



EZM EDELSTAHLZIEHEREI MARK Plant Wetter

EZM Edelstahlzieherei Mark, P.O. Box 4163, 58294 Wetter

General Terms and Conditions (of sale)

Orders from companies, legal entities of the public law or special funds under public law (hereinafter referred to as the “customer”) shall be processed by us (hereinafter referred to as the “supplier”) solely on the basis of the following conditions, which shall also be applicable for all future transactions, without separate reference being made to said conditions. Counter-confirmations by the customer referring to its conditions shall be hereby opposed. These conditions shall be deemed to have been accepted at the latest upon acceptance of our delivery by the customer, even if the customer has previously referred to its conditions. General terms and conditions of the customer shall require our explicit written consent to become valid. The effectiveness of other conditions shall not be able to be derived from the execution of a placed order. Unless otherwise provided for in the conditions set forth in the following, the legal relationship to the customer shall be governed by the provisions of applicable law.

In the event that our extended reservation of property rights in accordance with item VIII. has not become part of the contract on the grounds of a defence clause of the purchaser, the transfer of title to the goods shall be subject to payment of the full price agreed.

I Conclusion of contract

I.1. The quotations of the supplier shall be non-binding. Orders placed by the customer shall require our confirmation in text form to become binding.

I.2. Modifications or additions to these terms and conditions and any negotiated agreements shall only become effective upon written confirmation by the supplier. This shall also apply to an alteration of this clause pertaining to the written form.

I.3. The information contained in our brochures, catalogues, price lists, or in the documents stating details, drawings and specifications belonging to the quotation shall be approximate values customary in the trade unless they are expressly designated as binding in the order confirmation.

I.4. The INCOTERMS 1990 shall apply to the interpretation of the trade terms.

II Pricing

II.1. Prices are in EUROS, ex works, plus the applicable statutory value added tax and the costs for packaging and insurance.

II.2. If, during the period after the placement of the order and the production of the ordered goods or until the rendering of any other agreed service the labour, material and/or production costs to be paid by us should change through no fault of our own, to such an extent that the manufacturing costs to be verified by us and to be established on the basis of generally accepted German accounting principles in the sense of § 255 HGB for the respectively ordered product should increase by more than 33% as opposed to said costs at the time of order placing, we shall be entitled to re-calculate the agreed price for the ordered product at our reasonable discretion (§ 315 BGB).

II.3. Packaging materials shall be invoiced at cost price and shall not be taken back.

III Payment conditions

III.1. The maturity of our claims shall be based on the statutory provisions.

III.2. Our invoices shall be due for payment immediately upon receipt without deduction. Payment by bill of exchange shall require a corresponding agreement. If we cheques or bills of exchange, this shall only take place in lieu of formal payment. Discount charges shall be calculated from the due date for payment of the invoice amount. Any warranty for the correct presentation of the bill of exchange and the due submission of a protest of said bill of exchange shall be excluded. Acceptance of bills of exchange is subject to the condition that they are eligible for discount.

III.3. Default of payment shall apply for our receivables at the latest 15 days after receipt of the invoice, without the necessity for a reminder or other prerequisites, unless default has occurred at an earlier date according to applicable law. If, in deviation from item III no. 1, a payment term is agreed that can be calculated according to the calendar, default of payment shall apply upon expiration of said term without the necessity for a reminder or other prerequisites. Under no circumstances however shall default according to the above provisions occur prior to the due date of the receivables.

III.4. If after conclusion of the contract our claims to payment should become recognisably jeopardised, we shall be entitled to refuse performance and determine a reasonable period within which the customer shall pay step by step in return for delivery or has to provide security. Upon refusal of payment or provision of security by the customer, or after fruitless expiration of the deadline, we shall be entitled to withdraw from the contract or to demand compensation. After delivery of the goods we shall, in the event that our claims to payment should be recognisably jeopardised, we shall have the right to recover the goods delivered after giving advance notice, and for this purpose to enter the premises of the customer to recover the goods. Recovery shall not represent a withdrawal from the contract. The customer may avert the return of the goods by the provision of security to the amount of our payment claim.

III.5. Upon default of payment of the customer we shall be entitled, after notification of the customer, to terminate the fulfilment of further obligations until receipt of payment, even if said fulfilment applies to other orders.

III.6. The customer shall only be able to set off claims for payment of the supplier against undisputed or legally established receivables. A right of retention shall only exist as far as it is set off against undisputed or legally established receivables. A right of retention shall only exist as far as it is set off against undisputed or legally final receivables.

IV Dispatch and transfer of risk

IV.1. Dispatch shall take place ex works and - if no particular agreement has been concluded – without our guarantee for the selection of the cheapest mode of transport.

IV.2. The risk – even in the event of a separately agreed carriage-paid delivery – shall be transferred to the customer when the goods are handed over to the freight forwarder commissioned with the transport, this shall also apply in the event of transport by internal personnel.

IV.3. In the event of a delay in dispatch or collection of the ordered goods as a result of circumstances beyond our control, the risk shall be transferred to the customer from the day of notification that the goods are ready for dispatch or collection.

V Delivery

V.1. The delivery dates stated by us are not fixed deadlines, unless this has been expressly agreed in writing. With the exception of effectively agreed fixed delivery dates, the agreed deadlines shall in turn be subject to punctual supply to us.

V.2. The date of dispatch ex works shall prevail for compliance with delivery times. If the goods cannot be dispatched timely for reasons beyond our control, the delivery shall be considered to be met upon notification of readiness for dispatch.

V.3. Events of force majeure impeding the fulfilment of our obligations shall entitle us to postpone the delivery by the duration of the hindrance and a reasonable time for resuming operations (last-

ing for a maximum of 14 workdays) or to withdraw from the contract on the grounds of the unfulfilled part of the obligations. The customer can request from us a declaration whether we wish to withdraw or to deliver within an appropriate period of time. Should we fail to declare our intentions within the period set by the customer, the customer shall be entitled to withdraw from the contract. If a fixed-date transaction has been agreed, then statutory rights of withdrawal of the customer shall remain unaffected by the above regulations.

V.4. If we are in default of delivery and if the customer intends to withdraw from the contract, said customer shall set a reasonable period of performance of at least two weeks, unless a deadline is dispensable according to the law.

V.5. If the supplier owes divisible services to the customer, divisible services shall be permissible to a reasonable extent and may be separately invoiced by the supplier. A right of retention on the grounds of the not yet delivered part of the order cannot be set off against the claim for payment of a reasonable partial performance of the customer.

VI Acceptance obligation, excess and short supplies

VI.1. An order or call for delivery shall oblige the purchaser to accept the full quantity of the goods. This obligation shall in particular apply for such cases, in which the goods to be delivered are fully or partly customised. We reserve the right to excess or short supply of up to 5% of the ordered or called quantity. The total price shall be subject to change to the extent of the excess or short supply.

VII Retention of title

VII.1. We reserve the title to the goods delivered by us until full payment of all our claims from the business relationship with the customer, including those arising in future, has been made. The goods may only be sold in the proper course of business. The entitlement to the sale of the goods shall become null and void if the customer ceases payment. The customer shall not be permitted to pledge reserved goods or to assign them as security to third parties. It shall be obliged to protect our rights if goods subject to reservation of title are sold on credit. The customer shall already assign to us all receivables owed from the sale to its customers; it shall however remain authorised to collect any such receivables at its own cost until revoked. We shall hereby accept said assignment. Upon request, the buyer customer shall name the debtors of the assigned receivables and inform us regarding the type and amount of the claims, and provide all information and documents necessary for the enforcement of the receivables. Upon previous notification, we shall be entitled to disclose to the third party debtor the assignment of receivables.

VII.2. If the delivered goods are sold together with any other goods not belonging to us, **the customer's claim against its purchasers to the amount of the price agreed between us and the other party shall be deemed to be assigned.**

VII.3. We undertake to release the securities to which we are entitled as far as their value exceeds the receivables to be secured, if not yet paid, by more than 20%.

VII.4. The customer shall be obliged to insure the reserved goods against the risk of destruction, loss or damage due to fire, water and theft for the time after risk is transferred. The customer shall also be obliged to insure the reserved goods against the risk of destruction, loss and damage during transport. In case of loss, destruction or damage of the reserved goods, the customer shall notify us immediately and shall provide us with all documents referring to the damage to the reserved goods, in particular expert reports, inform us of existing insurances and forward to us at its discretion either the insurance policy or an insurance certificate issued by the insurer for our reserved goods.

VII.5. The pledging and transfer of security of reserved goods shall not be permissible. We shall be informed immediately in the event of any attachment, seizure or other third-party measures.

VII.6. A possible processing or conversion of reserved goods by the customer shall always be undertaken on our behalf. In this respect we shall be considered as the manufacturer in the sense of § 950 of the German Civil Code (BGB). In case of processing, connection or intermixing by the

customer with other objects not belonging to us, we shall have co-ownership of the new object in proportion of the invoice value of the processed reserved goods compared with that of the other objects processed. For the goods to which we shall have full or co-ownership arising from processing, connection or intermixing, the regulations for reserved goods shall also apply according to item VII Nr. 1-5 correspondingly.

VIII Notification of defects

VIII.1. a. If the provisions of § 377 HBG (German Commercial Code) and/or §§ 381, 377 HGB are applicable to the contract, the following shall be agreed with regard to the complaint deadlines set forth in said provisions: The customer shall inform us immediately after detection and in writing of any obvious defects, at the latest however within 4 workdays after discovery. The conditions and consequences of a late notification of defects shall furthermore be governed by the statutory provision (§ 377 HBG and/or §§ 377, 381 HGB). The provision stated above in item VIII. no. 1 lit. A shall not be applicable in the event that we have provided a contractual guarantee that the item with the communicated defect is free fro defects or in the event that a compensation claim has been filed against us on the grounds of loss of life, limbs, health or freedom of a person. In such cases, the conditions and consequences of a late notification of defects shall be based solely on the statutory provisions (§ 377 HGB and/or §§ 377, 381 HGB).

VIII.2. If the customer within the framework of a mutual business transaction should fail to send a notification of defects in due time in accordance with the provisions of §§ 377 and/or 377, 381 HGB, this shall lead to the exclusion of the customer's tortuous claims having occurred or occurring as a result of said defect. This shall not apply if the claims are based on at least gross negligent behaviour of the supplier or its vicarious agents. Furthermore, the exclusion shall not apply to claims based on the German Product Liability Act or on the loss of life, limbs, health or freedom of a person.

IX Warranty, liability and limitation

IX.1. In accordance with statutory provisions, our liability for material defects shall be limited to subsequent performance (replacement or rectification), withdrawal or decrease (price reduction). Compensation for damage caused by material defects for which we are responsible shall only be paid in the following cases within the framework of our contractual liability under the statutory conditions: a. The compensation claim filed against us is based on a material defect and concerns the replacement of material damage caused to other assets than the purchased item. Equivalent to material damage are such other financial losses that are a consequence of material damage caused by a material defect on other assets than the purchased item (financial loss as a result of material defects). The amount of our liability is limited in accordance with the provisions set forth in item IX no. 4. b. We are responsible for the material defect due to wilful intent, fraudulent intent or gross negligence. c. We issued a special contractual assurance or guarantee beyond a quality agreement for the goods being free from the material defect having caused the damage.

d. The compensation claim filed against us is based on the loss of life, limbs, health or freedom of a person. e. We shall be liable for such damage under the aspect of default. Our non-contractual liability, in particular according to the regulations concerning wrongful acts and to the German Product Liability Act, shall not be limited by the afore-mentioned provisions.

IX.2.a. The period of limitation for the claims pertaining to material defects as set forth in § 437 BGB (German Civil Code), shall be one year, subject to the provisions below. If the object delivered or manufactured by us is used for a building in accordance with its intended purpose, and if the defect was caused by this object, then the limitation period for warranty claims shall be 5 years. The statutory limitation periods shall apply if the warranty claims filed against us involve compensation for the loss of life, limbs, health or freedom of a person. The statutory limitation periods shall also apply if we have maliciously concealed the defect, or if we are responsible for said defect on the grounds of wilful intent or gross negligence.

The statutory limitation period shall finally also apply if we have assumed a contractual guarantee for freedom from defects with regard to the specific defect in question. b. The limitation period for the claims set forth in § 437 BGB, which are based on legal shortcomings, shall be one year, unless the defect exists in a third-party right in rem, for the reason of which the handing over of the

purchased item can be demanded, or in any other rights entered in the land register. The statutory limitation periods (§ 438 BGB) shall also apply if we have maliciously concealed the defect, or if we are responsible for said defect on the grounds of wilful intent or gross negligence. The statutory limitation period shall also apply if we have assumed a contractual guarantee for freedom from defects with regard to the specific defect in question.

c. The limitation period in the case of other compensation claims filed against us that are not based on liability for legal or material defects shall be 18 months. This shall not apply:

- if claims filed against us are based on the loss of life, limbs, health or freedom of a person,
- if our liability is based on a wilful or grossly negligent breach of duties on our part - or if claims resulting from the Product Liability Act are filed against us.

In these cases the statutory limitation periods shall apply.

IX.3. If, within the framework of the warranty, deliveries are replaced or repaired, the limitation period for warranty claims shall not be extended as a result, even for the replaced or repaired parts. The statutory provisions regarding the suspension and recommencement of the limitation period shall remain unaffected.

IX.4. For consequential damage as a result of a material defect, our liability – irrespective of the legal reason – shall be limited to the amount of 1,000,000.00 euros for each breach of duty, if we present proof that we have taken out a liability insurance that would be responsible for this case of damages with an insurance coverage of at least 1,000,000.00 euros. The same shall apply to our liability for damage caused by a culpable breach of secondary duties. If several cases of damage should occur within the framework of a sales contract or any other transaction, which are based on the same cause, e.g. the delivery of several items with the same common defect within one purchase contract, then this shall represent one breach: A higher insurance coverage can be taken out upon written request of the customer at its own expense. In this case the maximum liability limit shall be increased accordingly.

This liability limitation shall not apply if our liability is based on wilful intent, fraudulent intent or gross negligence. It shall also not apply - for claims from the Product Liability Act, - for contractual claims for such defects, for the absence of which we have assumed a contractual guarantee, or for claims filed against us on the grounds of the loss of life, limbs, health or freedom of a person. In this respect we shall be unlimitedly liable in accordance with statutory provisions.

IX.5. Our warranty and liability – irrespective of the legal reason – shall be excluded for defects resulting from faults made in the planning documents, drawings, materials or products supplied by the customer, unless defectiveness of said planning documents, drawings, materials or products provided by the customer were not recognised due to gross negligence. If an original sample inspection is performed by the customer without defects being immediately reported to us, our liability – irrespective of the legal reason – for such defects that could have been detected upon diligent sample inspection, shall be excluded. These liability limitations shall not apply if our liability is based on wilful intent, fraudulent intent or gross negligence. It shall furthermore not apply

- for claims arising from the Product Liability Act,
- for contractual claims for such defects, for the absence of which we have assumed a contractual guarantee, or for claims filed against us on the grounds of the loss of life, limbs, health or freedom of a person.

These shall be subject to the statutory provisions.

IX.6. The regulations set forth in item IX Nr. 1 to 5 shall not apply to the regress of the customer against the supplier in accordance with §§ 378, 379 BGB and/or §§ 651, 478, 379 BGB (regress on the grounds of a defect of the goods occurring to a consumer). These shall be subject to the statutory provisions.

X Parts and machines sent in for processing

X.1. The following provisions shall apply to contracts concerning the processing, reconditioning or repair of parts, machines or other objects submitted to us. If no special provisions are concluded

in the following, the remaining provisions of these General Terms & Conditions shall apply to contracts.

X.2. Delivery of the parts of machines sent in to us for processing shall take carriage paid to the supplier's plant in good packaging enclosing the packing slip containing our order details.

X.3. The material of the sent-in parts must be stated at the latest upon delivery; best possible processing must be ensured. If these conditions are not fulfilled, the supplier may invoice the costs for any resulting additional work as well as the cost of prematurely worn or damaged tools, or withdraw from the contract, whereby the customer shall remunerate the contractually agreed price less any expenses saved and plus the above mentioned additional costs.

X.4. In accordance with statutory provisions, our liability for material defects shall be limited to subsequent performance (replacement or rectification), withdrawal or decrease (price reduction). Compensation for damage caused by material defects for which we are responsible shall only be paid in the following cases within the framework of our contractual liability under the statutory conditions:

a. The compensation claim filed against us is based on a material defect and concerns the replacement of material damage or other loss in consequence of the material damage caused by the defect. The amount of our liability is limited in accordance with the provisions set forth in item IX Nr. 4t.

b. We are responsible for the material damage due to wilful intent, tortious intent or gross negligence.

c. We issued a special contractual assurance or guarantee beyond a quality agreement for the goods being free from the material defect having caused the damage.

d. The compensation claim filed against us is based on the loss of life, limbs, health or freedom of a person,

e. We shall be liable for such damage under the aspect of default.

Our non-contractual liability, in particular according to the regulations concerning wrongful acts and to the German Product Liability Act, shall not be limited by the afore-mentioned provisions.

X.5. If we are liable for damage or destruction of sent-in parts or machines in accordance with statutory provisions, said liability shall be limited to the amount of 1,000,000.00 euros for each breach of duty, if we present proof in the case of damage that we have taken out a liability insurance that would be responsible for this case of damages with an insurance coverage of at least 1,000,000.00 euros. If several cases of damage should occur within the framework of a contract, which are based on the same cause, e.g. the faulty processing of several sent-in items, then this shall represent one breach. A higher insurance coverage can be taken out upon written request of the customer at its own expense. In this case the maximum liability limit shall be increased accordingly. This liability limitation shall not apply if we are proven to have acted with wilful intent or gross negligence, or if we have assumed a guarantee for freedom from defects with regard to the defect having caused the damage. Furthermore, this limitation of liability shall also not apply if the claimed damage concerns the loss of life, limbs, health or freedom of a person.

X.6. a. The limitation period for the warranty claims for material and legal defects as set forth in § 634 BGB shall be one year, subject to the following provisions, if the work to be performed concerns the manufacture, maintenance or modification of an object, which is not a building, or in the provision of planning or monitoring services, which do not relate to buildings. The statutory limitation periods shall apply if the warranty claims filed against us involve compensation for the loss of life, limbs, health or freedom of a person. The statutory limitation periods shall also apply if we have maliciously concealed the defect, or if we are responsible for said defect on the grounds of wilful intent or gross negligence. The statutory limitation periods shall finally also apply if we have assumed a contractual guarantee for freedom from defects with regard to the specific defect in question.

b. The limitation period in the case of other compensation claims filed against us that are not based on liability for legal or material defects shall be 18 months, irrespective of the legal reason. This shall not apply

- if claims filed against us are based on the loss of life, limbs, health or freedom of a person,

- if our liability is based on a wilful or gross negligent breach of duty for which we are responsible

- or if claims arising from the Product Liability Act are filed against us.

In these cases the statutory limitation periods shall apply.

X.7. If we rectify any work performed by us, the limitation period for warranty claims shall not be extended for the rectified parts as a result. The statutory provisions regarding the suspension and recommencement of the limitation period shall remain unaffected.

X.8. Our services shall be deemed accepted when

- The processed object is sold to or allowed to be used by a third party by the customer;
- The object processed by us is processed or mixed with or connected to other objects with the approval of the customer;
- or the object processed by us is used beyond testing either by the customer or by third parties with the approval of the customer.

X.9. The supplier is entitled to a contractual right of lien to the objects obtained due to the order because of its claim arising from the order. The contractual right of lien can also be enforced in relation to claims ensuing from earlier work and all other services where same are associated with the subject of the order. The right of lien shall apply to other claims relating to the business connection only if such claims are uncontested or a legally binding title exists, and the subject of the order belongs to the customer.

XI Place of fulfilment, place of jurisdiction and applicable law

XI.1. The place of fulfilment of the contractual duties of both contractual parties shall be our registered office (Wetter).

XI.1. The sole place of jurisdiction for all claims associated with the implementation of this contractual relationship is our registered office. This shall also apply to claims arising from cheques, bills of exchange and direct debit procedures. We can however also institute legal proceedings at the customer's registered office.

XI.3. German law shall apply for all claims associated with the implementation of this contractual relationship provided that the regulations of the **Vienna UN Convention of 11.04.1978** on Contracts for the International Sale of Goods are not applied.

XII Severability clause

XII.1. Should a provision of these conditions of delivery and payment be or become ineffective, the effectiveness of the remaining provisions shall not be affected. In such a case, a provision shall apply which comes as close as possible to the aim intended by the invalid provision.

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