

General Terms and Conditions of Sale
of the Eckel & Sohn Maschinenbau GmbH & Co. KG,
D-55239 Gau-Odernheim

These general terms and conditions of sale are applicable for the world wide distribution with the exception of Germany, Austria and Switzerland (D-A-Ch)

§ 1 General

(1) Our General Terms and Conditions of Sale set out below shall form part of any agreement concluded with us for commercial transactions and undertakings. These Terms and Conditions shall apply in accordance with the most recent version and all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

(2) We hereby object to any counter confirmation, counter offer or other reference by the Customer to its own general terms and conditions. The Customer's own terms and conditions shall only apply if we have confirmed the same in writing.

§ 2 Offers; Orders

(1) Our offers shall not be binding; unless we have agreed on a commitment period for the offer.

(2) The Customer has to deliver obligatory samples on time and in a sufficient number free of cost. The samples, including packing material, will be returned with delivery of the subject of an order. Any refusal to accept returned goods will be at the expense of the Customer.

(3) Orders placed by the Customer shall not be regarded as accepted before they have been confirmed to us in writing. If we should fail to confirm in writing an agreement which we have entered into verbally or in a telephone conversation, then our invoice shall be regarded as confirmation.

(4) Documents such as illustrations, drawings, weight and measurement details which form part of the offer are only roughly authoritative; unless expressly described as obligatory.

(5) Any changes to articles or machines require our written approval. The Customer will bear the additional costs caused by such changes.

§ 3 Prices and Payment

(1) Our prices are in Euro and shall exclude any statutory VAT which shall be payable at the date of delivery.

(2) In principle, payments are due in Euro within 10 days with 2% cash discount or within 30 days net. Minimum invoice value is Euro 50. The Customer shall pay all bank charges incurred for international transfers. Deduction of 2% cash discount is not granted if other demands are due. The down payment invoice in accordance to subsection (3) is due immediately, and no later than 7 days after the invoice date.

(3) Unless agreed otherwise, the Customer shall make the payment as follows: 50% of the selling price upon order confirmation, 40% at indication of the dispatch readiness, 10% at acceptance or at the latest 1 month after delivery.

(4) Installation, repair and spare part invoices are immediately payable in full.

(5) In case of travel expenses, we will provide a separate invoice for travel expenses, time spent travelling, accommodation, catering and other expenditures. Travelling time will be charged according to our hourly rates. In case of repair orders outside the warranty, the Customer bears the travelling expenses even if it turns out that there is no defect.

(6) We are entitled to demand from the Customer, even after the confirmation of an order, a bank guarantee of a financial institution located within the European Union to provide security for our pecuniary claims. Every order confirmation is subject to the reservation that such a bank guarantee is put in place at the Customer's expense. If the financial circumstances of the Customer deteriorate to such an extent that our claims for payment are endangered, delivery can be refused until the invoice amount is paid. All demands immediately fall due if the Customer ceases to make payments or upon the commencement of composition settlement negotiations or insolvency proceedings regarding the Customer.

(7) If the invoice amount is overdue then we are entitled, without the need for a separate warning notice, to recover default interest in a proven amount but in any event an amount equalling 8% above the base rate of the European Central Bank. Further damages claims remain unaffected.

(8) If, as result of a change of law between the agreement date and the delivery date, additional or increased charges - in particular duties, levies, currency compensation payments, shall be payable, then we shall have the right to increase the purchase price accordingly. The same applies to any fees for examination.

(9) In case of early termination, we may - regardless of the assertion of a right to further compensation - charge a cancellation fee of 10% while for a special production run, after the production work has begun, 50% of the order value will be charged.

(10) The Customer shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us.

§ 4 Shipment and Delivery

(1) Our prices are correct ex works. The customer bears the costs of freight and packing. Transportation of the goods shall be at the risk of the Customer. This shall also apply in cases of any delivery free of charge and regardless of the means of transport used. Any transport insurance shall be provided only upon express demand of the Customer.

If transport is carried out or arranged for by the Customer, the Customer has to provide us with an export certificate at the latest within 1 week of delivery.

(2) The selection of the place of dispatch, the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to our reasonable discretion and be without the assumption of any responsibility on our part to choose the cheapest and fastest transport.

(3) As regards any obligation under the packaging regulation to take back the packaging used for transportation, the Customer bears the transportation costs for returning the used packing and the reasonable costs of its utilization. Where it is considered possible and useful for us to reuse the packaging, the Customer will bear any reasonable additional costs which arise in such a reuse of the packaging.

(4) Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding. The delivery period starts with the date of the order confirmation; however not before the Customer's required adduction of approvals, releases, obligatory product drawings, obligatory samples and any machine specifications to be filled out by the Customer as well as receipt of an agreed first installment.

(5) The Customer has to provide to us a sample delivery of the production tool at the latest 3 weeks (21 days) prior to the end of the delivery period for our function test. The sample delivery must include at least three times the machine capacity of sample parts. If the Customer fails to provide the sample delivery in due time, our delivery time will be delayed accordingly.

In case of deviations between the obligatory sample and the productions parts which lead to a modification of the machine design, the Customer shall bear the additional costs arising from the modification and be held liable for delayed delivery.

(6) We shall have the right to reasonable delivery in instalments.

(7) Our delivery obligation shall at all times be subject to timely and orderly receipt of the goods from our own suppliers.

(8) If the dispatch is delayed at the request of the Customer, the Customer will be charged storage costs, commencing from the notice of dispatch readiness, of at least 0.5% of the value of the goods for every month. In this case, the delivery item will be invoiced at dispatch readiness.

(9) Any inability to supply as result of *force majeure/acts of God* or other unforeseen incidents outside our responsibility including, but not limited to, strike, lock out, acts of public authorities, subsequent impossibility to export or import and our reservation of timely supply from our own suppliers in accordance with subsection (7) above shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading.

(10) If any agreed time of delivery or unloading is exceeded without the occurrence of one of the incidents referred to in subsection (9) above, then the Customer must allow us a reasonable period of at least two weeks to rectify the situation. If we should also fail to meet

this deadline, then the Customer shall have the right to rescind the agreement but shall have no right to seek compensation for breach of contract or default except in a case of wilful misconduct or gross negligence on our part.

§ 5 Risk of Loss and Acceptance

- (1) The risk of loss will transfer to Customer upon the dispatch to the customer, including for partial deliveries. This also applies if we undertake delivery and installation.
- (2) If the dispatch or the acceptance is delayed by circumstances which are the responsibility of the Customer, then the risk of loss will transfer to Customer from the day of the dispatch readiness.
- (3) In case of a work performance, the acceptance shall be carried out following the notice of the dispatch and acceptance readiness of the delivery item at Eckel & Sohn. If the Customer waives the acceptance, the delivery item shall be deemed to be accepted. If the Customer does not announce readiness for the acceptance test within three days, or does not object to any essential defects in writing within 10 days following the dispatch and acceptance readiness, the delivery item shall be deemed to be accepted.
- (4) The acceptance can be refused only because of material defects; insignificant defects are subject to the warranty rights in § 10.

§ 6 Duty to Inspection and Objection

- (1) Upon delivery at the agreed destination or (in the event of self supply) upon taking possession, the Customer shall immediately
 - a) check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note and/or the acknowledgement of receipt/warehouse removal note of the cold storage and
 - b) conduct a representative quality check on a spot check basis including, for such purpose, open the packaging (cartons etc.) and checking the shape of the provided goods themselves.
- (2) In case of a notice of defect, the Customer shall comply with the following procedures and deadlines:
 - a) The notification shall be made no later than the end of the working day on which the delivery of the goods to the agreed destination is made or on which possession of the goods has been taken. A different deadline regime shall apply in the event of an objection to a hidden defect which, despite a first inspection in accordance with subsection (1) above, has remained undiscovered. In such a case, the objection must be raised before the expiry of the working day on which the defect has been discovered or within one week after delivery or taking over of the goods, whichever occurs first.
 - b) The detailed notice shall be delivered to us within the aforementioned deadlines in writing or by fax. Any notice given by telephone conversation or e-mail

shall not be accepted. Any notice given to sales representatives, commission agents or agents shall not be valid.

- c) The notice must clearly specify the kind and amount of the alleged defect.
- d) The Customer agrees to make the objected goods available for inspection at the place of inspection; such inspection may be done by us, our suppliers or any expert we may have designated.

(3) No objection with regard to quantities, weight or packaging of the goods shall be possible unless a note has been placed on the delivery note, consignment note or receipt of acknowledgement in accordance with subparagraph (1) (a) above. Moreover, a right to object shall cease to exist once the Customer has mixed, used or resold the goods delivered or has started processing them.

(4) Any good to which an objection has not been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

§ 7 Retention of Title

(1) We shall retain full title of the goods that have been delivered until the Customer has discharged all claims arising from the business relationship.

(2) The Customer shall have the right to dispose of the goods delivered by us within the ordinary course of business. The authority granted hereunder shall cease in the situation referred to in § 3 (5) above. Moreover, we may withdraw the sales authority of the Customer through written notice should it be in breach of any obligation owed to us and, in particular, should it be in default regarding payment or should we become aware of other incidents that give rise to doubts about its creditworthiness.

(3) The Customer's right to process the goods delivered shall also be subject to the limitations set out in subsection (2) above. The Customer shall not acquire title to the fully or partly processed goods; the processing shall be done free of charge for us as a Manufacturer in the sense of § 950 of German Civil Code. If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between us and the Customer that we shall acquire title upon processing of the goods and the Customer shall remain custodian of the goods which shall be free of charge.

(4) If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are the property of third parties, then we shall acquire co-title in the new goods or the mixed stock. The proportion of the title shall follow from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the other goods.

(5) Goods in which we shall acquire sole or co-title in accordance with subsection (3) and (4) shall, just as with regard to the goods delivered under retention of title according to subsection (1) above, be regarded as goods delivered under retention of title for the purposes of the following paragraphs.

(6) The Customer hereby assigns to us all claims arising from the resale of the goods delivered under retention of title. Such claims shall also include claims against any bank which, within the scope of the sale, has issued or confirmed a letter of credit to the benefit of the Customer (i.e., the reseller). We hereby accept such assignment.

(7) Where our claims are undoubtedly secured to a level exceeding 125% by the assignment and retention, any surplus of receivables and/or good delivered under retention of title shall, upon demand of the Customer, be released in accordance with our choice.

(8) The Customer shall be authorised to collect any receivables arising from the resale of a good. Such authority shall cease to exist in the event that there is no longer an ordinary course of business as defined in § 7 (4) above. Moreover, we may withdraw the Customer's authority to collect, if it is in breach of any obligation owed to us and, in particular, if it is in default regarding payment or we become aware of other incidents that give rise to doubts about its creditworthiness. Should the above authority cease to exist or be withdrawn by us, then the Customer shall, upon our demand, immediately specify to us its debtors in the claims assigned and provide us with all information and documentation necessary for collection.

(9) In the event of any third party action against our goods delivered under retention of title or any receivables assigned to us, the Customer shall notify such party of our property/our right and immediately inform us about such action. The Customer shall bear the costs of any intervention.

(10) Should the Customer be in Breach of contract, in particular in default regarding payment, then it shall, upon our demand, immediately return to us all goods delivered under retention of title and assign to us any repossession claims against any third party in conjunction with such goods. Any repossession or enforcement proceedings with regard to the goods delivered under retention of title shall not be regarded as a rescission of this agreement.

(11) In the case referred in § 7 (4) above, we may require the Customer to inform us about the claims arising from the resale that have been assigned to us in accordance with § 8 (6) above, including information regarding its debtors. Following receipt of such information, we shall have the right to disclose the assignment as we consider appropriate.

§ 9 Confidentiality

(1) Both parties will treat confidential information received from the other party as confidential, use it only in the context of the order relationship and disclose it only as far as necessary to affiliated entities and vicarious agents, which are under a similar obligation of confidentiality. All information is to be deemed confidential once it is expressly marked as "confidential" or is confidential by its nature.

(2) For the sake of clarification, please be aware that our proposal documents are confidential and may be made neither copied nor disclosed to third parties without our express written permission.

§ 10 Warranty

(1) Upon justified objections regarding defects of the goods which have been raised in accordance with the procedures and deadlines hereunder, the Customer shall have the right to claim an adequate reduction in the purchase price, without prejudice to our right to provide

the return or repair of the defective goods. The Customer may not claim a defect if the composition and/or use of the product are only insignificantly impaired. The composition and/or use of the product are specified in product descriptions and these may stipulate maximum product-specific operating times to which the warranty rights are restricted.

(2) In cases of a claim under a warranty, the product must be provided to us in our business location. In case of delivery of products including physical installation at the recipient premises, we bear the possible reasonable costs for de-installation and installation as well as for transport. In case of delivery of products without physical installation, the Customer bears possible costs for de-installation and installation as well as for transport. Replaced parts become our property. If it turns out that there is no defect, the Customer shall bear all accrued costs, in particular travel expenses, work and cost of materials.

(3) Upon repair, the warranty rights shall be limited to the repair and spare parts regarding the defect. In case of repair outside the terms of the warranty and/or upon the use of certain components of other manufacturers at the Customer's request, we assign possible claims against the suppliers and manufacturers of these components to the Customer who accepts such assignment and excludes further warranty rights against us.

(4) The warranty rights shall not apply in case of improper use, consumption material and as far as the Customer undertakes changes to the product not authorized in writing by us unless the Customer proves that the respective defect was not caused by the change and that the repairing of defects is not aggravated by the change.

(5) The Customer shall not be entitled to any further rights or remedies. In particular, we shall not be responsible for any compensation based on breach of contract or default unless the goods lack a characteristic that we have expressly guaranteed in writing or in case of wilful misconduct or gross negligence on our part.

(6) The warranty period shall be for 90 days from delivery.

§ 11 Limitation of Liability

(1) Subject to the provisions in the following sub-sections, Eckel & Sohn shall only be liable, irrespective of the legal grounds, for damage caused by the intentional or grossly negligent conduct of Eckel & Sohn, its legal representatives, managerial employees or any other vicarious agents. In case of damage caused by the grossly negligent conduct of any other vicarious agents, liability shall be limited to those damages which must typically be expected within the scope of an agreement such as the present one.

(2) Eckel & Sohn's liability - except for cases of damage caused intentionally – shall be limited to the maximum amount of the payment for the delivery item that caused the damage or, if this cannot be identified, the payments of the previous 6 months. Damages for disruption of production, loss of profit and other indirect and consequential damages shall be excluded.

(3) To the extent that the liability of Eckel & Sohn is excluded pursuant to the subsections of this provision, this shall also apply to the benefit of Eckel & Sohn's employees in the event that the Customer files any claims directly against them.

(4) Without prejudice to the liability limitations specified above, our liability is limited to € per damage claim.

§ 12 Final Provisions

- (1) The Customer may not assign any rights and obligations under this agreement without our prior written approval. We may assign claims without Customer's approval.
- (2) The place of performance for deliveries shall be the place of destination unless otherwise agreed.
- (3) For our benefit, the courts of Mainz shall have jurisdiction over all disputes arising from this Agreement. However, we may also select a different place of jurisdiction. In addition, each party can bring an action against the party at the general place of jurisdiction of the other party.
- (4) Amendments, supplements and notices of termination of this agreement must be made in writing. The rescission of the agreement or any alteration to the requirement of the written form must also be made in writing.
- (5) This Agreement, and all orders hereunder, shall be governed by the laws of the Federal Republic of Germany excluding the conflicts of law and the UN Convention on the International Sale of Goods (CISG).
- (6) The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.