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Fritz Egger GmbH & Co. OG
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Our General Terms and Conditions of Trade

Our following general terms and conditions of trade apply to contractual relations with traders in the context of the latter's conduct of business as well as with legal entities under public law including special public funds, with each of our sites in 6380 St. Johann in Tirol, 6300 Wörgl or 3105 Unterradlberg.

§ 1 Application of the General Terms and Conditions of Trade

1. Our deliveries, services and offers are provided exclusively on the basis of these general terms and conditions of trade. They are, consequently, also applicable to all future business relations. At the latest with receipt of the products or the service these general terms and conditions of trade are deemed to be accepted. The application of general terms and conditions of trade of the other contracting party is herewith excluded. This exclusion applies also in the case that the other contracting party refers to his general terms and conditions or his general terms and conditions of purchase in counter-confirmations or in any other way.
2. Deviations from these general terms and conditions of trade are only effective, if we have confirmed them in writing.
3. These general terms and conditions of trade replace all previous terms of business.

§ 2 Offer and Conclusion of Contract, Content of Performance Obligation

1. Our offers are subject to change without notice and are not binding. Declarations of acceptance and all orders require our written confirmation to be legally effective. The same applies to supplements, modifications and additional agreements.
2. Drawings, illustrations, measurements, weights or other performance data are only binding, if this is expressly agreed in writing. The same applies with respect to any other specific characteristics and in the case that the product should be fit for a particular purpose.
3. In case of order upon sample or model, only the essential characteristics of the sample or model are deemed to be required, unless something different has been expressly agreed in writing. In the absence of any other express written agreement, these characteristics are, in the case of order upon sample or model, deemed to be the comprehensive and exclusive determination of the content of our performance obligation.
4. Public statements of third persons, especially in advertising, regarding the characteristics of the product are, in the absence of other express written agreements, not content of the contract.

§ 3 Price

1. The prices are subject to change without notice. All orders are accepted exclusively on the basis of the price applicable at the time of the order. Our prices are to be understood as exclusive of VAT and for deliveries ex seller's works, loaded free on board of truck or rail.
2. Any discounts allowed as well as reimbursement of turnover and freight become inapplicable in case of judicial or extra-judicial settlement proceedings, bankruptcy or compulsory winding-up as well as in case of default of payment for more than one month.
3. Regarding installment contracts as well as all purchases upon call we charge the price of the day of delivery. The same applies to all other contracts, if delivery takes place more than one month after conclusion of the contract. Any delays in delivery for which we are responsible, however, do not lead to price increases.

§ 4 Shipment and Passing of Risk

Shipment is, also in case of freight-paid delivery, at the customer's/purchaser's risk. We assume no liability whatsoever for any damage or loss occurred during transportation. If no particular method of shipment has been agreed, shipment takes place according to our best judgement without any obligation to use the cheapest method of shipment. Shipment expenses have to be reimbursed to us. Risk passes to the other contracting party as soon as the consignment has been handed over to the person carrying out the transportation or as soon as it has left our warehouse for the purpose of shipment. If, without our fault, shipment is impossible or delayed, risk passes to the customer/buyer upon notification of readiness for shipment.

§ 5 Over- and Under-Deliveries, Partial Deliveries.

Over- or under-deliveries by up to 10 % as well as usual tolerances are permissible and do not entitle the customer/purchaser to make a complaint. This applies for all orders. Partial deliveries are permissible and are charged separately.

§ 6 Orders On Call

In the case of orders on call or similar, the customer/purchaser is obliged, unless otherwise agreed in writing in the individual case, to take delivery of the ordered products within a reasonable period of time, at the latest six months after the date of order.

§ 7 Payment

1. Unless otherwise agreed, our invoices are payable within 8 days of the date of invoice.
2. We are entitled, irrespective of any terms and conditions of the customer/purchaser to the contrary, to set payments off first against older debts of the customer/purchaser and in this event we shall inform the customer/purchaser of the effected set-off. If costs and interest have already arisen, we are entitled to set the payment off first against the costs, then against the interest, and finally against the principal claim.
3. A payment is deemed to have been made only when we have the sum at our disposal. In the case of cheques, payment is deemed to have been made only when the cheque is honoured. We only accept cheques and bills of exchange as conditional payment (*datio in solutum*), and bills of exchange only after separate agreement.
4. If the customer/purchaser falls into arrears with payment, we are from the time of default on, entitled to charge interest at a rate of 8 % p. a. over the base interest rate fixed by the Austrian National Bank for the last calendar day of the past calendar half-year.
5. If circumstances become known to us that call into question the creditworthiness of the customer/purchaser, especially if a cheque is not honoured or if the customer/purchaser stops payment, or if other circumstances become known that call into question his creditworthiness, we are entitled to make the entire remaining debt due. This applies also, if we have accepted cheques. In this case we are, furthermore, entitled to request advance payments or a security deposit.
6. The customer/purchaser is, also in the case of counterclaims or deficiency claims, only entitled to set off or to withhold or reduce payments, if the counterclaims have been acknowledged by an unappealable finding of the court or if they are undisputed.
7. The prohibitions of assignment included in the orders / conditions of purchase / general terms and conditions of our customers are considered as not agreed.

§ 8 Obligations to Supply and to Take Over the Delivery, Return of the Goods

1. The delivery times in our offers are subject to change by us without notice. Delivery dates and periods, which may be agreed to have binding character, have to be fixed in writing. In any case, the delivery dates refer to completion in our works.
2. Our specifications regarding delivery times are made to the best of our knowledge and, unless fixed dates have been expressly agreed, are binding in an approximative way and may diverge from the actual delivery. A delivery time of two weeks before or after the stated delivery time is admissible and is deemed to be still on 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. Claims for damage caused by delayed deliveries are excluded, unless the default is caused by at least gross negligence on our part.

4. The customer/purchaser is obliged to take over the products. This will not affect any claims arising out of defectiveness of the delivered products. In case of early delivery within the meaning of paragraph 2 and in so far as the delivered quantity exceeds the admissible variations (§5) there is no obligation to take over the products; the same applies in case of defective products 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 products.

5. At our request, the customer/purchaser is obliged to return to us for the purpose of examination the products that are subject to his complaint in the state of delivery. Furthermore, the customer/purchaser is only entitled to return the goods upon our express consent in writing.

6. 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 Guarantee

1. The period of guarantee for the products supplied by us is six months. It starts with the date of delivery.

2. In respect of the customer's/purchaser's duty of inspection and to notify defects, the provisions of §§ 377 and 378 UGB (Austrian Business Code) apply to our deliveries with the following provisions: The defects have to be notified immediately; within the meaning of these provisions we are particularly not obligated to guarantee if the defect could have been detected with proper examination before the beginning of the processing and has not been notified before the beginning of the processing. Failure to notify defects in due time also releases the seller from liability for consequential damages. The seller cannot refer to the failure to timely notify the defects if he has intentionally caused or concealed the defect.

3. If the seller's operating and maintenance instructions are not followed, if modifications are made to the products, if parts are exchanged or if consumables are used that do not meet the original specification, there is no guarantee, unless the customer/purchaser disproves an appropriately substantiated assertion on our part that the respective defect has been caused only by one of these circumstances.

4. In case of justified notification of defects on time we are obliged to remedy the defects of the delivered products, free of charge, or, at our discretion, to provide replacement. We are also entitled, at our discretion, to credit the decrease in value or to take back the products that are subject to complaint against refund of the purchase price.

5. If, after a reasonable period of time, the remedy of defects or the replacement fail, the customer/purchaser may demand a reduction of the price and, if there is a fundamental breach of contract, at his discretion, the cancellation of the contract.

6. Guarantee claims are, the other requirements met, available only in case of defects that have existed at the time of delivery (in case of dispatch at the time of handing over to the carrier). The respective burden of proof lies upon the customer/purchaser. The application of the legal fiction of defectiveness as provided in § 924 ABGB (Austrian Civil Code) is excluded. Responsibility for normal wear and tear is, in any case, excluded.

7. Only the direct customer/purchaser has guarantee claims against us; they cannot be assigned to third persons. This does not apply if the seller is obligated to mere payments in cash in accordance with paragraphs 4 and 5.

8. The above paragraphs and § 14 contain in a comprehensive and exclusive way the regulation on guarantee for the products and exclude any other guarantee claims whatsoever. In particular, there is no recourse in the sense of § 933b ABGB.

§ 10 Claims For Damages

1. Claims for damages on the basis of non-performance or defective performance, of positive violation of contractual duties (positive Forderungsverletzung), of culpa in contrahendo, of tort as well as on any other legal basis against us and against our vicarious agents are excluded, unless there has been gross negligence or intent. This does not apply to the harm that the defect itself represents and the consequential harm caused by a defect, if liability is based on an express written warranty that is designed to protect the customer/purchaser against the risk of such kinds of damage.

2. Liability for damage regarding life, bodily integrity and health remains unaffected hereby.

3. The proof of fault and the proof of gross fault (gross negligence or intent) lies upon the customer/purchaser.

4. If there is, according to the previous provisions, liability for harm that a defect itself represents, we are, also regarding the claim for damages, obliged, at our discretion, to remedying the defect, to replacement or to compensation in form of money. If remedying or replacement fail after a reasonable period of time, the customer/purchaser can in any case demand compensation in form of money.

5. With regards to claims for damages resulting from the defectiveness of the products, one has to apply the provisions on the duty to examine the goods and to give notification of any defects of §§ 377 und 378 UGB (Austrian Business Code) pursuant to § 9 paragraph 2 accordingly. The same applies to claims for compensation resulting from tort and culpa in contrahendo if the damaging behaviour is reflected in a damage of the good. The liability by no means applies to damages due to a defective service if the defect could have been detected through proper examination before the processing started.

6. We are not liable for damages of our products when not used as intended. Any use that is contradictory to the technical specifications given in our product information service, which can be retrieved online (www.egger.at, menu item "Produkte"), is also regarded as improper.

7. In any case, possible claims are limited to claims for compensation of the damage that was foreseeable at the time of conclusion of the contract.

§ 11 Reservation of Ownership, Securities.

Until all debts (including all balances owed from a current account) to which we are entitled opposite the contractual partner on any legal basis, now or in the future, are settled, the following securities are granted to us; we shall release them upon request, at our discretion, in so far as the value of the securities lastingly exceeds the debts by more than 20 %:

a) The products remain our property. If the products are processed or reworked or combined with other goods in a way that separation is impossible, there is co-ownership in the unitary good. Our reserved property remains upright in our joint ownership quota with the amount of the invoice value. The customer/purchaser holds our (joint) property free of charge. Goods in which we have (joint) ownership are hereinafter referred to as goods subject to reservation.

b) The customer/purchaser is entitled to process and transfer goods subject to reservation in the ordinary course of business, provided that he is not in default. The goods may not be pledged or transferred by way of security. The customer/purchaser already now assigns to us in full by way of security all claims arising out of a resale or on any other legal basis (insurance, tort) relating to the goods subject to reservation (including all balances from a current account). The customer/purchaser is obliged to set without delay all acts of publicity (in particular notes in his books) that are required for the effectiveness of the assignment. We authorise him, with revocable character, to collect the claims assigned to us on our account in his own name. This authorisation to collect can only be revoked, if the customer/purchaser does not properly fulfil his payment obligations.

- c) If third parties seize the goods subject to reservation, the customer/purchaser shall draw the third parties' attention to our ownership and inform us without delay.
- d) If the customer/purchaser acts in violation of the contract – especially in case of delay in payment - we are entitled to take back the goods subject to reservation or, should the situation arise, request assignment of the customer's/purchaser's claims for restitution opposite third parties. Our taking back the goods subject to reservation or pledging them does not constitute withdrawal from the contract.
- e) The customer/purchaser is obliged to provide us, at our request, with a precise list of the claims assigned to us pursuant to this provision, with names and addresses of the purchasers, as well as to grant us all information necessary for claiming the assigned rights.
- f) All costs arising from the taking back of the delivery item bears the customer/purchaser. We are entitled to make use of the repossessed delivery item in the open market.

§ 12 Modification of Design

We reserve the right to make at any time modifications of the design. We are, however, not obliged to make such modifications to products already delivered.

§ 13 Confidentiality

Unless otherwise agreed expressly and in written form, the information submitted to us in connection with orders is not considered confidential.

§ 14 Third Party Rights

1. Pursuant to the other provisions of this contract the seller is only liable for third party rights based on industrial or other intellectual property if the industrial property right is based on the law of the country of the customer'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 seller's obligation according to paragraph 1 does not apply to cases when interference in rights results from the fact that the seller has oriented himself to technical drawings, sketches, formulas or other specifications provided by the customer/purchaser. In this case the customer/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. If a third party claims to be violated in industrial property rights to the customer/purchaser, the customer/purchaser has to immediately inform the seller of all fundamental circumstances.
4. Unless otherwise regulated, §§ 9 and 10 apply to claims for guarantee and damages due to interference in rights of third parties. As concerns the beginning of the period of guarantee the legal provisions apply. The customer/purchaser has to reprimand the rights of third parties with analogous use of the provisions of § 9 paragraph 2.

§ 15 Taking Back of Products

In the event that the products are taken back, due to mutual consent or in the case of inability to pay, we shall credit the current value taking into account the condition of the products, provided they can be otherwise used. Sending back of the products is only admissible with our express written consent.

§ 16 Applicable Law, Place of Performance, Place of Jurisdiction, Partial Voidness.

1. To these general terms and conditions of trade and to the entire legal relationship between us and the customer/purchaser applies Austrian law, excluding of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. Place of performance for all reciprocal obligations is the place of our supply works.
3. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court competent for the seat of the supply works.
4. Should a provision of these general terms and conditions of trade or a provision within the framework of other agreements be or become invalid, the validity of all other provisions or agreements remains unaffected.