

**S.C. EGGER Retail Products S.R.L**

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## **General Terms and Conditions of Trade**

The following general terms and conditions of trade are effective and apply to all production, trade and/ or service supply activities carried out by and between **(i)** various professionals, as well as legal entities under public law, including those which manage investments out of public funds, on one side (hereinafter referred to as the **"Contracting Party"**) and **(ii)** the company EGGER Retail Products S.R.L., on the other side (hereinafter referred to as **"EGGER"**).

In interpreting the terms and conditions herein, where required, **(i)** words denoting the singular shall be deemed as including the plural and vice versa, and **(ii)** any reference to the Contracting Party shall be deemed as referring to the "Customer", "Purchaser" or any equivalent wording used within the specific conditions that EGGER and its contracting party will agree upon with respect to each delivery or group of deliveries and/ or, respectively, to each category of services, as to refer to EGGER's counterparty.

### **§ 1 Application of the General Terms and Conditions of Trade:**

1. EGGER's deliveries, services and offers are provided on the basis of these general terms and conditions of trade. For the avoidance of any doubt, the terms and conditions set forth herein are also applicable to all future production, trade and service supply activities carried out between EGGER and the Contracting Party. These general terms and conditions of trade shall be deemed as accepted by the Contracting Party, at the very latest, upon the time the latter receives the goods or services provided/ supplied by EGGER.

The application of the general terms and conditions of trade of the Contracting Party, either in full or in part, is herewith excluded. Therefore, any reference to the Contracting Party's general terms and conditions and/ or its general terms and conditions of purchase shall be deemed as unwritten and as non-applicable to the contractual relationships between EGGER and the Contracting Party.

2. Any derogations, amendments or completions to these general terms and conditions of trade shall be effective only if such will be provided in writing and confirmed by signature of the legal representative(s) of EGGER.

3. These general terms and conditions of trade shall replace any and all general terms and conditions previously agreed by EGGER and the Contracting Party.

### **§ 2 Offers and Conclusion of Contracts. Content of Performance Obligation:**

1. EGGER's offers are subject to change without any prior notice communicated by EGGER to the Contracting Party and are not binding. Any and all orders, issued by the Contracting Party, require the written confirmation of EGGER's legal representative(s) to be legally effective. The same applies with respect to the valid execution of supplements, modifications and additional agreements to the EGGER's offers.

2. Drawings, illustrations, measurements, weights or other performance data are only binding on EGGER in executing the order received from the Contracting Party, only if such has been previously expressly agreed in writing by the aforementioned parties. The same applies with respect to any other specific characteristics and in the case that the merchandise should be fit for a particular purpose.

3. In case of order upon sample or model, EGGER shall be bound to deliver the goods/ services having only the essential characteristics of the sample or model that are deemed to be required, unless something different has been expressly agreed in writing by EGGER and the Contracting Party. 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 EGGER's performance obligation.

4. Public statements of third persons, especially in advertising, regarding the characteristics of the merchandise manufactured and/ or commercialized by EGGER, shall not trigger contractual obligations on the latter in the absence of other express written agreements between EGGER and the Contracting Party regarding such merchandise.

### § 3 Price

1. The prices are subject to change without any prior notice communicated by EGGER to the Contracting Party. All orders shall be accepted by EGGER exclusively on the basis of the price applicable at the time of the order. "EGGER's prices" are to be understood as exclusive of VAT and for deliveries ex seller's works, loaded free on board of truck or rail, if the parties do not agree different agree by orders and orders' confirmations.

2. Any discounts granted by EGGER, as well as any reimbursement of turnover and freight shall be cancelled in case of judicial or extra-judicial settlement proceedings between EGGER and the Contracting Party, bankruptcy or winding-up of the Contracting Party, as well as in case of the Contracting Party's default of payment for more than one month.

3. In case of installment contracts (*i.e.*, with successive deliveries), as well as in the case of all purchases upon call, EGGER shall charge the price applicable on the day of delivery. The same applies to all other contracts or orders, if delivery will take place more than one month after the conclusion of the contract/acceptance of the order. Any delays in delivery for which EGGER is responsible, however, do not lead to price increases up against the prices applicable on the day when the delivery should have been made.

### § 4 Shipment and Passing of Risk:

The delivery condition of the goods shall be agreed by the Contracting Parties and indicated into the orders and orders' confirmations that the Contracting Parties shall issue during the development of the trade relations between them.

The transfer of the good's risk will take place according to the delivery condition agreed between the Contracting Parties, in accordance with Incoterms 2010.

### § 5 Over and Under Deliveries. Partial Deliveries:

Over- or under-deliveries by up to 10 %, as well as usual slight tolerances, are permissible and do not entitle the Contracting Party to invoke the exception of non-execution of the contract. Partial deliveries are permissible and shall be charged separately.

### § 6 Orders On Call:

In the case of orders on call or similar, the Contracting Party is obliged, unless otherwise agreed in writing by both parties hereof with respect to that particular case, to take delivery of the ordered goods within a reasonable period of time, which cannot exceed six months as of the issuing date of the order (provided that EGGER has accepted the order).

### § 7 Payment:

1. Unless otherwise agreed, the invoices issued by EGGER, for the deliveries/ services supplied, are fully payable within 30 days as of issuing date of the invoice, net.

2. In case the Contracting Party has several debts towards EGGER, irrespective of any terms and conditions of the Contracting Party to the contrary, EGGER reserves the right to set payments off first against older debts of the Contracting Party and, in this event, EGGER shall inform the Contracting Party

of the effected set-off. If additional costs and interest have already arisen, EGGER reserves the right to set the payment off first against the additional costs, then against the interest, and finally against the principal claim (*i.e.*, the invoiced amount corresponding to the goods delivered/ services supplied).

3. Any payment shall be deemed to have been made as of the time when EGGER will have the sum at its disposal. When payment is made by cheques, payment shall be deemed as effectively performed only when the cheque will be honoured. EGGER only accepts cheques, promissory notes and bills of exchange as alternative payment instruments, while the acceptance of bills of exchange shall be made only pursuant to separate agreements executed by EGGER and the Contracting Party to that effect.

4. If the Contracting Party falls into arrears with payment, EGGER is, from the time of default on, entitled to charge a penalty interest at a rate of 8 % p. a. over the last reference interest rate fixed and communicated by the National Bank of Romania.

5. If circumstances become known to EGGER that call into question the creditworthiness of the Contracting Party, especially if a cheque issued by the latter cannot be honoured or if the Contracting Party stops payment, or if other circumstances become known that call into question the Contracting Party's creditworthiness, EGGER is immediately entitled to declare as due all and entire remaining debts afferent to the services supplied/ goods delivered. This applies also if EGGER has accepted cheques as alternative payment instruments. In this latter case, EGGER has also the right to request from the Contracting Party advance payments, security deposit or other guarantees.

6. The Contracting Party is entitled, in case of counterclaims or deficiency claims related to the services supplied/ goods delivered by EGGER, to set off or to withhold or reduce the payments owed to EGGER, only if the respective counterclaims or deficiency claims have been previously sustained and acknowledged by a final and binding decision of the competent court of law or only if EGGER had expressed in writing its consent to that effect.

7. The prohibitions of assignment included in the orders/ conditions of purchase/ general terms and conditions of the Contracting Party are considered as not agreed by and non-applicable to the parties hereof, in accordance with Article §1, paragraph 1 (final theses) above.

#### **§ 8 Obligations to Supply and to Take Over the Delivery:**

1. The delivery times indicated in EGGER's offers are subject to change by the latter without prior notice communicated by EGGER to the Contracting Party. Delivery dates and periods, which may be agreed to have binding character, have to be fixed by EGGER and the Contracting Party in writing. In any case, the delivery dates shall refer to the time when the goods are completed at EGGER's works.

2. EGGER's specifications regarding delivery times are made to the best of its knowledge and, unless fixed dates have been expressly agreed by the parties hereof, such are deemed as approximate times that may diverge from the actual delivery times. A delivery time of two weeks before or after the stated delivery time or period is admissible and is deemed to be still on time, without triggering EGGER's liability for untimely performance of its delivery obligation.

3. Delays in deliveries and performance owing to force majeure and to events which render deliveries more difficult or impossible for EGGER – particularly included are strikes, governmental orders, etc. (hereinafter referred to individually as the "**Hindrance**"), even if such Hindrances occur at EGGER's pre-suppliers or at the latter's sub-suppliers – shall not be trigger EGGER's contractual liability, even if deadlines and dates have been agreed as being binding. In such cases, EGGER shall be entitled to postpone the delivery and/ or service supply by the duration of the Hindrance plus by a reasonable start-up time, or to even unilaterally cancel the contract, in total or in part, with respect to the contractual part not yet fulfilled. Should the Hindrance exceed three months, the Contracting Party has the right to unilaterally cancel the contract with respect to the contractual part not yet fulfilled, subject to having settled and communicated to EGGER a reasonable and proper subsequent deadline. If the delivery time extends, or if EGGER is released from its contractual performance obligation due to the occurrence of a Hindrance, the Contracting Party hereby acknowledges and declares that it may not and it will not do anything of nature to derive any damage compensation claims from these circumstances. EGGER and the Contracting Party hereby convene that any and all claims for damage caused by delayed deliveries are excluded, unless the delay is caused by at least gross negligence on EGGER's part.

4. The Contracting Party is obliged to take over the goods. This will not affect the right of the Contracting Party to formulate any claims arising out of defectiveness of the delivered goods. The Contracting Party will have the obligation to take over the goods delivered by EGGER in the situation detailed within paragraph 2 of this Article 8, on the date the goods are effectively delivered. In case of early delivery within the meaning of paragraph 2 and in so far as the delivered quantity exceeds the admissible variations (set forth as per Article 5 hereabove), the Contracting Party has no obligation to take over 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.

**§ 9 Guarantee obligation**

**§ 9.1. General provisions**

1. The guarantee obligation set forth under this Article 9 shall subsist on EGGER solely for the hidden flaws that have existed at the time of delivery of the ordered goods (in case of dispatch - at the time of handing over to the first carrier) and only for the hidden flaws which had been known or should have been known by EGGER, as detailed in Section § 9.2 below. The burden of proof regarding the existence of the hidden flaws at the time of delivery or the fact that these had been known or should have been known by EGGER lies upon the Contracting Party. EGGER's responsibility for the goods' normal wear and tear is, in any case, excluded.

2. The right of guarantee claims is granted solely to the Contracting Party and cannot be assigned to third persons.

3. Without prejudice to the provisions of paragraphs 1 and 2 of the present Article 9.1., in case of goods/merchandise delivered upon sample or model, EGGER hereby guarantees that the delivered goods/merchandise shall have the characteristics of the sample or model, in accordance with the provisions of paragraph 3 of Article 2 above.

4. The present Article 9 contains in a full, comprehensive and exclusive way, the parties' agreement on the guarantee rights granted by EGGER to the Contracting Party for the products delivered/ services supplied and exclude any other guarantee claims whatsoever.

5. Should the Contracting Party claim the existence of certain flaws of the goods delivered by EGGER, at EGGER's request, it will have the obligation to return to EGGER, for the purpose of examination, the goods that are subject to complaint, in the state such were delivered by the latter. For the avoidance of any doubt, the Contracting Party shall be entitled to return the goods solely further to receiving EGGER's express written consent in this respect.

6. Upon the time the ordered goods are handed over by EGGER, the Contracting Party (through its representatives or through the person carrying out the transportation, as the case may be) has the obligation to verify the status of the merchandise. In case the Contracting Party detects, further to verifying the merchandise, the existence of certain flaws with respect to the handed-over goods, it shall have the obligation to inform EGGER, in writing and without delay. In lack of such notification, it shall be presumed that EGGER has properly fulfilled the obligation to hand over the ordered goods.

**§ 9.2. Guarantee against hidden flaws**

1. EGGER shall be held liable for the hidden flaws of the merchandise/ goods delivered to the Contracting Party provided that it has been aware of such or should have been aware of such as of the date the contract was concluded. Pursuant to the applicable legal provisions, a hidden flaw is deemed as the flaw which, as of the date the merchandise/ goods were handed over, could not be detected, without specialised assistance, by a prudent and diligent buyer.

2. Should the Contracting Party detect hidden flaws of the merchandise/ goods delivered, it shall have the obligation to notify EGGER in relation thereto within 2 working days. On the basis of EGGER's legal obligation to guarantee against the hidden flaws that it has been aware of such or should have been aware of such as of the date the contract was concluded, the Contracting Party may benefit, as the case may be, and in accordance with the provisions below, of the following:

(a) the remedy of the hidden flaws, performed by EGGER or on the latter's expense;

- (b) the replacement of the delivered merchandise/ goods with similar merchandise/ goods having no hidden flaws;
- (c) the reduction of the price; or
- (d) the cancellation of the contract, except for the case when the abovementioned 2 working day term will not be observed.

3. The period of guarantee against hidden flaws for the products supplied by EGGER is six months. It starts with the date of delivery.

4. The Contracting Party may not invoke EGGER's obligation of guarantee against hidden flaws if it has caused or deliberately concealed the defectiveness of the merchandise.

5. As concerns the goods delivered by EGGER and further processed by the Contracting Party, EGGER shall be relieved from the guarantee obligation if:

- (i) the defect could have been detected by the Contracting Party, with proper examination before the beginning of the processing and
- (ii) has not been notified to EGGER before the beginning of the processing of the delivered merchandise/ goods, in accordance with paragraph 2 of this Article 9.2. Failure to notify defects in due time also releases EGGER from liability for consequential damages. EGGER cannot prevail itself from the Contracting Party's failure to timely notify the defects if it has intentionally caused or concealed the respective defects.

6. If EGGER's operating and maintenance instructions are not followed, if modifications are made to the products delivered by EGGER, if parts are exchanged or if consumables are used that do not meet the original specification of the products delivered, there is no guarantee against hidden flaws in the burden of EGGER, unless the Contracting Party disproves an appropriately substantiated assertion on EGGER's part that the respective defect has been caused only by one of these circumstances. Any use of the products delivered by EGGER, that is contradictory to the technical specifications given in EGGER's product information service, which can be retrieved online ([www.EGGER.com](http://www.EGGER.com), menu item "Produce"), is also regarded as improper.

7. In case of justified notification of defects made on time in accordance with the provisions of paragraph 2 of the present Article 9.2, EGGER shall be obliged to remedy the defects of the delivered goods, free of charge, or, at EGGER's sole discretion, to provide replacement of the goods. EGGER is also entitled, at its sole discretion, to credit the decrease in value or to take back the goods that are subject to complaint against refund of the purchase price, the contract being thus partially cancelled with respect to the goods taken back, in accordance with the provisions of paragraph 2 letter (d) of the present Article § 9.2.

8. If, after a reasonable period of time, the remedy of defects or the replacement fail, the Contracting Party may demand a reduction of the price, in accordance with the provisions of paragraph 2 letter (c) of the present Article § 9.2, and, if there is a fundamental breach of contract, the unilateral cancellation of the contract, pursuant to the provisions of paragraph 2 letter (d) of the present Article § 9.2.

9. In any case, potential claims that may be formulated by the Contracting Party in accordance with the provisions of this Article § 9.2 are limited to claims for compensation of the damage that was foreseeable at the time of conclusion of the contract.

**§ 10 Reservation of Ownership, Securities.**

Until all debts (including all balances owed from a current account) to which EGGER is entitled to from the Contracting Party on any legal or contractual basis, now or in the future, are settled, the Contracting Party shall grant to EGGER proper guarantees for payment. EGGER shall release them upon request, at its sole discretion, in so far as the value of the securities lastingly exceeds the debts by more than 20 %. EGGER may opt between any security forms provided under law, including for one of the following:

a) The goods remain in EGGER's property. If the goods are processed or reworked or combined with other goods in a way that separation is impossible, there is co-ownership in the unitary good. EGGER's reserved property shall remain upright in the joint ownership quota with the amount of the invoice value. The Contracting Party holds (joint) property free of charge. Goods in which EGGER shall have (joint) ownership are hereinafter referred to as goods subject to reservation.

b) The Contracting Party is entitled to process and transfer goods subject to reservation in the ordinary course of business, provided that it is not in default as concerns the payments it owes to EGGER. The goods may not be pledged or transferred by way of security. The Contracting Party hereby agrees that it assigns to EGGER in full 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 Contracting Party is obliged to execute all necessary deeds and to set without delay all acts of publicity (in particular notes in its accounting books) that are required for the effectiveness of the assignment and for properly observing the publicity requirements set forth under the applicable law. EGGER hereby authorises the Contracting Party, with revocable character, to collect the claims assigned to EGGER on EGGER's name. This authorisation to collect can only be revoked if the Contracting Party does not properly fulfil its payment obligations towards EGGER.

c) If third parties seize the goods subject to reservation, the Contracting Party shall draw the third parties' attention to EGGER's ownership thereof and shall inform EGGER without delay, taking in the meantime all necessary measures to protect and preserve EGGER's rights over the goods subject to reservation.

d) If the Contracting Party acts in violation of the contract – especially in case of delay in payment - EGGER shall be entitled to take back the goods subject to reservation or, should the situation arise, request assignment of the Contracting Party's claims against third parties. The acts of EGGER in the form of taking back the goods subject to reservation or pledging them do not constitute and shall not be deemed as unilateral cancellation of the contract.

e) The Contracting Party is obliged to provide EGGER, at the latter's request, with a precise list of the claims regarding the goods subject to reservation, which have been assigned to EGGER pursuant to the provisions of this Article § 10, with names and addresses of the Contracting Party's purchasers, as well as to grant EGGER all information necessary for claiming the assigned rights.

f) All costs arising from the taking back of the delivery item shall be incumbent on the Contracting Party. EGGER shall be entitled to make use of the repossessed delivery item in the open market.

#### **§ 11 Modification of Design:**

EGGER hereby reserves the right to make at any time modifications of the design. However, EGGER is not and shall not be at any time obliged to make such modifications to products already delivered to the Contracting Party.

#### **§ 12 Confidentiality:**

Unless otherwise agreed expressly and in written form, the information submitted to EGGER in connection with orders is not considered confidential. The Contracting Party hereby undertakes the obligation to keep confidential any and all information related to the contract(s) executed with EGGER and to the products delivered by EGGER, the prices used by the latter, rebates, discounts, and any other elements of financial nature or of any other nature that the Contracting Party acknowledged during the execution of the contract(s) concluded with EGGER.

#### **§ 13 Third Party Intellectual or Industrial Property Rights:**

1. Pursuant to the other provisions of this general terms and conditions, EGGER is only liable for third party rights based on industrial or other intellectual property, provided that the industrial property rights is based on the law of the country of the Contracting Party billing address. EGGER shall be only liable for observing the rights of third parties according to the law of other countries solely upon express and written agreement executed by EGGER.

2. EGGER's obligation according to paragraph 1 of this Article § 13 does not apply to cases when interference in rights results from the fact that EGGER has oriented himself to technical drawings, sketches, formulas or other specifications provided by the Contracting Party. In this case, the Contracting Party hereby expressly declares that it shall undertake full liability and shall indemnify and hold EGGER 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 Contracting Party, the latter has to immediately inform EGGER of all fundamental circumstances.
- 4. Unless otherwise regulated, Article 9 shall 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 shall apply. The Contracting Party has to reprimand the rights of third parties with analogous use of the provisions of 9. 1 and 9.2 (specially 9 paragraph 5).

**§ 14 Taking Back of Goods:**

In the event that the goods are taken back, due to mutual consent of EGGER and of the Contracting Party or in the case of the Contracting Party's inability to pay, EGGER shall credit the current value taking into account the condition of the goods, provided they can be otherwise used. Sending back of the goods is only admissible with EGGER's express written consent to that effect.

**§ 15 Applicable Law. Place of Performance. Place of Jurisdiction. Partial Voidness:**

- 1. To these general terms and conditions of trade the Romanian law shall apply, 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 EGGER's supply works.
- 3. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship established between EGGER and the Contracting Party is the court competent for the seat of the EGGER's supply works.
- 4. Should a provision of these general terms and conditions of trade be or become invalid, the validity of all other provisions hereof remains unaffected.

By signing below the present General and Terms of Conditions of Trade, the Contracting Party hereby declares that it has read, understood and agreed with the unusual standard clauses set forth herein which provide, within the meaning of Article 1,203 of the Romanian Civil Code (i) with respect to and as concerns EGGER - limitation of liability, unilateral termination rights and/or the right to suspend the execution of its obligations under the contract, and, (ii) with respect to and as concerns the Contracting Party - loss of rights or term, limitations regarding right to exercise a claim, restrictions on contracting with third parties, the automatic extension of the contract, the law applicable to the contract and the clauses by which derogation is agreed from the legal norms regarding the competence of the courts of law.

**Date and place:**                      **Date and place:**

**S.C. EGGER Retail Products S.R.L.**

**Contractor**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**As** \_\_\_\_\_

**As** \_\_\_\_\_

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