

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



## I. General provisions, scope of application

1.

The following general purchase conditions (GPC) apply to all business relationships with our business partners and suppliers (hereinafter referred to as "Seller"). The GPC shall only apply if the Seller is an entrepreneur (section 14 BGB [Bürgerliches Gesetzbuch, German Civil Code]), a legal person under public law or a special asset under public law.

2.

In particular, these GPC apply to contracts regarding the sale and/or delivery of moveable goods (hereinafter also referred to as "Goods"), irrespective of whether the Seller manufactures the Goods himself or purchases these from suppliers (sections 433, 651 BGB). The GPC as amended shall also apply as framework agreement to all future contracts regarding the sale and/or delivery of movable goods concluded with the same Seller without us having to refer to them again in each individual case; we shall inform the Seller immediately of changes in the GPC in this case.

3.

These GPC apply exclusively. Deviating, contrary or supplementary General Terms and Conditions (GTC) of the Seller shall only become part of the contract if and insofar as we explicitly agreed to their validity in writing. This requirement for approval applies under all circumstances, for example also if we accept the delivery from the Seller without reservation under full knowledge of his General Terms and Conditions.

4.

Individual arrangements agreed with the Seller in particular cases (including collateral agreements, supplements and amendments) shall always take precedence over these GPC. A written contract or our written confirmation shall be decisive for the content of any such agreement.

5.

Legally relevant declarations and notifications that the Seller has to make towards us after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of withdrawal) shall require the written form to be valid.

6.

References to the validity of legal provisions shall only be of clarifying character. Accordingly, legal provisions apply, also without such clarification, unless they are directly modified or explicitly excluded in these GPC.

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



## II. Conclusion of the contract

1.

Our order shall be deemed binding no sooner than upon written placement or written confirmation. The Seller shall point out to us obvious errors (e.g. spelling mistakes and calculation errors) as well as incompleteness of the order including the order documentation for the purpose of correction or completion before acceptance; failure to do so shall result in the contract being deemed not concluded.

2.

The Seller is requested to confirm our order in writing within two weeks or, especially, execute it without reservation by dispatch of the Goods (acceptance). Delayed acceptance shall be deemed a new offer and requires acceptance on our part.

## III. Delivery period and delayed delivery

1.

The delivery period specified by us in the order shall be binding. If the delivery period is not stated in the order and not agreed otherwise, it shall be two weeks after conclusion of the contract. The Seller shall be obliged to immediately notify us in writing if he is likely to be unable to comply with the agreed delivery period – irrespective of reasons.

2.

If the Supplier does not provide his performance or does not provide it within the agreed delivery period or if he delays delivery, our rights – especially the right of withdrawal and right to compensation – shall be determined based on statutory regulations. The regulations in clause 3 below shall remain unaffected.

3.

If the Seller delays delivery we shall have the right to demand – in addition to further legal claims – flat rate compensation for the damage we incurred due to the delay amounting to 1 % of the net price of the Goods delivered late per completed calendar week, but no more than 5 % of the net price in total. We reserve the right to prove that we incurred higher damage. The purchaser shall have the right to prove that we incurred no damage at all or a significantly lower damage.

## IV. Performance, delivery, transfer of risk, delayed acceptance

1.

The Seller shall not have the right to commission third parties (e.g. subcontractor) to provide the performance owed by him without our prior written approval. The Seller shall bear the procurement risk for his services, unless other provisions are agreed in individual cases (e.g. sale of Goods in stock).

2.

Within Germany, delivery shall take place “carriage paid” to the place indicated in the order. If the destination is not specified and if nothing else is agreed, the delivery

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



shall be sent to our registered seat in Stahlstraße 2, 57234 Wilnsdorf. The respective destination also is the place of performance (obligation to be performed at the purchaser's place of business).

3.

Complete delivery documentation including specification of the agreed information shall be attached to the delivery. If delivery documentation is missing or incomplete, the delivery shall be deemed as not executed in full. Corresponding additional costs for processing may be invoiced to the Seller and we shall not be held responsible for delays in processing and delays in payments resulting from this.

4.

The risk of accidental loss and accidental deterioration of the Goods shall be transferred to us upon receipt of delivery at the place of performance. If acceptance is agreed, it shall be decisive for the transfer of risk. Also apart from the above, the legal provisions of service contract law apply accordingly to acceptance. Delay of acceptance on our part shall be deemed equal to delivery or acceptance.

5.

Occurrence of delayed acceptance on our part shall be subject to statutory regulations. However, the Seller shall also explicitly offer his performance to us when a specific or determinable calendar time is agreed for an action or co-operation on our part (e.g. provision of material). If we delay acceptance, the Seller shall be entitled to demand compensation for his additional expense in accordance with legal provisions (section 304 BGB). If the object of the contract is a single item to be produced by the Seller (custom-made product), the Seller shall only be entitled to any further rights if we have committed to co-operation and are responsible for co-operation not taking place.

## V. Prices and payment conditions

1.

The price given in the order shall be binding. All prices are given including statutory VAT, provided that VAT is not listed separately.

2.

Unless provisions to the contrary are agreed in individual cases, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including possible transport and liability insurance). The Seller shall take back packaging material at our request.

3.

The agreed price shall be payable within 30 calendar days after complete delivery and performance (including any acceptance that may have been agreed) as well as receipt of a proper invoice. If we effect payment within 14 calendar days, the Seller shall grant us a discount of 3 % of the net amount of the invoice. In case of bank

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



transfer, payment shall be deemed made on time when our transfer order was received by the bank before expiry of the payment period; we shall not be responsible for any delays by the banks involved in the payment transaction.

4.

We shall not owe interest on maturity. Default interest shall amount to 5 percentage points per year above the basic interest rate. Occurrence of delayed payment on our part shall be subject to statutory regulations, whereby, in possible deviation from these, a written reminder by the Seller shall always be required.

5.

We shall be entitled to set offs and rights of retention as well as the objection of non-fulfilment of the contract within the limits of statutory regulations. Especially, we shall have the right to withhold due payments for as long as we are still entitled to claims towards the Seller arising from incomplete or defective performances.

6.

The Seller shall only have a right to set off or right of retention in case of legally determined or undisputed counterclaims.

## **VI. Secrecy and retention of title**

1.

We reserve title and copyrights to images, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall only be used for the contractual performance and shall be returned to us after the contract has been fulfilled. The documents shall be kept secret towards third parties, also after the contract has expired. The obligation to secrecy shall only expire if and to the extent that the knowledge contained in the documents that were made available has become public.

2.

The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects that we make available to the Seller for manufacturing purposes. Such objects – insofar as they are not being processed – shall be stored apart at the expense of the Seller and shall be insured against destruction and loss to an appropriate extent.

3.

Any processing, mixing or combination (Processing) by the Seller of the objects provided is executed on our behalf. The same applies to Processing of the Goods by us, so that we are considered to be the manufacturer and acquire title to the product in accordance with statutory provisions upon Processing at the latest.

4.

Ownership of the product shall be transferred to us without fail and irrespective of

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



payment of the price. However, if we accept an offer for transfer of ownership by the Seller on the condition of paying the purchase price in individual cases, retention of title of the Seller shall expire no later than upon payment of the purchase price for the delivered Goods. Also before payment of the purchase price, we shall have the right to resell the Goods in the proper course of business under advance assignment of resulting claims. Thus, all other forms of retention of title, especially the extended and forwarded retention of title as well as the retention of title extended to processing, are excluded under any circumstances.

## VII. Defective delivery

1.

Unless set out otherwise below, legal provisions shall apply to our rights in case of material defects and defects of title of the Goods (including incorrect delivery or delivery of a quantity smaller than ordered as well as improper assembly or faulty assembly or operation instructions or faulty manual) and in case of other breaches of duty on the part of the Seller.

2.

In accordance with legal provisions, the Seller shall especially be liable for the Goods having the agreed quality upon transfer of risk to us. Considered as agreement regarding the quality of Goods are all product descriptions that – in particular by designation or due to reference to our order – are part of the respective contract or have been included in the contract in the same manner as these GPC. In this respect, it shall be irrelevant whether the product description was prepared by us, the Seller or the manufacturer.

3.

In deviation from section 442 clause 1 sentence 2 BGB, we shall also be entitled to unlimited rights arising from product defects if the defect was not known to us upon conclusion of the contract due to gross negligence.

4.

The following statutory provisions (sections 377, 381 HGB Handelsgesetzbuch, German Commercial Code) shall apply to commercial inspection obligations and the obligation to give notice of defects subject to the following: our inspection obligation shall be limited to defects that become evident in external examination including delivery documentation in the course of our incoming goods inspection as well as in our quality control involving random sample testing (e.g. transport damage, incorrect delivery or delivery of a quantity smaller than ordered). If acceptance is agreed, no inspection obligation applies. Apart from the above, it shall depend on the extent to which an examination would be feasible in the proper course of business taking into consideration the circumstances of the individual case. Our obligation to give notice of defects regarding defects discovered at a later point shall remain unaffected. In all cases, our notification of defects shall be deemed immediate and in time if it is received by the Seller within five working days.

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



5.

Cost incurred by the Seller for testing and repair (including possible removal and installation costs) shall be borne by him, also if it becomes evident that the item is actually free from defects. Our damage liability in case of unjustified demand for defect removal shall remain unaffected; yet we only shall be liable if we knew that the item is free from defects or gross negligently failed to recognise that it is free from defects.

6.

If the Seller does not fulfil his obligation to supplementary performance – at our discretion by removal of the defect (repair) or by delivery of an item free of defects (replacement delivery) – within a reasonable period set by us, we shall have the right to remove the defect ourselves and to demand the Seller to reimburse the expenses incurred for this purpose or to pay a corresponding advance. If supplementary performance by the Seller failed or is unacceptable for us (e.g. due to special urgency, endangering of operational safety or imminent occurrence of disproportionate damages), no setting of a period shall be required; we shall inform the Seller of any such circumstances immediately and, if possible, in advance.

7.

Apart from the above, we shall have the right to reduce the purchase price or to withdraw from the contract in case of material defect or defect of title in accordance with legal provisions. Additionally, we shall be entitled to damages and reimbursement of expenses in accordance with legal provisions.

## VIII. Supplier recourse

1.

We shall be entitled to our unlimited claims for recourse within a supply chain as set out by the law (supplier recourse in accordance with sections 478, 479 BGB) in addition to our claims for defects. Especially, we shall have the right to demand exactly that type of supplementary performance (repair or replacement delivery) from the Seller that we owe our customer in the particular case. Our legal right to choose (section 439 clause 1 BGB) shall not be limited by this.

2.

Before we recognise or satisfy any claim for defects asserted by one of our customers (including reimbursement of expenses in accordance with sections 478 clause 3, 439 clause 2 BGB), we shall inform the Seller and, including a brief description of the situation, shall request a written statement. If no statement is made within a reasonable period and if no amicable solution is found, the claim for defects we actually granted to our customer shall be deemed void; in this case, the Seller shall bear burden of proof to the contrary.

3.

Our claims arising from supplier recourse shall also apply if the Goods were processed by us or by one of our customers, e.g. by installation in another product,

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



before the Goods are sold to a consumer.

## IX. Manufacturer liability

1.

If the manufacturer is responsible for a product defect, he shall indemnify us against claims of third parties insofar as the cause falls into his domain and organisational area and insofar as he himself is liable in an external relationship.

2.

In the context of his indemnification obligations, the Seller shall reimburse expenses in accordance with sections 683, 670 BGB that arise from or in connection with a claim asserted by third parties, including recall campaigns implemented by us. We shall inform the Seller about object and scope of recall measures – to the extent possible and reasonable – and shall give him the opportunity to comment. Other legal claims shall remain unaffected.

3.

The Seller shall take out and maintain product liability insurance with a flat rate sum insured of no less than EUR 10,000,000.00 per personal injury or damage to property.

## X. Statute of limitations

1.

Mutual claims of the parties to the contract shall come under the statute of limitations in accordance with legal provisions, unless provided otherwise below.

2.

In deviation from section 438 clause 1 no. 3 BGB, the standard statute of limitations for claims for defects is 3 years after transfer of risk. If acceptance is agreed, this period shall commence upon acceptance. The 3-year statute of limitations shall apply accordingly to claims arising from defects of title, whereby the statutory statute of limitations for material claims for surrender of third parties (section 438 clause 1 no. 1 BGB) shall remain unaffected; also, claims arising from defects of title shall on no account come under the statute of limitations as long as the third party may still exercise the right towards us – especially because no statute of limitation applies.

3.

The statutes of limitations of purchase law including the extensions specified above shall apply – within the limits of statutory regulations – to all contractual claims for defects. Insofar as we are entitled to non-contractual damages due to a defect, these shall be subject to the regular statutory statute of limitations (sections 195, 199 BGB), unless the application of the statute of limitations as provided by purchase law results in a longer statute of limitations in particular cases.

# General Purchase Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



## XI. Choice of law and place of jurisdiction

1.

These GPC and all legal relationships between us and the Seller shall be subject to the law of the Federal Republic of Germany under the exclusion of international uniform law, especially the United Nations Convention on Contracts for the International Sale of Goods. Prerequisites for and consequences of the retention of title shall be subject to applicable law at the storage location of the item insofar as choice of law in favour of German law is not permissible or invalid under applicable law.

2.

If the Seller is a businessman in terms of the Handelsgesetzbuch, a legal person under public law or a special asset under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is our registered seat in 57234 Wilnsdorf, Germany. However, we shall also have the right to file a lawsuit at the general place of jurisdiction of the place of performance for the delivery obligation.