

General terms of business of the company estaro GmbH (issue 02/2016)

§1 General conditions

- a. The company estaro GmbH will solely act on behalf of their ordering parties on the basis of the following conditions of sale, delivery and payment. These conditions are considered to be accepted in all parts thereof at the point of the assignment of the order. In respect of the scope of deliveries or services only the statements that have been reciprocally received in writing are applicable.
- b. These general contractual terms are considered agreed upon even when the company estaro GmbH carries out orders or services respectively on behalf of the contractual partner unconditionally in knowledge of conflicting or differing conditions.
- c. General terms of business of the ordering parties are only valid in as such these are expressly recognized by the company estaro GmbH in writing. Divergent general terms of business of the ordering parties are herewith providently objected to.
- d. Subsidiary arrangements as well as additions and modifications to contractual agreements always shall be in writing. Oral subsidiary arrangements are viewed as being invalid, if their validity has not expressly been recognized by the company estaro GmbH in writing.
- e. In case single conditions of legally binding contracts or of these general terms of business should as a whole or in part turn out to be invalid, this does not affect the validity of all other contractually agreed upon conditions. Invalid conditions are to be exchanged by agreements, which are in line with the original commercial intention of the invalid one.

§2 Quotations

- a. Quotations are subject to change and in addition of the alloy surcharge valid on the day of delivery, provided nothing else has expressly been agreed upon in writing as part of that particular quotation.
- b. Orders constitute obligations on our part only in case of pursuant delivery of goods or order confirmation respectively.

§3 Prices

- a. Quoted prices shall be net prices excluding cost of packaging and freight and are without VAT.
- b. The quoted prices are valid ex works, or ex storage respectively, unless otherwise confirmed in writing.
- c. Where delivery free of freight charges has been agreed upon, this is valid up to the handover of the goods to the respective recipient of the goods.
- d. Additional costs due to a special delivery method at the request of the ordering party (i.e. express freight or airfreight) are borne by that ordering party.

§4 Dispatch and transfer of risk

- a. If not otherwise agreed upon the risk of kind is passed onto the carrier/shipper or as the case may be when the goods are picked up on behalf of the recipient onto the ordering party. This is valid even in cases of agreed third-party deals, free of all charges/franco, FOB or CIF deals.
- b. In the case of supply to the ordering party using transport provided by us the German general carrier terms apply, whereby regarding the transfer of risk only the point of the transfer of the properly loaded goods into the public traffic applies.
- c. The delivery is to be checked immediately at the point of reception for completeness, assortment and condition. Any objection should be claimed in writing forthwith to the company estaro GmbH with the receipt number or the documentation number.
- d. In case of circumstances outside the responsibility of the company estaro GmbH or incidents respectively leading to a delayed completion of the performance obligation (e.g. traffic or business disruption, shortage of raw materials or energy, strike or lock-out) it is agreed that a suitable prolongation of the delivery time applies accordingly. The same applies in case of suppliers of the company estaro GmbH not being able to fulfill their contractual obligations in time due to the aforementioned circumstances.

§5 Delivery; Deadlines

- a. Delivery times quoted on the part of the company estaro GmbH are always to be regarded as non-binding announcements referring to the anticipated delivery of goods. This is not valid in case of explicitly guaranteed delivery times in writing by the company estaro GmbH.
- b. In case of a disregarding of payment terms or breach of other contractual obligations on the part of the ordering party, the company estaro GmbH is entitled to put the delivery of the ordered goods on hold.
- c. In case of breach of an explicit delivery time confirmed in writing or in cases of other and not only temporary performance delay respectively, on the part of the company estaro GmbH and due to circumstances in their responsibility, the ordering party is entitled to set a reasonable respite in writing. After the expiration of this respite the ordering party shall be entitled to withdraw from the contract.
- d. The delivery shall count as carried out in time if the goods have left the works/storage of the company estaro GmbH before the end of the delivery deadline or have left the works/storage of the pre-supplier to the company estaro GmbH.
- e. In case of circumstances outside the responsibility of the company estaro GmbH or incidents respectively leading to a delayed completion of the performance obligation (e.g. traffic or business disruption, shortage of raw materials or energy, strike or lock-out) it is agreed that a suitable prolongation of the delivery time applies accordingly. The same applies in case of suppliers of the company estaro GmbH not being able to fulfill their contractual obligations in time due to the aforementioned circumstances.
- f. If and when an encumbrance according to §4 clause (c.) of these terms of business should not be removable in due time the company estaro GmbH is entitled, to withdraw from the contract in full or partly without obligation to deliver. The enforceability of any compensation by the ordering party is in this case precluded.
- g. Partial deliveries are always permitted unreservedly. Each partial delivery shall be considered as self-contained legal act.

§6 Warranties

- a. Claims due to visible flaws, wrong delivery or considerable quantity variance have to be communicated immediately in writing to the company estaro GmbH, at the latest 5 days after receipt of the goods. Otherwise the enforceability of warranty claims is excluded.
- b. Defects, which are not immediately identifiable, have to be addressed immediately after detection thereof in writing, at the latest within 1 month after receipt of the goods. If the ordering party does not claim any defects within this time span the goods are considered accepted to be defect-free.
- c. This is not valid as far as the law provides for differing preclusion periods as well as in cases of damages to the life, body or health should the company estaro GmbH be responsible for an intentional or grossly negligent breach of duty or in cases of enforceability of claims due to fraudulently concealed defects.
- d. In order to meet the terms according to §6 clauses (a.-b.) it is sufficient to send a detailed claim in time. The full burden of proof regarding all qualifying requirements, especially in respect of the defectiveness of the goods, the time of the determination of the defect and the timeliness of the claim - lies with the ordering party/contract partner.
- e. Ceteris paribus the legal regulations regarding the limitation of claims and the estoppels or the new start of such applicable terms will remain unaffected.
- f. In the case of delivery to an enterprise/enterprise the enforceability of warranty claims expires at the latest after one year, beginning with the point of transfer of perils - provided that the aforementioned conditions do not require a shorter period of time.
- g. In the case of well-founded complaints the company estaro is entitled to subsequent improvement at their own discretion or to a replacement delivery in return for the faulty goods. Shortfall quantities will be delivered in addition.
- h. Faulty partial deliveries do not entitle to a suspension of that particular order or other orders of that ordering party.
- i. In case of failure of the supplementary performance the ordering party may demand by choice and on principal a reduction in price (abatement) or the cancellation of the contract (withdrawal). In the case of a minor infringement of the contract or if only minor defects have been detected the ordering party is not entitled to withdraw from the contract.
- j. Inasmuch as the ordering party should decide to take advantage of its withdrawal rights due to a persistent defect or lack of title after a failed supplementary performance, no claim for damages may be granted additionally.
- k. In case of an enforceability of damages on the part of the ordering party after a failed supplementary performance the goods remain with the ordering party, if this can be expected of the ordering party. As damages – if applicable – that sum has to be paid that equals the difference between the purchase price and the value of the faulty goods.
- l. Where the ordering party/contract partner has carried out alterations or repairs regarding the delivered goods, or had such changes done, without prior written consent of the company estaro, each and any claims on warranties concerning contractual objects of the company estaro GmbH are null and void.
- m. The company estaro GmbH does not grant warranty for damages caused by incidents or actions as mentioned hereafter: inappropriate or incorrect usage, faulty implementation, natural wear, incorrect or negligent treatment of the delivered goods and chemical or electrochemical impacts, if the company estaro GmbH is independent of negligence in such a case.
- n. If an insufficiency is due to the fact that the company estaro GmbH was handed faulty or incomplete product descriptions/technical drawings by the ordering party then the enforceability of demands from warranties is excluded. All goods and services rendered by the company estaro GmbH on the basis of a corresponding order have to be paid in full in this case.
- o. If the ordering party/contract partner is an established businessperson then on principle only the details and characteristics of the product description by the company estaro GmbH regarding the condition of the goods are valid as agreed upon. Public comments, targeting or details serving advertising of the company estaro GmbH may not be used as mandatory warranty concerning the condition of the goods.
- p. The enforceability of demands by the ordering party due to damage not directly concerning the goods delivered by the company estaro GmbH is excluded - provided there is no compulsory liability without limitation or extended liability for the company estaro GmbH from indispensable legal regulations.

- q. The same is valid – in case of the event of a consequential harm to production means of the ordering party caused by a defect.

§7 Compensation

- a. The enforceability of claims for damages or claims for expenditures - by the ordering party, no matter on which legal basis is categorically excluded if in as much as nothing other can be concluded from the conditions named hereafter.
- b. The disclaimer according to §7 clause (a.) of these general contract conditions is not valid in as much as the company estaro GmbH is liable, pursuant to indispensable legal regulations on the basis of the Product Liability Act, in cases due to intent or gross negligence, or due to damages to the body/the health as well as under consideration of a breach of essential contractual obligations is liable according to indispensable legal regulations.
- c. Compensation due to a breach of essential contractual obligations, due to delay as well as due to performance impossibility is limited to foreseeable contract coherent damage. This is not valid in case of intentional misconduct by an employee of the company estaro GmbH as well as in cases of damages to life, body or health of a third party.
- d. The aforementioned conditions do not entail a change in the burden of proof to a disadvantage of the particular ordering party.
- e. In the case of non-duly communicated notices of defect or changes carried out without authority on goods delivered by the company estaro GmbH all and any liability on the part of the company estaro GmbH is void. Concurrently all - if so - granted warranties by the company estaro GmbH expire.
- f. The liability of the company estaro GmbH to pay damages is always limited to that amount – as far as legally permissible - that has been agreed upon as payment regarding the services to be rendered or the partial service thereof respectively.
- g. The abovementioned limitations are only valid where the company estaro GmbH is acting for business people as the ordering party.
- h. The liability due to unauthorized actions as well as due to deliberate or grossly negligent misconduct by employees of the company estaro GmbH is not limited.

§8 Basis for credit

- a. The fulfillment by the company estaro GmbH of the obligations to requirements arising from the particular contract may be deferred if there are reasonable doubts regarding the creditworthiness of the particular ordering party.
- b. In the case of considerable decline of the legal estate, the cessation of payment, a forced sale of collaterals, the opening of insolvency proceedings, the liquidation or the handover of the business and in case of the death of the ordering party, the company estaro GmbH is entitled to demand securities. The same is applicable if the ordering party pledges stock, receivables or goods or uses these as securities towards other creditors and also if the ordering party falls behind with payments regarding open receivables owed to the company estaro GmbH.
- c. If no sufficient securities should be provided by the ordering party, the company estaro GmbH is entitled to withdraw from the contract and/or to demand compensation. The same is valid if the company estaro GmbH should receive negative information regarding the creditworthiness of the ordering party.
- d. If the company estaro GmbH should withdraw from the contract according to §8 of these general business terms, the ordering party is obliged to cover any and all incurred costs (costs for storage, transport, administration and other costs).
- e. If a termination of contract takes place on behalf of the ordering party (counter order), due to non-payments by third parties owed to the ordering party, the ordering party is obliged to cover all incurred costs (costs for storage, transport, administration and other costs) of the company estaro GmbH.

§9 Ownership

- a. The goods delivered by the company estaro GmbH remain their property up until all commitments on the part of the particular ordering party regarding the business relation between this party and the company estaro GmbH have been met in full.
- b. If the value of the lien that the company estaro GmbH is entitled to exceeds the sum of all secured demands by more than 20 percent, the company estaro GmbH will release that part of the lien at the request of the ordering party.
- c. During the existence of the reservation of proprietary rights the ordering parties are interdicted to pledge the goods subject to retention of title as security.
- d. The ordering party undertakes to immediately inform the company estaro GmbH in case of execution, sequestration or other stipulations regarding the goods subject to retention of title. The same is valid in case of third parties/companies assuming possession of the goods subject to retention of title.
- e. The further sale of the goods subject to retention of title is only granted to the ordering parties as part of the ordinary business procedures and only on condition that the ordering party receives payment from its customers accordingly or only hands over the goods subject to retention of title to its customers with reservation of proprietary rights itself.
- f. If the ordering party does not comply with the above-mentioned obligations, the company estaro is authorized albeit sundry rights, to demand the return of the goods subject to retention to restore possession. The ordering party has in this case no claim of ownership.
- g. The ordering party assigns the receivables to the company estaro GmbH at the moment of placing the order for the goods under retention of title, which arise from the further sale of the same against its own customers including any ancillary rights. The ordering party remains entitled to such receivables assigned to the company estaro GmbH up until the revocation thereof. The ordering party is obliged to pass on the sum of such receivables and the names of such garnishees to the company estaro GmbH should it so wish.
- h. In the case of the processing of the goods subject to retention of title the company estaro GmbH is regarded as the producer and thus acquires a co-possession of this new product. If the processing is carried out in combination with other materials the company estaro GmbH is assigned co-possession of the then produced product at the ratio of the gross invoice value of the goods subject to retention of title to other processed materials.
- i. Whilst the receivables owed to the company estaro GmbH by the particular ordering party have not been settled in full, this party is obliged to pass on in full dues received or to be received to the company estaro GmbH.
- j. In the case of a combination, mixing or commingling of the goods subject to retention of title with another business, whereby the latter is to be seen as the principle business the co-ownership regarding the principle business accounted according to the gross invoice value of the goods subject to retention of title passes on to the company estaro GmbH.
- k. In the case of non-compliance of the above mentioned conditions all rights of the ordering party to sell or process the goods subject to retention of title as well as the collection of debts ceded to the company estaro GmbH as receivable are forfeited. The same is valid in case of a protest of cheque or bill within the responsibility of the particular ordering party.

§10 Terms of Payment

- a. The ordering party commits itself to settle their account with the company estaro GmbH within 30 days after the invoice date strictly net.
- b. Authoritative is the day of receipt of payment to one of our bank accounts. Cheques and bills of exchange only count from the moment of encashment of such payment. The passing on of a bill of exchange and prolongations do not count as payments.
- c. In the case of exceeding the aforementioned payment deadline or incomplete payment respectively, the ordering party is in arrears without reminder.
- d. If the ordering party is in arrears with payment, the company estaro GmbH is entitled albeit to sundry rights, with effect of the beginning of the due date of the corresponding payment or part payment respectively to demand default charges. The company estaro GmbH is in this case further entitled to accelerate immediately all receivables due from this ordering party and/or demand securities as the case may be before delivery, to withhold outstanding deliveries or to withdraw partly or fully from at this point unfulfilled contracts.
- e. Factually owed or allegedly owed receivables to the ordering party of the company estaro GmbH may only be transferred to the company estaro GmbH obverse to the ordering party as off-set, if the first mentioned receivables are without doubt or legally binding. Rights of retention may only be claimed by the ordering party, if these cover demands concerning the same contractual relationship.
- f. If the ordering party is a businessperson the right to withhold performance or the lien requires the previous written authorization on the part of the company estaro GmbH.

§11 Applicable law, place of performance and jurisdiction

- a. In consideration of all and any legal transactions of the company estaro GmbH solely German law shall be applicable excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as other international agreements.
- b. Place of performance and sole jurisdiction for all legal disputes, including possible proceedings on bills of exchange and trials by the record, is – provided its legal legitimacy - the location of the company estaro GmbH. Nonetheless the company estaro GmbH is entitled to sue alternatively at the location of headquarters or that of the subsidiary of the ordering party.

§12 Partial Ineffectualness

If single provisions of these general terms of business should turn out to be invalid whole or in part - now or in future, this does not affect the enforceability of the remaining provisions.

estaro GmbH