

elephant GmbH & Co. KG, Bremen (Germany)

General delivery and sales conditions

1. General

Our general delivery and sales conditions (sales conditions) apply for all our deliveries and other services provided to customers. We do not acknowledge contrary conditions of the customer, or those varying from these sales conditions, even if we provide the delivery or service in awareness of such conditions, and without special reservation, unless we expressly agree to their applicability in writing. These sales conditions apply only to commercial entities in the sense of §14 BGB (German Civil Code).

These sales conditions also apply to all future business transactions with the customer.

The contract and these conditions contain all agreements made between the parties on the subject of the contract. Supplementary verbal agreements have not been made.

As far as these sales conditions require written form this is to be understood as written or text form.

Legally relevant declarations and notices of the customer regarding the contract (e.g. fixing of a time limit, notices of defects, withdrawal or reductions) must be in written form (e.g. letter, e-mail, fax). More stringent formal requirements based on the provisions of law or further proofs in particular in case of doubt of authorization of the contractual partner are not thereby affected.

2. Quotations

In the case of doubt our requests to the supplier constitute only invitations to submit a contract offer by the supplier (so-called "Invitatio ad offerendum"), unless they have been given clearly, in writing and stating a validity date as binding quotations. A contract only comes into existence in this "Invitatio ad offerendum" case when we confirm the customer's order in writing or deliver the goods. If we give a binding quotation, we are entitled to revoke the quotation up to the point of acceptance by the customer.

If an order of the customer constitutes a contract offer, the customer is bound to his quotation for two weeks, unless another commitment period is explicitly specified or agreed.

3. Prices

Our prices are given in Euro net ex-works onto the vehicle, i.e. without value-added tax in the relevant applicable amount, insurance, customs duties, transport costs etc.

In the event of unforeseeable and unusual price increases, such as currency fluctuations and substantial raw material price increases, we are entitled to pass the price increase on to the customer. If the price increase exceeds 15% of the original price, the customer may reject the price increase. In this case, we are entitled to withdraw from the contract.

4. Payment / advance payment / security

Our invoices are issued under the date of the day of dispatch, and in the case of laying orders, on completion or readiness for dispatch. Part-deliveries or services will be invoiced separately, and become due for payment individually, irrespective of the total delivery or service extent. Advance payments will be reconciled against part-deliveries in the sequence of the deliveries. The customer automatically falls into

arrears with payment if invoices are not paid within 14 days of receipt of the invoice. Any earlier state of arrears in accordance with legal regulations remains unaffected.

If the customer falls into payment arrears, the amount will be subject to interest at the average interest rate for outstanding current account overdrafts charged by German banks. The customer is however entitled to demonstrate that no damages or significantly lower damages have been incurred due to the late payment. The right is reserved to claim higher damages. The legal regulations on the minimum interest rate remain unaffected.

We are entitled to require advance payment or lodgement of security if the customer falls into payment arrears, or if we become aware, following conclusion of the contract, of circumstances which create justified doubt as to the solvency of the customer, and in particular if a significant deterioration in his financial situation becomes known. We are further entitled in this case to revoke agreed payment deadlines, to require advance payment or security for further deliveries, or to withdraw from the contract. If the customer fails to comply with the requirement for advance payment or security within an appropriate time set by us, we are entitled to withdraw from the contract.

The right of reconciliation only exists in the event of counter-claims which are either undisputed by us or established in law. Our field personnel and representatives are not authorised to collect payment, if they cannot present our written payment collection authority.

5. Delivery time

In the event of doubt, specified delivery times and dates are non-binding estimates. Binding delivery times are agreed as only approximations.

Specified delivery times start at the earliest after sending our confirmation of order but in no event before the technical and commercial details of the order have been clarified. The adherence to delivery times and dates requires the timely fulfilment of all necessary acts of co-operation by the customer. Specified delivery times are extended reasonably if the customer fails to perform a necessary act of co-operation in due time.

If we have concluded a congruent coverage transaction with our upstream suppliers in good time, our specified delivery dates are subject to timely and proper delivery to us by our suppliers.

Our delivery obligation is suspended in cases of force majeure (unforeseen circumstances or events beyond our control, which could not have been avoided even with all the due care and attention of a professional businessman, including war, business or traffic disruptions, strikes, lock-outs, dispatch disruptions, official regulations etc.) or similar circumstances which occur after conclusion of the contract and are beyond our control. If it is unreasonable to expect one of the parties to stick to the contract because of the length of such disruption, the said party is entitled to withdraw from the contract.

6. Delivery

Partial-deliveries are permissible wherever reasonable. Goods ordered in excess of customer's need cannot be returned.

The goods are provided ready for delivery. If additional dispatch packaging is required because of the method of delivery required by the customer, the resulting costs will be charged to the customer.

Dispatch is carried out for the account of the customer. The risk is transferred ex works to the customer on availability of the goods at our premises, even if carriage-paid delivery has been agreed. The unloading of vehicles is in any event the responsibility of the customer.

If the customer wants the goods to be insured for transport, we must be notified accordingly in writing. The costs of such insurance must be borne by the customer.

If the customer is late in accepting the goods, or if he infringes his co-operation obligations, we are entitled to require reimbursement for the damages incurred by us in this way, including any additional costs. We are further entitled, following unsuccessful elapsing of a further appropriate period set for the customer, to apply storage charges for every month or part of a month in the amount of 0.5 % of the price of the deliveries, up to a total maximum of 5 % of invoice value. The parties to the contracts are at liberty to substantiate higher or lower storage costs or other damages. Further claims and rights are reserved. If the above conditions exist, the risk of the accidental loss or accidental deterioration of the goods is transferred to the customer at the time at which he fell into arrears with acceptance or payment. The customer automatically falls into arrears if he fails to accept call-off orders within the call-off time, or if no call up period is agreed, within 4 months from notification of call-off readiness. After elapsing of an appropriate subsequent period for the customer to call off the goods, or even without such subsequent period where the setting of such is no statutory requirement, we are entitled, at our discretion, either to require payment, or to withdraw from the contract and/or claim compensation for damages instead of the delivery. Further claims, in particular for reimbursement of all additional costs and damages caused by the acceptance delay, remain unaffected.

Chargeable additional deliveries due to packaging up to 2.6 m² and deviations for technical reasons are reserved.

7. Properties of the goods

Unless otherwise agreed, the goods must be supplied to the average quality and with the normal properties of the country of origin. Normal variations in properties of natural products do not constitute a defect. Normal variations in colour and texture are permissible. Slight overlaps, minor irregularities in length, thickness, width, natural colour variations even within an element, lightening caused by UV radiation for steamed products (coffee) and joint formation can occur. These do not constitute grounds for complaint, and must be tolerated by the customer. If a quotation is given according to a sample, the samples provided represent only the average properties of the goods. The properties of the sample, in particular colour and texture, are only agreed as approximations. Sample properties or other property information do not constitute any guarantees, unless such a guarantee has expressly been agreed in writing.

The material moisture content of bamboo on delivery is approx. 7.5 % ($\pm 2\%$). In case of material for use in exterior areas, the material moisture content is approx. 12 % ($\pm 2\%$). A relative air humidity of 50 % to 60 % and a 20 °C room temperature should in general be ensured for storage, laying and use in rooms. If these recommended values are exceeded in either direction, this can result in changes in the general condition of the goods. Further information on the drying level, moisture, weight etc. are given to the best of our knowledge, and are non-binding.

8. Notice of Defects, Claims for Defects

Any claims for defects of the customer require that the customer has fulfilled its statutory duties to inspect the goods for defects and to give notice of defects as modified by the following additional provisions. Obvious transport damages must be reported to the transport person immediately on delivery, and a confirmation signature obtained. Otherwise, defects which are apparent on proper inspection must be reported in writing immediately, and at the latest however within 5 days of receipt of the goods, and concealed defects immediately on their discovery, otherwise the goods are considered to have been accepted. Defects must in all cases be reported before the goods are further processed. Defect claims and claims for reimbursement of expenses for subsequent fulfilment lapse in 12 months following delivery or acceptance. The above stipulations do not apply if the regulations of §438 Para. 1 No. 2 BGB (Buildings and materials for construction works), §§ 478 Para. 2, 445b BGB (Regress claims in case of a sale of consumer goods) and §634a Para. 1 BGB (Building defects) specify longer limitation periods.

Defects which are based on the defectiveness of parts supplied to us are not our responsibility, unless we have assumed a corresponding guarantee to this effect, or the defect in the supplied part is apparent on proper inspection. We are not obliged to carry out quality control of parts supplied to us.

If our delivery or service demonstrates a defect which was already present at the time of the transfer of risk, we will honour our guarantee, subject to being reported at the required time, by subsequent fulfilment, and at our discretion in the form of rework of the goods in question or delivery of new, defect-free goods. We must always be given the opportunity to provide subsequent fulfilment within an appropriate period. The subsequent fulfilment does neither include the removal of defective goods nor the re-installation of the reworked or replaced defect-free goods, if we have not been obligated to the installation originally. We are entitled to request return of the goods for examination and, if necessary, for subsequent fulfilment.

We bear the necessary cost for examination and subsequent fulfilment, in particular costs for transport, labour and material (not: costs for removal and re-installation) if the respective goods in question are in fact defective. Otherwise we are entitled to demand reimbursement for the costs arising from unjustified demands for subsequent fulfilment (in particular costs for examination and transport). In the event of rework, we are entitled to use new or equivalent spare parts. Without detriment to any possible claims for compensation for damages, the customer may only withdraw from the contract or require reduction of the price if subsequent fulfilment has not been carried out by us within an adequate time limit, is impossible, has been rejected, is unreasonable or has failed. The period for subsequent fulfilment has to be at least 4 weeks, unless such period would be contrary to legitimate interests of the customer. Failure of subsequent fulfilment is only deemed to have occurred at the earliest after two attempts at subsequent fulfilment. Claims may not be made on the basis of only minor deviations from the agreed properties, only minor impairment of the usability, natural wear and tear or in the case of faults which occur after the transfer of risk, in particular due to faulty or negligent handling, excessive stress, external effects and processing. If maintenance or repair work or modifications are undertaken improperly by the customer or a third party, no claims may be made for this or for any resulting consequences. Claims for compensation for damages exist, in addition to the legal requirements, only subject to the additional requirements of Item 9.

The legal provisions for any recourse of the customer against us according to §§ 445a para 1 to 3 and 445b BGB are hereby excluded. This does not apply in the scope of application of 478 BGB.

9. Rescission and compensation for damages

The right of rescission of the contract is subject to the statutory provisions provided that the customer is only entitled to a rescission based on a breach of duty other than a defect if it was us who caused the breach, and negligently or intentionally so.

Without prejudice to the other legal claim requirements, our liability for compensation for damages is subject to the following liability exclusions and limits. We are liable if we are responsible for deliberate or gross negligence. In the case of simple negligence, we are only liable in case of an infringement whose fulfilment is essential for the proper performance of the contract, and whose observation the customer could reasonably be entitled to expect (so-called cardinal obligation). Otherwise, liability for compensation for damages of all types, on whatever basis the claim is made, including liability for culpability on contract conclusion, is excluded. Our liability is limited to those damages which we would typically have had to expect according to the circumstances known at the time of contract conclusion. Our liability for damages due to delayed delivery is limited to 5 % of the value of the delayed goods.

The above liability exclusions and limitations do not apply if we are liable for deliberate or gross negligence, or have given a guarantee for the properties of the goods, or for damages which are subject to compensation under product liability regulations, or for damages to life, limb or health. The above liability exclusions and limitations also apply in favour of our employees, agents and other parties engaged by us for the purposes of contract fulfilment.

10. Limitation periods

The claims of the customer on the grounds of a defects in the goods lapse in one year. This does not apply if the claims of the customer are based on a defect in the goods purchased which consists of a material right of third party to be able to require the surrender of the goods. Such claims lapse in 10 years.

Claims on the basis of a guarantee and contractual claims by the customer on the grounds of infringement of obligations lapse in one year. This does not apply to the right of the customer to withdraw from the contract because of an infringement of obligations on our part which does not lie in a fault.

In variance to the above Items 1 and 2 the legal limitation periods apply for the following claims of the customer:

- Claims for compensation for damages arising from product liability, damages resulting from injury to life, limb or health or a cardinal contractual obligation or on the grounds of other damages resulting from deliberate or grossly negligent infringement of obligations by us or our agents,
- Claims for reimbursement of costs in accordance with §478 Para. 2, 445b BGB,
- Claims due to malicious concealment of a defect.

Our claims against the customer laps in accordance with legal regulations.

11. Reservation of ownership

We reserve ownership of the goods delivered until complete payment of all claims arising from the delivery contract, including subsidiary claims, claims for compensation for damages, claims arising in the future and the redemption of foreign exchange and cheques and all present and future claims arising from the business relation with the customer. This also applies for all future deliveries, even if we do not always make express reference to this stipulation.

The customer keeps the reserved goods on our behalf. He is obliged to handle the goods with all due care, and to insure them adequately against the normal risks (theft, fire, water etc.).

The customer hereby assigns, by way of security, his claims for compensation for damages against insurance companies or other bodies liable for compensation in our favour in the amount of his claim. We hereby accept the assignment. Rights arising from the reservation of ownership and all special forms specified in these conditions apply until the complete release as eventual liabilities entered into by us in the interests of the purchase. We are entitled to request at any time that the customer draw up an inventory of all reserved goods at their respective depot and to mark them as our property.

During the existence of the reservation of ownership, the customer is not allowed to assign or transfer as security the reserved goods or the relinquished claims, or to engage in factoring. The customer is entitled to process the goods and to sell them subject to the following conditions: The further sale and/or processing is allowed only in the normal course of business, as long as the customer is not in arrears, no application has been made for the institution of insolvency proceedings against his assets, and he is not obliged to apply for such insolvency proceedings, and only under the condition that the customer receives payment from his customers, or makes the reservation that ownership is only transferred to the customer when the latter has fulfilled his payment obligations.

The processing or reworking of the goods purchased by the customer is always carried out on our behalf as creator, so that the customer does not acquire ownership of the new goods resulting from the processing of the reserved goods. In this case, the abeyance right of the customer to the goods purchased continues in

effect with respect to the new goods. If the reserved goods are processed, mixed or combined with other goods, we acquire joint ownership to the new goods in the same ratio as the invoice value of our reserved goods to the goods value of the other processed items at the time of processing. If the customer acquires sole ownership according to legal regulations, he hereby transfers to us joint ownership in proportion to the ratio of the invoice value of the reserved goods to the invoice value of the other main goods. We hereby accept the transfer.

The customer hereby relinquishes to us all claims and all subsidiary rights arising from the resale of the reserved goods. If we hold only joint ownership of the reserved goods, this advance relinquishment is restricted to that part of the claim corresponding to the proportion of our joint ownership. We accept this relinquishment. We revocably authorise the customer to collect the claims relinquished to us on his own account and in his own name.

Amounts received from the relinquished claim must be kept separately for transfer to us. We will not collect the relinquished claim as long as the customer fulfils his payment obligations. The customer is however obliged to provide us on request with a complete list of the claims due to us, stating the names and addresses of the customers, amount of the individual claims, invoice dates etc., to notify his customers of the relinquishment, and to provide us with all information necessary for the furtherance of the relinquished claims. We reserve the right to revoke such collection authority, and to collect the relinquished claims ourselves, as soon as the customer fails to comply with his payment obligations, or a significant deterioration occurs in his financial situation, in particular if application is made for the institution of insolvency proceedings against his assets, or he is obliged to apply for such insolvency proceedings. On revocation of the collection authority, the customer must provide us with all information and documentation required to collect the claim, and if necessary assist us with such collection. We are entitled to notify the third party of the relinquishment.

We are entitled to check the status of the relinquished claims by means of the customer accounts. The reservation of ownership remains in effect even if individual claims of the seller are included in ongoing accounts, and the balance has been drawn and acknowledged. The reservation of ownership is due to us not only for the acknowledged and abstract concluding balance, but also for the causal balance.

In case of non-contractual conduct by the customer, and in particular late payment, we are entitled to rescind the contract in accordance with the statutory provisions and require the return of the goods. Provided that the prerequisites are fulfilled we also have the option to claim only the return of the goods and expressly reserve the right to rescind the contract. Our demand for the return of the goods shall (only) be deemed a declaration of rescission if the demand for the return is made without an explicit reservation of rescission. We may dispose of the reclaimed reserved goods freely in order to satisfy our claims.

In the event of distraint, seizure or other dispositions, damage or intervention by third parties in the reserved goods or relinquished claims, the customer is obliged to notify us immediately, and to provide us with all the information and documentation necessary for our intervention. The customer is liable for the costs incurred for the nullification of such access, and in particular for the lodgement of a third-party motion to vacate, unless such costs can be obtained from the collecting creditor.

In the event of cessation of payments, the customer is obliged, immediately following announcement of such cessation, to provide us with a list of the reserved goods still available, including those which have already been processed, together with a list of the claims against third-party debtors and copies of the corresponding invoices.

12. Data protection

We are entitled to process the data relating to the customer received with regard to the business relationships or in connection with them, irrespective of whether this originates from the customer himself or from third parties, in accordance with Federal German data protection regulations.

13. Place of fulfilment, applicable law, place of jurisdiction

Place of fulfilment for all services of the contract partner is Bremen (Germany). The law of the Federal Republic of Germany applies exclusively, to the exclusion of the UN Convention on the International Sale of Goods (CISG). If the customer is a commercial entity, place of jurisdiction is Bremen, or at our discretion the general place of jurisdiction of the customer.

Should one or more provisions of the contract including these General delivery and sales conditions be or become invalid or should the contract contain a gap, the validity of the other provisions shall not be affected thereby. In such cases the invalid or incomplete provision shall be replaced with the provision that comes economically as close as legally possible to the meaning and purpose of the desired provision.

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