

General Terms and Conditions of Business (Terms of Payment and Supply) of Endrich Bauelemente Vertriebs-GmbH

1. General

- (1) Our Terms of Supply apply exclusively; we will not accept conflicting terms of business of the customer which differ from our own General Terms and Conditions of Business unless we have given our express written consent thereto.
- (2) Our Terms of Supply shall apply even if we execute the order with the knowledge that the customer's terms and conditions conflict with or differ from our own.
- (3) Our Terms of Supply shall apply to all future supplies and services until superseded by new terms of supply.
- (4) The scope of the supplies and services (hereinafter "Supplies") shall be as defined in writing by both parties. General terms and conditions of the customer shall only apply if Endrich has expressly granted its consent hereto in writing.
- (5) Endrich reserves the right to realise property rights and copyrights in estimates, drawings and other documents (hereinafter "Documents") without limitation. The Documents may only be disclosed to third parties with the prior consent of the supplier and must be returned without undue delay on request if the order is not placed with Endrich. The same shall apply to Documents of the customer; these may however be disclosed to third parties to whom Endrich has been permitted to subcontract.
- (6) The customer shall have the non-exclusive right to use standard software and firmware with the agreed performance features for agreed appliances in unaltered form.
- (7) Part deliveries are permissible provided that they are reasonable to the customer.
- (8) In these General Terms and Conditions of Business the term "compensation claims" also includes claims for reimbursement of expenditures made to no avail.

2. Prices and terms of payment

- (1) Prices are ex works excluding packaging plus Value Added Tax at the applicable statutory rate.
- (2) Payments shall be made by customer to Endrich's place of payment free of charge. Payments shall be due without deduction within 30 days of the date of the invoice.
- (3) The customer shall only be entitled to offset counterclaims against our claims if the counterclaims are undisputed or final and absolute.

3. Reservation of title

- (1) Endrich reserves title in the goods supplied until all Endrich's claims against the customer under the business relationship have been satisfied. For repair orders Endrich will retain title in all accessories, spares and replacement parts used until all payments have been received. These items shall hereinafter also be included in the term Supplies.
- (2) The customer may not pledge or transfer the contractual goods as security for such time as Endrich still has title in the Supplies. Should such Supplies be seized, confiscated or the subject of other orders by third parties the customer shall notify Endrich hereof without undue delay and provide Endrich with whatever information and documents are necessary for intervention.
- (3) If the Supplies are combined with other items or processed Endrich shall acquire pro-rata co-ownership in the resultant goods which the customer hereby transfers now in advance. Any further-processing shall be for Endrich's account. If the customer acquires sole title in the new items the parties shall be deemed to have agreed that the customer transfers the pro-rata co-ownership to Endrich and that Endrich accepts such transfer. The customer shall keep the sole title or pro-rata co-ownership in items created in this way in trust for Endrich free of charge.
- (4) The customer may resell the Supplies – where appropriate in a processed or combined form - in the course of proper business for cash payment or subject to retention of title. The customer hereby assigns any claims arising from resale to Endrich. Endrich accepts this assignment. The clause regarding the assignment of claims also applies in case of processing, combination and mixing for the newly created item. In any event assignment is only up to an amount which is the equivalent of the value of the (processed, combined or mixed) reserved goods as charged by Endrich. The customer may collect the assigned claims as long as it fulfils its payment obligations towards Endrich. If the customer is in default with payment Endrich may revoke the right to collect. In this event the customer shall - at Endrich's request – provide whatever details are required for collection, permit Endrich to inspect necessary documents or to have them inspected by a third party and notify the debtors of assignment.
- (5) In the event that the customer should default on payment, that insolvency proceedings should be instituted or the customer's business should be transferred to third parties, Endrich may withdraw from the agreement, demand that the Supplies be released, take back the goods delivered and enter the customer's business premises for this purpose. This has no effect on the statutory provisions stating that it is not necessary to set a deadline. The customer is obliged to release the reserved goods. Endrich is entitled to dispose freely of the reserved goods it has taken back. The proceeds from realisation must be credited to the customer's liabilities less reasonable realisation costs. If Endrich takes back goods, claims reservation of title or seizes the reserved goods this shall not constitute rescission of the agreement, unless Endrich specifically declares this.

- (6) If the realisable value of all security rights to which Endrich is entitled exceeds the aggregate of all secured claims by more than 10 % Endrich shall – at the request of the customer – release a corresponding portion of the security rights chosen at Endrich's discretion.

4. Delivery times; default

- (1) Meeting of delivery times requires all Documents to be provided by the customer, permits and clearances required, in particular plans, are provided in due time and if the customer meets agreed terms of payment and other obligations. If these conditions are not fulfilled on time, the deadlines shall be reasonably extended; this shall not apply if Endrich is responsible for the delay.
- (2) If delivery times cannot be met owing to force majeure (e.g. mobilisation, war, civil commotion, strike, lock-out or similar) the times shall be reasonably extended.
- (3) Claims for compensation on the part of the customer on the grounds of delayed delivery and claims for compensation in lieu of performance shall be excluded in all instances of delayed delivery even if a deadline which has been set for Endrich has expired. This shall not apply to the extent that there is mandatory statutory liability in the event of intent, gross negligence or damage to life, body or health or a culpable breach of duties, the fulfilment of which guarantees the proper execution of the contract in the first place and the observation of which the contractual partner usually relies on and may rely on (Kardinalpflichten). Where there is no intentional breach of duty and the culpable breach of duty does not lead to damage to life, body or health Endrich's liability is restricted in amount to foreseeable damage typical of this type of contract. The customer may only withdraw from the agreement as provided for by statutory provisions to the extent that Endrich is responsible for the default in delivery. The above provisions do not give rise to a change in the burden of proof to the detriment of the customer.
- (4) At the request of Endrich the customer shall state within a reasonable period whether it intends to withdraw from the agreement owing to the delay in delivery or insist on supply.
- (5) If dispatch or service is delayed at the request of the customer by more than one month after the goods are ready for dispatch, Endrich may charge the customer storage costs for each month commenced at a rate of 0.5% of the price of the goods to be delivered, however no more than 5%. The parties to the agreement are at liberty to prove that higher or lower storage costs have been incurred.

5. Passage of risk

- (1) For freight-free shipments the risk shall also pass to the customer on dispatch or collection of the shipment. Endrich will insure shipments against the usual transport risks at the request and expense of the customer.
- (2) If dispatch, delivery, commencement, execution of erection or assembly, receipt at the customer's premises or the trial run is delayed for reasons which are the responsibility of the customer or if the customer is in default with acceptance for other reasons, risk shall pass to the customer at this time.

6. Receipt

The customer may not refuse to take receipt of Supplies on the grounds of minor defects.

7. Product Defects

Endrich shall be liable for product defects as follows:

- (1) In the event that any parts or Supplies are defective Endrich may choose to remedy these defects free of charge, replace them or provide replacement delivery if the defect existed at the time of passage of risk (subsequent performance).
- (2) Claims for product defects become statute-barred 12 months after delivery by Endrich. This does not apply if longer periods are prescribed by statute pursuant to §§438 I no. 2 of the German Civil Code (*Bürgerliches Gesetzbuch*) (buildings and property), 479 I (recourse) and 634 a I no. 2 (building defects) and in instances of injury to life, body and health, or an intentional or grossly negligent breach of duty on the part of Endrich or malicious concealment of a defect.
- (3) The customer shall report product defects to Endrich without undue delay in writing stating the precise details of the defect asserted.
- (4) If defects are reported the customer may withhold payment to an extent commensurate with the product defect. The customer may only withhold payment if claims are asserted regarding defects and if there is no doubt as to the validity of such claims. The customer is not entitled to withhold payment if its claims for compensation for defects have become statute-barred. If the complaint regarding defects is unjustified, Endrich may demand that the customer reimburse it for expenses incurred.
- (5) Endrich must first be given an opportunity to subsequent performance within a reasonable period. If the subsequent performance is not successful the customer may rescind the agreement or reduce payment - regardless of any compensation claims pursuant to Article 7 no. 9.

9. Impossibility / adjustment of agreement

- (6) There shall be no claims for defects where there is only an immaterial deviation of the agreed quality, where the usability is insignificantly impaired, in case of natural wear and tear or where damage incurred after the passage of risk owing to faulty or negligent treatment, excessive use, use of unsuitable operating materials or in case of special external influences which are not stipulated under the agreement and for non-reproducible software errors. Likewise if inappropriate modifications or maintenance work are carried out by the customer or third parties there shall be no claims for defects for these and any consequences.
- (7) Claims of the customer derived from the expenses required to satisfy subsequent obligations, in particular, transport, in-transit, work and material costs are ruled out in as far as the expenses increase because the subject of the consignment was taken subsequently to a place other than the branch of the customer, unless such transport corresponds to the designated contractual use.
- (8) The customer shall only have statutory rights of recourse against Endrich pursuant to § 478 of the German Civil Code (recourse) in as far as the customer has not entered into any agreements with its customer over and above the claims for defects provided for by statute. With respect to the scope of the claim to recourse of the customer against Endrich pursuant to § 478 II of the German Civil Code Article 7 no. 7 shall apply accordingly.
- (9) The customer may not claim compensation on the grounds of a product defect. This does not apply to malicious concealment of a defect, failure to fulfil a guarantee of quality, in the event of damage to life, body or health, intentional or grossly negligent breach of obligation on the part of Endrich or a culpable breach of duties, the fulfilment of which guarantees the proper execution of the contract in the first place and the observation of which the contractual partner usually relies on and may rely on (Kardinalpflichten). Where there is no intentional breach of duty and the culpable breach of duty does not lead to damage to life, body or health Endrich's liability is restricted in amount to foreseeable damage typical of this type of contract. The above provisions do not give rise to a change in the burden of proof to the detriment of the customer. The customer shall have no claims for product defects over and above those set out in this Article.
- 8. Intellectual property rights and copyrights, legal defects**
- (1) Unless otherwise agreed Endrich is only obliged to deliver the Supplies free of third-party intellectual property rights and copyrights (hereinafter "Property Right") to the country of the place of delivery. In as far as a third party files justified claims against the customer owing to the breach of a Property Right concerning products used in compliance with contract and supplied by Endrich, Endrich is liable vis-à-vis the customer within the period set out in Art. 7 no. 2 as follows:
- a) Endrich shall at its discretion either procure a right of use for the Supplies in question or modify them in such a way that the Property Right is not infringed or replace them. To the extent that Endrich is not able to do so at reasonable conditions the customer shall be entitled to the statutory rescission or reduction rights.
- b) Endrich's obligation to render compensation shall be as set out in Article 7 no. 9.
- c) The above obligations of Endrich exist only to the extent that the customer notifies Endrich in writing without undue delay of the third-party claims, does not acknowledge an infringement and allows Endrich to reserve all measures to avert the infringement and engage in negotiations for a settlement. If the customer stops using the Supplies for reasons of loss mitigation - or for other good cause - it is obliged to inform the third party that this does not constitute acknowledgement of infringement of a Property Right.
- (2) The customer has no recourse to the extent that it is itself responsible for infringement of the Property Right.
- (3) The customer has no claims to the extent that the infringement of the Property Right was caused by the specific stipulations of the customer, by unforeseeable use by Endrich or by the fact that the customer altered the Supplies or used them in conjunction with products not supplied by the supplier.
- (4) In the case of Property Right infringements the customer's claims as set out in Article 8 no. 1 apply, and the provisions of Article 7 nos. 4, 5 and 9 accordingly.
- (5) In the event of other legal defects the provisions of Article 7 shall apply accordingly.
- (6) Claims of the customer against Endrich and its vicarious agents on the grounds of a legal defect over and above or other than those set out in Article 8 are excluded.
- (1) To the extent that supply is not possible the customer is entitled to demand compensation unless Endrich is not responsible for such impossibility. Compensation of the customer shall, however, be restricted to 5% of the value of such portion of the consignment which cannot be used for its designated purpose owing to such impossibility. This restriction shall not apply to the extent that there is mandatory statutory liability for intent, gross negligence or injury to life, bodily injury or health. This does not give rise to a change in the burden of proof to the detriment of the customer. This shall not affect the customer's right to rescind the agreement.
- (2) To the extent that unforeseen occurrences within the meaning of Article 4 no. 2 substantially alter the economic significance or the content of the Supplies or have a substantial influence on Endrich's operations the agreement shall be adjusted appropriately in good faith. If this is not economically tenable Endrich may rescind the agreement. If it wishes to make use of this right to rescind the agreement it shall inform the customer without undue delay after gaining knowledge of the implications of the event, even if an extension to the delivery period has initially been agreed.
- 10. Other compensation claims**
- (1) The customer shall have no compensation claims (hereinafter "Compensation Claims") irrespective of legal basis, in particular on the grounds of infringement of duties arising from the obligation and from tortious acts.
- (2) This shall not apply in as far as there is mandatory statutory liability, e.g. under the Product Liability Act (*Produkthaftungsgesetz*), in cases of intent, gross negligence, damage to life, body or health, or a culpable breach of duties, the fulfilment of which guarantees the proper execution of the contract in the first place and the observation of which the contractual partner usually relies on and may rely on (Kardinalpflichten). Where there is no intentional breach of duty and the culpable breach of duty does not lead to damage to life, body or health Endrich's liability is restricted in amount to foreseeable damage typical of this type of contract. The above provisions do not give rise to a change in the burden of proof to the detriment of the customer.
- (3) In as far as the customer is entitled to compensation claims under Article 10 these shall become statute-barred on expiry of the limitation period which applies to claims for material defects pursuant to Article 7 no. 2. The same shall apply to claims of the customer associated with measures to avert losses (such as product recall measures). Claims for compensation under the Product Liability Act are subject to the statutory limitation provisions.
- 11. Place of jurisdiction and applicable law**
- (1) If the customer is a businessman (Kaufmann) the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the domicile of Endrich. However, Endrich may also file action at the domicile of the customer.
- (2) Legal relationships associated with this agreement shall be governed by German substantive law excluding application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12. Severability clause**
- If individual provisions of the agreement are legally invalid the rest of the agreement shall remain binding. This shall not apply if to adhere to the agreement would constitute unreasonable hardship for one of the parties.