

Validity: from 23<sup>rd</sup> of September, 2016  
Reference No. 0800.0000

Egger Polska Sp. z o.o.  
ul. św. Michała 43  
61-119 Poznań (PL)  
T +48 61 650 36 01

## General Terms and Conditions of Trade of Egger Polska Sp. z o.o.

Our General Terms and Conditions, mentioned below, apply to contractual relationships with traders, under the structure of their business operations, and with legal entities under public law or other business entities (the "orderer/purchaser").

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

1. Our deliveries, services, invitations to conclude a contract 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 any terms and conditions of the orderer/purchaser is herewith denied. This also applies if the orderer/purchaser, 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 Invitation to conclude a contract and contract-execution

1. Our invitations to conclude a contract are subject to confirmation and are not binding. The invitation to conclude a contract does not constitute an offer in the meaning of the Polish Civil Code. Acceptance declarations and all orders require our written confirmation in order to be legally effective. The same applies to supplements, amendments or side agreements. Egger Polska's offers or invitations to conclude a contract may only be accepted without any modifications. The order placed by the orderer/purchaser constitutes an offer in the meaning of the Polish Civil Code.
2. Drawings, illustrations, measures, weights or other specifications are only binding if this has been specifically agreed in writing.

### § 3 Prices

1. Pricelists 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 FCA (free carrier), our delivering plant or our warehouse (Incoterms 2010).

[**CMS comment:** We indicated the relevant Incoterms rule. We recommend, however, indicating the place of your delivering plant (if possible). If your intention of the above provision was different, please let us know.]

2. Discounts possibly granted as well as turnover- and freight-refunds are cancelled in case of settlement proceedings in court or out-of-court or 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 orderer/purchaser 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 each 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 invitations to conclude a contract or orderer/purchaser's offers or orders. 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 – approximate; 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. 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 wilful conduct on our part.

**[CMS comment:** As we indicated in the comment to paragraph 4 above, under Polish law excluding liability for damage caused intentionally is not allowed. It is, however, admissible to exclude liability for gross negligence.]

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 withhold the delivery 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 withhold 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 the goods supplied by us is one year. 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 article 563 of the Polish Civil Code.

2. If operating or maintenance instructions are not complied with, if the goods are modified, parts exchanged or consumables used which do not conform to the original specification or if our goods are used improperly, the orderer/purchaser loses the rights under the warranty, unless he 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 obliged 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 goods 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 wilful conduct on our side or 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 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.

**[CMS comment:** As we indicated in the comment to paragraph 4 above, under Polish law excluding liability for damage caused intentionally is not allowed. It is, however, admissible to exclude liability for gross negligence.]

#### **§ 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. The liability for damages arising from injury to life, body or health due to 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 goods 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, or their vicarious agents) with respect to the quality of the goods or, in case of labelling, with respect to certain characteristics of the goods, unless the ignorance of these advertising statements is based on intent 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 for payment for the delivery 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 which have not been paid for 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 the orderer/purchaser's (co-)ownership in the uniform matter will be 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) will be 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 upon separate agreement the assignment of the claim for return on the side of the orderer/purchaser against third parties. If we take back or pledge the retained goods 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 goods 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. The orderer/purchaser undertakes to procure that goods produced in accordance with drawings, sketches, models or other equal descriptions or specifications provided by the orderer/purchaser (the “Materials”) will not infringe any of the third parties’ industrial property rights and third-party copyrights (the “Intellectual Property Rights”).

[**CMS comment:** We understand that the intention of this provision was to limit Egger’s liability for the infringement of third party rights to the minimum.. Under Polish law Egger’s liability will occur when damage suffered by the orderer/purchaser due to the infringement of third party rights was caused by Egger intentionally – such liability may not be excluded. As we mentioned, liability for damages caused due to gross negligence may be, however, excluded.]

2. 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 the Intellectual Property Rights if the goods were produced in accordance with the Materials.

3. The orderer/purchaser is obligated to inform us immediately in writing about any 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. In particular, the orderer/purchaser shall undertake all necessary steps to ensure that we enter into court proceedings or any negotiation proceedings related to the claims stated or put forth by a third party for the infringement of the Intellectual Property Rights related to the use of the goods. If the orderer/purchaser ceases to use the goods, 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 the Intellectual Property Rights. The orderer/purchaser will give us all information necessary and grant other adequate support.

4. If the goods are to be produced in accordance with the Materials, the orderer/purchaser hereby grants us a non-exclusive non-transferable, royalty-free license, without the right of sublicense, to use the Materials in the scope of saving and multiplication on any storage media using the techniques of printing, information technology, photography, digital, multimedia, audiovisual, phonographic, magnetic disc recording and other techniques known at the moment of granting the license, in each case when it is necessary for the purpose of the proper execution of our obligations under the contractual relationship with the orderer/purchaser.

5. §§ 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. Polish 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 Polish 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. The exclusive place of jurisdiction – for all disputes arising directly or indirectly from the contractual relationship – is Poznań.

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.

[**CMS comment:** From the perspective of Polish law there are no obstacles to agreeing that the GTCs in the language of the contract are binding. However, taking into account practical aspects, we recommend indicating that the Polish version prevails. This is mainly because the Polish courts are competent to adjudicate disputes arising from the contracts based on these GTCs. If the English version of the document is binding, the Polish court assessing the case may not accept the Polish translation of the document prepared by Egger and may order the original English version to be translated into Polish by a sworn translator. In such

a case the sworn translation would be binding in court proceedings.

Also under Polish law there are no legal obstacles to the order/contract itself being in English and the binding version of the GTCs being in Polish. It is a common practice for businesses in Poland to have bilingual versions of their GTCs in one document. You may consider creating one document containing both language versions and delivering it to your customers irrespective of which language a particular customer uses to place orders.

Please let us know if having the Polish version as the binding version does not suit you. In such a case we would amend the above provision accordingly.]