

General terms & conditions

Sales, delivery and payment conditions

1. General Provisions

1.1 Our sales and delivery terms and conditions cover and are exclusively valid for the entire business relationship with our customers. Deviating or additional conditions of buyers are not acknowledged, except where their being valid has been explicitly agreed on in writing. Our terms and conditions only apply if we carry out delivery unconditionally despite contrary, deviating or additional terms and standards of the buyer. Our terms and standards also apply to all future business with the buyer without express agreement.

1.2 The conditions herein only apply to companies, legal entities of public law and special estates under public law.

1.3 Our sales representatives and agents do not have signing authority; agreements reached with them are only valid and binding once confirmed by us in writing.

2. Offers and Contract Conclusion

2.1 Our offers are always subject to change without notice unless stated otherwise in the relevant offer. Silence on the part of the buyer shall not qualify as acceptance.

2.2 The contract of sale is validated by our confirmation of order in writing. Our execution of delivery respectively the delivery note is considered as confirmation of order if a written confirmation of order is lacking. Any oral agreements have to be confirmed by us in writing.

2.3 Once the order confirmation has been issued, the buyer cannot cancel the delivery contract unless legal or contractual provisions deviate.

2.4 The dimensions, weights, illustrations, descriptions and other details as given in our catalogues, brochures, price lists or estimates and other documents only serve as information and are only binding contractual content if we expressly agree to this in writing.

2.5 Details on material and durability can only be considered as guarantees if expressly stated as such. The same holds true for the acceptance of a procurement risk.

2.6 Our written confirmation of order determines nature and scope of our performance. We are entitled to partial performance in as far as this is reasonable.

3. Delivery Deadlines

3.1 Delivery deadlines depend on the specifications stated in the order confirmation, unless otherwise agreed. Delivery deadline commences with the dispatch of our confirmation of order, yet not before all open questions necessary for the execution of the order have been resolved respectively any prior concessions forming part of the buyers contractual duties have been supplied respectively any advance payment of the buyer has been received. In cases of us supplying the buyer on advance payment, the stated delivery period commences on the day we are credited with the advance payment amount. Supplementary alterations desired by the buyer result in the delivery period being suspended. Once agreement has been reached on the desired alterations, the delivery period commences anew.

3.2 Deadlines for deliveries „ex works“ are fulfilled when the items covered in the contract are selected and ready for dispatch within the agreed deadline and the buyer is notified about this. For contracts of sale involving the carriage of goods, delivery deadlines are considered fulfilled if the items covered in the contract have been forwarded to the carrier prior to expiry of the deadline or if the goods could not be sent off in time through no fault of our own.

3.3 In the event of delays in delivery and service due to force majeure, serious internal company matters or events beyond our control, we are also entitled to delay the delivery or service until the obstacle is removed and after a reasonable start-up period. This also applies in cases where such events take place with our suppliers or during a delay already being caused. With such a hindrance lasting longer than 3 months, both we and the buyer are entitled to withdraw from the remainder of the contract. We inform the buyer of any such hindrances as to their start and end as timely as possible.

3.4 If the buyer is in default with payments for previous deliveries in the course of our current business connection, we are entitled to refrain from providing further services until any outstanding payment is settled. Any resulting expenditures incurred are absorbed by the buyer.

3.5 With on call purchases, orders have to be collected within 6 months after the first partial delivery. Once this period has been expired, we are entitled to dispatch the ordered goods. If the buyer falls in default of acceptance or violates any of his duties to cooperate, we are entitled to claim compensation for the damage caused by this. The right to more extensive claims is reserved.

3.6 If the buyer falls in default of acceptance or culpably violates any of his obligations to cooperate, we are entitled to claim compensation for the resulting damages, including any additional expenditure.

3.7 If the dispatch, delivery or collection of the object of sale is delayed at the request of the buyer or due to circumstances which are the responsibility of the buyer, the buyer shall reimburse us for any storage costs and interest payments on capital involved in the provision of the object of sale. If the event of storage, we are entitled to claim at least 0.5 % of the outstanding invoice amount for each month started, beginning one month after notification of readiness for dispatch. The rate of interest may be reduced if the buyer provides the relevant proof. However, after adequate time has been given and ineffectually expired, we are entitled to dispose otherwise of the object of sale and provide the buyer with a replacement within an adequate additional period of time.

3.8 If we culpably fail to fulfil our basic contractual obligations (i.e. obligations that make the proper performance of contract possible and are usually subject to buyer's confidence) within the deadline, compensation shall be restricted to typically foreseeable damage. Incidentally, compensation for damages caused by delay is limited to 3 % of the value of goods delivered for each completed week and a maximum of 15 % of the value of goods delivered.

4. Prices

4.1 Unless otherwise agreed in writing, deliveries are made at the prices we have specified. Prices are ex works or ex the agreed dispatch location and exclude packaging, customs, insurance, installation and instruction costs, shipment and value-added tax.

4.2 If costs decrease or increase as a result of material price changes or wage increases or adjustments taking effect after the contract is closed, we reserve the right to charge the price in effect at the date of delivery if delivery takes place more than 4 months after the date of our confirmation of order. For any such changes in cost, proof will be established upon request.

4.3 We also reserve the right to revise prices in a reasonable way in such cases where the item covered by the contract has been technically improved on since closure of contract.

4.4 For on call orders, we always charge the prices valid on the day of shipment or due date for acceptance.

4.5 We are entitled to cost-covering surcharges respectively cuts in discounts in case of reduced amounts not covered by the contract as such.

4.6 For „ex works“ deliveries, we are entitled to invoice for the goods from the day of availability. For contracts of sale involving the carriage of goods, we are entitled to submit an invoice from the moment the goods are handed over to the representative from the shipping company.

5. Payment

5.1 Unless otherwise stated, our invoices are due within 30 days as of date of invoice and without deductions. There are no discounts for invoices referring to development costs and expenditures, tools or operating material. For overseas shipments, the purchase price shall be paid without deductions immediately on receipt of the invoice. Authorized discounts may be voided if the buyer fails to transfer the amount to our account promptly.

5.2 For defaults in payment, interest is due amounting to 9 percent per year above the respective basic rate of interest (§247BGB). We reserve the right to claim further compensation against proof.

5.3 We are entitled to execute outstanding performances only on advance payment or subject to a security being given if the buyer is in default with payments as agreed or if circumstances transpire which cast substantial doubts on the credibility of the buyer (standard banking criteria being applied), and after the futile expiry of a reasonable extension. Moreover, we are entitled to set our outstanding claims due and to demand the placing of securities regardless of the time between date and maturity of a bill of exchange.

5.4 The purchaser is authorised to set off payments and to exercise a right of retention only on account of his undisputed or legally confirmed claims. The assertion of rights of retention by the purchaser is possible only if his counterclaim is based on the same legal relationship.

5.5 Lump sums retained by the buyer for warranty or guarantee reasons and claimed in advance are prohibited.

5.6 Our representatives, agents and sales employees are not authorized to collect money, unless they are explicitly and expressly commissioned to do so and have authorization in writing.

5.7 If the contract stipulates payment by instalments, we are entitled to request immediate repayment of the total remaining purchase price due if the buyer defaults on instalments amounting to more than 10 % of the total purchase price.

6. Packaging and shipment

6.1 Packaging complies with standard commercial practice and is at our discretion. We use disposable packaging, calculated at minimum price and not to be returned. Reusable packaging systems have to be agreed on between supplier and buyer.

6.2 For contracts of sale involving the carriage of goods, we endeavour to use the best possible means of transport, unless bound by contract to use a certain one.

6.3 The buyer has to bear the costs for packaging and shipment ex works to their final destination.

7. Scope of Delivery, Transport and Passage of Risk

7.1 If no other agreements are made, the goods shall be delivered „ex works“. The risk of deterioration or destruction of the goods is transferred to the buyer once the goods have been sorted ready for dispatch and the buyer is notified of this fact. This holds true even in cases where we have taken over additional services, such as loading, transport or unloading. If services are delayed as a result of circumstances caused by the buyer, we are entitled to store the goods at the expense and risk of the buyer at our own discretion and invoice them as delivered ex works.

7.2 If the contract of sale includes the carriage of goods, the risk of deterioration or destruction is transferred to the buyer at the latest when the object of sale is dispatched or handed over to the representative from the shipping company ex works or at the place of dispatch. If the conduct of the buyer delays the dispatch of the goods, the risk is transferred to the buyer at the moment in which the buyer is notified that they are ready for dispatch. Clause 7.1 section 4 applies accordingly.

7.3 Upon the buyer's request and at his expense, we shall insure the relevant shipment in his name against theft, breakages, transport loss, and damages caused by fire and water. The buyer must make a request in this regard in order to grant us the power of authority to act on his behalf.

7.4 Deliveries that are slightly short or excessive due to production reasons (deliveries of 20 items +/- 1 and deliveries including more than 20 items +/- 5 % of the delivery quantity) also fulfil the contractual requirements. Only the quantity delivered shall be invoiced.

7.5 The risk of accidental destruction or deterioration of the items covered in the contract is transferred to the buyer at the moment in which the buyer incurs default of acceptance or debtor's delay.

8. Reservation of ownership

8.1 The goods supplied remain our property until such time as all our claims arising from the business relationship have been fulfilled entirely. This shall also apply if a confirmation of the balance has been issued.

8.2 The buyer shall be entitled to sell on the delivered goods in the regular course of business provided he is not in arrears with payment. However, he shall assign to us in advance all receivables due to him from his customers or third parties up to the final total of our invoice (including value added tax), irrespective of whether the object of sale was sold with or without further processing. The buyer shall be entitled to collect all claims until revoked. Our authority to collect these receivables independently is not thereby affected. However, we undertake not to collect such debts as long as the buyer meets his payment obligations to us from the revenues he collects, is not in arrears with payments and, in particular, as long as no application has been made to initiate insolvency or composition proceedings to recover assets from the buyer or the buyer has not suspended payments. If such is the case, however, we may request that the buyer inform us of all assigned receivables and the debtors thereof, provide all details required to effect collection, hand over the necessary documents and notify the debtors (third parties) of the assignment.

8.3 As the manufacturer, buyer's processing or reworking of the object of sale shall always be to our benefit, without placing us under obligation. If the object of sale is processed together with objects which do not belong to us, we shall acquire part ownership of the new object in the same ratio as the value of the object of sale (final total of invoice including value added tax) stands to the value of the other processed objects at the date of processing. In all other aspects, the object created by the processing is subject to the same provisions as the supplied object of sale with rights reserved.

8.4 If the object of sale is indivisibly mixed with other objects not belonging to us, we shall acquire part ownership of the new object in the same ratio as the value of the object of sale (final total of invoice including value added tax) stands to the value of the other objects used at the time they were mixed. If the objects are mixed in such a manner that the buyer's share is to be regarded as the major part, it shall be deemed agreed that the buyer transfers to us a pro rata share of ownership. All other aspects are subject to the same provisions as the object of sale supplied with reservation of ownership.

8.5 Providing we had part ownership of the sold reserved goods in accordance with the preceding conditions, the buyer shall pledge an amount of his receivables from the purchaser that is proportionate to the coownership share. The buyer shall assign those receivables which have accrued to him through the combination of the reserved goods with a property towards a third party for security. We now accept these assignments.

8.6 The buyer shall not be entitled to dispose otherwise of the reserved goods or assign them as security for a debt. In the event of seizure/levy of execution or confiscation of reserved goods, the buyer is to give notification of our ownership and must inform us of such occurrences without undue delay in order that we may preserve our rights towards third parties. The buyer shall bear liability for any deficit that accrues to us provided that a third party cannot reimburse the costs to us following legal or extrajudicial litigation.

8.7 The buyer retains the reserved property based on the preceding provisions or substitute objects at no expense to us.

8.8 At the request of the buyer, we shall release the object of sale, omitting our security interest from the object scope. The security interest is omitted providing the achievable value of the object of sale does not temporarily exceed a liability limit of 110 % of the secured receivable. It is assumed that the liability limit is reached when the professionally estimated value of the object of sale corresponds to 150 % of the secured receivables at the time when the demand for release is submitted. A different achievable value may be assigned to the object of sale if the buyer provides the relevant proof.

8.9 If the buyer violates the provisions of the contract, in particular by falling into arrears with payments or if our receivables are at risk due to a decline in the buyer's credit worthiness, we are entitled to take back the reserved goods, once an extension granted by us has expired unsuccessfully, even though we may not have withdrawn from the contract. We are then also entitled to freely sell the reserved goods or have them auctioned off. The revenue from the resale shall be offset against the amounts owed by the buyer after the deduction of the reasonable costs of the resale. The buyer is liable for remaining indemnification.

8.10 The buyer is obliged to handle the object of sale with due care and keep the object in perfect condition until ownership passes over to him. The buyer has to sufficiently insure the goods supplied to him against loss or damage resulting from theft, fire, water or similar damages at his expense and to our benefit, and must provide proof of such insurances upon request. The buyer must arrange maintenance and inspection work promptly and at his own expense when such work is necessary.

8.11 We are authorized to assign pecuniary claims against the buyer.

8.12 If the law at the storage location of the object of sale stipulates that the reservation of ownership or the assignment is not effective, a corresponding security shall apply as agreed. The buyer is obliged to take whatever measures are necessary to substantiate and uphold such laws.

9. Warranty, duties of buyer upon defects reported by his buyers, compensation for expenditure, liability

9.1 Any warranty claims of the buyer rest on the assumption that he himself has met his legal and statutory duties to inspect and report defects without fail. This also applies when the buyer sells on the object of sale. Obvious defectiveness or incompleteness of the goods have to be communicated to us in writing within 2 weeks after the goods or services have been delivered, specifying the fault in detail and quoting the invoice number. Receipts, samples, packing slips and/or defective goods have to be returned if so requested by us. All claims of the buyer due to defectiveness or incompleteness are expressly excluded if he does not meet this duty. Latent defects of quality must be objected to without undue delay after their discovery. If an inspection of goods was carried out, claims involving defects which could have been detected during inspection are excluded.

9.2 Liability for a specified purpose of use or any specified suitability shall only be assumed to the extent that the latter is agreed as such expressly and in writing. In all other aspects, the suitability and application risk is the sole responsibility of the buyer. The buyer is obliged to guarantee compliance with the basic technical conditions specified in the documentation and/or supplementary documents. Any other type of use is prohibited. The buyer shall impose these and any other restrictions of use stipulated by the seller to subsequent buyers.

9.3 Warranty claims for used objects of sale are excluded completely unless liability for defects has been agreed expressly and in writing.

9.4 The object of sale is not considered defective if the buyer uses products supplied by us in a functional connection with product components already available or purchased from third parties, providing the defect was caused by components supplied by us or a lack of compatibility thereof. If we have provided express written assurance that the object of sale is compatible with external products, this assurance only relates to the product version current at the moment the assurance was made, and not to earlier or later product versions. An object of sale is not considered defective if a defect results from the fact that the buyer has not ensured compliance with the basic technical conditions specified in the documentation and/or supplementary documents. If the buyer instructs us to rectify such defects, he shall absorb the resulting costs at our current applicable rates. The buyer shall also indemnify us from any claims for compensation made by third parties in such cases. The buyer shall bear the burden of proof that violation of the provisions in the contract was not the cause of the damage when the product supplied by us was used.

9.5 The buyer remains solely responsible, in particular for natural wear of the object of sale, incorrect or negligent use, modifications, assembly and operation as well as incorrect consultation or instruction from the buyer or third parties, excessive loads, unsuitable operating resources, unsuitable installation site, in particular supporting ground under the object, an unstable or unsafe power supply, chemical, electrochemical or electrical influences, weather or other natural influences.

9.6 If consumables are found to be defective, the materials shall be set aside immediately in the condition they were in when the defect was discovered and retained for our further inspection. Otherwise they shall be considered accepted by the buyer in the condition in which they were delivered without further liability on our part.

9.7 Should delivery items prove to be defective, it is our choice to remedy the fault subsequently by repairing the defective item or supplying a nondefective replacement. Only if this has failed repeatedly, or if it should prove unreasonable for the customer, or if the defects are of substantial nature, then the buyer is entitled to withdraw from the contract or to deductions in price, as stipulated within the legal framework. A delivery recourse shall not affect the limitation period as stipulated in §§ 478, 479 BGB under German law. The buyer is entitled to compensation only to the extent covered by section 9.12. As for potential repairs or replacements, the warranty period is 3 months as of delivery or execution date and covers at least the expiry date of the warranty period for the original goods or services (see section 9.14, 9.15).

9.8 The buyer shall give us the necessary time and opportunity to conduct all the remedies and replacement deliveries necessary in agreement with us. Otherwise, the buyer shall be exempt of liability for the resultant consequences. The buyer shall bear any additional costs incurred (e.g. overtime premiums, extended journeys, etc.) for the express deployment of a technician or work performed outside of normal working hours at the specific request of the buyer.

9.9 Parts replaced as a result of subsequent repairs become our property. We shall only be liable for replacement parts in accordance with the existing delivery and sales conditions, more specifically the conditions included in section 9.7.

9.10 The buyer must inform us immediately of any report of defects submitted by his customers on our goods or services. In case the buyer does not meet this his obligation, he is not entitled to warranty claims. The buyer must also secure evidence in suitable form and has to grant us the opportunity to verify this claim.

9.11 Unless explicitly authorized by us, the buyer's advertising statements, whether to his customers or in his advertising material, do not constitute the right to warranty claims against us.

9.12 We are liable for compensation in cases where warranty or procurement risks have been expressly assumed or where duties and obligations have been grossly neglected or violated with intent. In the event of gross negligence, liability for compensation shall be restricted to typically foreseeable damage. Liability for culpable loss of life, injury to the body or damage to health, as well as compulsory liability as stipulated in the Product Liability Act, remains unaffected. With respect to defects of quality and economic loss resulting from ordinary negligence, we shall be held liable only in instances where we fail to fulfil our basic contractual obligations (i.e. obligations that make the proper performance of contract possible and are usually subject to buyer's confidence), limited however to typical damage foreseeable at the time the contract was signed.

9.13 In case the buyer is entitled to demand compensation instead of performance or is entitled to withdraw from the contract, he shall be obliged to declare at our request within a reasonable period of time whether and how he intends to make use of his rights. Is there no declaration of intent in due course, or does the buyer insist on the contract being performed, the buyer shall be entitled to exercise above rights only after a further, reasonable extended term has expired without any results.

9.14 Warranty claims due to defects expire within 12 months as of passage of risk. Legal claims expire accordingly. Intentional breaches of duty, breaches resulting from gross negligence, lack of guaranteed characteristics, assumption of procurement risks and personal injury shall be governed by the statutory limitation periods. Under German law, this does not apply to claims resulting from defects as stipulated in § 438 Para. 1 no. 2 lit. b BGB.

9.15 A term of exclusion of 6 months applies for all claims that are not subject to a statute of limitations because of a defect. This term begins from the moment when the damage is discovered and the party causing the damage is known. This does not apply for compensation claims resulting from an intentional failure to fulfil obligations or gross negligence.

9.16 If the buyer returns an object of sale to have it repaired, and if we then establish the claim to be unfounded and warranty claims not applicable, we shall ask the buyer to collect the returned item within 4 weeks after notification or to let us know in writing whether the inspected item should be returned or repaired. We also inform the buyer that lack of written communication within this given period of time will result in us being entitled to scrap the item at his expense. Shipment and repair of the object of sale are at the buyer's expense in cases of unwarranted claims.

9.17 Any further liability with regards to claims for compensation, other than provided for in the preceding sections of Clause 9, is excluded, regardless of the legal nature of the claim. This applies in particular to claims for compensation for culpability at the time the contract is signed resulting from other breaches of duty or tortious compensation claims for damages (as stipulated by German law in § 823 BGB). This limitation also applies providing the buyer requests expenses without substitution in place of services instead of a claim for compensation. Any further liability due to maliciously concealed discrepancies remains unaffected.

9.18 The preceding regulations also apply in the event of a violation of the product monitoring obligation. The normal service life of products supplied by us depends on the completion of the tasks listed in the documentation and/or the service supplementary documents.

9.19 The preceding liability limitations also apply to the benefit of our statutory representatives, agents, employees, commercial agents and other servants and/or assistants, depending on the reason and extent.

10. Software use

In as far as software is included in the scope of delivery, the buyer is granted a non-exclusive right to use this software including its documentation. It is transferred for use on the object of sale. Any use of the software on more than one system is prohibited. The buyer may reproduce, revise, translate or convert the object code into the source code only to the extent legally authorized (§§69a ff German Copyright Act). The buyer undertakes not to remove or alter manufacturing details, especially copyright notes, without our express prior consent. All other rights to the software and the documentation, including copies, remain vested in ebm-papst as seller or the software provider. The granting of sublicenses is not permitted. Distribution is permitted only if the buyer provides proof of a justifiable interest in forwarding the software to third parties and specifies the actual use, especially in cases where the complete facility is sold.

11. Copyright

We reserve property rights and copyrights for all illustrations, drawings, diagrams, calculations and other documents that are forwarded to the buyer as part of a quotation and during contract settlement. This also applies for documents referred to as „personal“ and/or „confidential“. Documents of this kind may not be used beyond the boundaries of contract fulfilment, duplicated or their contents made accessible to third parties without our prior written permission. They are to be immediately returned upon request.

12. Cancellation of the contract

12.1 If the position of both parties is restored to a pre-contract status (e.g. due to a withdrawal by one of the contractual parties) the buyer is obliged to return the object of sale to us in advance. We are entitled to have the object of sale collected from the buyer's premises.

12.2 In addition, we are entitled to request appropriate compensation from the buyer for the deterioration or destruction of the object of sale or an impracticality that occurred or is occurring within the area of risk or responsibility of the buyer for any other reason and is preventing the return of the object of sale. The appropriate compensation amount is calculated from the difference between the total price specified in the order and the present value, determined by the sale of the object or if the object cannot be sold, the estimation of an attested authorized expert.

13. Subrogation

The subrogation of rights and/or the transfer of the buyer's obligations stated in this contract is not possible without our prior written permission.

14. Export and inspection provisions

14.1 The objects of sale and possible replacement parts may be subject to export inspection provisions applicable in the Federal Republic of Germany or other states. If the object of sale is exported at a later time, the buyer is responsible for observing all applicable legal provisions in the destination country.

14.2 If the buyer fails to produce the necessary proof of sales tax exemption when exporting an object of sale, he is liable to pay sales tax at the rate applicable in the country.

15. Applicable law and legal venue

15.1 Our business location is defined as the place of jurisdiction on the condition that the buyer is a trader for the purpose of legal provisions, and legal bodies of public law and public assets regard him as a trader. However, we are entitled to start legal proceedings against the buyer at a court presiding over the buyer's place of residence.

15.2 The law of the Federal Republic of Germany applies; the validity of the UN Convention on the international sale of goods is excluded.

15.3 If not otherwise specified in the order confirmation, our place of business will be the place of performance.

15.4 If individual clauses or terms of this contract are invalid, unenforceable or incomplete, the other clauses and terms remain unaffected.

ebm-papst Motoren & Ventilatoren GmbH, Linz

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