

# General Terms and Conditions of Purchase (AEB)



**EuropTec Germany hereinafter referred to as the "Buyer"**

General Terms and Conditions of Purchase (AEB) for Trade Relations

## 1. General information and scope of application

1.1 These General Terms and Conditions of Purchase of the Buyer apply to all purchases, orders and assignments of the Buyer exclusively in trade relations with entities other than consumers within the meaning of § 310 sec. 1 of the German Civil Code.

1.2 Assignments and orders are given only subject to these terms and conditions of purchase.

Confirmation of any assignments/orders of the Buyer by the Seller is understood as the acceptance of these general terms and conditions of purchase. Other arrangements apply only when they have been agreed in writing.

1.3 The Seller's general business conditions are expressly excluded. Any conditions of the Seller, being contrary to or different from these conditions of purchase, shall only apply if the Buyer has expressly accepted them in writing. It also applies to the situation in which the Buyer has not expressly excluded the Seller's conditions included in the offer or confirmation of orders or referred thereto. No acceptance of any supply or services or full payment does not imply the Buyer's consent to the Seller's conditions.

1.4 These general terms and conditions of purchase also apply to all future transactions with the Seller related to sale-purchase agreements.

## 2. Offer and conclusion of agreement

2.1 The Buyer shall be bound by the offer presented by it (assignment/order) for 5 business days from the date of receipt thereof by the Seller. Orders made in writing shall only be binding. Any assignments given verbally or by telephone, and any additional arrangements, changes or supplements, must be confirmed in writing by the Buyer.

2.2 Offers must be accepted by the Seller in writing (e.g. by facsimile, e-mail).

2.3 Any confirmations of the Seller which are different than the offer shall be considered to constitute a new offer.

2.4 Confirmation of an assignment should be made in writing. Any additional arrangements, changes or supplements in an oral form must be confirmed in writing.

2.5 Conditions of the main assignment shall also apply to all additional and supplementary assignments, unless agreed otherwise in writing.

## 3. Prices, invoices, conditions of payment

3.1 The price indicated in the order shall be binding.

If any order does not clearly specify the price, the Seller is obliged to present it before the execution of the order. If the Seller presents the price, then it will be deemed agreed if the Buyer confirms it in writing within 5 business days of the receipt of such information.

If the Seller does not provide information about the price, then the prices which have been recently calculated by the parties to the contract, and additionally catalogue prices of the Seller as of the date of the order, subject to the customary discounts, will be binding as the agreed prices.

The agreed prices are fixed (net) prices and they exclude any additional demands of any kind. Unless otherwise agreed in any particular case, the price includes all services and additional services of the Seller, as well as all additional costs (e.g. proper packaging, transportation costs including transportation insurance and third party liability insurance, if any).

3.2 Test deliveries, preparation of patterns, designs, plans, bills of costs, etc., shall be carried out by the Seller for the Buyer free of charge and on a tentative basis, unless otherwise agreed in writing.

3.3 Invoices are payable upon receipt of 2 counterparts of the invoice by the Buyer. Invoices which are not correctly delivered (i.e. incorrect, incomplete, inappropriate and non-verifiable) shall only be payable upon the receipt by the Buyer of a fully corrected invoice.

3.4 Payments shall be made after the receipt or collection of the goods and receipt of a verifiable invoice or within 14 days, minus 3% discount, or within 30 days net, unless otherwise agreed in writing.

## 4. Delivery and packaging

4.1 The Seller is obliged to label the delivered items such that they are permanently identifiable as far as possible, if it is practicable and economically justifiable taking into account the product properties.

4.2 Deliveries shall be carried out in packaging and exworks of the Buyer (place of fulfillment of the obligation), unless otherwise expressly agreed in writing.

4.3 Transportation risk, transportation fees and additional costs shall be borne by the Seller.

4.4 Goods should be packed in such manner as to avoid damages during transport. Environmentally friendly packaging should only be used.

4.5 At the Buyer's request, the Seller is obliged to collect packaging in accordance with the provisions of law.

## 5. Delivery dates and delay

5.1 The agreed delivery dates are binding. The Buyer's prior consent in writing shall be required for any extension. In the event of any agreements concerning calendar weeks, delivery should be carried out no later than on Friday of a given calendar week.

5.2 Delays in deliveries should be immediately reported to the Buyer in writing with indication of the reasons and duration thereof.

5.3 In the event of any delay in delivery, after an ineffective lapse of the relevant period, the Buyer has the right to rescind the agreement and, in case of any culpable breach of the obligation, to demand damages instead of services. It shall be without prejudice to the right to claim damages due a culpable delay. If the deadline for provision of services was agreed according to the calendar, then the Seller falls into delay without any additional request being required.

5.4 Acceptance of the entire delayed supply or services shall not be deemed to be a waiver of claims arising from the delay.

5.5 Partial deliveries are not permissible as a matter of principle, unless the Buyer has previously expressly agreed thereto in writing.

5.6 In any goods are delivered before the scheduled date, the Buyer reserves the right to send the goods back or store them until the agreed delivery date, at the Seller's expense and risk.

5.7 In the event of force majeure and strikes, the Buyer shall be released, in full or in part, from the obligation to collect the ordered goods/services, and accordingly it shall have the right to rescind the agreement, if due to a delay caused by force majeure or strike the goods/services no longer have any value for the Buyer from the economic perspective.

## 6. Contractual penalty

6.1 The Seller shall be liable for all damages and losses suffered by the Buyer in the event of culpable overrun of the agreed delivery deadlines.

6.2 For a culpable overrun of the agreed delivery deadline by more than 10 business days the Seller is obliged to pay a contractual penalty of 0.2% of the net order value for each business day of delay, however not more than 5% of the net order value, retroactively, from the first business day of delay.

6.3 It shall be without prejudice to the Buyer's right to pursue claims for damages in addition to the contractual penalty.

However, the contractual penalty already paid is credited towards such compensatory claims.

6.4 The contractual penalty does not have to be reserved upon delivery or collection of goods. It is sufficient to assert a claim concerning a contractual penalty until the ultimate maturity date of payments.

6.5 If the delivery dates are postponed or upon consent of both parties, such dates shall be agreed again, and then the new provision concerning the contractual penalty pertains to new dates; no new specific provision concerning a contractual penalty is required.

## 7. Submission of a security instrument / performance guarantee

7.1 If the Buyer made any payments in advance, then the Seller, at the Buyer's request, is obliged to provide, within 10 business days, a security instrument in the form of an unconditional and reliable guarantee for an indefinite period of time, providing for direct liability of the guarantor having its seat in the German Federal Republic (a bank or savings bank – rather than a credit insurer), payable on first demand – for an amount equal to 10% of the net order value, concerning the performance of all obligations pertaining to it and arising from the contract, in particular the performance of services in compliance with the contract, including reconciliation of payments, removal of defects (including any claims seeking payment or compensatory claims related to defects), satisfaction of all compensatory claims of any kind, in particular related to damages instead of services, breach of obligation, fault in the event of contractual negotiations and arising from a subcontract.

7.2 Payment in advance may be conditional upon provision of the guarantee document.

7.3 The Buyer is obliged to return the guarantee document after the delivery or collection of goods.

7.4 The costs of the guarantee shall be borne by the Seller.

## 8. Transfer of risk

The Seller shall bear material risk until the collection of goods or other services by the Buyer at the place to which the goods were to be delivered or at which other services were to be performed in accordance with the order.

## 9. Warranty

9.1 The Seller guarantees and warrants that all supplies and services will conform to the state of the art, the relevant obligations and provisions of law and the labor and special unions of the German Federal Republic, EU and the country of destination.

9.2 The Seller warrants that the services delivered and performed by it will comply with the requirements and specifications agreed individually with the Buyer, will have the agreed quality and will be capable of being used in accordance with their permitted use specified in the contract.

9.3 The Seller shall be liable for any impact on the environment and health of the delivered products and packaging materials, and all damages caused as a result of any breach of the statutory disposal obligation. On request the Seller is obliged to issue a quality certificate and/or certificate of origin for the delivered goods.

9.4 For the purposes of the commercial obligation to check and file a complaint, the relevant provisions of law shall apply (§§ 377, 381 of the German Commercial Code), subject to the following provision:

The Buyer's obligation to check the delivery is limited to defects visible during a visual inspection of goods and delivery documents, and during quality control as part of random control (e.g. damages causing during transport, incorrect or incomplete delivery). In such cases the Buyer is obliged to immediately report defects to the Seller, i.e. within two weeks of the receipt of the delivery. If collection was agreed, there is no obligation to check the delivery.

Further, it depends on the extent to which inspection is possible taking into consideration the conditions applicable to a given

case in accordance with the correct course of action. The obligation to file a complaint concerning defects discovered at a later date (hidden defects), including also departures from the agreed specifications, beyond the range of tolerance, shall continue in force without any changes. In such cases the Buyer is obliged to immediately and timely submit a complaint to the Seller, i.e. within two weeks of discovering the defect.

9.5 If at the time of transfer of risk, despite exercising due diligence, a defect exists, the Buyer is obliged to make it possible for the Seller to repair it within an appropriate deadline.

9.6 In case of justified complaints the Seller has the right to repair the defect free of charge, at the Buyer's option, through repair or delivery of substitute goods. If the defect may only be repaired, both through substitute delivery and repair, at incommensurably high costs, the Seller has the right to refuse to carry out a repair or reduce the purchase price.

9.7 After the second ineffective attempt to repair the defect, the repair should be deemed unsuccessful if as a result thereof something else is being created other than what should arise from the type of thing or defect or other circumstances. In such a case the Buyer may exercise other rights arising from § 437 of the German Civil Code.

9.8 If despite an appropriately longer deadline the Seller fails to fulfill the obligation to remove a defect, then the Buyer has the right to remedy the defect by itself and claim reimbursement of necessary expenditures, if the Seller – despite § 275 sec. 2 and 3 of the German Civil Code – fails to extend the repair due to incommensurably high costs.

9.9 The Buyer's claims arising from a defect of a thing shall expire – contrary to § 438 sec. 1 no. 3 of the German Civil Code – after 3 years from the effective delivery of goods to the Buyer. If collection has been agreed in respect of any supply and/or services, then the expiry date is calculated from the collection date. If the right arising from §§ 438 sec. 1 no. 2 of the German Civil Code (Buildings and building appurtenances), 445 a and b of the German Civil Code (Right to pursue claims), 478 (Right to pursue claims in case of consumer sales) and 634 a sec. 1 no. 2 of the German Civil Code (Structural defects) unconditionally provides for longer deadlines, then such deadlines shall apply.

9.10 The Seller is ready to take over longer guarantee periods, arising from individual agreements between the Buyer and its ordering parties, for the products or semi-finished products supplied by it for the same period of time. It requires an express written agreement.

9.11 Recourse claims pursuant to §§ 445a and 478 of the German Civil Code shall apply without changes.

9.12 The Seller shall be liable towards the Buyer also in internal relationship, if the Buyer has been requested to pay damages due to any breach of official regulations in respect of domestic or foreign standards concerning product liability, if the reason is fully or partially inherent in a given service on the side of the supplier. A recourse claim encompasses also the costs of replacement or service actions, even if it is organized as precaution. Several entities are liable towards the Buyer as joint and several debtors. In case of recourse claims the Buyer reserves the right to be released from liability. The Seller undertakes to have appropriate and sufficient insurance against the above-mentioned damages and present it upon request; otherwise, prior to the execution of an agreement it undertakes to inform the Buyer in writing of the lack of insurance or insurance below the value.

9.13 The Seller shall be liable for its products and recipes outside the provisions of law (e.g. the Act on Product Liability) already in the event of a minor negligence. The Seller undertakes to execute and hold sufficient third party liability insurance for a minimum insurance sum in respect of personal injuries and property damages of EUR 30 million. Third party liability insurance should be submitted to the Buyer upon request, and in the event of any longer commercial relationship without request, once a year.

## 10. Security instruments / Rights of third parties

10.1 Along with the delivery the Seller irrevocably assigns to the Buyer the exclusive right to use and process the goods for all known manners of use.

10.2 Supplies must be free from security instruments and extended retention of title such that the delivered goods may be processed, mixed and used without any legal restrictions.

10.3 The Seller confirms that any services are to its knowledge free from any third party rights, and in particular not patents, licenses or any other protective rights and third party rights will be breached through the delivery and use of objects.

10.4 If in connection with the foregoing a third party approaches the Buyer with a demand, then the Seller is obliged to release the Buyer from such claims on first written demand. In the event of third party claims for damages the supplier has the right to prove that it is not at fault in respect of the breach of third party rights.

## 11. Prevention of accidents and environmental protection

The Seller shall be responsible for ensuring that the delivered machines and plant have CE marking. The plant must comply with the provisions of the Machinery Directive 8/37/EC, and in particular the regulations, directives and recommendations in respect of prevention of accidents, safety and environmental protection concerning good production sector, as well as VDI and VDE regulations and DIN standards.

## 12. Tools / Recipes / Liability

12.1 Moulds, tools, reproductions, plans, models, recipes, etc., manufactured and paid for by the Buyer or made available to the Seller by the Buyer, become the Buyer's property upon production and remain the Buyer's property. After the completion of the order they should be returned without request. Upon delivery of the object of the order and full payment, the Seller irrevocably assigns to the Buyer the exclusive right to use the object of the order for all known manners of use, as well as all claims arising from the author's rights concerning any use in the future, if permissible by law.

12.2 The Seller undertakes to timely, i.e. prior to the first delivery and prior to each change of any recipe, inform the Buyer of the ingredients of its recipes for the purposes of carrying out an inspection / tolerance test, and carry out the delivery only after the Buyer's written approval of the recipe for further use. The Seller shall inspect its recipes with a view to ensuring uniform ingredients and quality and shall guarantee them.

## 13. Trade secret

13.1 The Seller is obliged to keep confidential the fact of execution of the agreement, and in its advertising materials it may invoke commercial relations with the Buyer only upon written consent. Contracting parties undertake to keep trade secret in respect of all undisclosed commercial and technical details, in particular the main material and machines, of which they learned as part of the commercial relationship.

13.2 Designs/plans prepared for the Buyer, including the realized plans, drawings, designs, etc. cannot be made available to any third parties not engaged in the commercial relationship, nor can they be used in any third party designs/plans. It also applies to any non-realized designs or plans.

13.3 In the case of any breach of the confidentiality obligation a contractual penalty of EUR 50,000.00 shall be charged. This shall be without prejudice to any further compensatory claims.

## 14. Compensation and right to refuse to provide services / Pledge

14.1 Compensation is excluded, except in case of indisputable mutual claims or claims confirmed by a legally valid court verdict, arising from the same contractual relationship.

14.2 The Buyer shall only be entitled to exercise the right to refuse to render the services or a lien to the extent that its mutual claim is based on the same contractual relationship.

## 15. Assignment

15.1 The assignment of claims arising from the executed contractual relationship requires written consent of the other contracting party. Such consent cannot be refused without a good reason.

15.2 § 354a of the German Commercial Code shall continue in force.

## 16. Other provisions

16.1 If particular provisions of these General Terms and Conditions of Purchase are ineffective, the effectiveness of the other provisions shall remain unaffected. The contracting parties are consequently obliged as far as reasonably practicable to replace the ineffective provision by a provision which will be as close as possible to the assumed goal in economic terms and in terms of contents. If it is not possible, the provisions of the German Civil Code shall apply.

16.2 The Seller does not have the right, without the Buyer's prior consent, assign the order or any material parts thereof to any third parties. Such consent shall be granted substantially if the assigned obligations arising from the agreement are assigned to subcontractors without changes and in full.

16.3 If suppliers stop their payments or a bankruptcy petition is filed in respect of the Seller's assets, then the Buyer shall have the right to rescind the agreement, in full in part. If the Buyer terminates the agreement due to the Seller's breach of obligations, then the services completed thus far will be settled according to the contractual prices only to the extent that the Buyer may use them in accordance with their permitted use. During reconciliation damages suffered by the Buyer shall be taken into account.

## 17. Jurisdiction and governing law

17.1 Goslar is agreed to be the place of performance of the obligation and the court in Goslar shall have exclusive jurisdiction for all disputes.

17.2 Agreements between the Seller and the Buyer and any legal relationships between the parties are subject exclusively to the laws of the German Federal Republic, excluding the United Nations Convention on contracts for the international sale of goods.