

Payment and Delivery Terms

§ 1 General- Scope of Application

1.1 The following payment and delivery terms will apply exclusively to the delivery of products of the individual companies of Emsland Group with business seat in Germany; any terms to the contrary or payment and delivery terms by the purchaser deviating from ours will not be accepted by us unless we expressly consented to their validity in writing. Our sales terms will apply even if we unconditionally carry out the delivery to the purchaser despite being aware of contrary terms or terms by the purchaser deviating from our payment and delivery terms. The following payment and delivery terms apply exclusively to the contract between the selling company of Emsland Group and the purchaser.

1.2 The payment and delivery terms will be regarded as having been accepted by the purchaser unless the purchaser immediately rejects them in writing.

1.3 Individual agreements with the purchaser concluded in the individual case (including ancillary agreements, addenda and amendments) will always prevail over the present payment and delivery terms. A written contract or our written confirmation is authoritative for the subject matter of such agreements.

1.4 The payment and delivery terms are part of all contracts concluded by us with the purchaser for the goods offered. They will only apply if the purchaser is an entrepreneur (§ 14 German Civil Code).

§ 2 Conclusion of the contract

2.1 Our quotations are subject to change and are non-binding, unless we have explicitly designated them as binding.

2.2 Upon placing an order for the required goods, the purchaser makes a binding offer to enter into a contract.

2.3 We shall be entitled to accept the offer constituted by the purchase order within two weeks either by sending an order confirmation or by sending the ordered products within the same period.

2.4 The contract shall be concluded with the proviso that, if we ourselves are not correctly or properly supplied, we are not obliged to perform the contract, or may only partially perform the same. This shall only apply if we are not responsible for the failure to deliver. We will notify the purchaser immediately if the goods are not available or only partially available and return all advance payments of the purchaser immediately.

§ 3 Prices and payment

3.1 In contracts with continuing obligations, frame delivery agreements and contracts with a delivery date later than three months since signing of the contract, we reserve our right to adjust prices. The prices are calculated on the basis of the price structure negotiated in each case with the purchaser. In the event of a change of subsidies or prices for raw material at least three months after the date of the order confirmation, we shall be entitled to pass on the increased expenses to purchaser, if they are not compensated by decreases of other costs reflected in the price structure. Changes accordingly, we will pass on to the purchaser decreased expenses not compensated.

3.2 Unless otherwise agreed on in writing with us, all invoices are due to the full amount within ten (10) days after receipt of the invoice to a bank account to be specified by us (essentially the account of the respective plant delivering the goods). Bills of exchange will only be accepted if their term does not exceed ninety (90) days and the fees are reimbursed in the case of discounting (discounting fee). They are to be cashed at a bank. Notwithstanding, we reserve the right to refuse acceptance of a bill of exchange. Bills of exchange are for the purpose of performance only.

3.3 After lapse of the payment deadline, the purchaser will be deemed as being in arrears with payment. The statutory provisions regarding the consequences of deferred payment will apply. We reserve the right to prove and assert that greater damage was caused due to the delay.

3.4 We have the right to carry out or render outstanding deliveries and services on the sole basis of advance payment or furnishing of security if after conclusion of the present contract we become aware of circumstances which are significantly detrimental to the purchaser's creditworthiness and by which the payment of our outstanding claims by the purchaser from the respective contract (including the individual contracts to which the same framework agreement) applies is jeopardized.

§ 4 Delivery

4.1 Delivery is ex works or ex warehouse. If in exceptional cases freight paid delivery to German Railway station or the shipping port (Incoterms 2010) has been agreed on in writing additional freight costs will be charged to the recipient for urgent or express deliveries.

4.2 All incidents of force majeure or all other events not foreseeable and avoidable at the time of the conclusion of the contract (such as operational trouble of any type, difficulties with the procurement of the materials and energy, transport delays, strikes, legal lock-outs, shortage of labor, energy or raw materials, difficulties with the procurement of the necessary official permits, official measures or the omission of or, improper or non-timely delivery by suppliers) will release us from the fulfillment of the contractual duties assumed by us for the duration of such events. We will be obligated to inform the purchaser immediately of the onset of such an event, simultaneously informing the purchaser of the anticipated duration of such an event. If such an event lasts longer than three months we may rescind the contract. Any contractual consideration already given will be reimbursed.

4.3 Our statutory rights of rescission and termination as well as the legal provisions on the winding up of the contract in the case a performance duty is not met (e.g. in the case of infeasibility of the service or if performance of the service or follow-up service is unreasonable) will remain unaffected.

4.4 If performance of delivery or a service by us is delayed or performance is impossible, regardless of the ground, our liability will be limited to damage compensation pursuant to § 9 of the present payment and delivery terms.

§ 5 Delivery Deadline

Deadlines and dates for deliveries and services stated by us are only approximate unless a fixed deadline or date has been expressly agreed on.

§ 6 Rescission

We reserve the right to rescind the contract or terminate contracts with continuing obligations if there is an objective legitimate ground not detectible already upon conclusion of the contract. An objective legitimate ground may in particular be a breach of contract by the purchaser, false information regarding the purchaser's creditworthiness, a change of the purchaser's ownership that seriously affects our interests or if insolvency proceedings have been filed for against the purchaser or the onset of other facts which jeopardize our claim to the purchase price due to the lack of solvency of the purchaser. The right to rescission in § 4 of the present payment and delivery terms as well as the statutory right of rescission will remain unaffected.

§ 7 Place of Fulfillment and Passing of Risks

The place of fulfillment for all duties arising from the present contract is our place of business or our warehouse unless otherwise specified. All deliveries will be at the risk of the purchaser ex works (Incoterms 2010). The purchaser will also bear the transport risk for all goods returned to us.

§ 8 Warranty

8.1 The warranty period will be one (1) year as from the passing of the risk. However, our statutory liability pursuant to § 9 of the present payment and delivery terms will remain unaffected.

8.2 The agreed quality of the goods decides whether the goods are defective or not. Any specifications of the individual contract define the agreed quality of the goods. If no specification has been agreed, any decision whether the goods are defective shall be made according to § 434 section 1 sentences 2 and 3 German Civil Code. There are no claims based on defects in the case of only minor deviation from the agreed features, if such features were agreed on in writing, or in the case of only minor impairment of usability.

8.3 The prerequisite for the purchaser's claims based on defects is his compliance with the statutory inspection and complaint duties (§ 377 German Commercial Code). Any complaints based on defects must be declared in writing. The full burden of proof for all prerequisites for the claims and in particular for the defect itself, time of the defect and timeliness of the complaint, will be incumbent on the purchaser. If the purchaser fails to carry out the due inspection and/or report of defects, our warranty will be excluded for the defect which was not reported.

8.4 If the item delivered is defective the purchaser may initially demand either rectification of the defect (repair) or delivery of an item free of defects (replacement). If the purchaser does not declare which of the rights he opts for we can stipulate an adequate deadline for this. If the purchaser does not make his decision within this period, the right of option will pass to us after lapse of the deadline.

8.5 We have the right to make the supplementary fulfillment dependent on payment of the purchase price by the purchaser. However, the purchaser has the right to retain part of the purchase price in relation to the defect.

8.6 The purchaser must give us the necessary time and opportunity for supplementary fulfillment, especially for handing over the contested goods for inspection. In the case of replacement the purchaser must upon our demand return the defective item to us in accordance with the statutory provisions.

8.7 The expenditure necessary for inspection and make-up performance, in particular, transport, travel, labor and material costs will be borne by us if there is an actual defect. However, if the purchaser's claims for defect rectification are not justified we may demand reimbursement by the purchaser of the costs thereby incurred.

8.8 In urgent cases such as risk to operational safety or for preventing disproportionate damage the purchaser has the right to remove the defect himself and demand reimbursement of the expenditure objectively necessary for this purpose. We must be informed immediately, if possible, in advance in the case of independent rectification by the purchaser. The right to independent rectification will not apply if we would be entitled to refuse make-up performance in accordance with the statutory provisions.

8.9 If the supplementary fulfillment was unsuccessful twice or an adequate deadline for make-up performance to be stipulated by the purchaser has lapsed fruitlessly or is not necessary according to legal provisions the purchaser may rescind the purchase contract or have the purchase price reduced. However, in the case of minor defects there is no right of rescission.

8.10 Claims by the purchaser to damage compensation or compensation of superfluous expenditure will only exist pursuant to § 9 and are excluded in other respects.

§ 9 Liability

9.1 We will be liable in accordance with the statutory provisions if the purchaser asserts damage compensation claims based on willfulness or gross negligence including willfulness or gross negligence by our representatives or vicarious agents.

9.2 In case we are not culpable of willful breach of contract the damage compensation will be limited to foreseeable, typical damage.

9.3 We will be liable in accordance with the statutory provisions to the extent that we culpably breach an essential contractual duty the breach of which endangers the aim of the contract (“Kardinalpflicht”); in such a case, damage compensation liability will be limited to foreseeable, typical damage.

9.4 The statutory liability due to culpable damage to life, limb or health will remain unaffected; this will also apply to compulsory liability in accordance with the Product Liability Act.

9.5 Unless regulated otherwise, further-reaching liability for damage compensation other than in § 9 is excluded, regardless of the legal nature of the claim being asserted. This applies in particular to damage compensation claims on the basis of other breaches of duty or on the basis of claims in tort law to the compensation of material damage pursuant to § 823 BGB.

9.6 Restrictions as set out in §§ 9.2, 9.3 and 9.5 will also apply in case the purchaser demands reimbursement of superfluous expenditure in lieu of damage compensation.

9.7 As far as damage compensation liability towards us is excluded or restricted this will also apply to the personal damage compensation liability of our employees, workers, associates, representatives and vicarious agents.

§ 10 Retention of Title

10.1 We reserve the title to the goods until receipt of all payments from the business relationship with the purchaser. If there is a current account relationship between the purchaser and us the retention of title will also apply to the respective recognized balance; the same will apply if a balance is not recognized, but a “causal” balance is drawn, due to insolvency or liquidation of the purchaser.

10.2 In case of breach of contract by the purchaser, in particular delayed payment, we will have the right to rescind the contract in accordance with the statutory provisions and to demand release of the goods on the basis of the retention of title and rescission. If the purchaser fails to pay the purchase price we may only assert these claims if we have unsuccessfully stipulated an adequate deadline for payment for the purchaser or stipulation of such a deadline is not required by law.

10.3 After rescission of the contract we will be authorized to realization of the goods; the proceeds are to be set off against the purchaser’s liabilities minus adequate realization costs.

10.4 The purchaser has the right to resell the goods in a regular business transaction; however he is already assigning to us all claims against customers or third parties to the amount of the invoice total (including VAT) of our liability which arise from the resale, regardless of whether the goods were resold without or after processing. We hereby accept the assignment.

10.5 The purchaser will remain authorized to collect these claims even after assignment. Our authorization to collect the claims ourselves will remain unaffected. However, we undertake not to collect the claims as long as the purchaser complies with his payment duties from the proceeds earned, is not in arrears with payment and in particular if insolvency proceedings have not been filed for. If this is the case we can demand that purchaser discloses to us the assigned claims and their debtors, provide all information necessary for collection as well as all corresponding documents and notify the debtors (third parties) of the assignment.

10.6 Processing or transformation of the goods by the purchaser will be carried out for us in every case. If the goods are processed with other items not belonging to us we will acquire coownership in the new item on the basis of the ratio of the value of the goods (invoice total including VAT) to the other processed items at the time of processing. The same will apply to the item originating from processing as to the goods delivered subject to retention of title.

10.7 If the goods are blended inseparably with other items not belonging to us we acquire coownership in the new item on the basis of the ratio of the value of the goods (invoice total, including VAT) to the other blended items at the time of blending. If the blending is carried out in such a way that the purchaser’s item is to be regarded as the main item it is agreed that the purchaser will assign

a share in the ownership to us. The purchaser will safeguard the sole or co-ownership arising in this way on our behalf free of charge.

10.8 We undertake to release the securities we are entitled to at the request of the purchaser if the realizable value of all our securities exceed the claims to be secured by more than 10%; the choice of the securities to be released will be incumbent on us.

§ 11 Final Provisions:

11.1 For all disputes arising in connection with the present contract or its validity the contracting parties agree to our business seat as the exclusive place of jurisdiction.

11.2 The present payment and delivery terms are subject to the laws of the Federal Republic of Germany excluding the UN Sales Convention on International Sales of Goods (CISG) and any law on conflict of laws that would come to the application of a foreign law. The legal terms in this payment and delivery terms shall have the meaning ascribed to them under the laws of the Federal Republic of Germany.

11.3 Should individual terms of the present payment and delivery terms be or become legally invalid or void this will not affect the validity of the remaining terms.

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