

General Terms and Conditions
of EFCO Maschinenbau GmbH, Postfach 100527, D-52305 Düren

Terms of Sale

S. 1 Scope

(1) These Terms of Sale apply to companies, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (Bürgerliches Gesetzbuch; BGB) only. We shall only recognise terms of the Purchaser that conflict with or deviate from our terms of sale if we expressly agree to their validity in writing.

(2) These terms of sale shall also apply to all future business with the Purchaser, insofar as legal transactions of a related nature are concerned.

(3) Individual agreements made with the Purchaser (including ancillary agreements, amendments and changes) in individual cases, shall in all cases take precedence over these terms of sale. Subject to proof to the contrary, a written agreement or our written confirmation shall be authoritative for the content of such agreements.

S. 2 Offer and Contract Conclusion

If an order must be considered an offer in accordance with s. 145 BGB, we may accept same within two weeks.

S. 3 Submitted Documents

We reserve property rights and copyrights in all documents submitted to the Purchaser in connection with the placing of the order, such as calculations, drawings etc. Such documents may not be made accessible to third parties, unless we give the Purchaser express written approval to do so. Where the Purchaser's offer is not accepted by us within the time period stipulated under s. 2, such documents must be immediately returned to us.

S. 4 Prices and Payment

(1) Unless agreed otherwise in writing, our prices are ex works excluding packaging and subject to value added tax to the respective applicable amount. Costs of packaging shall be billed separately.

(2) Payment of the purchase price must be made to the account specified overleaf only. The deduction of a discount shall only be permissible by special written agreement.

(3) Unless agreed otherwise, the purchase price shall be paid within 10 days after delivery. Interest on arrears shall be charged at a rate of 8 percentage points above the respective base rate p.a. We reserve the right to claim higher damages for delay.

(4) We reserve the right to reasonably amend prices to account for changes in wage, material, and distribution costs for deliveries taking place 3 months or later after contract conclusion.

(5) Our purchase price claims are subject to a limitation period of five years.

S. 5 Rights of Retention

The Purchaser shall only be allowed to exercise a right of retention insofar, as that the Purchaser's counterclaim is based on the same contractual relationship.

S. 6 Delivery Time

(1) The commencement of the delivery time indicated by us is subject to clarification of all technical issues and to timely and proper performance of the Purchaser's obligations. The plea of non-performance of the contract remains reserved.

(2) If the customer is in default of acceptance or culpably breaches any other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect,

including any additional expenses. Further claims remain reserved. If the above conditions are met, the risk of accidental loss or accidental destruction or accidental deterioration of the object of sale shall pass to the Purchaser at the point in time at which the Purchaser is in default of acceptance or debtor's delay.

S. 7 Passing of Risk at the Time of Dispatch

If the goods are dispatched to the Purchaser at the Purchaser's request, the risk of accidental destruction or the accidental deterioration of the goods shall pass to the Purchaser with dispatch to the Purchaser, but at the time goods leave the works/storage at the latest. This shall apply irrespective of whether the dispatch of the goods takes place from the place of performance or of who bears the shipping costs.

S. 8 Retention of Title

(1) We reserve title to the delivered item until full payment of all claims arising from the delivery contract. This shall also apply to all future deliveries, even if we do not always expressly refer to same. We shall be entitled to take back the object of sale, if the Purchaser acts in breach of contract.

(2) As long as the title has not passed to the Purchaser, the Purchaser shall be under the obligation to treat the object of sale with care. The Purchaser shall in particular be under the obligation to insure same adequately at replacement value and at Purchaser's own costs against damage caused by theft, fire and water. If maintenance or service work must be performed, the Purchaser shall perform same in good time and at its own expense. As long as title has not passed, the Purchaser must notify us immediately in writing, if the delivered item should be seized or be subjected to other interferences by third parties. If the third party should not be in a position to refund court and out of court costs of legal action in accordance with s. 771 German Code of Civil Procedure (Zivilprozessordnung; ZPO) to us, the Purchaser shall be liable for losses incurred by us.

(3) The Purchaser shall be entitled to resell the reserved goods in the normal course of business. The Purchaser hereby assigns to us at this time already any claims arising to the Purchaser from reselling the reserved goods to the final invoice amount (including value added tax). Such assignment shall be valid irrespective of whether the object of sale was sold prior to or after processing. The Purchaser shall, also after assignment, remain authorized to recover the claim. Our power to recover the claim ourselves shall remain unaffected by this. We will, however, not recover the claim as long as the Purchaser meets its obligations to make payments out of the proceeds collected, is not in default of payment and, in particular, as long as no application for the commencement of insolvency proceedings has been made or as long as there is no cessation of payments.

(4) Processing or transforming of the object of sale by the Purchaser must always take place in our name and on behalf of us. In this case, the Purchaser's right of expectancy in the object of sale in the transformed item shall survive. If the object of sale should be processed with other items, which do not belong to us, we shall acquire title in the new matter proportionate to the objective value of our object of sale and the other processed items at the time of processing. The same shall apply to the case of intermixing. If intermixing takes place in such a way that the Purchaser's item can be considered the main item, it is deemed agreed, that the Purchaser shall transfer co-ownership to us on a pro-rata basis and that the Purchaser holds the sole property or co-owned property such created in custody for us. To secure our claims against the

Purchaser, the Purchaser shall also assign claims to us, which arise to the Purchaser vis-a-vis a third party from the connection of the reserved goods with land; we hereby accept such assignment already at this time.

(5) We undertake to release the collateral we are entitled to on the Purchaser's request, if its value exceeds the claims, that are to be secured, by more than 20%.

S. 9 Warranty and Notice of Defects as well as Recourse/Manufacturer's Recourse

(1) Purchaser's warranty rights presuppose that the Purchaser has duly complied with its obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (Handelsgesetzbuch; HGB).

(2) Claims for defects shall become time-barred 12 months after delivery of the goods supplied by us to our customer. The statutory limitation period shall apply to any claims for damages arising from intent and gross negligence as well as injury to life, body and health based on intentional or negligent breaches of user's obligations.

Insofar as legal provisions provide under s. 438 (1) No. 2 BGB (Buildings and Things for Buildings), s. 445b BGB (Right of Recourse), and s. 634a (1) BGB (Construction Defects) for mandatory longer periods, such periods shall apply. Prior to returning goods our approval must be obtained.

(3) If the delivered goods should, despite all due care, show any defects, which existed already at the time of passing of the risk, we will, subject to a timely notice of defect, have the choice to either remedy the defect or to deliver replacement goods. We shall always be granted the opportunity to remedy defects within a reasonable period of time. The above stipulation shall, without limitation, not affect any rights of recourse.

(4) If subsequent performance should fail, the Purchaser may - without prejudice to any claims for damages - withdraw from the contract or reduce the payment.

(5) There shall be no claims for defects in case of only insignificant deviation from the agreed condition, in case of only insignificant impairment of usability, in case of natural wear and tear or loss in value from normal use as well as damage caused after transfer of risk due to incorrect or careless handling, excessive use, unsuitable operating means, defective construction works, unsuitable building ground or due to special external influences, which are not considered under the contract. If the Purchaser or third parties perform improper repair works or make changes, there shall be no claims for defects for same and consequences arising from same.

(6) Purchaser's claims for expenses necessary for the purpose of subsequent performance, including, but not limited to transport, travel, work, and material costs, shall be excluded insofar, as such expenses are higher because the goods delivered by us were subsequently transferred to another location than the Purchaser's location, unless such transfer corresponds to their intended use.

(7) Purchaser's recourse entitlements against us shall only exist insofar as that the Purchaser did not with its customer enter into any agreements exceeding the mandatory statutory defect claims. Sub-section 6 shall apply accordingly to the scope of the Purchaser's recourse entitlements against the supplier.

S. 10 Miscellaneous

(1) This contract and the entire legal relationships of the parties shall be subject to the laws of the Federal Republic of Germany, excluding UN Sales Law (CISG).

(2) Place of performance and exclusive jurisdiction for all disputes arising under this contract shall be Düren.

(3) Changes and amendments to this agreement must be in written form. This shall also apply to this written form clause. No oral ancillary agreements were made.

(4) If individual provisions should be or become ineffective or contain a gap, the other provisions shall remain unaffected by this. The parties undertake to substitute the ineffective provision with such legally permissible provision, which comes closest to the economic purpose of the ineffective provision or closes the gap respectively.

S 11 No Russia and no Belarus Clause

(1) The Purchaser shall not sell, export or re-export, directly or indirectly, to the Russian Federation and/or Belarus or for use in the Russian Federation and/or Belarus any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 and/or the scope of Article 8g of Council Regulation (EU) No 765/2006.

(2) The Purchaser shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(3) The Purchaser shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).

(4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement, and the [Exporter/Seller] shall be entitled to seek appropriate remedies, including, but not limited to:

(i) termination of this Agreement; and

(ii) a penalty of 100% of the total value of this Agreement or the price of the goods exported, whichever is higher.

(5) The Purchaser shall immediately inform the [Exporter/Seller] about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The [Importer/Buyer] shall make available to the [Exporter/Seller] information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information."

Status on: July 2024