

**General terms and conditions for sales and deliveries  
of EUROSOY GmbH, Hamburg (Version: July 2020)**

**1. Scope of application**

1.1. The present general terms and conditions for sales and deliveries apply to all transactions we conclude with our customers ("Buyer"). The general terms and conditions for sales and deliveries only apply to customers classifying as entrepreneur (section 14 German Civil Code, BGB) or as a legal person or special estate under public law.

1.2. Unless confirmed by us in writing for individual cases - such exemptions shall not apply to further contracts in the future - the provisions set out below shall apply exclusively; we hereby reject any deviating terms and conditions for purchase of the Buyer. Any deviating provisions or counter-confirmations of the Buyer will only be binding for us if and where we expressly accepted any such. Consent is required in all cases, also where we dispatch shipments to a customer without reservations despite being aware of the customer's T&Cs. Silence on our part regarding such deviating conditions shall especially not be considered acknowledgement or agreement. References to the application of legal provisions are made for clarification purposes only. This means that legal provisions also apply where no express reference is made to them, unless they are directly amended or excluded in these general terms and conditions for sales and deliveries.

**2. Conclusion and form of contract**

2.1. Our offers are non-binding, any acceptance declarations and orders as well as additions, amendments or ancillary agreements must be confirmed by us in writing or by telex; dispatching the order shall be equivalent to a confirmation.

2.2. Individual agreements concluded with the Buyer in specific cases (including ancillary agreements, additions and amendments) shall always take precedence over these general terms and conditions for sales and deliveries.

2.3. Declarations and notifications of the Buyer in regard to the contract (e.g. setting time limits, notice of defects, withdrawal or reduction) that are relevant for legal purposes must be made in writing or text form (e.g. letter, e-mail, fax). Formal requirements set out in the law shall remain applicable.

### **3. Prices**

3.1 The prices stated in the order confirmation are binding.

2. The weight determined by us shall be the only basis for calculating prices.

3.3. The prices are based on the tariffs, taxes, exchange rates and other public duties as well as costs for freight and insurance as applicable at the time the contract is concluded. Any increase of the above between conclusion of contract and dispatch shall be borne by the Buyer. We reserve the right to charge packaging costs separately.

3.4. We shall have the right to include any changes in material purchase costs, wages and ancillary wage costs as well as energy costs after conclusion of the contract in our prices, provided that at least 6 weeks pass between conclusion of contract and dispatch of the order.

### **4. Dispatch, delivery period, transfer of risk, delayed acceptance**

4.1. Binding delivery dates and periods must be agreed expressly. We do our utmost to comply with non-binding or only vague delivery dates and periods (indicated by, for example, "approximately", "roughly", etc.). Where delivery times are exceeded, the Buyer shall have the right to set an appropriate grace period; if this period expires unsuccessfully, the Buyer may withdraw from the contract. Any damage claims based on delayed delivery or non-compliance – irrespective of the reasons for these – shall only be permissible in accordance with section 8.

4.2. All orders are dispatched ex works. Any transport risks ex works shall be borne by the Buyer, also in case of franco and franco domicile deliveries; unless agreed otherwise, our shipments will not be insured. If franco delivery is offered, we will choose the shipment method that is cheapest for us. If the Buyer requires a special shipping method, the Buyer shall bear any resulting additional costs.

4.3. If dispatch is delayed as a result of us exercising our right of retention if the Buyer delays payment or for any other reason that the Buyer is responsible for, the risks shall be transferred to the Buyer the moment we communicate that the order is ready for dispatch.

4.4. If delivery on call is agreed, the calls must be placed within three months after conclusion of the contract, unless agreed otherwise. If the Buyer fails to comply with this obligation we can, at our choice and after expiry of an unsuccessful grace period of two weeks, either invoice the goods and dispatch them to the Buyer or to store these at the Buyer's costs or withdraw from the contract and we may assert any damage we incurred as a result of non-compliance to its full amount, but at least at 15% of the invoice amount (net), unless the Buyer can prove that a lower or no damage was incurred.

4.5. All our shipments are subject to the most recent Incoterms. Where Incoterms are agreed, these shall take precedence over these general terms and conditions for sales and deliveries, especially regarding sections 3.3 and 4.2 if contradictions arise.

4.6. The point in time from which onwards a shipment is considered delayed is governed by the law, subject to the condition that the Buyer will have to send a reminder.

4.7. Partial shipments are, in general, permissible; they will be invoiced and are due separately.

## **5. Payment conditions**

5.1. Our invoices are payable immediately after receipt of the goods to their full net amount unless agreed otherwise.

5.2. If payment deadlines are exceeded, we shall have the right, subject to reserving assertion of any further damage caused by the delay, to demand interest of 2% above the respective base rate, but at least of 5% for the year, from the day payment was due until the day on which the payment is made (section 355 German Commercial Code, HGB).

5.3. Furthermore, we have the right to delay dispatch of any further shipments until all outstanding invoices have been paid. We reserve the right to assign our claim to payment of the purchase price to third parties.

5.4. Bills of exchange and cheques will not be considered payment until they are cashed. Accepted bills will only be accepted subject to prior agreement and only if all taxes were

duly paid and if they are rediscountable. Any costs associated with bills of exchange or discounts shall be borne by the Buyer.

5.5. Any goods returned to us (as agreed or following a violation of contract by the Buyer) shall be invoiced at the agreed purchase price minus return costs and damage compensation of at least 15% of the (net) invoice amount, unless the Buyer can prove that no or only lower damage was incurred.

5.6. Setoff and retention by the Buyer are not permissible, unless in undisputed or legally confirmed cases. We reserve the right to setoff, including in cases where the reciprocal claims are in different currencies. The exchange rate is the official average exchange rate at the forex market in Frankfurt on the day setoff is declared.

## **6. Retentions of title**

6.1. Until payment of the full purchase price, including older claims under the business relationship, the supplied goods shall remain our property; the Buyer may process or sell the goods as part of standard business operations. If payment is delayed, however, the Buyer must not dispose of our goods without our express consent. The Buyer hereby assigns any claims arising from a resale of the goods that are subject to retention of title to us, also if and insofar as the Buyer has processed these. If, in addition to the goods that are subject to retention of title, the processed product only includes items belonging to the Buyer or that were supplied subject to an only simple retention of title, this assignment shall apply to the full purchase price claim. If claims were assigned to multiple suppliers at any one time, we shall be entitled to that fraction of the purchase price claim that corresponds to the proportion of the invoice value of our goods that are subject to retention of title to the invoice value of the remaining processed items.

6.2. If goods still owned by third parties are processed, we shall acquire co-ownership of the new item in the proportion of the invoice value of our goods to the invoice value of the goods owned by third parties. The Buyer himself shall not acquire any form of partial or full title to the items manufactured by processing our goods. Should, however, the retention of title expire for any reason, the Buyer and we agree at this point already that the act of processing transfers the title to the new item to us; we accept the assignment and the Buyer shall act as unpaid custodian. Insofar as 125% or more of our total claims resulting from any assignment are secured beyond a doubt, the excess outstanding amounts shall be released at our choice if the customer so requests.

6.3. As long as the Buyer complies with payment obligations towards us, the Buyer may collect outstanding amounts until such permission is revoked. The Buyer shall not have the right to mortgage or pledge our goods that are subject to retention of title or any of our collaterals.

6.4. Where we retake possession of goods, this shall only constitute a utilisation of collaterals and not a withdrawal from the contract, unless expressly declared otherwise. In this case, the Buyer has to return the goods free of charge.

6.5. Where third parties enforce compulsory execution regarding our goods that are subject to retention of title or collaterals or threatens any such, the Buyer shall notify us immediately and shall provide us with any and all documents required.

## **7. Warranty, inspection and notification obligations**

7.1. Where goods are sold based on templates/samples, the characteristics of the template/sample are not guaranteed, our description of the goods is non-binding. The same also applies to analyses, unless specific values were expressly guaranteed.

7.2. Application support, information and recommendations provided by us are non-binding and do not exempt the Buyer from independently inspecting our goods for suitability for the intended purposes and processes.

7.3. The Buyer has to verify type, quantity and features of the goods immediately after arrival; any defects that are determined must be reported in writing or by telex within no more than eight days after receipt of the goods.

Defects that cannot be detected within this time limit despite careful inspection must be reported to us without undue delay, i.e. within four days after their discovery.

If the Buyer does not check the goods or if the Buyer fails to report any defects they determined in time, there shall be no right to demand warranty services/damages based on the defect in question (section 377 HGB).

The same applies in case of incorrect delivery, even if acceptance of the goods by the Buyer cannot be expected.



7.4. In the event of a justified notification of defects and complaints, we shall only be obliged to have accept a return of supplied goods and to, at our choice, reduce the purchase price in proportion of the defective goods or the goods giving rise to the complaint to the total delivery or to provide a defect-free replacement. If we opt for a replacement and if replacement is unsuccessful, the statutory rights of the Buyer for rescission of the of the contract or reduction of the purchase price shall apply once again. Our right to refuse subsequent performance subject to statutory conditions (section 439(4) BGB) remains unaffected. We shall have the right to make subsequent performance dependent on the Buyer paying the purchase price that is due. However, the Buyer has the right to retain that portion of the purchase price that is appropriate in the light of the defect. The Buyer shall give us the time and opportunity required for the subsequent performance we owe, and especially has to return the defective goods to us for testing.

7.5. We do not give any guarantees for defects caused by incorrect or careless handling or improper or incorrect storage or use or any such caused by failure to comply with the processing and utilisation instructions. Where we supply deliveries in accordance with specifications, templates, details etc. provided by the Buyer, the Buyer shall bear the risk of the items being suitable for their intended purpose.

## **8. Exclusion and limitation of any further liability**

8.1. We shall only accept unlimited responsibility for intentional and grossly negligent actions – including any actions of our legal representatives and vicarious agents – and for damage caused by injury to life, limb or health resulting from a negligent violation of duty on our part or from an intentional or negligent violation of duty on the part of our legal representatives and vicarious agents. Likewise, we will accept unlimited liability when having issued guarantees and made promises, provided that it is any defect covered by the above that triggers our warranty claims. Furthermore, the liability for posing hazards shall be unlimited, especially under product liability law. Any liability under the principles of company recourse pursuant to sections 478 et seq. BGB shall remain unaffected.

8.2. In the event of other culpable violations of major contractual duties (cardinal duties, see section 8.7), our remaining liability shall be limited to the typical damage that can be expected for this type of contract.

8.3. Apart from the above, liability – irrespective of legal grounds (especially claims stemming from a violation of primary and secondary contractual obligations, liability for civil offences and tort) – is excluded.

8.4. The same (exclusion and limitation of liability and exceptions thereto) applies to claims stemming from fault upon conclusion of contract.

8.5. This section 8 applies mutatis mutandis to compensation claims (with the exception of such pursuant to section 439 (2), 635(2) BGB).

8.6. Any exclusion or limitation of our liability shall also include our legal representatives and vicarious agents.

8.7. Cardinal duties are major duties, i.e. duties defining the contract and compliance with which the contractual partner may rely on; these are the major rights and obligations creating the conditions required for execution of the contract and which are crucial for achieving the purpose of the contract.

8.8. None of the above clauses is intended to change burden of proof as regulated by the law or case law.

8.9. The Buyer is independent in their decision regarding a use of the goods or other services provided by us. Unless we have expressly confirmed the specific properties and suitability of the products for a specific purpose in the contract, any application support shall always be non-binding.

## **9. Force majeure and other impediments, reservation of receiving deliveries from suppliers, import and export permissions**

9.1. Industrial action, any form of interruptions to operations that we cannot influence, traffic barriers, import and export restrictions, foreign currency restrictions, official orders, war, unrests, looting, damage caused by water, fire or other natural events as well as other incidents considered to be force majeure shall entitle us to change delivery times accordingly and to withdraw from all or part of the contract. The same applies if our supplier does not provide deliveries in time or not at the price agreed with them for such reasons.

9.2. We shall also have the right to withdraw from the contract if we initially exercised the option of extending delivery times. If the delivery period is exceeded by at least three months, the Buyer has the right to withdraw from all or parts of the contract, without us becoming liable to pay damages.

9.3. Whenever any official import or export permission are not granted or if execution of the contract is or will be made impossible by official import or export bans and insofar as we are not responsible for any of the above, we may, even if we have agreed to apply for import or export permits, withdraw from the contract. The Buyer cannot use this as basis to assert any claims against us.

9.4. The obligation to perform of either party shall be suspended for as long as governmental measures, like any such taken to fight a pandemic, make it impossible to provide the services.

## 10. Statute of limitations

10.1. In deviation from section 438(1) no. 3 BGB, the standard statute of limitations for any claims based on material defects or defects of title shall be one year after delivery.

10.2. The above statute of limitations also applies to contractual and non-contractual damage claims of the Buyer based on the goods being defective, unless the application of standard statutory statutes of limitations (sections 195, 199 BGB) would result in a shorter period until the claims in that case become time-barred. The statute of limitations as set out in product liability law shall remain unaffected in any case. Any other claims for damages of the Buyer under section 8 shall be exclusively governed by statutory limitation periods.

10.3. None of the above clauses is intended to change burden of proof as regulated by the law or case law.

## 11. Place of performance, place of jurisdiction and partial invalidity

11.1. The place of performance for all contractual obligations is Hamburg.



11.2. The exclusive place of jurisdiction for any disputes, including action brought in proceedings involving bills of exchange or cheques, is the competent court at our place of business. We do, however, have the right to bring action against the Buyer at the Buyer's general place of jurisdiction.

11.3. Any and all legal relations between the Buyer and us are exclusively governed by the law of the Federal Republic of Germany. Standard international laws on the purchase of goods, especially any such based on international agreements hereto, in particular the standard law on the international sale and purchase of moveable goods and on the conclusion of purchase contracts hereto (The Hague Purchase Convention) and the CISG provisions do not apply.

11.4. If individual provisions of these terms and conditions are or become void in the context of other agreements, this shall not affect the validity of all remaining provisions or agreements.

11.5. In case of contradictions between the English and the German version of these conditions, the German version shall prevail.

EUROSOY GmbH  
Hamburg, July 2020