

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



I. General provisions, scope of application

1.

The present general sales conditions (GSC) apply to all our business relationships with our Customers (hereinafter referred to as "Purchaser"). The GSC shall only apply if the Purchaser 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 GSC apply to contracts regarding the sale and/or delivery of moveable goods (hereinafter also referred to as "Goods"), irrespective of whether we manufacture the Goods ourselves or purchase these from suppliers (sections 433, 651 BGB). The GSC 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 Purchaser without us having to refer to them again in each individual case; we shall inform the Purchaser immediately of changes in the GSC in this case.

3.

Our GSC apply exclusively. Deviating, contrary or supplementary General Terms and Conditions (GTC) of the Purchaser shall only become part of the contract if and insofar as we explicitly agreed to their validity. This requirement for approval applies under all circumstances, for example also if we make the delivery to the Purchaser without reservation under full knowledge of the GTC.

4.

Individual arrangements agreed with the Purchaser in particular cases (including collateral agreements, supplements and amendments) shall always take precedence over these GSC. 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 Purchaser has to make towards us after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) 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 GSC.

II. Conclusion of the contract

1.

Our offers are subject to changes and non-binding. This also applies if we provided

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, reference to DIN standards), other product descriptions or documents – also in electronic form. We reserve title and copyrights to any items listed in the previous sentence.

2.

Ordering of Goods by the Purchaser shall constitute a binding contractual offer. Unless stated otherwise in the order, we shall have the right to accept the contractual offer within two weeks of having been received.

3.

Acceptance shall be communicated to the Purchaser in writing (e.g. by order confirmation) or by delivery of the Goods to the Purchaser.

III. Delivery period and delayed delivery

1.

The delivery period shall be agreed individually or shall be indicated by us upon acceptance of the order. If neither is the case, the delivery period amounts to approximately three weeks after conclusion of the contract.

2.

If we cannot comply with binding delivery periods for reasons we are not responsible for (unavailability of the performance), we shall inform the Purchaser immediately about this and shall simultaneously communicate an estimated new delivery period. If the performance is not available during the new delivery period, either, we shall have the right to withdraw from the contract, either in whole or in part; we shall immediately reimburse any considerations already provided by the Purchaser. In particular, deemed as unavailability of the performance in this sense is the failure of self-delivery by our supplier in a timely manner, if we have concluded a congruent hedging transaction, if neither we nor our supplier are responsible or if we have no procurement obligation in the particular case.

3.

Occurrence of delayed delivery shall be determined in accordance with legal provisions. However, a warning by the Purchaser shall be required in each case. If we delay delivery, the Purchaser shall be entitled to demand a flat rate recompense for the damage he incurred due to the delay. The damages flat rate amounts to 0.5 % of the net price (delivery value) for every commenced calendar week of the delay, but to no more than 5 % of the delivery value of the Goods delivered too late. We reserve the right to prove that the Purchaser incurred no damage or a significantly lower damage than the damages resulting from the aforementioned flat rate.

4.

The rights of the Purchaser in accordance with the provision VIII. of these GSC and our legal rights, especially in the case of exclusion of performance obligation (e.g.

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



due to impossibility or unreasonableness of the performance and/or supplementary performance) shall remain unaffected.

IV. Delivery, transfer of risk, acceptance, delayed in acceptance

1.

Deliveries shall be made ex works, which shall also be the place of performance. On request of the Purchaser, the Goods shall be delivered to another destination (sales shipment). Unless agreed otherwise, we shall have the right to determine type of shipment (especially forwarder, shipping method, packaging).

2.

The risk of accidental loss and accidental deterioration of the Goods shall be transferred to the Purchaser upon delivery at the latest. However, in case of sales shipment, risk of accidental loss and accidental deterioration of the Goods as well as risk of delay shall be transferred already upon delivery of the Goods to the forwarder, carrier or any other person or entity charged with transport. If acceptance has been agreed, it shall be decisive for the transfer of risk. Apart from this, the legal provisions of service contract law apply accordingly to agreed acceptance. Delay of acceptance on the part of the Purchaser shall be deemed equal to delivery or acceptance.

3.

If the Purchaser delays acceptance, if he fails to take a co-operation action or if our delivery is delayed due to other reasons the Purchaser is responsible for, we shall have the right to claim damages for any damage incurred, including additional expenses (e.g. storage costs). For this we shall invoice a flat rate compensation amounting to EUR 100.00 per calendar day, beginning with the delivery period or, if such is not applicable, with notification of the Goods being ready for dispatch. The right to prove higher damage and our legal claims (especially reimbursement for additional expenses, reasonable compensation, cancellation) shall remain unaffected; but the flat rate shall be set off against further monetary claims. The Purchaser shall have the right to prove that we incurred no damage at all or a significantly lower damage than the aforementioned flat rate.

V. Prices and payment conditions

1.

Unless agreed otherwise in individual cases, our prices as valid at the time the contract is concluded apply; they are given ex works and excluding statutory VAT.

2.

In case of sales shipment (IV. clause 1 of these GSC), the Purchaser shall bear the transport costs ex warehouse and the costs of any transport insurance possibly requested by the Purchaser. Unless we invoice the transport costs actually incurred in individual cases, a transport flat rate (excluding transport insurance) shall be agreed. Possible customs duties, fees, taxes and other official charges shall be paid

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



by the Purchaser. We shall not take back any transport packaging or all other packaging in accordance with the packaging ordinance, these shall become property of the Purchaser; this does not apply to pallets.

3.

Unless agreed otherwise, the purchase price shall be payable within 14 days of invoicing and delivery or acceptance of the Goods, as applicable.

4.

The Purchaser shall be deemed delaying payment upon expiry of the aforementioned payment period. For as long as the delay lasts, interest shall be paid on the purchase price at the statutory default interest rate. We reserve the right to assert further damages based on delay. Towards businessmen, our claim to the commercial maturity interest (section 353 HGB [Handelsgesetzbuch, Commercial Code]) shall remain unaffected.

5.

The Purchaser shall only be entitled to set-offs and retention rights insofar as his claim has been legally determined or is undisputed. In case of defective deliveries, the opposing rights of the Purchaser, especially in accordance with provision VII. clause 6 sentence 2 of these GSC, shall remain unaffected.

6.

If it becomes apparent after the contract was concluded that our claim to the purchase price is jeopardised by a lack of performance capability on the part of the Purchaser (e.g. by application to open insolvency proceedings), we shall have the right, in accordance with statutory provisions regarding refusal of performance, to withdraw from the contract after having set a period, if applicable (section 321 BGB). In the case of contracts regarding the manufacturing of single items (custom-made products), we shall have the right to withdraw immediately; legal provisions regarding dispensability of setting a period shall remain unaffected.

VI. Retention of title

1.

Until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we retain title to the Goods sold.

2.

The Goods subject to retention of title must not be pledged to third parties or be transferred as security before the secured claims have been paid in full. The Purchaser shall inform us immediately if and insofar as third parties gain access to the Goods belonging to us.

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



3.

In case of behaviour of the Purchaser that violates the contract, especially in case of non-payment of the purchase price due, we shall be entitled to withdraw from the contract complying with legal provisions or/and to demand return of the Goods based on the retention of title. The demand to return the Goods shall not be deemed a simultaneous withdrawal from the contract; on the contrary, we shall have the right to demand return of the Goods only and to reserve the right of withdrawal. If the Purchaser does not pay the agreed purchase price, we shall only be entitled to exercise these rights if we granted the Purchaser a reasonable period for payment without success or if such period can be dispensed with in accordance with legal provisions.

4.

The Purchaser shall have the right to resell and/or to process the Goods subject to retention of title in the proper course of business. In this case, the following provisions shall also apply:

a)

The retention of title shall include the products manufactured by processing, mixing or combining of our Goods at their full value whereby we shall be considered as being the manufacturer. If property rights of third parties are maintained in processing, mixing or combining the Goods with goods of third parties, we shall acquire joint ownership in proportion of the invoice value of the processed, mixed or combined Goods. Apart from that, the provisions for the Goods delivered subject to retention of title also apply to the resulting product.

b)

The Purchaser already now assigns to us as security the claims towards third parties resulting from the resale of the Goods or the products in full or to the amount of any joint ownership on our part in accordance with the above paragraph. We accept this assignment. The obligations of the Purchaser as set out in clause 2 shall also apply in consideration of the assigned claims.

c)

The Purchaser shall remain entitled to collect the claim besides us. We agree to not collect the claims for as long as the Purchaser fulfils his payment obligations towards us, does not delay payment, for as long as no application for opening of insolvency proceedings is filed and no other defects of his performance capability become apparent. But if any of these occur, we shall be entitled to demand the Purchaser to disclose the assigned claims and corresponding debtors to us, to provide us with all information required for collection, to hand over all corresponding documents to us and to inform the debtors (third parties) of the assignment.

d)

If the realisable value of the securities exceeds our claims by more than 10 %, we shall release securities at our choice on request of the Purchaser.

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



VII. Claims for defects of the Purchaser

1.

Unless set out otherwise below, legal provisions shall apply to the rights of the Purchaser in case of material defects and defects of title (including incorrect delivery or delivery of a quantity smaller than ordered as well as improper assembly or faulty assembly instructions). Statutory special provisions in case of final delivery of Goods to a consumer (supplier recourse in accordance with sections 478, 479 BGB) shall remain unaffected in all cases.

2.

The principal basis for our liability for defects shall be the agreement regarding quality of the Goods. Considered as agreements regarding the quality of Goods are all product descriptions that are part of the individual contract; in this respect, it shall be irrelevant whether the product description was prepared by the Purchaser, the manufacturer or by us.

3.

If quality was not agreed, determination of whether there is a defect or not shall take place in accordance with legal provisions (section 434 clause 1 sentences 2 and 3 BGB). However, we do not assume liability for public statements of the manufacturer or other third parties (e.g. advertising statements).

4.

Prerequisite for the claims for defects of the Purchaser is that he has complied with his statutory inspection obligations and obligation to give notice of defects (sections 377, 381 HGB). If a defect is determined during inspection or at a later point, we shall be immediately informed thereof in writing. A notification shall be deemed immediate if it is issued within two weeks; timely sending of the notification shall be sufficient for compliance with the period. Independent from these inspection obligations and obligation to give notice of defects, the Purchaser shall give notice of obvious defects (including incorrect delivery or delivery of a quantity smaller than ordered) within two weeks of delivery; again, timely sending of the notification shall be sufficient for compliance with the period. If the Purchaser fails to conduct proper inspection and/or to give notification of defects, our liability for the defect that was not communicated is excluded.

5.

If the delivered item is defective, we shall have the right to initially chose whether we provide supplementary performance by removal of the defect (repair) or by delivery of an item free of defects (replacement delivery). Our right to refuse supplementary performance when legal prerequisites apply shall remain unaffected.

6.

We shall have the right to predicate the supplementary performance owed on the

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



Purchaser paying the payable purchase price. However, the Purchaser shall have the right to retain a part of the purchase price that stands in reasonable proportion to the defect.

7.

The Purchaser shall grant us the time and opportunity required for the supplementary performance owed; especially, he shall submit the objected product for inspection purposes. In case of replacement delivery, the Purchaser shall return the defective item to us in accordance with legal provisions. Supplementary performance shall not include expansion of the defective item or repeated installation if we were not obliged to install the item in the first place.

8.

Expenses required for inspection and supplementary performance, especially transport costs as well as road maintenance costs, labour costs and material costs (not included: expansion and installation costs) shall be borne by us, if there actually is a defect. If, however, the Purchaser's demand for removal of defect is proven to be unjustified, we shall have the right to demand the Purchaser to reimburse us for the costs incurred hereby.

9.

In urgent cases, e.g. in case of endangering operational safety or in order to prevent disproportionate damage, the Purchaser shall have the right to remove the defect himself and to demand us to reimburse expenses objectively incurred for this purpose. We shall be informed of such removal of defects by the Purchaser himself immediately, if possible before it takes place. The Purchaser shall not be entitled to conduct the removal of defects by himself if we would have the right to refuse corresponding supplementary performance in accordance with legal provisions.

10.

If supplementary performance failed or if the period for supplementary performance set by the Purchaser expired without result or if it can be dispensed with in accordance with legal provisions, the Purchaser shall have the right to withdraw from the purchase contract or to reduce the purchase price. In case of an insignificant defect, however, the right of withdrawal shall not apply.

11.

Claims of the Purchaser for damages or reimbursement of fruitless expenses are only valid in accordance with the following provision VIII. and are excluded otherwise.

VIII. Other liability

1.

Unless resulting otherwise from these GSC including the provisions set out below, we shall be liable in accordance with relevant statutory provisions in case of violation of

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



contractual and non-contractual obligations.

2.

We shall be liable for damages – irrespective of legal reasons – in cases of intent and

gross negligence. In cases of simple negligence, we shall only assume liability

a)

for damages resulting from injuries to life and limb or health,

b)

for damages resulting from violation of an essential contractual obligation (an obligation the fulfilment of which is necessary for proper implementation of the contract and on fulfilment of which the contractual partner relies and may rely regularly); however, our liability in this case shall be limited to compensation of the predicable damage usually incurred.

3.

The limitations of liability set out in clause 2 shall not apply if we keep a defect secret with fraudulent intent or have guaranteed quality of the Goods. The same applies to claims of the Purchaser subject to the Produkthaftungsgesetz [product liability law].

4.

The Purchaser shall only be entitled to withdraw from or cancel the contract due to a violation of an obligation that is not a defect if we are responsible for this violation of an obligation. A free right of cancellation of the Purchaser (especially in accordance with sections 651, 649 BGB) is excluded. Apart from that, statutory prerequisites and legal consequences apply.

IX. Statute of limitations

1.

In deviation from section 438 clause 1 no. 3 BGB, the standard statute of limitations for claims arising from material defects and defects of title is one year after delivery. If acceptance is agreed, this period shall commence upon acceptance.

2.

However, if the item is a building or a product that was used for a building in accordance with its customary use and caused its defectiveness (building material), the statute of limitations shall be to 5 years from delivery onwards in accordance with statutory regulations (section 438 clause 1 no. 2 BGB). Special statutory regulations for material claims for surrender of third parties (section 438 clause 1 no. 1 BGB), in case of fraudulent intent of the seller (section 438 clause 3 BGB) and for claims subject to supplier recourse in case of final delivery to a consumer (section 479 BGB) shall remain unaffected as well.

3.

The above statute of limitations of purchase law shall also apply to contractual and

General Sales Conditions of the company Eferest GmbH Wilnsdorf

As of Oktober 2015



non-contractual damage claims of the Purchaser that are based on a defect of the Goods, unless the application of the standard statutory statute of limitation (sections 195, 199 BGB) would result in a shorter statute of limitations in individual cases. The statute of limitations of the Produkthaftungsgesetz shall remain unaffected under all circumstances. Apart from the above, damage claims of the Purchaser in accordance with provision VIII. Shall be subject to statutory statutes of limitation.

X. Choice of law and place of jurisdiction

1.

These GSC and all legal relationships between us and the Purchaser 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 in accordance with provision VI. of these GSC are subject to applicable law at the 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 Purchaser is a business man 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 directly or indirectly from the contractual relationship is our registered seat in Wilnsdorf. However, we shall also have the right to file a lawsuit at the general place of jurisdiction of the Purchaser.