



## **Translation of the French EGELHOF General Sales and Delivery Conditions**

### **1. Scope of validity**

The following conditions are transmitted or handed over in written to every buyer. They are binding, i.e. as soon as we receive an order, buyer gives us his unlimited and unreserved consent to these conditions and at the same time any other document from buyer like e.g. general purchasing conditions are excluded.

Prerequisite for the acceptance of order on behalf of the vendor is that buyer fully accepts these current general sales and delivery conditions.

Any other agreement differing from these current sales and delivery conditions requires the explicit and written consent on behalf of the vendor.

Buyer waives his own general purchasing conditions even in cases where they have been quoted on the order. The fact that vendor does not assert one of the conditions stated hereunder at a certain moment does not mean that he also renounces on asserting it at a later date.

### **2. Formation of contract**

Orders will be considered as binding as soon as they have been confirmed in written by vendor or if required after payment of the agreed down payment.

Orders accepted by vendor's agents are subject to a written and signed confirmation on behalf of the vendor.

Acceptance however results from a delivery of goods.

Orders for which we have already started production or for which raw materials have already been ordered may by no means be changed nor cancelled. In cases where we agree upon a cancellation or change of order, buyer will have to pay in any case for the products that have already been manufactured and/or for raw materials that have already been ordered.

In cases of a deterioration with regard to buyer's solvency or if vendor may assume that buyer cannot pay for the amount up to the fixed date, vendor reserves to:

- cancel the current order even in cases where order has become effective,
- or to require a real guarantee or payment before delivery. Payment means that vendor is entitled to collect the due amount.

Buyer is bound by the order and is not entitled to transfer it to any third party without prior written consent on behalf of the vendor.

### **3. Subject of delivery - Drawings**

Vendor reserves the right to carry out at any time modifications on standard products which he considers necessary and which he lists in his catalogues.

Products will be delivered according to specified tolerances normally applied in industry.

Drawings, schemes and any other documents remain property of the vendor and buyer is not allowed to make use of them without prior consent in written on behalf of the vendor.

Each drawing delivered by buyer marked and showing a corresponding proprietor's reference will be delivered upon request.

### **4. Delivery**

Delivery is carried out either by handing goods directly over to buyer - by simple notice that goods are available - or by handing goods over to a forwarder located next to vendor's premises.

Buyer is obliged to pick up goods within eight days after receipt of the information that goods are available.

In cases where buyer does not comply with the above mentioned period of time, vendor is entitled to invoice charges occurring for storage.

### **5. Delivery delays**

#### **5.1.**

Delivery delays will be indicated as precise as possible however depend on supply and transportation possibilities and on orders' sequence.

Vendor is allowed to carry out complete as well as partial deliveries.

In cases where delivery delays are not maintained, this fact may not entitle buyer to make claims for damages or interests nor may he cancel orders due to this fact.

In cases of force majeure or if unforeseen events happen, vendor is relieved of his obligation to deliver goods.

## **5.2.**

A delivery within delivery delays can only be executed in cases where vendor has no outstanding claims whatsoever as against buyer.

## **6. Costs and passing of risk**

Goods are to be delivered to premises according to the Incoterms CCI as of 2010, "ex works".

They will be delivered at the expense and risk of consignee. In cases where transportation damages occur or where goods are missing, consignee is obliged to establish the required facts and also has to lodge his reservations against the forwarder in written or by registered letter within a period of three days after receipt of goods. Generally, he will have to introduce all necessary steps so as to be able to have recourse as against the forwarder.

In cases where vendor exceptionally names forwarder, this one will become active at sole expense and risk of buyer.

If buyer has not given any written instructions before delivery - which must be given anew before each delivery and must be confirmed by vendor - vendor is not obliged to sign neither an assurance nor any document of value or interest for the delivery on behalf of the buyer no matter how much the value of the delivered goods is.

Relative costs occurring from services for buyer will be charged completely to buyer. Vendor can by no means be made liable for the chosen payment mode nor for costs invoiced by forwarder.

## **7. Acceptance of Goods**

Independently of the steps to be taken against forwarder, claims with regard to obvious faults or in cases where delivered goods do not correspond to ordered goods or to those listed on delivery note can only be considered if made in written within a period of eight days after receipt of goods. If buyer fails to make claims within such period, claims are no longer considered.

It is up to vendor to analyse faults and to introduce corresponding steps for their elimination.

Buyer is not allowed to intervene himself nor to have faults eliminated by a third party. Before a return of goods, buyer and vendor will have to agree upon such a return. Costs and risks of such a return will be at vendor's expense provided that he has previously agreed upon such a return.

## **8. Consequences of a return**

As for obvious faults or in cases where delivered goods do not correspond - facts which have to be duly stated by vendor as per conditions mentioned under paragraph VII -, buyer may according to vendor's choice either claim for a replacement free of charges of faulty parts or products or for a credit note totalling to purchasing price. All other claims with regard to damages will thus be settled.

In cases where claims made by buyer prove of being unjustified, vendor is entitled to invoice costs for travelling, testing and transportation.

## **9. Installation**

Buyer is obliged to install or to have goods properly installed, i.e. in compliance with technical documents, manuals, descriptions etc.

Buyer is not obliged to act as a consultant as far as selection or handling of goods are concerned.

## **10. Warranty**

Beyond legal warranty which will have to be established by recourse to law within fourteen days after ascertainment of the fault, vendor grants buyer a warranty period of twelve months for his products from date receipt of goods.

Warranty means that vendor is only obliged to replace part or product free of charges provided that his after-sales service has ascertained the fault. According to vendor's choice, he may alternatively also issue a credit note. By doing so, all other claims for damages or interests will be balanced.

Eventually occurring expenses for postage, packaging and travelling will be borne by vendor. Warranty period however is not extended due to this.

## **11. Exclusion of Warranty**

According to terms of contract, we can only grant warranty if warranty claims are made in written and if vendor has no outstanding claims as against buyer.

Warranty is excluded for faults and deviations that have occurred due to normal wear, external influences, incorrect connection, installation or assembly, a change of product, inappropriate application or any intervention by a third party, insufficient maintenance or a change of product that has not been foreseen.

## **12. Pricing**

Goods will be delivered at the price being applicable at the day of order.

A detailed list showing the items as to why a change of price has become necessary will be submitted on the day of delivery.

## **13. Payment**

Invoices are to be paid thirty days after date of invoice net or within fourteen days less a 2 % discount.

As for foreign sales, vendor reserves the right to invoice the amount in Euros or any other foreign currency at the exchange value being applicable at the date of invoice.

This kind of payment applies to every mode of payment which has been agreed.

In case of a payment by bills, buyer will have to return them confirmed within a maximum period of seven days.

Payment according to the current general sales and delivery conditions does not mean handing over of a cheque or bill but its cash in on the agreed date.

Any deterioration of buyer's solvency entitles vendor - before handling the order - to claim for guarantees, a cash payment or a payment by sight bills. Due to the risks which vendor will be exposed to in such cases, he is entitled to fix a maximum amount of overdraft for every customer which will apply to every open order.

In cases where buyer fails to comply with these conditions, vendor is entitled to cancel all or part of the orders and to require immediate payment of all outstanding amounts.

## **14. Payment in arrears or non payment**

If customer is in arrears with his payments, vendor may suspend all of his current orders without prejudice to institute any other proceedings

Every sum that has not been paid up to its maturity date entitles vendor - without granting any further delay - to increase the price by 10 € per day of defaulted payment from maturity date onward, plus damages and interests which will have to be paid as a compensation for damages that have occurred due to defaulted payment, in addition are to be paid interests of defaulted payment which have accumulated from maturity date of the claim onward up to the date of payment and that will be invoiced at an interest rate being 5 % higher as the legal one.

As soon as interests on defaulted payment will be invoiced for a period of twelve months, they will bear themselves interests at the same interest rate.

In cases where buyer still does not pay within forty-eight hours after expiration of the agreed period of time, it is up to vendor to either annul the sale by rights or to require the surrender of goods by means of an interim injunction, without prejudice to all other claims for damages and interests.

Cancellation does not only apply to this order but to all orders entered previously, that have already been delivered or that are ready for delivery, no matter if they have become due or not.

In case where payment is to be carried out by bills, a non-return will be considered as a refusal of acceptance.

Once buyer fails to pay up to maturity date, he will immediately be required to pay for all of his outstanding amounts without any further delay.

The same applies to changes with regard to buyer's person or solvency.

In all of the above mentioned cases where amounts have become due for other reasons, amounts will immediately be demanded provided that vendor does not wish a cancellation of relative orders.

Buyer must pay for all costs occurring by judicial demanding of due amounts. Moreover he will have to pay a compensation of 10 % of the amount he has failed to pay for, this as a lump sum for interests which the amount would have borne at legal interest rate for the period from date of payment order onward up to date of payment.

Payments may by no means be suspended nor balanced without prior written consent on behalf of the vendor.

Every instalment is first balanced against interests and additional claims and in the following against amounts having fallen longest due.

Payment arrears or non-payment may not be justified at a later date by claims.

On every sum that will not be paid up to its maturity date named on the invoice - no matter if this date corresponds to what is mentioned in the general sales and delivery conditions or not - a penalty of 1.5 of the legal interest rate is to be paid. Penalty can be raised at mere vendor's request.

## **15. Retention of Title**

Vendor reserves title to the goods delivered until entire payment of the price through buyer.

In case of a resale of delivered goods, buyer already agrees upon immediately assigning claims receivable from a sale to a second buyer and to entitle vendor to collect due amount - i.e. amount that buyer owes to vendor - from second buyer.

Buyer is obliged to inform vendor immediately about the exact and complete personal particulars of the second buyer. He will furthermore inform second buyer about vendor's retention of title during conclusion of contract at the latest.

Any violation of a condition stated in these general sales and delivery conditions will result in the immediate maturity of payments.

A surrender of goods under retention of title does not result in a cancellation nor in a withdrawal from sales contract.

In cases where buyer fails to comply with one of his duties, vendor may require surrender of goods; the same applies to a refusal of acceptance of bills and also in cases where vendor has good reasons to assume that buyer will not be able to fulfil the agreed maturity dates.

All of the costs arising from a surrender of goods or demanding of price are to be borne by buyer.

#### **16. Arbitration – Applicable Law**

Courts at Strasbourg will be competent for any dispute that cannot be settled amicably. French jurisdiction will be applied.

#### **NOTE:**

For all disputes only the text of the original French version becomes applicable.

Fellbach, 3<sup>rd</sup> May 2011