

## **General Terms and Conditions of Sale of Epoch Traumwiesen GmbH, Sulzbacher Straße 48, 90489 Nürnberg (as at 01/01/2015)**

### **I. Validity**

The following Conditions of Sale are basis for all contracts on the delivery of goods concluded between the Buyer and us. They are valid for all future business relations without explicit agreement. Deviant conditions of the Buyer are only binding with our explicit acceptance in writing. An implied comprehension is excluded.

### **II. Offer and Conclusion of Contract**

The Buyer's order is considered as binding offer for entering into a contract. We shall accept this offer by confirmation of order within two weeks or by delivering the goods within the same period. The right for technical changes or changes in design, measurement or weight in reasonable limits is reserved. We also reserve the property right, copyrights and right of ownership for all our products and related figures, calculations and drawings as well as all documents. The Buyer shall only hand them on to third persons with our written consent, irrespective of our marking it confidential.

### **III. Terms of Payment, Balancing**

Without deviant agreement our prices are to be understood ex works. VAT is not included. We will specify VAT on the invoice to the legal rate on the day of invoicing.

The price is payable 30 days after invoicing as far as no other date of payment is issued on the confirmation of order. The payment is considered to be effected if the amount is at our disposal. If the Buyer is in default, we shall be at liberty to object fulfilment of the sales contract. If payment is considerably endangered, e.g. by petition in insolvency on the Buyer's property, we shall be authorised to claim advance payment or adequate security. If the Buyer refuses, we shall withdraw and/or claim damages.

For purpose of credit check, we will obtain address and credit rating data.

The Buyer is legitimated for offset only if the counterclaim is legally stated, accepted by us or undisputed. The lien is restricted to claims which are based on the same contract. Suability of the counterclaim remains unaffected.

### **IV. Time of Delivery and Performance**

Date and time of delivery are solely non-binding specifications as far as they are not explicitly stated as binding. The time of delivery is considered to be met if the goods leave the factory at the time stated or if the Buyer is informed on the readiness for delivery. If we do not meet the time of delivery, the Buyer has to set a period of grace of at least 3 weeks.

Our liability due to not complying with the time of delivery agreed upon is limited to predictable, typically incurring damage. Deliberate violation of the contract is excluded from this limitation. Acts of God, operational disturbance or other unpredictable circumstances we are not responsible for release us from complying with the date of delivery during the obstruction. In this case the Buyer is not authorised to withdraw and/or claim damages. Further liability for delay in delivery we are responsible for is excluded. Further claims and rights of the Buyer he is entitled to due to a delay in delivery of our side – next to damages – remain unaffected.

We are at all times authorised for partial delivery or partial performance as far as this is reasonable for the Buyer.

### **V. Transfer of Perils, Shipping, Packaging**

Shipment of the goods ordered including promotion material, brochures, printings, plastic bags etc. is effected from **Warehouse Amsterdam or Germany** without insurance on account and risk of the Buyer – even if free delivery is agreed upon. Additional costs which arise from special wishes of the Buyer regarding type and way of shipment or transport insurance are charged to the Buyer's account – even if free delivery is agreed upon. We do not take back transport and all other packaging, except pallets.

If shipment is delayed on request or by fault of the Buyer, we shall store the goods on account and risk of the Buyer. In this case the notification of readiness for delivery is equal to delivery. On the Buyer's request and account we shall effect a transport insurance for the shipment.

### **VI. Material Defects, Defect of Title, Liability, Risk of Supply**

Defect claims are excluded 8 days after receipt of goods. The Buyer bears the burden of proof especially of the defect itself, the time of detection and the timeliness of the complaint.

Regarding defects the Buyer has to grant us an adequate period for supplementary performance. The type of supplementary performance shall be in our sole discretion by elimination of the defects or by delivery of new goods. In case of elimination of the defect we shall bear the costs incurred as far as they do not increase because the place the subject is located does not equal the place of fulfilment. If the supplementary performance fails, the Buyer may claim price reduction or withdraw from the contract. The supplementary performance is considered to be failed after the third vain attempt as far as no further attempts are adequate or reasonable for the Buyer depending on the subject. The Buyer may claim damages due to the defects at the following conditions, only if the supplementary performance failed. The Buyer's right to claim further

damages at the following conditions remains unaffected.

We are not liable for damages caused by slight negligence. Our liability is limited to predictable, typically and directly incurring average defects depending on the type of goods. The limitation of liability does not apply to product liability or liability for any damage to the Buyer's body and health or loss of life.

The Buyer's warranty claims fall under the statute of limitations one year after delivery of the goods. The Buyer has to proof that the defect existed at the time of delivery.

Defect claims cannot be asserted in case of insignificant modifications in quality and conditions agreed upon or in case of insignificant impairment of serviceability. These are in particular typical or slight technically unavoidable modifications in form, colour, measurements and/or weight, in finish and design. We shall not accept any risk of supply and any kind of warranties beyond the obligations of the sales contract without explicit agreement.

#### **VII. The Seller's Right of Cancellation**

We may at any time withdraw from the sales contract in case of absent creditworthiness of the Buyer or if the Buyer gave false specifications regarding his creditworthiness and this is of considerable importance for business relation. In case of withdrawal we may claim – without precise proof - an allowance of 20 % of the order volume as compensation for all costs incurred and for the missed profit. The Buyer shall be at liberty to prove a lower damage.

#### **VIII. Reservation of Title**

The supplied goods (goods in reserve) shall remain our property until all claims are met including all outstanding accounting due to us now and in future. It forms a withdrawal from the contract, if we claim or take back the goods in reserve. It also forms a withdrawal from the contract, if we seize the goods in reserve. We are authorised to realise the goods in reserve after taking them back. The proceeds have to be passed to the Buyer's account after deduction of an adequate compensation for the realisation costs.

The Buyer has to take good care of the goods in reserve and insure them against fire, water and theft on his own costs. The Buyer is authorised to sell and/or use the goods properly in the course of business as far as he is not in default of payment. Pledges and transfer by the way of security are prohibited. All claims resulting from the selling-on or from another legal ground (insurance, tortious act) (including all outstanding accounts) are already now assigned to us to the full extent for security reasons; herewith we accept the assignment. We revocably authorise the Buyer to collect the claims assigned to us for his account and on his behalf. The direct debit authorization may be revoked at any time if the Buyer does not discharge all payment obligations properly. If a third person may gain access to the goods in reserve, especially pledges, the Buyer shall refer to our property rights and inform us immediately so that we can claim our property. As far as the third person is not able to refund us the judicial and extrajudicial costs incurring, the Buyer shall be liable.

#### **IX. Place of Performance, Venue, Applicable Law**

Place of performance and venue for all differences arising between the Buyer and us on basis of the sales contract is our head office. However, we are entitled to sue the Buyer at his place of residence and/or business. The relations between the parties are settled exclusively applying German law. The application of the Uniform Laws on the International Sales of Goods laid down in the 1980 United Nations Convention is excluded. As far as individual terms of the contract including these General Terms and Conditions of Sale are or become fully or partially invalid, the validity of the other terms is not affected. The term fully or partially invalid shall be substituted by a term which mostly resembles the economic success of the invalid term.