

General Terms and Conditions

Eberl Trocknungsanlagen GmbH

Version: December 2014

1. General information, Scope of Validity

- 1.1. The legal relationships between the seller (Eberl Trocknungsanlagen GmbH) and the customer (hereinafter referred to as "purchaser") are orientated on these General Terms and Conditions (GTCs). The GTCs shall only apply to natural or legal persons or judicable partnerships exercising their commercial or self-employed professional activity on conclusion of the contract (entrepreneur in terms of § 14 Sect. 1 German Civil Code) or to legal entities under public law or special funds under public law.
- 1.2. The GTCs apply in particular for contracts on the sale and/or the delivery of moveable property (hereinafter referred to as "product") regardless of whether the seller produces the product themselves or if they purchase it from suppliers (§§ 433, 651 German Civil Code). In their respective version, the GTCs shall apply as a framework agreement also for future contracts with the same purchaser without the seller having to refer to them again in each individual case; the seller shall immediately inform the purchaser on any changes to the GTCs.
- 1.3. The GTCs shall apply exclusively. Deviating, opposing or supplementary GTCs of the purchaser shall only and insofar become an integral part of the contract if the seller explicitly agrees to their validity. This requirement of consent shall also apply if the seller unconditionally carries out the delivery to the purchaser, although aware of conflicting terms or of terms of the purchaser deviating from these terms.
- 1.4. Individual agreements reached with the customer in individual cases (including subsidiary agreements, supplements and amendments) shall have priority over these GTCs whatever the case. A written contract or a written confirmation is decisive for the contents of such agreements.
- 1.5. Legally relevant declarations and notifications which the purchaser has to submit to the seller after conclusion of the contract (e.g. setting of deadlines, notice of defects, notice of withdrawal or of reduction) require the written form in order to be valid.
- 1.6. Any references to the applicability of statutory regulations are only made for the purpose of clarification. Therefore, the statutory regulations shall also apply without such a clarification unless directly amended or expressly excluded in these GTCs.

2. Offer and offer documents

- 2.1. The seller's offers are subject to alteration and non-binding. This shall also apply if the seller provides the purchaser with catalogues, illustrations, technical documentation (e.g. drawings, plans, computations, calculations, execution instructions, product specifications, references to DIN standards), other product specifications or documents – also in electronic form – to which the seller reserves the right of ownership.

Without the seller's express consent, the purchaser shall not be allowed to make these items themselves or contents thereof available to third parties, to publish them or to use them themselves or through third parties, or to copy them. On the seller's request, they shall be obligated to return these items completely to the seller and to destroy any copies they may have made if these are no longer needed in the regular course of business, or if the negotiations do not result in the conclusion of a contract.

- 2.2. The purchaser's order of the product represents a binding contractual offer. The seller shall be entitled to accept the offer within two weeks after its receipt.
- 2.3. Acceptance can either be declared in writing (e.g. through confirmation of order) or by delivering the product to the purchaser.

3. Prices and Terms of Payment

- 3.1. Unless otherwise agreed in individual cases, the seller's current prices valid on conclusion of the contract are quoted ex works from Hauptstraße 57a, 84155 Bodenkirchen, plus packaging and statutory VAT. Additional shipments and services shall be charged separately.
- 3.2. In case of sales shipment (clause 5.1. of these GTCs) the purchaser shall be obligated to bear the transport costs ex works including cartage, route investigation and delivery charges and the costs of any transportation insurance requested by the purchaser. Unloading the product at the purchaser's premises is freight forward. Any customs duties, fees, taxes and other public charges shall be borne by the purchaser.

- 3.3. The purchase price shall be due and payable without deductions within 8 days from issue of invoice and delivery of the product or its acceptance respectively. However, unless otherwise agreed, the purchaser shall be entitled to invoice the purchase price in 3 separate parts: 30% of the purchase price on order placement, 60% of the purchase price on readiness for dispatch, and the remaining 10% after delivery. In case of a foreign transaction, the separate contractual agreements shall apply. The parts of the total sum are due and are to be paid within 2 weeks after issue of invoice.
- 3.4. The seller shall be entitled to credit payments made by the purchaser first to any previous debts owed by the purchaser, and to inform the purchaser on the manner in which these costs have been offset. Should costs and interests have already accrued, the seller shall be entitled to credit payments made by the purchaser first to the costs, then to the interest and then finally to the main services.
- 3.5. On expiration of the payment term stated in clause 3.3., the purchaser shall be in default of payment. During the delay, interest is to be paid on the purchase price at the respective applicable statutory interest for default. As far as merchants are concerned, the seller's entitlement to the commercial default interest (§ 353 German Commercial Code) shall remain unaffected. The seller reserves the right to claim further damages caused by default of payment.
- 3.6. The purchaser shall only be entitled to any offset or retention rights inasmuch as his claim is legally binding or undisputed. In case of defective delivery/shipment, the purchaser's counter-rights especially according to number 7.6., sentence 2 of these GTCs shall remain unaffected.
- 3.7. If – after conclusion of contract – it becomes evident that the seller's claim to receive the purchase price is endangered due to the purchaser's lack of financial capacity (e.g. indicated through application for the opening of insolvency proceedings), the seller shall be entitled to refuse services and to withdraw from the contract (§ 321 German Civil Code) – if applicable with a set deadline – according to the statutory provisions. In case of contracts on the production of non-fungible goods (custom-made items), the seller shall be entitled to declare their immediate withdrawal from the contract; the statutory regulations concerning the dispensability of setting a deadline shall remain unaffected.

4. Term of delivery and default of delivery

- 4.1. The term of delivery shall be agreed upon individually or stated by the seller on accepting the order. Should this not be the case, the term of delivery is approx. 12 weeks from conclusion of contract.
- 4.2. Should the seller prove unable to meet the binding terms of delivery for reasons for which they are not responsible (unavailability of the product), the seller shall inform the purchaser immediately and at the same time state the expected new term of delivery. Should the product not be available within the new term of delivery, the seller shall be entitled to withdraw from the contract completely or in part; the seller shall immediately reimburse payments already made by the purchaser. In this context, unavailability of the product means in particular that the seller's supplier did not deliver in time if the seller has entered into a congruent hedging transaction, if neither the seller nor the supplier is responsible or if the seller is not obligated to procure the product in individual cases.
- 4.3. Statutory provisions determine whether the seller's delivery is in default. However, a reminder from of the purchaser shall be required whatever the cases. Should the seller's delivery be in default, the purchaser shall be entitled to claim lump sum compensation for any damages caused by the delay. The lump sum compensation shall amount to 0.5% of the net price (delivery value) for each full calendar week, however not exceeding 5% of the delivery value of the delayed delivery. The seller reserves the right to prove that the purchaser suffered no or significantly less damages than abovementioned lump sum compensation.
- 4.4. The purchaser's rights according to clause 8 of these GTCs and the seller's statutory rights shall remain unaffected in particular if they are no longer obligated to perform their obligations (e.g. due to impossibility or unreasonableness of the performance and/or supplementary performance).

5. Delivery, passing of risk, acceptance of delivery, default of acceptance

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- 5.1. Delivery shall be effected ex works from Hauptstraße 57a, 84155 Bodenkirchen, this address also being the place of fulfilment. The product can be delivered to another destination (sales shipment) at the purchaser's request and expense. Unless otherwise agreed, the seller shall be entitled to determine the method of delivery (in particular transport company, transport route, packaging).
- 5.2. The risk of accidental loss or of accidental deterioration of the product shall be transferred onto the purchaser, at the latest on handover to the purchaser. In case of sales shipment, however, the risk of accidental loss or of accidental deterioration of the product as well as the risk of delay shall be transferred onto the forwarding agent, the transport carrier or the person or organisation in charge of effecting delivery as soon as the product has been delivered. If acceptance of the product has been agreed upon, this point shall represent the transfer of risk. In addition to this, the statutory provisions of the law of contract shall apply accordingly for an agreed acceptance. Any default in acceptance on behalf of the purchaser shall be equivalent to handover or acceptance.
- 5.3. Should the purchaser be in default with regard to the acceptance; should they fail to cooperate or should the seller's delivery be delayed due to reasons for which the purchaser is responsible, the seller shall be entitled to claim compensation for the resulting damages including additional expenses (e.g. storage costs). For each full calendar week of the delay, the seller shall be entitled to charge a lump sum compensation of 0.5% of the net price (delivery value) of the product, but not exceeding 5% of the delivery value of the product or 10% in case of final non-acceptance starting with the delivery term or – if there is no fixed delivery term – with the notification that the product is ready for dispatch.
- 5.4. Proof of higher damages and the statutory claims on behalf of the seller (in particular reimbursement of additional expenses, adequate compensation, termination) shall remain unaffected; the lump sum shall, however, be deducted from further monetary claims. The purchaser reserves the right to prove that the seller has been caused no or significantly less damage than the abovementioned lump sum (no. 5.3.).

6. Reservation of title

- 6.1. The seller shall reserve their property rights to all products until all current and future claims resulting from the sales contract have been paid and a functioning business relationship has been achieved.
- 6.2. Should the purchaser act in a manner contrary to the contract, in particular in case of non-payment of the purchase price due, the seller shall – according to the statutory provisions - be entitled to withdraw from the contract and/or to reclaim the products due to the reservation of title. If the seller reclaims the product, this shall not simultaneously mean their declaration of withdrawal from the contract unless explicitly stated by the seller in writing. The seller shall instead be entitled to merely reclaim the product and to reserve the right to withdraw from the contract. Should the purchaser not pay the purchase price due, the seller shall only be entitled to claim these rights if they have unsuccessfully previously set the purchaser an appropriate payment deadline or if such a deadline is not required according to statutory provisions.
- 6.3. The purchaser shall be obligated to take care of the products under reservation of title; he shall in particular be obligated to sufficiently insure these products against damage by fire, water and theft at their own expense to an insurance sum which is adequate to cover the replacement value. Should maintenance or inspection work be required, the purchaser shall be obligated to execute them at their own expense and in time.
- 6.4. Products subject to reservation of title may neither be pledged to a third party nor be transferred as a security before the secured claims have been paid in full.
- In case of seizure or other interference by a third party, the purchaser shall be obligated to immediately notify the seller in writing.
- 6.5. During the proper course of business, the purchaser shall be entitled to resell and/or further process the products under reservation of title. In this case, the following provisions shall also apply:
- 6.5.1. Processing or alteration of the products under reservation of title by the purchaser shall at all times be executed for the seller. The purchaser's expectant rights to the product shall continue to apply for the altered product. If the product under reservation of title is processed

with other items not belonging to the seller, the seller shall acquire co-ownership of the new product to the proportion of the invoice values of the seller's product compared to the other processed items at the time of processing. Apart from that, the same shall apply for the product produced by processing as applies for the product delivered under reservation of title.

- 6.5.2. If the product under reservation of title is inseparably connected, mixed or blended with items not belonging to the seller, the seller shall acquire co-ownership of the new product to the proportion of the invoice values of the seller's product compared to the other connected, mixed or blended items at the time of connecting, mixing or blending. If the connection, mixture or blend is effected in such a way that the purchaser's product is to be considered the main component, it shall hereby be agreed that a pro rata co-ownership is to be transferred to the seller by the purchaser. The seller shall accept this transfer. Apart from that, the same shall apply for the product produced by connection, mixing or blending as applies for the product delivered under reservation of title.
- 6.5.3. The purchaser shall be obligated to preserve the sole ownership or co-ownership of a product for the seller resulting according to No. 6.5.1. and 6.5.2.
- 6.5.4. The purchaser shall assign all claims arising from resale to their customers or to third parties to the seller regardless of whether the product was sold with or without processing as a whole or to the amount of any co-ownership share on behalf of the seller according to No. 6.5.1. and 6.5.2. The purchaser shall remain authorised to collect these claims even after assignment. The seller's right to collect the claims themselves shall remain unaffected. The seller, however, shall be obligated not to collect the claim as long as the purchaser fulfils their payment obligations towards the seller, is not in default of payment, as long as no application has been filed for the opening of insolvency proceedings and as long as no other lack in financial capacity becomes apparent. Should this, however, be the case, the seller shall be entitled to demand the purchaser to announce the assigned claims and their debtors, to provide the seller with all details required for collection, to hand over all relevant documents and to notify the debtors (third parties) of the assignment.
- 6.6. The seller shall be obligated to release the securities due to the seller on the purchaser's request insofar as the realisable value of the seller's securities exceeds the claims to be secured by more than 10%; the seller may choose which securities are released.

7. Warranty for defects

- 7.1. Unless hereinafter otherwise agreed, the statutory provisions shall apply for the purchaser's rights concerning defects as to quality or defects of title (including wrong or short delivery as well as incorrect installation or deficient installation instruction). In all cases, the statutory special provisions for final delivery of the product to a consumer shall remain unaffected (supplier's recourse according to §§ 478, 479 German Civil Code).
- 7.2. The basis for the seller's liability for defects shall be the agreement on the property of the product. The so-called product descriptions (also those of the manufacturer) which were handed over to the customer before they placed their order or which were included in the contract in the same way as these GTCs shall serve as an agreement on the property of the product.
- 7.3. In the absence of any agreement on properties, the statutory provisions shall be applied to assess whether there is a defect or not (§ 434 sect. 1, sentence 2 and 3 German Civil Code). However, the seller shall not be held liable for public statements made by the manufacturer or other third parties (e.g. advertising statements).
- 7.4. The purchaser's warranty rights shall be subject to them meeting their obligations to examine the product or to give notice of defects according to §§ 377, 381 German Commercial Code. The seller shall immediately be notified in writing of any defect discovered during examination or later. The notification is considered immediate if it takes place within two weeks. To meet the deadline, sending the notification in time shall suffice. Irrespective of their obligation to examine the product or to give notice of defects, the purchaser shall be obligated to report obvious defects (including wrong or short delivery) within two weeks from delivery in writing. In this case, too, sending the notification in time shall suffice to meet the deadline. If the purchaser fails to examine the

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product properly and/or to notify the seller of a defect, the seller's liability for the defect not reported shall be excluded.

- 7.5. If the product delivered is defective, the seller shall be entitled to choose whether they provide subsequent performance by eliminating the defect (subsequent improvement) or by delivering a defect-free product (substitute delivery). The seller's right of refusal for subsequent performance according to the statutory provisions shall remain unaffected.
- 7.6. The seller shall be entitled to make the owed subsequent performance dependent on the purchaser paying the purchase price due. However, the purchaser shall be entitled to retain a part of the purchase price which is in a reasonable ratio to the defect.
- 7.7. The purchaser must allow the seller the time and opportunity required for the owed subsequent performance, in particular the handover of the goods concerned for inspection purposes. In the case of a substitute delivery, the purchaser shall be required to return the defective product according to the statutory provisions. Subsequent performance shall not include removal or reinstallation of the defective product if the seller was not originally obligated to install the product.
- 7.8. If an actual defect exists, the seller shall bear the expenses required for inspection and subsequent performance, in particular transport, travel, labour and material costs (but not the costs for removal and reinstallation if the seller was not originally obligated to install the product). If, however, the purchaser's request to remedy a defect proves unjustified, the seller shall be entitled to claim reimbursement from the purchaser of the costs hereby incurred.
- 7.9. In urgent cases, for example when operational safety is endangered or to avoid disproportionate damages, the purchaser shall be entitled to remove the defect themselves and to claim compensation from the seller for the objectively required expenses. The seller shall be notified of such self-repair immediately, if possible, in advance. The right to self-repair shall be excluded if the seller was entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
- 7.10. If the subsequent performance failed or if a reasonable deadline to be set by the purchaser expired without success or is superfluous according to the statutory provisions, the purchaser shall be entitled to choose whether to declare their withdrawal from the purchase contract or to request a corresponding reduction in the purchase price (price reduction). In case of minor defects, however, the right to withdraw from the contract shall be excluded.
- 7.11. The purchaser's claims to compensation or substitute of futile expenses shall only exist in accordance with clause 8 of these GTCs, and shall otherwise be excluded.

8. Further liability

- 8.1. Unless otherwise defined by these GTCs including the following provisions, the seller shall be held liable for any breach of contractual and non-contractual obligations according to the relevant statutory provisions.
- 8.2. Regardless of whatever legal reason, the seller shall only be held liable for any compensation for damages in case of intent or gross negligence. In case of simple negligence, the seller shall only be held liable
 - 8.2.1. For damages arising from injury to life, body or health,
 - 8.2.2. For damages arising from breaching a cardinal (contractual) obligation (an obligation, the fulfilment of which represents a prerequisite for proper execution of the contract and on the adherence of which the contractual partner relies, and may regularly rely on); in this case, however, the seller's liability shall be limited to compensation for any foreseeable, typically occurring damages.
- 8.3. The limitations of liability arising from clause 8.2. shall not apply if the seller has fraudulently concealed a defect or provided a guarantee for the properties of the product; nor shall they apply for the purchaser's claims according to the German Product Liability Act.
- 8.4. In case of a breach of obligation not based on a defect, the purchaser shall only be entitled to withdraw from or cancel the contract if the seller is responsible for the breach of obligation. The unrestricted right of termination on behalf of the purchaser (in particular according to

§§ 651, 649 German Civil Code) shall be excluded. Apart from this, the statutory requirements and legal consequences shall apply.

9. Statutory limitations

- 9.1. Deviating from § 438 Sect. 1 No. 3 German Civil Code, the general period of limitation for any claims resulting from defects as to quality and defects of title shall be one year from delivery. If an acceptance has been agreed, the period of limitation shall start with acceptance.
- 9.2. If, however, the product is a building or an item used for a building according to its conventional purpose and has caused the defectiveness of the building (building material), the period of limitation shall be 5 years from delivery according to the statutory provisions (§ 438 Sect. 1 No. 2 German Civil Code). Special statutory provisions concerning third-party material rights to recover possession (§ 438 Sect. 1 No. 1 German Civil Code), concerning the seller's malicious intent (§ 438 Sect. 3 German Civil Code) as well as suppliers' recourse claims in case of final delivery to a consumer (§ 479 German Civil Code) shall remain unaffected.
- 9.3. The abovementioned periods of limitation under sales law shall also apply for the purchaser's contractual and non-contractual claims for compensation based on a defect of the product unless the application of standard statutory limitation (§§ 195, 199 German Civil Code) would result in shorter periods of limitation in individual cases.

The periods of limitation under the Product Liability Act shall remain unaffected whatever the case. Apart from this, the statutory periods of limitation shall exclusively apply for any claims for compensation on behalf of the purchaser according to clause 8.

10. Software

- 10.1. If software is included in the scope of delivery, the purchaser shall be granted a non-exclusive right to use the software delivered including its documentation. It is provided for use on the delivered product for which it is intended. It is prohibited to use the software on more than one system.
- 10.2. The purchaser shall only be entitled to reproduce, revise, translate or convert the object code into the source code to the legally admissible extent (§§ 69a et sequentes German Copy Right Act). The purchaser shall be obligated not to remove any manufacturer's information – in particular copyright notices – or to change them without the seller's prior express consent.
- 10.3. All other rights to the software and the documentation including copies shall remain with the seller or with the software supplier. The granting of sublicenses shall be prohibited.

11. General provisions

- 11.1. Unless otherwise agreed, the law of the Federal Republic of Germany shall apply exclusively for these GTCs and for the legal relations between seller and purchaser. The application of international uniform law, in particular of the United Nations Convention on Contracts for the International Sale of Goods dated 11/4/1980 shall be excluded. Prerequisites and effects of the reservation of title according to clause 6 shall be subject to the law applicable at the relevant storage location of the product if the choice of German law is inadmissible or invalid.
- 11.2. If the seller and purchaser are merchants in terms of the German Commercial Code, legal entities under public law or special funds under public law, the exclusive place of jurisdiction for all disputes resulting from this contractual relationship directly or indirectly shall be Landshut unless there is an exclusive statutory place of jurisdiction. However, the seller shall also be entitled to institute legal proceedings at the purchaser's general place of jurisdiction.