

# Terms and Conditions of Engesser GmbH

## I. General

1. These terms and conditions apply to all business relationships of Engesser GmbH with its customers (hereinafter: "Customer"). The terms and conditions only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

Deviating terms and conditions of purchase of the customer shall not become part of the contract even if the order is accepted by ENGESSER.

2. Individual agreements made with the customer in individual cases (including ancillary agreements, additions and amendments) shall in any case take precedence over these Terms and Conditions. The content of such agreements is determined by a written contract or the written confirmation of ENGESSER.
3. Legally relevant declarations and notifications that are to be submitted by the customer to ENGESSER after the conclusion of the contract (e.g. setting deadlines, notices of defects, declaration of withdrawal or reduction) must be made in writing in order to be effective.

## II. Contract

1. The offers of ENGESSER are subject to change and non-binding. This shall also apply if ENGESSER has provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which ENGESSER reserves the right of ownership and copyright.
2. The ordering of the goods by the customer is considered a binding contractual offer. Unless otherwise stated in the order, ENGESSER is entitled to accept this contract offer within one week of its receipt by ENGESSER.
3. Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.

## III. Prices and Payment

1. In the absence of a special agreement, the prices are valid ex works including loading at the factory, but only packaging and unloading. In addition to the prices, VAT is added at the respective statutory rate.
2. In the absence of a special agreement, payment is to be made immediately after delivery and without any deduction from the account of ENGESSER. The respective delivery quantity is calculated.
3. The Purchaser shall only have the right to withhold payments or to offset them against counterclaims to the extent that his counterclaims are undisputed or legally established.

## IV. Delivery time, delay in delivery

1. The delivery period results from the individual agreements of the contracting parties. Their compliance by ENGESSER presupposes that all commercial and technical questions have been clarified between the contracting parties and that the customer has fulfilled all obligations incumbent on him, such as the provision of the necessary official certificates or approvals or the payment of a down payment. If this is not the case, the delivery period shall be extended appropriately. This does not apply to the extent that ENGESSER is responsible for the delay.

2. If ENGESSER is unable to meet binding delivery deadlines for reasons for which ENGESSER is not responsible (unavailability of the service), ENGESSER shall inform the customer of this without delay and at the same time inform the customer of the expected new delivery date. If the service is not available even within the new delivery period, ENGESSER is entitled to withdraw from the contract in whole or in part; ENGESSER shall immediately reimburse any consideration already rendered by the customer. In this sense, force majeure, labor disputes and the failure to supply the company itself in time by suppliers are considered to be cases of unavailability of the service in this sense if:

- ENGESSER has concluded a congruent hedging transaction,
- neither ENGESSER nor its suppliers are at fault, or
- ENGESSER is not obliged to procure in individual cases.

The statutory rights of withdrawal and termination of ENGESSER as well as the statutory provisions on the execution of the contract in the event of an exclusion of the obligation to perform (e.g. impossibility or unreasonableness of the performance and/or subsequent performance) remain unaffected. The customer's rights of withdrawal and termination in accordance with IX as well as his statutory rights of withdrawal and termination shall also remain unaffected.

3. The occurrence of a delay in delivery by ENGESSER is determined by the statutory provisions. In any case, however, a reminder by the customer is required.
4. The delivery deadline is met if the delivery item has left the ENGESSER factory by the time it expires or if it is reported to be ready for shipment. If acceptance is to be made, the acceptance date is decisive – except in the case of a justified refusal of acceptance. In the alternative, the notification of readiness for acceptance.
5. If the shipment is delayed at the request of the customer, ENGESSER is entitled, after setting and fruitless expiry of a reasonable period, to dispose of the delivery item elsewhere and to supply the customer with a reasonable extended period.
6. The customer may withdraw from the contract without setting a deadline if ENGESSER finally becomes unable to perform the entire service before the transfer of risk. In addition, the customer may withdraw from the contract if the execution of part of the delivery becomes impossible in the case of an order and he has a legitimate interest in the rejection of the partial delivery. If this is not the case, the customer must pay the contract price attributable to the partial delivery. The same applies in the event of incompetence on the part of ENGESSER. In all other respects, Section IX.2 shall apply.

If the impossibility or inability occurs during the default of acceptance or if the customer is solely or largely responsible for these circumstances, he remains obliged to provide the consideration.

7. Further claims arising from delay in delivery shall be governed exclusively by Section IX.2 of these Terms.

## **V. Transfer of risk, acceptance**

1. The risk shall pass to the customer when the delivery item has left the factory, even if partial deliveries are made or ENGESSER has assumed other services, e.g. shipping costs or delivery and installation.

Insofar as an acceptance is to be made, this is decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the notification of the company ENGESSER about the readiness for acceptance. The customer may not refuse acceptance in the event of a non-material defect.

2. If dispatch or acceptance is delayed or omitted as a result of circumstances not attributable to ENGESSER, the risk shall pass to the Purchaser from the date of notification of readiness for dispatch or acceptance.

3. Partial deliveries are permissible as far as it is reasonable for the customer.

## **VI. Ownership**

1. ENGESSER reserves title to the delivery item until all claims of ENGESSER against the customer arising from the business relationship, including claims arising in the future, including contracts concluded at the same time or later, have been settled. This also applies if individual or all receivables of ENGESSER have been included in a current invoice and the balance has been drawn and acknowledged.

In the event of breach of contract by the Purchaser, in particular in the event of default of payment, ENGESSER shall be entitled to take back the delivery item after a reminder and the Purchaser shall be obliged to surrender it. Due to the retention of title, ENGESSER can only demand the return of the delivery item if it has withdrawn from the contract. In the event of seizure or other interference by third parties, the customer must notify ENGESSER immediately.

2. The Purchaser shall be entitled to resell the delivery item in the ordinary course of business. However, he already assigns to ENGESSER all claims arising from the resale against the customer or against third parties. The customer is also authorized to collect these claims after the assignment. ENGESSER's authority to collect the debts itself remains unaffected. However, ENGESSER undertakes not to collect the receivables as long as the customer duly meets its payment obligations or the right to collect has not been revoked or no application for the opening of insolvency proceedings has been filed. Otherwise, ENGESSER may demand that the customer inform him of the assigned claims and their debtors, provide all information necessary for collection, hand over the associated documents and notify the debtors of the assignment, insofar as ENGESSER has not already done so.

If the delivery item is resold together with other goods that do not belong to the Supplier, the claim of the Purchaser against the Purchaser shall be deemed to have been assigned in the amount of the delivery price agreed between ENGESSER and the Purchaser.

3. The Purchaser may neither pledge the delivery item nor transfer it as security.
4. ENGESSER is entitled to protect the delivery item against theft at the expense of the customer. breakage, fire, water and other damage, unless the customer himself has demonstrably taken out the insurance.
5. If, in connection with the payment of the purchase price by the purchaser, a bill of exchange liability of the company ENGESSER is established, the retention of title, including its agreed special forms, or other securities agreed to secure payment shall not expire before the redemption of the bill by the purchaser as the drawee.
6. The application for the opening of insolvency proceedings entitles ENGESSER to withdraw from the contract and to demand the immediate return of the delivery item.

## **VII. Duty to investigate and complain**

The Purchaser shall be obliged to inspect the delivery item immediately after delivery by ENGESSER, insofar as this is feasible in accordance with the proper course of business, and, if a defect becomes apparent, to notify ENGESSER immediately in text form.

## **VIII. Claims**

For material and legal defects of the delivery, ENGESSER provides warranty to the exclusion of further claims – subject to Section IX – as follows:

1. All those parts shall be repaired or replaced free of charge at the discretion of ENGESSER which prove to be defective as a result of a circumstance prior to the transfer of risk. The discovery of such defects must be reported to ENGESSER immediately in writing. Replaced parts become the property of ENGESSER.
2. The Purchaser shall give the necessary time and opportunity to carry out all repairs and replacement deliveries deemed necessary to ENGESSER after consultation with ENGESSER; otherwise, ENGESSER is exempt from liability for the resulting consequences.
3. Within the framework of the statutory provisions, the customer has a right to withdraw from the contract if ENGESSER – taking into account the statutory exceptions – allows a reasonable period of time set for repair or replacement delivery due to a material defect to elapse without success. If there is only an insignificant defect, the customer is only entitled to a reduction of the contract price. Otherwise, the right to a reduction in the contract price remains excluded. Further claims are governed by Section IX.2 of these Terms.
4. No warranty is given in particular in the following cases:  
Unsuitable or improper use, incorrect installation or commissioning by the customer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating equipment, chemical, electrochemical or electrical influences – unless they are the responsibility of ENGESSER.

ENGESSER shall only be liable for defects in material provided by the customer if ENGESSER should have recognized the defects by exercising professional care.

In the case of production according to the customer's drawing, ENGESSER shall only be liable for the execution in accordance with the drawing.

If special parts are ordered, the order quantity may be exceeded or undercut by 10%, but at least by 2 pieces.

5. If the customer or a third party makes improper repairs, ENGESSER shall not be liable for the resulting consequences. The same applies to changes to the delivery item made without the prior consent of ENGESSER.
6. Subject to Section IX.2, the aforementioned obligations of ENGESSER shall be conclusive in the event of infringement of intellectual property rights or copyright. They only exist if:
  - the Purchaser shall immediately inform ENGESSER of any alleged infringements of property or copyright,
  - the customer supports ENGESSER to an appropriate extent in defending against the asserted claims or enables ENGESSER to carry out the modification measures,
  - ENGESSER reserves the right to all defensive measures, including out-of-court settlements,
  - the defect in title is not based on an instruction from the purchaser, and
  - the infringement was not caused by the Purchaser having changed the delivery item without authorisation or using it in a manner that was not in accordance with the contract.
7. The customer assumes sole responsibility for the documents to be provided by him, such as drawings, gauges, samples or the like. The customer is responsible for ensuring that the design drawings submitted by him do not encroach on the property rights of third parties. ENGESSER is not obliged to check with the Purchaser whether any third-party property rights are infringed by the submission of offers on the basis of the execution sent to him. If, nevertheless, liability of ENGESSER arises from facts giving rise to a claim, the customer must indemnify him.

## **IX. Liability**

1. If the delivery item cannot be used by the Purchaser in accordance with the contract due to the fault of the company ENGESSER as a result of omitted or incorrect execution of suggestions and consultations given before or after the conclusion of the contract or due to the violation of other ancillary contractual obligations – in particular instructions for the operation and maintenance of the delivery item – the provisions of Sections VIII and XI.2 shall apply to the exclusion of further claims by the Purchaser accordingly.
2. For damage that has not occurred to the delivery item itself, ENGESSER is only liable – for whatever legal reasons –
  - a. in case of intent,
  - b. in the event of gross negligence on the part of the owner(s) or executives,
  - c. in the event of culpable injury to life, limb, health,
  - d. in the case of defects which he has fraudulently concealed or the absence of which he has guaranteed,
  - e. in the event of defects in the delivery item, insofar as liability is assumed for personal injury or property damage to privately used objects in accordance with the Product Liability Act.

In the event of culpable breach of essential contractual obligations, ENGESSER shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence, in the latter case limited to the contract-typical, reasonably foreseeable damage.

3. Further claims are excluded.

## **X. Prescription**

1. By way of derogation from Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period begins with acceptance.
2. However, if the goods are a building or an object that has been used for a building in accordance with its usual use and has caused its defectiveness (building material), the limitation period is 5 years from delivery according to the statutory regulation (§ 438 para. 1 no. 2 BGB). Special statutory provisions for claims in rem by third parties (Section 438 (1) No. 1 of the German Civil Code), in the event of fraudulent intent on the part of the seller (Section 438 (3) of the German Civil Code) and for claims in supplier recourse in the event of final delivery to a consumer (Section 479 of the German Civil Code) also remain unaffected.
3. The above limitation periods of the sales law also apply to contractual and non-contractual claims for damages by the buyer that are based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the Product Liability Act remain unaffected in any case. Otherwise, only the statutory limitation periods apply to claims for damages by the customer in accordance with IX.

## **XI. Choice of law and jurisdiction**

1. These terms and conditions and all legal relationships between ENGESSER and the customer are governed by the law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title pursuant to VI, on the other hand, are subject to the law of the respective location of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective.

2. If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of ENGESSER in Geisingen. However, ENGESSER is also entitled to file a lawsuit at the general place of jurisdiction of the customer.

**XII. Special conditions for machining contracts (completion, refurbishment, reworking or restoration of tools)**

In addition to or deviating from the terms of delivery, the following applies to processing contracts:

1. The editor assumes no liability for the conduct of the material sent to the editor. His entitlement to remuneration remains unaffected.
2. If the material becomes unusable during processing due to the fault of the processor, his claim to remuneration lapses. The customer's claim for damages is based on section XI.2. of the Terms of Delivery.

Geisingen, June 2023