

Validity from: .. January 2013  
Referenz-Nr. 0240.0004

Egger Kunststoffe  
GmbH & Co. KG  
Im Weilandmoor 2  
D-38518 Gifhorn  
Tel.:+49 5371 865-0

## Our General Terms and Conditions of Trade

Our General Terms and Conditions, mentioned below, apply to the contractual relationships with traders, under the structure of their business operations, and with legal entities under public law including Special Funds under public law.

### § 1 Applicability of the General Terms and Conditions

1. Our deliveries, services and offers are exclusively rendered on the basis of these General Terms and Conditions. Consequently, they apply to all future business relations. Latest with the acceptance of the goods or services, these Terms and Conditions shall be considered acknowledged. The applicability of terms and conditions of the contractual partner is herewith denied. This also applies if the business partner, by way of a counter-confirmation or in any other way, refers to these terms and/or purchase conditions.
2. Deviations from these General Terms and Conditions have effect only if they have been confirmed by us in writing.
3. These General Terms and Conditions supersede all previous General Terms and Conditions.

### § 2 Offer and contract-execution

1. Our offers are subject to confirmation and are not binding. Acceptance declarations and all orders require our written confirmation in order to be legally effective. The same applies to supplements, amendments or side agreements.
2. Drawings, illustrations, measures, weights or other specifications are only binding if this has been specifically agreed in writing.

### § 3 Prices

1. Prices are deemed to be not binding. All orders are accepted solely on the basis of the prices current at the time of order. Our prices do not include V.A.T. and apply ex seller's works, free on truck or rail.
2. Discounts possibly granted as well as turnover- and freight-refunds are cancelled in case of settlement proceedings in court or out-of-court, insolvency and payment default in excess of one month.
3. With respect to apportioned contracts and to all call-off orders, we invoice the prices current at the day of delivery. The same applies to all other orders if the delivery occurs later than four months after order placement.

### § 4 Passing of dispatch and risk

The dispatch occurs at the risk of the orderer/purchaser and also applies to carriage paid deliveries. We are not liable for damages or losses (occurring) during transport. If no special type of dispatch has been agreed, the dispatch is carried out at our best discretion without any obligation for the cheapest carriage. Carriage expenses must be refunded to us. The risk passes to the contractual partner as soon as the consignment has been turned over to the carrier and/or has left our stores for transport. If the dispatch proves impossible or has been delayed without our fault, the risk passes to the orderer/purchaser upon notification of the being ready for dispatch.

### § 5 Excess-, short- and part-deliveries

Excess- or short-deliveries of up to 10% and customary minor tolerances in measurements are admissible and do not entitle the orderer/purchaser to raise complaints. Part-deliveries are admissible to a reasonable extent and invoiced separately.

### § 6 Call-off orders

In case of call-off orders or similar, the orderer/purchaser is obligated to take delivery of the goods ordered within a reasonable grace period, at the latest within six months from the date of order, unless individually agreed otherwise in writing.

#### **§7 Payment terms**

1. Unless agreed otherwise, our invoices are due for payment within 8 days from the date of invoice with 2% cash discount, or within 30 days without discount.
2. We have the right, despite conflicting conditions on the side of the orderer/purchaser, to first set off payments against his older debts; in this case, we shall notify the orderer/purchaser about the nature of the set off made. If costs and interest have already accrued, we are entitled to set off the payment first against the costs, then against the interest and, last, against the main claim.
3. A payment is only considered as having been made when we can dispose of the amount. In case of cheques, the payment is only deemed as having been made once the cheque has been irrevocably cashed. We only accept bills of exchange and cheques subject to the receipt of the money, bills of exchange only upon separate agreement.
4. As from the due date, we charge 5% p.a interest.
5. If the orderer/purchaser defaults in payment, we are entitled, from the date of default onward, to charge interest on the trade receivables at the rate of 8% p.a. above the respective base rate of interest.
6. If we become aware of circumstances which render doubtful the orderer's/purchaser's credit worthiness, in particular if a cheque cannot be cashed or the orderer/purchaser discontinues his payments, or if other circumstances become known which question his credit worthiness, we have the right to accelerate the maturity of the entire remaining debt. This also applies if we have accepted cheques. In such an event, we are further entitled to request advance payments or the rendering of security.
7. The orderer/purchaser is only entitled to set off, retention or reduction, even if complaints for defects have been lodged or counter-claims have been asserted, if the counter-claims have been recognised by declaratory judgement or if they are incontestable. However, the orderer/customer also has a right of retention for reason of counter-claims arising from the same contractual relationship, provided the counter-claims do not concern payment claims.

#### **§ 8 Obligations regarding deliveries and the taking of deliveries**

1. We are not bound by the delivery times stated in our offers. Delivery dates or deadlines, which may be bindingly agreed, require the written form. At any rate, the delivery dates refer to the date of completion in our plants.
2. The delivery dates are given by us to the best of our knowledge and are - unless explicit fix-dates have been agreed - approximately binding; they may diverge from the actual delivery. A delivery time of two weeks after the delivery date stated is still considered as having been made in time.
3. Delays in deliveries and performance owing to force majeure and to events which render deliveries more difficult or impossible for us – particularly included are strikes, lock-outs, governmental orders, etc., even if they occur at our pre-suppliers or their sub-suppliers – are not our responsibility, even if deadlines and dates have been bindingly agreed. They entitle us to postpone the delivery and/or service by the duration of the hindrance plus a reasonable start-up time or to even withdraw from the contract, in total or in part, with respect to the contractual part not yet fulfilled. Should the hindrance exceed three months, the orderer/purchaser has the right, with respect to the contractual part not yet fulfilled, to withdraw from the contract after setting a reasonable subsequent deadline. If the delivery time extends or if we are released from our obligation, the orderer/purchaser may not derive any damage compensation claims from these circumstances.
4. Claims for damage caused by delayed deliveries are excluded, unless the default is caused by at least gross negligence on our part.
5. The orderer/purchaser is obligated to accept the goods. This will not affect any claims arising out of defectiveness of the delivered goods. In so far as the delivered quantity exceeds the admissible variations (§ 5) there is no obligation to accept the delivery; the same applies in case of defective goods if this represents a fundamental breach of contract or if there is risk of damage to property or person resulting from the condition of the goods.
6. If the orderer/purchaser is in default of acceptance of the goods, we are entitled to claim compensation for the expenditure arising for us.

7. As far as we are obligated by a contract to make advance deliveries, we may refuse to deliver if circumstances become known to us that call into question the performance of the orderer/purchaser after the conclusion of the contract, especially if the credit sale insurer cancels the credit limit of the orderer/purchaser or essentially reduces the credit limit or if the credit limit has been reached which endangers our claim for payment. The right to refuse performance is not applicable if the counter-performance has been made or security has been rendered for this counter-performance.

### **§ 9 Warranty**

1. The warranty period for products supplied by us is two years. It commences with the delivery date. With respect to the inspection and complaint obligations on the side of the orderer/purchaser, our deliveries are always subject to the provisions of § 377 HGB.
2. If the seller's operating or maintenance instructions are not complied with, if the products are modified, parts exchanged or consumables used which do not conform to the original specification or if our products are used improperly, the warranty is void, unless the orderer/purchaser disproves a respective statement substantiating that the defect was caused by just one of these circumstances. Any use that is contradictory to the technical specifications given in our product information services (<http://www.egger.de/de-deu/egger-de-produkte.htm>), which can be retrieved online, is also regarded as improper.
3. Upon our request, the orderer/purchaser is obligated to return rejected goods in their delivery condition for inspection.
4. In case of justified and timely complaint, we are obligated to subsequent fulfilment in the form of free-of-charge repair of the goods supplied and/or substitute delivery at our choice. If the subsequent fulfilment is impossible or unreasonable, we are also entitled, at our discretion, to credit the reduced value and to take back the rejected goods against refund of the purchase price.
5. If the repair and/or the substitute delivery fails after a reasonable period of time, the orderer/purchaser may, at his discretion, request the reduction of the remuneration or the rescission of the contract.
6. A warranty for normal wear and tear is excluded.
7. Warranty claims are only due to the pertinent, direct orderer/purchaser and may not be assigned to third parties.
8. The above mentioned paragraphs and § 14 comprise the final warranty regulations for products and exclude other warranty claims of any kind, unless gross negligence or wilful conduct occurs on our side or on the side of our vicarious agents or employees. The liability arising from injury to life, body or health due to grossly negligent conduct on our side or grossly negligent or wilful conduct on the side of our vicarious agents and/or employees remains unaffected thereby. Claims arising from quality guarantees, which shall secure the orderer/purchaser against the risk of consequential damage caused by defects, also remain unaffected. In any case, possible claims are limited to damages foreseeable at the point in time of contract conclusion.

### **§ 10 Liability restriction**

1. Claims for damage caused by default in performance of the contract, breach of duty prior to contract (culpa in contrahendo) and from tort as well as from all other legal bases are excluded, both against us and against our vicarious agents and/or employees, unless there is intent or gross negligent. In particular, this also applies to claims for damage instead of performance, however, only to the extent that substitution is sought for indirect or consequential damages resulting from defects, unless the liability is based on a quality warranty which shall secure the orderer/purchaser against the risk of such damages. The liability for damages arising from injury to life, body or health due to gross or wilful negligence on our side or on the side of our vicarious agents and/or employees remains unaffected. Each liability is limited to the damage foreseeable at contract conclusion.
2. We are not liable for damages of our products when not used as intended, unless the orderer/purchaser can rebut an appropriate substantiated statement that improper use has caused the damage. Any use that is contradictory to the technical specifications given in our product information services (<http://www.egger.de/de-deu/egger-de-produkte.htm>), which can be retrieved online, is also regarded as improper.
3. We are not liable for advertising statements made by third parties (e.g. manufacturers, as defined by § 4 subsect. 1 and 2 German Product Liability Act, or their vicarious agents) with respect to the quality of the merchandise or, in case of labelling, with respect to certain characteristics of the merchandise, unless the ignorance of these advertising statements is based on intent or gross negligence on our part, or insofar as the

advertising statements were corrected in an equivalent manner at the point in time of contract conclusion, or if the advertising statements could not influence the purchase decision.

### **§ 11 Reservation of title, securities**

Until the time all claims (including all balances from current accounts), which are due to us for any legal reason against the contractual partner, now or in future, have been fulfilled, the following securities will be granted to us, which we will release at our discretion, provided the value of the securities exceeds the claims by more than 20% in the long-term:

1. The goods remain in our ownership. Processing and remodelling are always carried out for us as manufacturer, although without any obligation on our side. If our (co-)ownership becomes void through amalgamation, it is already agreed now that our contractual partner's (co-)ownership in the uniform matter is transmitted to us at the proportional value (invoice value). The orderer/purchaser keeps safe the (co-)ownership for us without charge. Goods to which we hold (co)title will be described below as "retained goods".
2. The orderer/purchaser is entitled to process and sell the retained goods in the due course of his business, provided he is not in default. Pledges and security transfer are inadmissible. The trade receivables resulting from the resale of the retained goods or from any other legal reason (insurance, tort) with respect to said goods (including all balances due from current accounts) are, already now, fully assigned to us by the orderer/purchaser by way of security. We revocably empower him to collect the assigned trade receivables for our account in his own name. This power of collection may only be revoked if the orderer/purchaser does not meet his payment obligations in an orderly manner.
3. In case of encroachment upon the retained goods by third parties, the orderer/purchaser will indicate our ownership and notify us without delay.
4. If the orderer/purchaser acts in breach of contract – in particular in case of payment default – we are entitled to take back the retained goods or, if applicable, to request the assignment of the claim for return on the side of the orderer/purchaser against third parties. If we take back or pledge the conditional goods – unless the Consumer Credit Act applies, this does not constitute a rescission of the contract.
5. Upon our request, the orderer/purchaser is obligated to give us an exact listing of all claims transferred to us under the regulations of this provision, together with the customer's name and address, and to disclose to us all information needed to assert the claims assigned to us.
6. All costs incurred by re-possessing the delivery-object shall be borne by the orderer/purchaser. We have the right to discretionary sale of the delivery-object taken back.

### **§ 12 Construction changes**

We reserve the right to carry out construction changes at any time. We are not obligated, however, to carry out such changes on products already delivered.

### **§ 13 Secrecy**

Unless otherwise expressly agreed in writing, the information given to us in connection with orders shall not be considered as confidential.

### **§ 14 Third parties' rights**

1. Pursuant to the other provisions of this contract we are only liable for third party rights (industrial property rights, patents, copyrights, brands, etc.) if the industrial property right is based on the law of the country of the orderer's/purchaser's billing address. We are only liable for freedom of rights of third parties according to the law of other countries upon express and written agreement.
2. The liability according to paragraph 1 does not apply in so far as delivery items are produced in accordance with drawings, sketches, models or other equal descriptions or specifications provided by the orderer/purchaser. In this case the orderer/purchaser has to indemnify and hold us harmless in respect of all claims of third parties resulting from an asserted or actual infringement of a right.
3. The orderer/purchaser is obligated to inform us immediately in writing about claims stated or put forth by a third party. The orderer/purchaser is not entitled, without our agreement, to accept a violation of third party rights and he will reserve all legal action and conciliation procedures to us. If the orderer/purchaser ceases to use the products, he is obligated to point out to the third party that the cessation of usage is not connected with an

acceptance of an infringement of an industrial property right. The orderer/purchaser will give us all information necessary and grant other adequate support.

4. Furthermore, §§ 9 and 10 of these General Terms and Conditions apply. The orderer/purchaser has to reprimand the rights of third parties with analogous use of the provisions of § 9 subsect. 1 sentence 3.

#### **§ 15 Taking back goods**

If goods are taken back on common consent or for reason of insolvency, we shall credit the present value of the goods under consideration of the goods' condition, insofar as other utilisation is possible. A return of goods by mutual agreement is only possible with our explicit written consent.

#### **§ 16 Applicable law, place of performance, jurisdiction, severability**

1. German law is applicable to these General Terms and Conditions and to the entire legal relations between us and the orderer/purchaser, under exclusion of the applicability of laws regulating the international sale of goods and the execution of international sale agreements covering movable goods. The German version of these Terms and Conditions are binding in content.

2. The place of performance for the reciprocal obligations is the place of our delivering plant.

3. Insofar as the orderer/purchaser is a registered businessman within the meaning of the German Commercial Code, a legal entity under public law or a Special Fund under public law, the exclusive place of jurisdiction - for all disputes arising directly or indirectly from the contractual relationship - is Düsseldorf.

4. In the event that a condition in these General Terms and Conditions or a provision under the structure of other agreements is or will become invalid, this does not affect the validity of all other conditions or agreements.