

§1 General

- (1) The following general terms and conditions of sale and delivery shall apply exclusively to all contracts on deliveries and other services including contracts for work consultations, suggestions and other additional services.
- (2) Purchase terms and conditions of the buyer which ESSEL does not expressly recognize shall not be binding even if ESSEL does not expressly contradict them.
- (3) Supplements or amendments of the contract require the written form to become effective.

§2 Offers, scope of performance and conclusion of a contract

- (1) Contract offers of ESSEL shall remain free. Delivery dates shall be non-binding.
- (2) ESSEL's order confirmation shall be exclusively decisive for the scope of performance owed by contract.
- (3) ESSEL reserves the right to alter the materials used as well as the specification and the design even after dispatch of an order confirmation, provided that such amendments contradict neither the order confirmation nor the buyer's specification. The buyer shall agree to any amendment suggestions made by ESSEL beyond this, as far as these are reasonable for the buyer.
- (4) As a rule, the documents which the order confirmation is based on, such as illustrations, drawings, declarations of dimensions and weights shall be understood only as approximate values, provided that they are not expressly described as binding.
- (5) Permissible surplus or reduced order quantities are
 ≤ 20.000 tubes ± 20%
 > 20.000 tubes ± 10%
 > 1.000.000 tubes ± 5%
 per variant.

§3 Lithographs, tools, copyrights

- (1) Lithographs, drafts, clichés, embossing cylinders and other special tools shall remain property of ESSEL and will not be returned even if they are billed completely or partly. For repeat orders they will be kept for 2 years. If no additional orders are placed, ESSEL shall dispose of these parts at its own discretion. Any claims of the buyer shall expire at that time.
- (2) The buyer shall take responsibility that the execution of his order according to samples, drawings and print data sent in by him will not violate foreign rights, particularly copyrights and industrial property rights. The buyer shall compensate ESSEL any damage caused to ESSEL because of a violation of rights of third parties in connection with the buyer's order.

§4 Prices and terms of payment

- (1) The prices are ex works exclusive of packing and other shipping and transport expenses. Non-returnable packagings will not be taken back. All prices shall be in euros, net, i.e. plus sales tax, if applicable, unless otherwise accounted.
- (2) If, through no fault of ESSEL, the delivery is delayed by more than three months after the conclusion of the contract, ESSEL can invoice the price taking into account the costs of material, wage, storage and other incidentals.
- (3) If ESSEL takes into account amendment requests of the buyer after receipt of the order in writing, then the buyer will be charged for the extra expenses arising from it.
- (4) Unless otherwise agreed on or indicated in the invoices, the purchase price shall be due immediately after delivery without any cash discount and in such a way that ESSEL will have the amount at its disposal at the due date. The buyer shall bear the charges for the payment transactions. If the time allowed for payment is exceeded, ESSEL will charge interest to the amount of 8% above the base interest rate unless higher interest rates are agreed on. The right to assertion of further damage caused by delayed performance shall be reserved.

§5 Balancing and retention

- (1) Buyer's balancing and retention shall be excluded, unless the balancing claim is established undisputedly or finally.

§6 Execution of the deliveries, delivery times and deadlines

- (1) ESSEL's delivery commitment presupposes that Essel is supplied correctly and in time, unless ESSEL is to blame for such incorrect or delayed delivery.
- (2) In justifiable special cases, particularly for operational reasons, ESSEL shall have the right to make partial deliveries and render partial services after prior announcement and to invoice separately.
- (3) Details on delivery times shall be approximate. Delivery times start with the date of the order confirmation and are valid only under the prerequisite of punctual clarification of all particulars of the order and punctual fulfilment of all liabilities of the buyer, such as submitting all official certificates, providing letters of credit and guarantees, or making down payments as well as providing print data and technical specifications.
- (4) For the compliance with delivery times and deadlines, the time of the dispatch ex works or ex warehouse shall be decisive. Such times and deadlines shall be regarded to have been met upon notification of dispatch readiness, if the product cannot be dispatched on time through no faults of ESSEL.
- (5) In cases of force majeure ESSEL shall have the right to postpone the delivery by the duration of the hindrance plus an adequate initial period. This shall be valid, too, if such incidents occur during a current delay. Political measures taken by public authorities and affecting currency, trade or other matters, strikes, lock-outs, breakdowns and any other circumstances, which render the deliveries substantially difficult if not impossible through no fault of ESSEL, shall be regarded as if they were events of force majeure.

§7 Dispatch and passage of risk

- (1) The dispatch shall be at the buyer's own risk even with partial deliveries or in the event that ESSEL has taken other commitments such as consignment expenditures or transport.
- (2) In the absence of special instructions the packing as well as the choice of the transport route and the means of transportation shall be at best discretion. The unobjected take-over of the product from ESSEL by forwarding agents, mail, railway or other hauliers shall be regarded as confirmation of faultless packing at dispatch and shall exclude any liability of ESSEL for any damage or loss on the way because of improper packing or shipment, unless ESSEL is mandatorily liable because of intent or gross negligence.
- (3) The risk of accidental destruction or accidental deterioration of the product shall pass on to the buyer as soon as ESSEL has provided the buyer with the product and notified the buyer about it.

§8 Retention of title

- (1) ESSEL retains the title to ownership of the delivered goods until the complete payment. The retention of title shall also remain valid until all claims, including future and conditional claims, from the business relationship between the buyer and ESSEL.
- (2) The buyer shall not have the right to transfer the ownership as a security or to pledge the goods. The buyer shall have the right to further alienation of the conditional goods in the orderly business, however. The buyer already hereby assigns to ESSEL the claims due from his business partners arising therefrom.
- (3) If the buyer processes or alters the goods, the retention of title shall also extend on the complete new thing. The buyer shall acquire co-ownership of the fraction which represents the ratio of the value of his product to that of the goods delivered by ESSEL.
- (4) If the value of all securities existing for ESSEL exceeds the existing claims lastingly by more than 10%, ESSEL will release securities on the buyer's request at ESSEL's own choice.
- (5) ESSEL shall have the right to assert the rights related to the retention of title without withdrawing from the contract.

§9 Warranty

- (1) If the purchase is a commercial act for the two parties, the buyer shall examine the goods immediately upon receipt as far as this is possible in the regular course of business and, if a deficiency shows, immediate notify ESSEL (in writing within 5 days).
- (2) If the buyer fails to make such notification, the goods shall be regarded as approved, unless the deficiency was not recognizable in the examination. Otherwise sections 377 ff of the German Commercial Code shall apply. The warranty claims are shall be limited to improvement or substitute delivery, at ESSEL's own discretion. If improvement or substitute delivery fails, the buyer shall have the right to demand reduction of the payment or cancellation of the contract, at his own choice. In the case of improvement or substitute delivery ESSEL shall grant an adequate period.
- (3) Further-reaching claims of the buyer, particularly because of consequential damage, which do not result from the lack of assured features, shall be excluded. This shall not apply to intent, gross negligence or violation of essential contractual duties by ESSEL.
- (4) Insignificant faults without any reduction in value/ suitability or without restricted usability shall be excluded from the warranty.

§10 Limitation of liability

- (1) ESSEL's liability and the liability executives and other agents of ESSEL, for any violation of contractual or non-contractual obligations, particularly because of impossibility, delay, faults made at contract initiation and tortious acts shall be limited to instances of intent and gross negligence and to contract-typical damages foreseeable at the time of conclusion of the contract.
- (2) These limitations shall not apply to culpable violation of essential contractual duties, as far as the attainment of the purpose of the contract is endangered, to cases of mandatory liability pursuant to the product liability law, to damages to life, limb and health, and also not to instances where ESSEL has cunningly hidden defects of the thing or guaranteed the absence of such defects. The onus probandi rules shall remain untouched by this.
- (3) As far as nothing else is agreed on, contractual claims against ESSEL arising for the buyer on the occasion of, or in connection with, the delivery of the goods shall be barred one year after delivery of the goods. ESSEL's liability for damage resulting from intended and grossly negligent breaches of duty as well as the limitation of statutory recourse claims shall remain untouched of this. In instances of follow-up fulfilment the limitation period shall not start again.
- (4) By receiving printed samples i.e. product references the buyer is responsible for the protection of the trade mark rights. It means that these samples can only be used for inspection. Obviously the commercial using of these samples is forbidden. Commercial tubes can be used as product references upon the buyer requests not to do so.

§11 Evidence of export shipment and sales tax

- (1) If a buyer who is domiciled outside the Federal Republic of Germany or the buyer's assignee picks up goods or transports or sends them abroad, the buyer shall produce the evidence of export shipment required under tax law. If such evidence is not furnished, the buyer shall pay the sales tax imposed on the invoice amount for shipments within the Federal Republic of Germany.
- (2) With shipments from the Federal Republic of Germany to other EU member states the buyer shall inform about his sales tax identification number under which his earned income is taxed within the EU before the goods are dispatched. Otherwise the buyer shall pay ESSEL the statutory sales tax amount for the deliveries in addition to the purchase price agreed on.
- (3) Deliveries from the Federal Republic of Germany to other EU member states are invoiced pursuant to the sales tax regulation of the respective receiver member state, if either the buyer is registered in a different EU member state for the sales tax or if ESSEL is registered in the receiver member state for the sales tax.

§12 Final provisions

- (1) Dresden shall be the place of jurisdiction and fulfilment for all and any liabilities resulting indirectly or immediately from this contract relationship including the payment obligation. The seller shall also have the right to sue before a court which is competent for the seat or a branch office of the buyer.
- (2) The relations between the contracting parties shall be governed exclusively by the laws of the Federal Republic of Germany. UN purchase law shall be excluded.
- (3) The buyer can assign his rights and duties from this contract to third parties only with ESSEL's written consent.
- (4) The ineffectiveness of individual provisions of this contract or its components shall leave the effectiveness of the other provisions untouched. The contracting parties undertake to take reasonable effort in good faith to replace an ineffective provision by an effective provision which amounts to its economic success, provided that this does not cause a substantial change of the subject matter of the contract. The same shall apply, if a matter that needs regulation has not been expressly regulated.