

General Sales Terms and Delivery Conditions

§ 1 Scope

Our deliveries and performances shall be provided exclusively at the following general terms and conditions. They shall also apply for all future business relationships even if they have not been expressly agreed upon once again. They shall also apply if we have not objected to deviating terms and conditions of the Customer in the particular case which we hereby expressly reject. Our sales terms and conditions shall also then apply if we, being aware of conflicting terms and conditions of the Customer or terms and conditions of the Customer that deviate from our sales terms and conditions, carry out the delivery to the Customer unconditionally.

§ 2 Offer and Conclusion of the Contract

1. Our offers are without obligation. They concern merely requests for the rendering of offers upon the part of the Customer.
2. The order of the Customer is a binding offer. We may choose to accept or reject this offer within 4 weeks by sending a written order confirmation (also a fax or e-mail). If an immediate delivery is made, then the invoice shall likewise be considered to be an order confirmation.
3. We reserve the right of ownership, the copyright and the rights originating from the Patent and Utility Model Act to charts, drawings, calculations, results of data processing measures and other documents which we provide to the Customer in the course of the preliminary contractual work. They have only been provided for the purposes of our respective offer and may not be reproduced or provided to third parties without our express approval-even as excerpts. This shall particularly apply for such written docu-

ments which are designated as “confidential”; before their disclosure to third parties, the Customer shall require our express, written approval. The documents must be sent back to us free of charge if the order is awarded to someone else.

§ 3 Prices and Payments

1. Unless otherwise stated in the order confirmation, our prices are quoted “ex works”, Espelkamp. The prices do not include the VAT in the respective statutory amount and other country-specific levies for deliveries abroad as well as the costs for the packaging customary for us, other shipping costs, delivery costs, etc. Any additional costs, public levies or the like must be paid by the Customer unless mandatory statutory provisions conflict with this. We shall be entitled to demand immediate reimbursement of shipping charges and other expenditures that have been advanced. Packaging is charged at cost.

We reserve the right to correspondingly increase our prices if, after the conclusion of the agreement, cost increases occur, particularly due to the conclusion of collective bargaining agreements or price increases for materials and at least 4 months lie between the contractual conclusion and the anticipated delivery.

2. The Customer shall be obliged to pay the net purchase price (without any deductions) within 30 days from the invoice date. If this does not take place, the Customer shall, without any further requirements, enter into default from this point in time.

From the time the Customer enters into default, we shall be entitled to demand default interest in the amount of 8 % above the base lending rate. If we are able to document higher damages based upon this delay, we shall be entitled to assert legal claims for such damages. Nevertheless, the Customer shall be entitled to demonstrate to us that,

as a result of the delay in payment, no damages or significantly less damages were suffered.

3. If the Customer enters into default with a payment, all other payment claims shall become immediately due for payment if the contractual partner does not prove that he is not responsible for the default.
4. The Customer shall only be entitled to rights of offset if his counterclaims have been determined to be legally valid, are undisputed or we recognize them.
5. Despite any conflicting provisions of the Customer, we shall be entitled to credit payments toward earlier debts first of all. If costs and interest have already been incurred, we shall be entitled to credit payments first of all to the costs, then the interest and lastly to the main payment even if the Customer has designated something to the contrary. If this concerns financing assistance, firstly crediting shall be made towards the main payment, then to the interest and costs.
6. If we become aware of circumstances which bring into doubt the ability to pay and creditworthiness of the Customer, particularly if the Customer fails to honour a check, discontinues his payments or if we become aware of the filing of a petition to open bankruptcy proceedings, then we shall be entitled to demand the immediate payment of the entire remaining debt even if we have accepted checks. Furthermore, we may demand advance payments and the provision of security in this case. The same shall apply for the untimely payment for a previous delivery. Agreed-upon discounts shall not be granted if a balance due to our benefit exists at the time of the payment.

In the event that we become aware of the aforementioned circumstances or the filing of a petition to open bankruptcy proceedings, we shall be entitled to cancel all orders after the setting of an appropriate extension period which ultimately proves unsuccessful in

which the other party, step-by-step and in its discretion, has been required to affect counter-performance against the performance or provide security. In the event of a rescission, the Customer must reimburse us for our expenditures incurred against documentation. The assertion of more substantial damage compensation claims shall remain unaffected.

§ 4 Nature of the Object of Sale

1. The nature of the object of sale is derived from the brochures and other concrete descriptions of products which may be reviewed at any time at our location and, upon request, also be sent out at any time. No assurances or guarantees are made about the aforementioned information.
2. The instruction manuals for our products that we have supplied or that have been required must always be followed exactly. In the event that these instruction manuals are not followed, functional restrictions cannot be ruled out. The nature of our products will not be actively developed if servicing work is defective or not carried out. Therefore, servicing guidelines must be followed at all times.
3. The lifting platforms we offer and supply are only allowed and to be used as lifting devices for loads. They are not intended for the conveyance of service personnel. Service personnel should also not stand upon the hoisted platform unless the valid safety provisions for passenger transport are fulfilled and we have confirmed in writing that they are suitable for transport of workers and to stand on.
4. Customary deviations of drawings, dimensions, weights and other performance data are permitted. Therefore, in the event of short or excess delivery, we reserve the right to make deviations by up to 10 %.

§ 5 Delivery Deadline and Performance Timeframe

1. Delivery deadlines shall not begin before the submission of any documents to be provided by the Customer which are required for the processing of the order. A delivery deadline is considered to have been met if the shipment is ready for delivery within the timeframe and notification of this has been made to the Customer or if the shipment has left our factory.
2. In the event of force majeure or other unforeseeable, extraordinary circumstances and circumstances where fault cannot be assigned, e.g., non-delivery by our own suppliers, operational disruptions caused by fire, water and similar circumstances, non-operability of production facilities and machines, strikes and lockouts, shortages of materials, energy, transport options, governmental intervention (even if they concern our suppliers), we shall – provided that we are prevented from the timely fulfillment of our performance obligation by the aforementioned circumstances through no fault of our own – be entitled to suspend the delivery or performance for the duration of the hindrance in addition to an appropriate start-up period. However, the Customer shall be entitled in any case to set an appropriate extension period for us in writing of at least 14 days if we exceed the agreed-upon delivery deadline by more than one week. After the expiration of the extension period which proves unsuccessful, the Customer shall be entitled to rescind the agreement.
3. Before the expiration of the delivery date, we shall be entitled to make partial performances of a reasonable scope. Partial performances and invoices for functional units are permitted.
4. If the sending of the delivery is delayed by circumstances for which we are not responsible, then we shall be entitled to charge a storage fee in the amount of 0.5 % of the in-

voiced amount for each month begun unless the Customer documents less substantial damages. More substantial claims shall remain unaffected – e.g., all claims from entry into default.

§ 6 Transfer of Risk

1. Provided that there is no obligation to be performed at the creditor's place of business, the risk shall be transferred to the Customer as soon as the goods have been handed over to the person carrying out the transport or, for purposes of the shipping, have left our factory. This shall be considered to be independent of whether we carry out the transport with the factory's own vehicles or we commission third-party forwarding companies.
2. If the shipment is delayed due to reasons for which the Customer is responsible, then the risk shall be transferred to the Customer on the day the goods are provided.

§ 7 Liability in the Event of Defects

1. The warranty rights of the Customer require that he has properly fulfilled his obligations to inspect and notify of defects which are owed in accordance with § 377 German Commercial Code **[HGB]**. Within 8 days after the transfer, the Customer must make written notification of defects which are obvious and discovered in an ordinary inspection – provided that such an inspection is reasonable within the course of proper business operations. The Customer must make written notification of defects which are not obvious and not recognizable in the course of an ordinary inspection within 8 days after their discovery. In the event that the Customer fails to make notification of defects within the aforementioned time period, a warranty for the related defects shall cease to apply. Based upon the processing of complaints received and the inspection of the goods,

we do not waive the right to assert claims for the belated or incomplete notification of defects.

2. We shall provide no warranty for damages and disruptions which have been caused particularly by natural wear and tear, faulty installation or commissioning by the Customer, improper usage and operational errors, faulty or unsuitable power supply, operation with the wrong type of power or voltage, fire, lightning, explosion, humidity and non-execution of necessary or recommended operational and/or maintenance work. Likewise, no warranty shall be provided if parts are exchanged or consumable materials are used that do not correspond to the original specifications.
3. We shall provide warranties for the faultlessness of our product for a period of one (1) year from delivery. In the event that a defect is discovered, the Customer may request that we, at our discretion, eliminate the defect or supply a product free of defects. In the event that the subsequent performance is unsuccessful, the Customer reserves the right to choose whether to request a payment discount or to withdraw from the agreement. Subsequent performance shall be considered to have been unsuccessful if two attempts at subsequent performance fail. Any more substantial claims, particularly claims for reimbursement of expenditures or damage compensation claims shall be applicable only in accordance with the provision in § 8.
4. Provided that the Customer, for the assertion of rights, is obliged to provide us with an appropriate extension period for the rendering of our performance, then the time period shall only then be considered to be appropriate if it is not shorter than 20 days.

We shall be entitled to reject the subsequent performance if it is only possible with disproportional costs. Disproportionally high are considered to be costs particularly if the total expenditures for the remedying of a defect are more than 50 % of the market value of the goods sold. The further rights of the Customer shall remain unaffected.

5. We must bear the expenditures required to remedy the defect, particularly transport, infrastructure, labour and material costs, provided that they are not increased by the object having been relocated to another location than the place of performance. Replaced parts shall become our property.
6. If the defect cannot be determined, the Customer shall bear the costs for the inspection.
7. Only the direct Customer shall be entitled to assert warranty claims against us and such claims are not assignable.
8. In the event of immaterial defects, the Customer shall not be entitled to a right of rescission.

§ 8 Damage Compensation Claims

1. Provided that nothing to the contrary is stipulated in these terms and conditions, we shall be liable for damage compensation due to the violation of contractual, extra-contractual and statutory obligations only in the event of wrongful intent or gross negligence. This shall also apply for contractual violations of our legal representatives or persons employed in performing an obligation.

The amount of any existing damage compensation claim is limited to compensation for foreseeable damages.

We shall not be liable for damages that have not been caused to the delivered object itself; in particular, we shall not be liable for lost profits or other financial damages of the Customer.

Excepted from the existing liability restrictions shall be the liability for damages originating from the loss of life, personal injury or damage to health.

2. The existing liability restriction with the aforementioned limitation shall also apply for claims originating from culpa in contrahendo, violation of ancillary obligations and particularly for claims originating from manufacturer's liability in accordance with § 823 German Civil Code **[BGB]**.
3. The Customer may demand damage compensation instead of performance from us only in the event that we have committed significant contractual violations.
4. It shall be the responsibility of the Customer to prove the causality of a promotion for the purchasing decision.

The Customer must prove that the object sold was defective at the time that risk was transferred.

5. We shall provide no guarantees or quality warranties in any way.
6. If the contractual object is an object that is only classified to a category, then this shall also determine our liability in this case according to the aforementioned rules; a liability not based on fault shall be excluded.

§ 9 Retention of Ownership

1. All our deliveries and performances shall be provided subject to retention of ownership. The ownership shall only then be transferred to the Customer if all our claims originating from the business relationship, such as those connected with the object of sale, have been satisfied. This includes all claims, regardless of the legal reason, including the claims created in the future or conditional claims as well as from agreements concluded at the same time or later in business relationships. This shall also apply if payments are made upon specifically designated claims. In the event that ongoing invoicing is carried out, the retention of ownership shall serve as the securing of the payment balance owed to us.
2. The Customer shall be obliged to handle the object of sale with due care; the Customer is particularly obliged to sufficiently insure the object of sale at replacement value at his own expense against fire, water and theft. If maintenance and inspection work is required, the Customer must carry it out at his own expense in a prompt and professional manner.
3. The Customer may neither pledge nor provide the object of sale as security to which we have retained ownership. The Customer must immediately notify us of any attachments, seizures and other legal actions taken by third parties. In such case, the Customer must provide us with the assistance required for the safeguarding of our rights. Costs for any required interventions shall be borne by the Customer. Furthermore, in the event that payments are discontinued, the Customer must inform us of the goods still on-hand.
4. In the event that the Customer enters into payment default, then we – regardless of whether the agreement is maintained – shall be entitled to demand the immediate return of the goods. If we assert the right to retention of ownership, then this shall only

then be considered to be the rescission of the agreement if we expressly declare this in writing.

5. The Customer shall undertake the processing or reworking of the goods subject to right of retention for us on an ongoing basis. In the event of the handling and processing of the goods subject to right of retention or mixing, the right of ownership to the processed or mixed goods subject to right of retention shall continue to apply. If the goods subject to right of retention are processed with other goods not belonging to us or mixed with them in an inseparable manner, then we shall acquire the ownership to the new product in the proportion of the invoiced value of the goods subject to right of retention to the invoiced value of the other goods used at the time of the processing or the mixing. The created co-ownership rights shall be considered to be goods subject to right of retention in accordance with these terms and conditions. If our goods are combined with other movable objects to form a uniform product or mixed with them in an inseparable fashion and the other object is regarded as the main product, then the Customer shall transfer to us proportional co-ownership, provided that the main product belongs to him. In the aforementioned cases, the Customer shall already now assign his ownership rights to the processed, combined or mixed goods to us. Compensation shall be provided for the transfer by the Customer maintaining the processed, connected or mixed product for us. For the product created through the processing, usage and mixing, the same shall otherwise apply for goods subject to right of retention.

6. The Customer shall be entitled to process and to sell the goods subject to right of retention in the customary course of business, unless he is in default to us, has discontinued payments or a petition has been filed for the opening of bankruptcy proceedings with respect to his assets. The Customer shall already now assign to us the claims created with all rights in their full amount from the resale against consumers or third parties. We accept this assignment. If the goods subject to right of retention are sold by the Customer – after processing/combining – together with the goods not belonging to

the Customer, then the Customer shall already now assign to us the claims created from the resale in the amount of the value of the goods subject to right of retention with all ancillary rights and first priority before all others. We already now accept this assignment. Even after the assignment, the Customer shall be authorized to collect this payment claim. Our opportunity to collect the payment claims ourselves shall remain unaffected by this – nevertheless, we shall be obliged to not collect the payment claims as long as the Customer properly fulfills his payment and other obligations, is not in payment default particularly no petition has been filed to open bankruptcy proceedings, no payments have been discontinued or there is justified doubt in the ability to pay and creditworthiness of the Customer. The Customer shall in no way be entitled to otherwise assign the payment claim.

7. We may demand that the Customer notify us of the assigned payment claims and their debtors, provide all information required for the collection, submit the related documents and notify the debtors of the assignment. Any bill of exchange provided by third-party buyers must be assigned to us.
8. If the value of the securities we are entitled to exceeds the overall payment claim against the Customer by more than 20 %, then we are obliged to release the securities of our choice upon the request of the Customer. If we take back the goods by mutual agreement, their crediting shall be made only in the amount of the respective present value.

§ 10 Industrial Property Rights

1. If we must supply goods based upon drawings, models, samples or subject to the usage of parts provided by the Customer, then the Customer shall be responsible for ensuring that third-party rights of protection in the country of destination of the goods are not violated by so doing. We shall inform the Customer of all rights of which we are

aware. The Customer must indemnify us from third-party claims and provide compensation for any damages. If a third party prohibits us from producing or supplying an object while availing itself of rights of protection belonging to it, then we shall – without examination of the legal situation – be entitled to discontinue work until the legal situation is settled by the Customer and the third party. In the event that it is no longer reasonable for us to carry out the fulfillment of the order due to the delay, then we shall be entitled to rescind the agreement.

2. Any drawings and samples provided to us which have not led to an order shall be sent back upon request; otherwise, we shall be entitled to destroy them three months after the rendering of the offer. This obligation shall correspondingly apply for the Customer. The party entitled to destroy these documents must notify the contractual partner of its intention to destroy the documents in advance in a timely manner.
3. We shall be entitled to the copyrights and, where applicable, industrial property rights, particularly all rights of use and exploitation to the models, forms and devices, drafts, drawings and the supplied product which we have produced or a third party on our account.

§ 11 Applicable Law, Place of Jurisdiction, Place of Performance

1. The contractual relationship shall be subject to the law of the Federal Republic of Germany with the exception of the uniform United Nations Convention on Contracts for the International Sale of Goods.
2. For deliveries – even for freight-free deliveries – for payments, among other things, the place of performance for all obligations originating from the contractual relationship shall be our place of business.

3. The place of jurisdiction shall be, even for legal disputes involving bills of exchange and checks, our place of business if the Customer is an entrepreneur or a juridical person under public law. The same place of jurisdiction shall apply if the Customer has no general place of jurisdiction domestically or relocates his place of business or customary residence abroad after the contract is concluded. In any case, we may also assert legal claims against the Customer in his commercial residence.

§ 12 Severability Clause

In the event that a provision in these business terms and conditions should be or become invalid, then the legal validity of all other provisions or agreements shall not be affected. In place of the invalid provision, a legal provision shall be agreed upon between the parties which most closely corresponds to the commercial purpose of the invalid provision.

Espelkamp Status as of January 2002