

The Terms & Conditions outlined in the following exclusively govern the purchasing and delivery relationship between the seller/supplier ('the Supplier') and ESAU & HUEBER GmbH ("ESH").

§ 1 Conflicting terms and conditions

Without written agreement by ESH, the Supplier's terms and conditions shall only become part of a contract to the extent these do not contradict these Terms & Conditions for Purchasing and Delivery, even if applied at a later point in time. Conflicting general terms and conditions of business shall not affect the validity of the concluded contract. In the event of conflicting terms and conditions, statutory provisions shall apply.

§ 2 Orders / order documents

1. Purchase Order ("Order") must be placed in writing and confirmed by the Supplier in writing immediately, stating the cost center and order number. Verbally placed Orders and changes or additions to Orders shall only be binding if confirmed in writing. An Order is deemed accepted if the Supplier has not object the Order within seven (7) calendar days of its receipt.
2. ESH retains ownership and copyright to any photocopies, drawings, calculations, specifications for raw materials or products and other documents. These may not be made accessible to third parties without ESH's written consent and are to be utilized solely for the purpose of the contract between the Supplier and ESH.
3. Performance descriptions, drawings, specifications regarding weight, dimensions and/or consumption, raw material and production specifications provided by ESH shall be binding and constitute agreed characteristics.
4. Any work result (including suggestion, idea, design, drawing, sample, model, etc..) as well as any technical documentation and know-how arising in the course of the contract fulfillment is the sole property of ESH. Should it be legally not applicable, the Supplier grants ESH an exclusive, transferable, sub-licensable right to use the bespoke work result. In case of work protected by copyright, the below mentioned right of use also includes, in particular, the right to edit, rework, translate, publish, process, duplicate and exhibit.
5. The Supplier will not subcontract part of the work to process the order without the written consent of ESH.

§ 3 Confidential information

The Supplier undertakes to treat as strictly confidential any information received from ESH within the scope of their business relationship. Drawings, models, templates, samples and similar items must not be left or otherwise made accessible to unauthorized third parties. The duplication of such items is only permitted within the framework of the contract fulfillment and the copyright regulations. The Supplier shall accordingly oblige the subcontractors.

The Supplier may advertise or publish about their common business only with the prior written consent of ESH.

The obligations stipulated under § 3 shall cease to apply at the end of a period of five years, but at the earliest upon the termination of the business relationship between the Supplier and ESH.

§ 4 Price, Payment conditions and Invoicing

1. Prices agreed are fixed, including packaging and shipping to the specified delivery address, not including sales tax.
2. The supplier shall only send his invoice as pdf file to the E-Mail address given by ESH on its purchase order. The invoice shall clearly indicate the cost center and Order number of ESH as well as the delivery date and delivery note number of the Supplier. Furthermore, a separate VAT identification has to be made on the invoice. Invoices not meeting these requirements will be returned. Until an invoice is submitted meeting these requirements, ESH shall be entitled to withhold the purchase price payment, irrespective of other rights accruing.
3. As far there is not made another agreement within the purchase order, payment shall become due and payable within 60 (sixty) calendar days commencing as soon as the delivery and/or services are completed and a correctly issued invoice is received.
4. To increase the performance of the cashier's office, ESH reserves the right that payments are only made the following Wednesday of payment due date.
5. There shall be no interest payable from the due date. The default rate of interest for the year is five percentage points above the basic rate of interest and a payment default shall not occur before the payment day as set out above plus the bank internal remittance period; beyond that the applicable laws for delay in payment shall apply.

§ 5 Delivery Time, Delivery date and Delivery delay

1. Any agreed delivery date at the delivery address specified by ESH is binding. The Supplier shall inform ESH immediately if agreed delivery times cannot be met. If the supplier does not render his services or does not deliver within the agreed delivery time or if he is in default, the rights of ESH are determined - in particular for withdrawal and compensation - in accordance with the statutory provisions, whereby the regulations in § 5.2 remain unaffected.
2. Culpable non-adherence with a specified delivery date shall constitute a performance delay without requiring notice or granting of a grace period. In this case ESH may – in addition to further statutory claims - demand compensation for damage caused by the delay. The compensation shall amount to 0.2% of the Order value for each business day of delay; it shall not, however, exceed 5% of the Order value. ESH may claim the contractual compensation with the final payment. The rights to claim further damages remain unaffected.

§ 6 Right of inspection/review

ESH has the right, with reasonable advance notice, to inspect products ordered and review their manufacturing process at the Supplier's facilities and the facilities of the Supplier's own suppliers, and to evaluate the adequacy of the Supplier's internal quality controls. The Supplier is to provide the equipment resources and assistance necessary for such inspection/review free of charge. Such inspection or review does not relieve the Supplier from any extant warranty or guarantee obligations, nor does such invalidate ESH's right to file complaint of subsequently identified defects.

§ 7 Delivery, waybill/delivery note, packaging

1. Deliveries by the Supplier or third parties hired by the Supplier shall be made exclusively in coordination with ESH and during ESH's business hours.
2. The Supplier must comply with all applicable shipping and packaging regulations. All deliveries must include a waybill/delivery note from the Supplier indicating
 - a) ESH's cost center and Order number
 - b) the precise contents of the delivery/shipment.
3. The appropriate customs tariff number as well as weight and dimensions (gross).

§ 8 Supplier declarations; dual-use goods

1. Unless a long-term supplier declaration has been signed, an individual supplier declaration must be issued by the Supplier for each article. In the case of goods that originate from a third country, the indication of the country of origin must be specified in the supplier declaration and a certificate of origin must be issued by the Supplier upon request by ESH (free of charge) within two working days.
2. The Supplier shall give ESH prompt and legally binding notification if he is a supplier/manufacturer in the 'Military' and/or 'Dual-use' sector, or if he becomes classified as such during the existing partnership. This applies in particular if the goods procured are also subject to this classification. In this particularly case, it is imperative the export list number of the good concerned is specified in the delivery documents

§ 9 Hazardous materials

1. The Supplier shall comply with applicable laws and regulations regarding any hazardous materials in the ordered goods and provide corresponding documentation to ESH free of charge.

§ 10 Passing of risk

The Supplier bears the risk until the delivery is handed over at the place of use. This shall apply even if delivery ex works is agreed or ESH organizes and pays for shipment. Shall an acceptance of good been agreed, transfer of risk will be at acceptance.

§ 11 Passing of title

Transfer of title of goods to ESH must be made unconditionally and without consideration of the payment of the purchase price at the latest at the time of delivery / acceptance of good object.

§ 12 Defect Claims

1. In case of any material and legal defect and other breach of obligation by the Supplier, the statutory provisions shall apply, unless otherwise stated below.
2. The Supplier assumes a quality and production guarantee in accordance with the statutory provisions (see § 2.3).
3. The inspection duty is restricted to defects which become apparent during the incoming goods inspection by ESH under external appraisal including the delivery documents (e.g. transport damage, wrong and short delivery), or which become apparent in a sampling procedure during quality inspection. Insofar as acceptance has been agreed, there is no obligation to carry out an inspection. Moreover, it depends to what extent inspection is appropriate, taking into consideration the circumstances of the individual case and the course of business. The obligation to give notice of defects discovered at a later point in time remains unaffected. Without prejudice to the obligation to inspect, the complaint (notice of defects) by ESH shall in any case be deemed prompt and timely if it is submitted within 8 business days from the date of discovery or, in the case of obvious defects, from the date of delivery.
4. ESH is entitled to demand the Supplier either to repair or to replace the defective good and/or service at ESH's choice of remediation. ESH's right for damage compensation is expressly reserved.
5. ESH shall be entitled to rectify the defect himself and to demand from the Supplier to reimburse the expenses required for this purpose or a corresponding advance, provided that
 - the Supplier fails to rectify the defect within a reasonable period set by ESH, or
 - ESH has to rectify itself immediately under specific circumstances complies (eg urgency, endangerment of operational safety or threatened occurrence of disproportionate damage). In this case ESH shall inform the Supplier immediately, if possible beforehand, of the specific circumstances.
6. The statutory periods for limitation of claims for defects apply. The removal of defects or replacement delivery, including any disassembly or reassembly, shall be free of charge for ESH. All costs incurred by ESH in this context are borne by the Supplier.
7. For used objects, paragraphs 1-6 apply accordingly.
8. This Article shall apply in addition and without prejudice to any other rights and remedies under the Order and/or available to ESH at law.

§ 13 Liability

1. The Supplier is liable for any breach of statutory obligations, including particularly for willful intent and any form of negligence, including on the part of the Supplier's representatives, contractors, vicarious agents or other agents. There is no total liability cap.
2. The Supplier shall, as ESH's contract partner, indemnify ESH for and from all damage and consequential damage claims asserted against ESH in connection with the Supplier's contractually agreed product deliveries or services.
3. For services that include installation, repair and / or services on site, the Supplier has the obligation to observe the applicable regulations when carrying out all work. It is solely responsible and liable for any damage caused by itself or its agents and/or its execution mates.

§ 14 Product Liability

1. If the Supplier is responsible for product damage, it shall indemnify ESH against any claims of third parties.
2. Within the framework of its indemnity obligation, the Supplier shall reimburse all expenses incurred by ESH arising out of or in connection with a third-party claim, including recalls considered necessary and carried out by ESH. ESH will inform the supplier about the content and extent of recall measures - as far as possible and reasonable - and give him the opportunity to communicate his position. Further statutory claims remain unaffected.
3. The Supplier must take out and maintain product liability insurance with minimum sum coverage of at least € 3 million per personal injury / property damage. The Supplier will send ESH a copy of the policy at any time upon request.

§ 15 Provision of materials, drawings, samples

1. Any materials provided by ESH to the Supplier for the purpose of Order fulfillment shall remain the property of ESH. The Supplier is obligated to clearly label provided materials accordingly and store these separately so as to prevent any commingling or intermixing.
2. The Supplier agrees to utilize materials provided exclusively for the intended contractual production purpose. For the eventuality, that ESH loses ownership of such property (eg. in the manufacturing process), the

Supplier hereby assigns to ESH ownership rights accruing thereto. The Supplier is obligated to immediately notify ESH in writing of any pending or effective encumbrance or impingement of ESH's rights (specifying the data required to protect ESH's rights).

3. ESH may assert damages against the Supplier for non-compliance with or violation of the points outlined above. The Supplier is furthermore obliged to insure materials provided by ESH against all risks at the Supplier's expense, unless already insured by ESH. The Supplier hereby agrees to assign to ESH any insurance claims accruing.

4. Performance descriptions, drawings, models, samples and similar documents or items remain the property of ESH. Such documents or items – and products manufactured using these – may not be provided to any third party or used for promotional purposes without written consent from ESH. The Supplier shall carefully store such documents or items to ensure their usability at all times. ESH has the right to demand that the Supplier return these at any time. At the latest such documents/items are to be returned to ESH upon delivery of an Order. ESH may assert damages against the supplier for failure to meet these obligations

§ 16 No assignment; place of performance and jurisdiction

1. The Supplier may not, without the written permission of ESH, assign or pledge to third parties delivery obligations or resulting payment claims under contracts between the Supplier and ESH, either wholly or in part.
2. The place of delivery performance shall be ESH's delivery address stated in the Order.

§ 17 Severability

The invalidity of these Terms & Conditions or individual provisions thereof shall not affect the validity of contracts otherwise. In such case the relevant statutory provisions apply.

§ 18 Applicable law, place of jurisdiction and others

The contractual relationship and all aspects of contractual fulfillment shall be governed by the Federal Republic of Germany. The laws governing the international sale of movable property are herewith expressly excluded, even if the Supplier has his company address abroad.

The place of jurisdiction shall be as follows: ESAU & HUEBER GmbH, Kapellenweg 10, 86529 Schrobenhausen, Germany, to the extent permissible under law. Insofar as this Order/contract and/or parts of the contract are in German and English, the German version shall prevail in the event of deviations.

§ 19 General technical requirements

The objects of the agreement must conform with the relevant EC guidelines, while incorporating, where applicable standards and national guidelines, in particular any requirements pertaining to the Product Safety Act (Produktsicherheitsgesetz ProdSG) and all related regulations. All required declarations (such as a declaration of conformity in accordance with Directive 2006/42/EC Appendix II (A)), as well as any operating guides (for machines in accordance with Directive 2006/42/EC Appendix I No. 1.7.4) must be provided in German, together with the object(s) of the agreement. In particular, machines must be provided with a CE mark in accordance with the 9th Ordinance to the Product Safety Act (ProdSG).

§ 20 Company policies and core values

ESAU & HUEBER GmbH has a quality management system in place certified under DIN EN ISO 9001:2015 and an environmental management system certified under DIN EN ISO 14001:2015.

ESH additionally has a value management system in place oriented around the "EMB Wertemanagement Bau".

The company values and policies are published at the homepage of ESH or can be requested by the supplier in any time.

The Supplier is expected to share and adhere to the values and policies mentioned above.