

General terms and conditions of business and contracts of epro GmbH
Date 01.09.2005

Article I. Scope of our business and contract conditions

(1) For our contractual relationships as well as for preliminary contractual obligations, these general terms and conditions of contracts and business exclusively apply particularly for deliveries, services and offers.

Any conditions of the customer (buyer, purchaser) standing contrary to or deviating from our general conditions we do not recognize, unless we would have agreed expressly to their validity in writing.

Our conditions shall be valid too, when we deliver the goods or services unconditionally in knowledge of conditions of the customer, standing contrary to or deviating from our conditions.

(2) Our general terms and conditions of business and contracts shall also apply to all future business with the customer, even if they are not stipulated expressly again.

(3) At the latest by receipt of our goods or services these conditions shall be considered to be accepted by the customer.

Article II. Offer and conclusion of contracts

(1) An order of the customer which is to qualify as an offer in accordance with BGB § 145 (e.g. offer for conclusion of a sales contract), we can accept within a period of two weeks by sending an order confirmation or by forwarding the ordered products within the same period.

(2) Our offers are subject to alteration without notice and without obligation, unless we have particularly denominated them to be obligatory.

Article III. General regulations, industrial property rights and copyrights, liability arising from warranty of title

(1) We unconditionally reserve property rights, copyrights as well as any other protective rights, particularly exploitation rights on all illustrations, calculations, drawings, estimates of expenses and other documents (hereinafter called "Documents"). This shall also apply to such written documents which are described as "confidential". For disclosing these documents to third parties, the customer requires our express consent in writing. Aforementioned documents have to be returned to us by the customer immediately upon request if the contract relationship has not come into existence.

(2) We shall have the right to part deliveries as far as they are reasonable for the customer.

(3) a) Unless otherwise agreed upon in writing, we are just obliged to furnish the shipping free of industrial protective rights and copyrights of third parties (hereinafter called "protective rights") in the country of the place of delivery.

b) Provided that a third party has filed a justified claim against our customer, due to injury of protective rights by deliveries or services rendered by us, we are legally responsible to the customer, subject to the following conditions, within the period mentioned in article XI(6):

aa) We will exempt the customer from claims due to the injury of protective rights unless the outline of the subject of delivery and service was made by the customer. This exemption obligation is limited on the amount of the predictable damage occurring typically.

bb) We shall have the right to exempt from the obligations taken over with the beforementioned paragraph alternatively by either

aaa) providing the customer with the right for the use of the subject of delivery and services, particularly e.g. by obtaining the required licences regarding the allegedly injured protective rights or

bbb) making available to the customer the modified subjects and services or parts of it, which, in case of a replacement, remove the reproach of injury regarding the subject of delivery and services or

ccc) taking back the delivery at the invoice price (reduced by an adequate compensation for use).

cc) Additional claims for damages of the customer act in accordance with article XII. Claim for damages.

c) The before mentioned obligations shall only apply, as far as the customer immediately contacts us in writing about claims asserted by third parties, does not recognize the injury, reserves all avoidances and composition negotiations to our decisions, expressly, reserves us the right to litigate legal disputes in these matters. If our customer stops using the delivery or service due to reasons of lowering the damage or for any other important reason, he is obliged to point out to third parties that stop using the delivery shall not be related with admitting the injury of protective rights.

d) As far as the customer is responsible for the injury of the protective rights, any claim shall be excluded.

e) Furthermore, claims of the customer shall be excluded as far as the protection rights were injured due to specifications defined by the customer, by applications not foreseeable by us or as far as our delivery or service was modified by the customer or operated along with products not delivered from epro GmbH.

(4) As for the rest, at the presence of defects of title, the regulations of article XI shall apply correspondingly.

(5) Further claims or any other claim of the customer, as regulated in this article, due to a defect of title, against us or our vicarious agents, shall be excluded.

Article IV . Terms of payment / Price adjustment regulation

(1) Unless otherwise agreed in writing, expressly in the order confirmation, our prices are valid ex works, without packing.

(2) Our contract price does not include value added tax (VAT), customs duties, insurance premiums etc..

(3) If not agreed otherwise in writing and as far as services are invoiced on time and material basis, expressly on hourly basis, our actual price list, valid with the beginning of the year, shall apply.

(4) If we, as supplier, have e.g. taken over installation or mounting and if not agreed otherwise, the customer shall be charged, in addition to the normal remuneration, with all special expenses such as travelling costs, costs for the transport of tools and personal luggage as well as with the costs for daily allowances.

(5) Unless otherwise agreed in writing with the customer, cash discounts are not permitted.

(6) Provided that nothing else follows from the order confirmation, the amount of invoice is net cash (without discount) payable duly within 14 days as of the date of invoice.

(7) A payment is considered to be carried out not before the amount is at our disposal. In case of cheque payments, the payment is considered as carried out, when the cheque is cashed on our account.

(8) If the customer fails to make any payments when due, article VI hereinafter shall apply correspondingly; as for the rest, the legal regulations shall apply.

(9) As far as we have agreed with the customer to pay the reimbursement by means of bill / cheque, the retention of title extends on the encashment of the accepted bill by the customer and shall not extinct with the credit note of the cheque received.

(10) Even in case of complaints or counterclaims, the customer shall only be entitled on compensation if complaints or counterclaims, that have become absolute, are indisputable or were accepted by us.

(11) The customer shall only be entitled to practice a retention, if his counterclaim is based on the same contract relationship.

(12) We reserve the right to adjust our prices correspondingly, if cost reductions or increases in costs have occurred, notably due to conclusions of collective agreements or changes in material prices. We will prove them against the customer upon request.

Article V. Delivery time and time of performance, Settlements at delay of delivery or performance

(1) Dates of delivery or payment terms that were not agreed as obligatory, are exclusively non-binding information. The delivery or payment terms shall start not before all technical questions are settled.

(2) The observance of our delivery commitments or furnishing performances owed by us, presupposes the fulfilment of the customer's obligations, properly and in time, particularly of his cooperation duties. This applies expressly for the timely receipt of all documents to be provided by the customer, e.g. required authorizations and releases, especially of drafts, but also the compliance with the agreed terms of payment and other obligations of the customer. If these prerequisites are not fulfilled on time, the terms will prolong adequately; this shall not apply, if we are responsible for the delays.

(3) If the non-observance of agreed terms is attributed to force major, e.g. mobilization, war, riot, or similar events such as strike, lock-out, or interruptions of operation at epro or at one of our suppliers, who, without any fault on his part, temporarily inhibit us to supply or to furnish performances owed by us, the agreed terms will be prolonged adequately, at least by the delay, caused by these events.

(4) As far as we are responsible for the non-observance of agreed terms and dates or if we are in default, the customer has a claim on compensation for default of 0,5% for every completed week, however, altogether not more than 5% of the invoice amount of the delivery and service, affected from the delay. Prerequisite for this is, that the customer can furnish prima facie evidence for the existence of a damage caused by this delay.

(5) Claims for compensations of the customer due to delay of the deliveries or services as well as claims for compensation as replacement for the services, that exceed the limit as mentioned in the before mentioned paragraph 4, are excluded for all events of delays of deliveries or services, even after a specified period, allowed to us, has expired. This shall not apply, as far as in cases of deliberate acts, gross negligence or injury of persons or health an absolute liability will come into force; an amendment of the burden of proof to the disadvantage of the customer shall not be associated with this. Any similar claims in accordance to the product liability law remain untouched.

(6) The customer can only withdraw from the contract within the context of the legal regulations, as far as we are responsible for the delay of the delivery or services.

(7) Upon our request the customer is obliged to declare within an adequate period, whether he shall withdraw from the contract due to the delay of the delivery or services (in the context of the paragraphs before) and/or asserts a claim on compensation as replacement for the services or whether he insists on the completion of the contract.

Article VI. Delay of the customer

(1) If the customer has come into delay, we shall be entitled to assert a claim on the compensation of the damage and any possible expenses. The same applies, if the customer culpably neglects his cooperation duties.

(2) Upon occurrence of the default of acceptance or default of the debtor, the risk of accidental loss, destruction or deterioration passes to the buyer.

Article VII. Delivery, passing of risks

(1) Unless otherwise agreed in the order confirmation, the sold goods are delivered "ex-works".

(2) With freight paid delivery, the risk will also be passed to the buyer as follows:

- a) at deliveries without installation or mounting, if the goods were dispatched to or taken from the forwarding department.
- b) at deliveries with installation or mounting at the day of taking over in the factory or, as far as agreed, after the test run was performed perfectly.

(3) Upon request of the customer, we will insure the shipments in his name and on his invoice against the usual transport risks.

(4) If the customer is responsible for the delay of shipment, delivery, start, accomplishment or installation or mounting, taking over in the own factory or the test run, the risk shall be passed to the customer.

Article. VIII. Installation and assembly

Unless otherwise agreed in writing, the following regulations shall apply for installation and mounting:

(1) If mounting and connection of the delivered goods are carried out by staff or by third parties entrusted by us, the customer is obliged to provide the necessary supply connections (electricity, water, pressed air, as well as working facilities) free of charge.

(2) After the completed installation a receipt of delivery shall be drawn up and signed from the customer and us.

(3) The customer has to point out the special safety regulations applying to his installation place to the installation staff, to provide corresponding protection facilities free of charge and, as far as required, to obtain the required approvals or official permissions stipulated for the installation.

Article IX. Retention of title

(1) We reserve the right on the subject of the contract (subject matter of delivery, reserved goods) until all payments from the business connections with the customer including subsidiary claims, claims for compensations and payments of cheques and bills have been satisfied in full. The retention of title will remain even when individual claims of the supplier are taken over in current accounts and when a balance has been struck and recognized.

(2) Processing or transformation of the object of the contract by the customer is always carried out for us. If the object of the contract is processed with other subjects, which are not our property, we shall acquire a co-ownership on the new subject for the value of the contract (amount of invoice including VAT) in proportion to the other processed objects at the time of processing. As for the rest, for the subject getting processed the same shall apply as for the object of the contract, which was delivered with reservations.

(3) If the object of the contract is inseparable mixed with other subjects, which are not our property, we shall acquire a co-ownership on the new subject for the value of the contract (amount of invoice including VAT) in proportion to the other mixed objects at the time of mixture. If the intermixing follows upon that way, that the subject of the customer is taken for the main subject, it is considered to be agreed that the customer shall transfer co-ownership to us on a pro rata basis. The customer shall manage for us the exclusive ownership or the co-ownership, resulting therefrom.

(4) The customer shall also hand over to us the claims for saving our claims against him, which could arise against a third party, by connection of the object of the contract with a real estate.

(5) The customer is obliged to handle the object of the contract carefully, particularly he is obliged to effect a replacement value insurance at his expense against the risk of fire, water damage and theft. The customer herewith transfers his claims on insurance benefits, due to him against insurance companies from damages of the aforementioned manner or other claims against other parties that are obliged to compensate at the amount of the invoice value including VAT of the object of the contract, to us. We herewith accept this transfer. As far as maintenance and inspection works are required, the customer must carry these works out at his own expense on time.

(6) If we take back the object of the contract by exercising our right on retention of title, a withdrawal from the contract shall only be present, if we have expressly explained this. We shall be entitled to obtain satisfaction by the private sale of the goods taken back. The proceeds of the sale have to be credited on the liabilities of the customer minus adequate costs for utilization.

(7) In case of distraints or other interventions of third parties, the customer has to inform us immediately in writing, that we can take legal actions in accordance with § 771 ZPO. As far as the third party is not in the position to refund the legal and extra-judicial costs of a legal action in accordance with § 771 ZPO, the customer shall be legally responsible for the deficiency suffered to us.

(8) The customer is entitled to resell the purchased goods in the ordinary course of business; however, already now he transfers all claims to the amount of the invoice final amount (including VAT) of our claim to us, that arises from reselling the goods to his customers or third parties, independently from the fact whether the goods have been resold after further processing or without processing. The claim of the customer transferred to us in anticipation shall also be related to the confirmed balance of account as well as to the causal balance, existing in case of the bankruptcy of the buyer. The customer shall remain authorized for the collection of this claim even after the transfer, as long as he meets his financial obligations. The authorization for collection shall extinct though upon defaults in payment. Our authority to collect the claims, shall remain untouched from this. However, we commit ourself to renounce on collecting the sum due, as long as the customer meets his financial obligations from the proceeds of the sale, is not behind the schedule of payment and particularly has not filed a bankruptcy petition or has not stopped payment. But if this should be true, we shall be entitled to claim that the customer makes known to us all information on transferred claims and their debtors, makes particular statements for the collection of the claims, hands over all relevant documents and informs the debtors (third parties) about the transfer.

(9) Upon desire of the customer we shall be obliged to unblock the securities entitled to us, as far as the practicable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be unblocked shall be incumbent on us.

(10) The pawning or transfer of ownership as security for a debt of the reserved goods or of the claim handed over are inadmissible.

Article. X. Impossibility of performance

As far as the performances of our delivery or services are not possible, the customer shall be entitled to claim for compensation, unless we are not responsible for the impossibility of performance. However, the claim for compensation of the customer shall be confined on 10% of the value of the part of the delivery or services which cannot be put into appropriate operation, due to the impossibility of performance. This restriction shall not apply, as far as in cases of deliberate acts, gross negligence or injury of persons or health

an absolute liability will come into force; an amendment of the burden of proof to the disadvantage of the customer shall not be associated with this. The right of the customer for cancellation of the contract remains untouched.

Article XI. Right of the customer due to defects in case of a sales contract or at applicability of the sales contract law

In case of a sales contract or at applicability of the law of sales contracts in accordance to § 651 BGB the following shall apply:

(1) Notwithstanding § 434 BGB and unless otherwise agreed individually, the contracting parties have come to an agreement that the nominal condition of the part of delivery in the moment of passing the risk shall be regarded to be met, when, with respect to the production in general or to the serial production in our factory, it is of average kind and quality. In case of lower quality this shall not be regarded as a defect, as long as the use, as stipulated in the contract, is not impaired. § 434 paragraph 2 clause 2 BGB shall not apply.

(2) Claims of the purchaser, based on defects shall not be valid in case of only irrelevant variance from the agreed condition, at only insignificant impairment in serviceability, in case of normal wear and tear or damages, that have occurred after passing the risk due to incorrect or negligent handling, excessive loads, unsuitable equipment, imperfect workmanship, unsuitable building ground or which arise due to special external circumstances, which are not presupposed in accordance with the contract, as well as in case of not reproducible software faults.

If improper modifications or repairs are made by the customer or third parties, they are not entitled to assert claims for damages on the consequences resulting thereof.

(3) As for the rest, claims of the purchaser based on defects shall only exist, if the customer has properly met his duties to examine and to make complaints in respect of defects immediately, in accordance to § 377 HGB.

(4) As far as a defect of the object of the contract does already exist in the moment of passing the risk, we are obliged, to the exclusion of the customer's rights to cancel the contract or to reduce the purchase price, for subsequent performance, unless we are entitled to refuse subsequent performances, due to the provision of law. The customer has to grant an adequate period to us for the subsequent performance. At our option, the subsequent performance can be made by elimination of the defect (subsequent improvement) or by delivery of a new product. In case of eliminating the defect, we have to pay the required expenses, as far as these are not increased, because the object of the contract is located on another place than the place of performance.

(5) If the subsequent performance has failed, the customer is entitled at his option to require reduction of the purchase price (reduction) or to explain the cancellation of the contract. With the second vain trial, the subsequent improvement is regarded as failed, as far as further trials for the object of the contract are not adequate and reasonable for the customer.

(6) Claims on material defects are subject to a limitation period of 24 months as of the due date of the claims. The term shall also apply for consequential damages of the defects, as far as no claims from tortuous acts are asserted. Clause 1 shall not apply, if the law in force in accordance with § 438 par. 1 No. 2 BGB (buildings and objects for buildings) prescribes longer time limits and in cases of injuries of persons or health, in case of

deliberate or gross breaches of duties or fraudulent concealments of defects by us. As for the rest, the settlements of the product liability law shall remain untouched.

(7) Claims of the customer against us, due to defects, are due to only the customer and are not transferable.

(8) Further-reaching and other claims of the customer against the supplier or his vicarious agent due to material defects, as settled with this article, are excluded. As for the rest, claims for compensation are settled with article XII.

Article XII. Compensation

(1) We are liable within the legal provisions, as far as the customer asserts a claim on compensation which are based on intention or gross negligence of us or intention or gross negligence of our representatives or vicarious agents. As far as we are not charged of having violated the contract intentionally, the liability for compensation shall be restricted on the predictable typical damage occurred.

(2) As far as we have violated essential contractual duties culpably, we shall be liable within the legal provisions. In this case the liability for compensation shall be restricted on the predictable typical damage occurred.

(3) The liability due to culpable injury of the life, the body or the health remains untouched; this also applies to the mandatory liability in accordance with the product liability law.

(4) Unless the before mentioned is agreed otherwise, the liability shall be excluded. This applies without consideration on the legal nature of the asserted claim. This applies particularly to claims for compensation due to faults at completion of the contract, due to other breaches of duties or due to claims in tort for compensation of damages to property in accordance to § 823 BGB. Any further liability for compensation shall also be excluded, if the customer asserts a claim on replacement of useless expenses instead of the claim on compensation for the damage.

(5) As far as the liability for compensation against us is excluded or restricted, this shall be valid as well with respect to the personal liability for compensations of our employees, staff members, representatives and vicarious agents.

(6) An amendment of the burden of proof to the disadvantage of the customer shall not be associated with the regulations hereinbefore.

(7) Our liability for delay is defined by article V., our liability for impossibility of performance is defined by article X..

Article XIII. Liability of the contract between the customer and us

(1) Even if an individual provision of the contract, signed between the customer and us, has been or becomes invalid, the remaining provisions shall remain valid. Instead of the ineffective provision, an adequate settlement has to be agreed between the parties, which comes nearest to the point, the contracting parties have wanted or would have wanted in accordance to the whole purpose of the contract, provided they would had considered the point. The same applies in case of an incomplete contract. If the invalidity of the contract is based upon the definition of performance or time, it shall be superseded by definitions recognized by law.

(2) The before mentioned shall not apply, if, when complying with the terms of the contract, one of the contracting parties would suffer inequitable harm thereby.

Article XIV. Place of jurisdiction, applicable right, place of performance

(1) As far as our customer is merchant, legal person under public law, or a separate estate under public law, the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship, is our place of business; we are, however, authorized to sue the customer at the court of his place of residence. The same applies, when the customer does not have a place of jurisdiction in his home country, has changed his residence to abroad, or his residence or place of residence at the moment of filing a complaint is unknown.

(2) Place of performance is Gronau / Westfalen Germany

(3) For the privity of contract between the customer and us, the law of the Federal Republic of Germany shall be valid. The UN sales convention shall not apply.