

Terms and conditions of sale and delivery of the Elastic-Berger GmbH & Co. KG

§ 1 General – field of application

- (1) Our terms and conditions of sale and delivery exclusively apply to all our deliveries and services (referred to below as "services") as well as future agreements. We reserve the right to modify them for future agreements. We do not recognise contradictory terms and conditions of the purchaser which differ from our terms and conditions of sale, unless we have expressly agreed in writing that they may apply. Our terms and conditions of sale apply even if we undertake the delivery to the purchaser without reservation in full knowledge of contradictory terms and conditions of the purchaser which differ from our terms and conditions of sale.
- (2) Agreements made by telephone or verbally prior to or during conclusion of the agreement shall require the written form in order to be effective. Following conclusion of the agreement, verbal modifications and supplements should be made in writing.
- (3) Our terms and conditions of sale only apply towards entrepreneurs, legal persons under public law or special assets governed by public law in accordance with Article 310 para. 1 of the German Civil Code (BGB).

§ 2 Offer – offer documents

- (1) Our offers are non-binding, unless indicated otherwise in the order confirmation. We are entitled to accept offers by the purchaser in accordance with Article 145 of the German Civil Code (BGB) within 2 weeks.
- (2) We are entitled to deviate slightly from the information contained in brochures, price lists and offers concerning dimensions, construction, shape, grain, colour and design. We reserve the right to make technical modifications in the course of further development.
- (3) We reserve the rights of ownership and copyright over all documents communicated to the purchaser in relation to placement of the order, such as illustrations, drawings and calculations. These documents are not allowed to be made accessible to third parties, unless we give the purchaser our express written approval. If we do not accept the purchaser's offer within the period stated in Article 2 para. 1, these documents shall be sent back to us immediately without requiring a reminder. The purchaser is obliged to submit a written declaration on return of the documents indicating that no originals, copies or versions of the documents stated in sentence 1 (which may be on data storage media) remain in its possession.

§ 3 Prices – terms and conditions of payment

- (1) Unless stated otherwise in the order confirmation, our prices apply ex-works, exclusive of packaging, shipping and transport insurance costs; these shall be invoiced separately. The prices do not include VAT at the statutory rate; this is indicated separately on the invoice for delivery within the country.
- (2) Unless agreed otherwise, our invoices shall be payable within 21 days of the invoice date, exclusively to the account stated in the order confirmation. Deduction of a discount shall require a special written agreement. We are entitled to deliver to unknown purchasers on a cash-on-delivery basis.
- (3) If no fixed price agreement has been reached, we reserve the right to make appropriate price changes due to changes in payroll, energy, raw materials and sales costs for deliveries which take place 3 or more months after conclusion of the agreement. We will explain the cost changes to the purchaser on request.
- (4) In spite of other provisions of the buyer, we are entitled to apply payments initially to the buyer's debts of longer standing.

- (5) The date of receipt of payment shall be regarded as the day on which the amount is in our possession or is credited to our bank account. The risk during payment transfer lies with the purchaser. If payment by the purchaser is overdue, we are entitled to charge interest for the overdue period amounting to 8 percentage points above the annual base rate of the European Central Bank. This shall not impair our right to assert further claims for compensation.
- (6) The purchaser is only entitled to offset and retain payments if its counter-claim is undisputed by ourselves or has been legally established.

§ 4 Delivery period and delivery

- (1) The start of the delivery time specified by ourselves assumes that all technical questions have been clarified. The delivery period shall not commence as long as the purchaser has failed to carry out its obligations correctly, such as providing technical data and documents, approvals and, depending on what is agreed, an advance payment or transfer of a payment guarantee. The deadlines and periods which we name shall be regarded as having been agreed as approximates, unless we have confirmed an agreed delivery deadline expressly in writing as "fixed". A confirmed delivery deadline shall be dependent on correct, complete and timely delivery of our own supplies. We shall give notice of expected delays as soon as possible. Unless agreed otherwise, a confirmed delivery time shall be regarded as upheld if the item to be delivered has left our plant before the delivery time expires.
- (2) All temporary obstacles to performance attributable to force majeure shall release us from the accepted delivery obligation for the duration during which they apply. This also applies if there are other unforeseen obstacles to performance which are not attributable to us, in particular in case of fire, flooding, industrial disputes, lack of energy and raw materials or if official measures intervene. We shall give notice of the start and finish of such conditions as soon as possible.
- (3) To the extent that failure to comply with binding confirmed dates and deadlines is attributable to ourselves or we are in delay, the buyer shall be entitled, as a derogation from Article 7, to claim compensation for delay amounting to 0.5% for each completed week of the delay, but no more than 5% of the invoice value for the delayed products or services.
- (4) Partial deliveries are permitted, as far as it is reasonable to expect the purchaser to accept them.
- (5) In case of an application to open insolvency proceedings, statements in lieu of an oath according to Article 807 of the German Code of Civil Procedure (ZPO), payment difficulties arising or if a significant impairment in the asset position of the purchaser comes to our attention after conclusion of the contract, we shall be entitled to cease deliveries immediately and to refuse to fulfil ongoing agreements, to the extent that the purchaser fails to render payment or to offer appropriate collateral in response to our demands.

§ 5 Transition or risk

- (1) Delivery ex-works or ex-warehouse is agreed unless specified otherwise in the order confirmation. This applies irrespective of whether the goods are sent from the place of fulfilment or not, and which party is responsible for the shipping costs. Unless agreed otherwise, it shall be the purchaser's responsibility to assert claims assigned by ourselves against the shipping company. In case of damage in transit during rail transport, immediate arrangements shall be made for officially recording the facts of the case and submitting the damage claim to the responsible goods handling office.
- (2) If the purchaser wishes, we shall take out transport insurance to cover the delivery; the costs incurred shall be paid by the purchaser.

§ 6 Warranty for defects

- (1) The purchaser shall only be entitled to assert warranty claims if it has complied with its statutory obligations of investigation and complaint procedures in accordance with Article 377 of the German Commercial Code (HGB) in a due and proper manner.
- (2) The purchaser shall only be entitled to assert claims for compensation in damages due to a warranted property if the transfer of a warranty is specifically intended to safeguard the purchaser against the damage which has occurred. Other claims for compensation in damages under warranty are excluded, with the exception of injury to life, limb and impairment to health attributable to ourselves, our legal representatives or vicarious agents, if we, our legal representatives or vicarious agents are culpable of slight negligence, and unless what is involved is foreseeable, typical damage due to the violation of important contractual obligations; claims for compensation in damages are not excluded if we, our legal representatives or vicarious agents are guilty of deliberate or gross negligence.
- (3) In the case of products which we deliver as new goods in accordance with the agreement, the warranty period shall be one year from receipt of the goods; in the case of products which we do not deliver as new goods in accordance with the agreement, there shall be no warranty; Article 479 para. 1 of the German Civil Code (BGB), Article 438 para. 1 no. 2 BGB and Article 634a para. 1 BGB shall remain unaffected by this. In the case of claims for compensation in damages, the provision on the warranty period shall not apply if we have not excluded or limited liability.
- (4) If there is a quality defect attributable to ourselves then the purchaser initially has the right to claim rectification. If the rectification of the defect fails then the purchaser shall be entitled to demand a replacement delivery. If we do not comply with the demand for a replacement delivery after an appropriate deadline set by the purchaser then the purchaser shall be entitled, at its own choice, to withdraw from the agreement or to demand a reduction in the purchase price. The right of withdrawal shall not be available to the purchaser if there are only slight defects.
The provisions in 6.2 apply to compensation in damages. In the case of short deliveries, the purchaser shall initially have the right to claim a replacement delivery. Sentences 3 and 5 apply accordingly. Our agreement shall be obtained before the goods are sent back.
- (5) Claims based on defects shall not be allowed in the case of a deviation in quality, colour, veneer, size, weight of equipment or design which are in line with normal commercial practice or are only of an insignificant nature, or else if there is only an insignificant deviation from the agreed composition, only an insignificant impairment in utility, natural wear and tear as well as in case of damage which arises following the transition of risk as a result of faulty or negligent handling, excessive loading, unsuitable service products or as a result of special influences which are not assumed under the agreement. If the purchaser or third parties undertakes incorrect repair work or modifications then no claims based on defects shall be allowed for these modifications and repairs, including the resulting consequences.
- (6) Claims by the purchaser based on expenditure arising for the purpose of subsequent performance, particularly transport, travel, working and material costs, shall be excluded if the expenditure increases because the goods that we have delivered have subsequently been brought to a location other than the purchaser's branch, unless the transfer of location is in accordance with their designated use.
- (7) Claims under a right of recourse are unaffected by the aforementioned provisions without restriction. Claims under a right of recourse by the purchaser against us shall only be allowed to the extent that the purchaser has not made any agreements with its own customer beyond the mandatory statutory claims due to defects. Furthermore, para. 6 applies accordingly to the scope of the claim under a right of recourse by the purchaser against the supplier.

§ 7 Liability

- (1) Claims for compensation in damages which are not based on warranty entitlements of the purchaser, irrespective of what nature and on what legal basis, against ourselves, our legal representatives, vicarious agents and employees are excluded unless what is involved is foreseeable, typical damage arising from the infringement of important obligations under the agreement, or if the damage is based on violations of obligations by ourselves, our legal representatives or vicarious agents which are undertaken deliberately or with gross negligence. This exclusion from liability does not apply to claims for compensation in damages due to the injury to life, limb or impairment to health attributable to ourselves, our legal representatives or vicarious agents.
- (2) This liability regulation also applies to our consulting in written and verbal form as well as by means of experiments or in any other way; the purchaser is in particular not released from the obligation of itself checking the suitability of the delivery for the intended application purposes.

§ 8 Guarantee of retention of title

- (1) We retain title over the purchased item until all existing accounts receivable, including subordinate accounts receivable, which we have against the purchaser arising from our business relationship have been paid.
- (2) We are entitled to take possession of the goods subject to retention of title if the purchaser falls into arrears in fulfilling the claims existing against it arising from the commercial relationship. We are entitled to demand the immediate issue of the goods subject to retention of title, excluding any right of retention, unless the counterclaims are established in law or are undisputed. We are entitled to sell the taken-back goods for the best price on the open market after giving prior warning, and to credit the revenue after subtraction of the costs of sale.
- (3) The purchaser is obliged to treat the purchased item with care; in particular, the purchaser is obliged to insure it adequately, at the purchaser's own expense, at the purchased item's as-new value, against theft and fire and water damage. The purchaser assigns all claims arising from the insurance relationship to ourselves as of now. If maintenance and inspection work is required then the purchaser must undertake this in good time at its own expense.
- (4) In the case of seizures or other interventions by third parties, the purchaser shall notify us in writing without delay so that we may take legal action in accordance with Article 771 of the German Code of Civil Procedure (ZPO). In the event that the third party is not capable of refunding to us the court and out-of-court costs of the case in accordance with Article 771 of the German Code of Civil Procedure (ZPO) then the purchaser shall be liable to us for the resulting failure.
- (5) Processing of the goods subject to retention of title shall be carried out for us as the manufacturer in accordance with Article 950 of the German Civil Code (BGB), without us incurring any obligation. The processed goods are regarded as goods subject to retention of title in accordance with these conditions.
- (6) In the case of combination, mixing or blending with goods which do not belong to us (Articles 947, 948 of the German Civil Code (BGB)), we shall be entitled to joint title over the new object or overall quantity in the ratio of the value of our goods subject to retention of title at the time of their combination, mixing or blending and the value of the other combined, mixed or blended goods. If the purchaser purchases sole title over the new object then the contractual partners agree that the purchaser shall assign to us joint title over the new object or overall quantity in the ratio of the value of the processed or combined, mixed or blended goods subject to retention of title and the total value of the new object or overall quantity. The resulting new object shall be regarded as goods subject to retention of title in accordance with these conditions. The purchaser shall look after it free of charge, with due commercial diligence, on our behalf and undertakes to provide us with the information required for the exercise of our legal rights, and to grant us insight into its documents to this extent.

- (7) The purchaser is entitled to sell on the goods subject to retention of title in ordinary business procedures. The selling-on shall be equivalent to the purchaser using the goods in fulfilment of works or works delivery agreements. The accounts receivable of the purchaser from the selling-on of the goods subject to retention of title are assigned to us now with all ancillary rights, irrespective of whether the goods subject to retention of title are sold on without or following processing, machining, combination or mixture, and whether or not they are sold on to one or more customers. If the assigned account receivable from the third-party debtor have been included in a current invoice then the agreed assignment also relates to claims arising from the current account. The assigned accounts receivable are used for safeguarding all of our rights and accounts receivable in accordance with 8.1.
- (8) In the event that the goods subject to retention of title are sold by the purchaser together after combination, mixing, processing or machining then it is regarded as agreed that the purchase price account receivable in accordance with 8.7 is assigned to us in the amount of the agreed price of the goods subject to retention of title. If the purchaser provides a service in conjunction with the sale of the goods subject to retention of title and if, on the invoice issued to the customer, it does not distinguish between the goods subject to retention of title and the service, i.e. it charges a total price, then this is assigned to us in the amount of our selling price.
- (9) If the goods subject to retention of title are converted by the purchaser in order to fulfil a works or works delivery agreement then the account receivable arising from the works or works delivery agreement shall be assigned to us in advance in the same extent as determined under 8.7 and 8.8.
- (10) The purchaser is entitled to collect the accounts receivable from the selling-on, in spite of the assignment. Our right of collection shall be unaffected by the purchaser's collection authorisation. However, we will not collect the accounts receivable ourselves providing the purchaser upholds its payment obligations towards us in a proper manner. We are entitled to revoke the authorisation of the purchaser to sell on the goods subject to retention of title and to collect the accounts receivable assigned to us with immediate effect if the purchaser delays payment to us or encounters payment difficulties as a result of a significant impairment in its asset status. In case of an application to open insolvency proceedings on the assets of the purchaser, cessation of any payment, submission of a statement in lieu of an oath according to Article 807 of the German Code of Civil Procedure (ZPO) or if there is a change in ownership of the company of the purchaser associated with payment difficulties then the authorisation to sell on the goods subject to retention of title and the authorisation to collect accounts receivable assigned to us with regard to the goods subject to retention of title shall cease automatically. If we have revoked the purchaser's authorisations to sell on the goods subject to retention of title or if this authorisation has expired automatically then the purchaser is obliged to transfer the goods subject to retention of title to us immediately and to arrange for ourselves or a party authorised by ourselves to take immediate possession of them. In this regard, the purchaser is obliged to notify us of the assigned accounts receivable and their debtors, to provide us with all information required for collection, to give us the associated documents and to inform the debtors of the assignment.
- (11) The retention of ownership in accordance with the previous provisions remains in effect even if individual accounts receivable on our part have been included in a current invoice and the balance has been drawn and is recognised. The retention of ownership extends to the current account balance receivable in this case.
- (12) The retention of ownership in accordance with the previous provisions ceases to apply if all of the demands listed above under 8.1 have been met. As a result, title over the goods subject to retention of title passes to the purchaser and it has the right to the assigned accounts receivable.
- (13) If the achievable value of all collateral existing for us exceeds our accounts receivable by a total of more than 10% then we shall be obliged at the purchaser's request to release collateral of our choice to this extent.

§ 9 Industrial rights of third parties

- (1) The purchaser is liable for ensuring that our manufacture and delivery of objects based on drawings, models or patterns from the purchaser does not infringe patents, industrial rights, copyrights or other rights of third parties, and also does not violate statutory or official regulations.
- (2) If a claims is asserted against us by a third party due to the infringement of a right in accordance with number 9.1 then the purchaser shall be obliged to indemnify us from these claims.
- (3) The indemnification obligation on the purchaser relates to all expenditure incurred by us in connection with or arising from the claims of the third party.
- (4) We and the purchaser are obliged to inform one another mutually and without delay about potential violations which come to light and apparent cases of violation, and to provide the opportunity to defend ourselves against corresponding claims by mutual agreement.

§ 10 Court of jurisdiction – place of fulfilment – applicable law

- (1) The court of jurisdiction for all claims arising from the terms and conditions of business, in particular from our deliveries, is our business domicile. This court of jurisdiction, which exists above all for the dunning procedure as well, applies equally to disputes concerning the creation and effectiveness of the contractual relationship. However, we are also entitled to take legal action against the purchaser at the courts which have jurisdiction over its domicile.
- (2) Unless specified otherwise in the order confirmation, our business domicile is the place of fulfilment.
- (3) The material law of the Federal Republic of Germany applies exclusively, with exclusion of the provisions of international private law. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.