

# General Terms and Conditions of Sale and Delivery of ProdEq Deutschland GmbH

## 1. Scope

1.1 ProdEq Deutschland GmbH, Wilhelm-Maybach-Str. 6, 78234 Engen, Germany (hereinafter "ProdEq").

(1) brokers the sale of commercial and industrial equipment (hereinafter "Goods") for third parties and

(2) sells Goods itself in its own name and for its own account, and

(3) provides services related to the sale.

ProdEq therefore acts both in the name and for the account of third parties and in its own name and for its own account. If ProdEq acts in the name and for the account of a third party, ProdEq will disclose this to the Customer.

1.2 The term "Seller" is used in the following for

(1) the third party in whose name and for whose account ProdEq acts when ProdEq brokers the sale as well as for

(2) ProdEq as Seller in its own name and for its own account. ProdEq and the Seller shall not be jointly and severally liable.

1.3 Unless otherwise agreed, these General Terms and Conditions of Sale and Delivery shall apply exclusively to all deliveries and services within the scope of the sale of goods within the meaning of Clause 1.1 (hereinafter referred to as "Deliveries") of the Seller within the meaning of clause 1.2 to natural or legal persons or partnerships having legal capacity, who at the time of conclusion of the legal transaction, are acting in the exercise of their commercial or independent professional activity or to legal persons under public law and special funds under public law (hereinafter referred to as "Customers").

1.4 If an individual contract has been agreed, these General Terms and Conditions of Sale and Delivery shall apply supplementarily and subordinately unless they have been explicitly excluded. Terms and conditions of the Customer shall not become part of the contract, even if the Seller has not expressly objected to them.

1.5 Verbal collateral agreements, amendments and deviations from these Terms and Conditions shall only be effective after written confirmation by the Seller.

## 2. Offer and Conclusion of a Contract

2.1 The offers of the Seller are always subject to change and can be withdrawn and offered again without giving reasons at any time before the conclusion of a contract in general or for individual interested parties.

2.2 With his order, the Customer accepts these General Terms and Conditions of Sale and Delivery. The Customer remains bound to his order for a period of 3 weeks. A purchase contract between the Customer and the Seller is only concluded by an order confirmation of the Seller in text form.

## 3. Scope of Supply

Exclusively the order confirmation is authoritative for the scope of supply. In particular, photographs and videos do not document the scope of supply; they may show items that are not included.

## 4. Condition, Liability for Defects

4.1 In the absence of other agreements, customary or minor, technically unavoidable deviations in quality, color, dimensions or weight are not defects.

4.2 The descriptions of the Goods, e.g. advertising information, contents of brochures and/or public statements of the Seller as well as descriptions in documents of the Seller, e.g. data sheets, drawings, plans, information on use, model designations, serial numbers, years of construction, technical data, dimensions, foundation information, quantities, condition information, etc., do not constitute a description of quality or guarantees.

4.3 The quoting of prices does not constitute an assurance of a specific market value.

4.4 Insofar as the Seller provides consulting services, this is done to the best of his knowledge. All data and information on the suitability and application of the Goods do not release the Customer from his own tests and trials.

4.5 The infringement of third party intellectual property rights shall only constitute a defect if such rights exist in Germany.

4.6 Claims for defects on the part of the Customer require that the Customer has duly fulfilled his obligations to inspect the Goods and to give notice of defects.

4.7 Used Goods are sold in the condition and to the extent as they are at their current location at the time of the conclusion of the purchase contract and under exclusion of liability for defects. This exclusion does not apply to claims for damages based on a

# General Terms and Conditions of Sale and Delivery of ProdEq Deutschland GmbH

grossly negligent or intentional breach of the contractual obligations of the Seller or his agents and in the event of injury to life, body and health. Any remaining claims against third parties arising from liability for material defects shall be assigned to the Customer.

The Customer has the possibility to personally inspect used Goods and to convince himself of the condition of the Goods.

- 4.8 In the case of the sale of newly manufactured Goods, the Seller shall, in the event of duly raised and justified notices of defect, at its discretion either deliver a replacement or repair the Goods. Should the subsequent performance fail, the Customer shall be entitled to demand an appropriate reduction of the purchase price or - in the case of significant defects that make the continuation of the contract unreasonable - to withdraw from the contract. Furthermore, in the event of failure of subsequent performance, he shall be entitled to claim damages instead of performance in accordance with clause 13.

The Seller shall not be liable for any costs of subsequent performance arising from the fact that the delivered Goods were taken to a place other than the Customer's place of business after delivery.

## 5. Price

The price shall be made up of

- a) the agreed prices for the delivery of the Goods and
- b) the remuneration for the agreed services.

Unless otherwise agreed, this price shall be understood as EXW making the Goods available for dismantling ex foundation at the agreed location (Incoterms 2020®) net in Euro plus the statutory value added tax applicable on the day of delivery (hereinafter "Price").

## 6. Export Deliveries, Performance Deposit

For sales of Goods which are intended for export and the Customer collects the Goods in the country of dispatch, a performance deposit must be paid, the amount of which corresponds to the sales tax of the country of dispatch.

The deposit will be refunded upon timely presentation of properly issued export documents. In the case of intra-community Deliveries within the European Union, a confirmation of receipt and a valid VAT number of the recipient country issued in the name of the buyer must be submitted instead of an export certificate.

Damages incurred by the Seller due to the fact that the Customer does not comply with the VAT regulations of national or international business transactions (e.g. incorrect VAT identification number) shall be compensated by the Customer.

## 7. Payment Terms

- 7.1 Unless otherwise agreed between the parties, the price is due for payment without any deductions within 5 working days after the conclusion of the purchase contract. Decisive for the timeliness of payment is the irrevocable receipt of payment on the account specified on the invoice.
- 7.2 The retention of payments and the set-off with counterclaims by the Customer shall only be permissible insofar as his counterclaims are undisputed or have been legally established.
- 7.3 Invoices are not fraud-proof, especially when issued/sent electronically. It is the Customer's responsibility to match account number (IBAN) and account holder before making payments. The risk of payment transactions lies with the Customer, the Seller assumes no liability for misdirected payments to unauthorized account holders.

## 8. Transfer of Risk

Unless otherwise agreed or "EXW ex foundation" is agreed, the risk shall pass to the Customer upon irrevocable receipt of payment of the price in accordance with clause 7.1 on the account specified on the invoice or upon making available of the Goods for disassembly ex foundation at the agreed location, whichever occurs first.

This means in particular that the Customer shall be responsible for the disassembly, packaging, removal and collection of the Goods from the foundation at its own risk and expense.

The Customer is advised to take out insurance for his Goods.

## 9. Handover, Delivery, Deadlines

- 9.1 Unless otherwise agreed, the Goods shall be made available after irrevocable receipt of payment of the full price in accordance with Clause 7.1 on the account specified on the invoice.

# General Terms and Conditions of Sale and Delivery of ProdEq Deutschland GmbH

## 9.2 Unless otherwise agreed between the parties, the following shall apply:

The Seller shall hand over the Goods to the Customer at their location at the time when the Contract was concluded. Upon handover, possession shall pass to the Customer.

The Customer shall be obliged to accept the Goods on time and shall be responsible for their disassembly, removal and collection.

The activity of the Customer's employees or his vicarious agents at the location of the Goods shall be at their own risk. All applicable statutory provisions and those of the landlord shall be observed, instructions of the Seller shall be complied with, and the place of installation shall be left clean and safe.

The Seller reserves the right to refuse certain vicarious agents of the Customer, to issue directives or to specify rigging companies. If the latter is the case, the costs will be made known to the Customer before the conclusion of the purchase contract.

If, in connection with the removal of the Goods, works on buildings and structures become necessary, these shall, in the absence of other agreements, be borne by the Customer, including the restoration of the original condition.

The Customer shall submit to the Seller, without being requested to do so, proof of the conclusion of a liability insurance policy with a coverage amount of minimum 5 million Euros.

The Customer shall be liable for damages incurred by the Seller or third parties on the occasion of the activities of the Customer's employees and its vicarious agents.

In connection with exports, the Customer is responsible for clearing the Goods for export.

## 9.3 If the Customer is in default with its obligations under the purchase contract concluded with the Seller, then

- the Seller shall be entitled (without any further notification) to disassemble and ship the Goods at the Customer's expense or to store them, if necessary also outdoors, at the Seller's discretion. In this case, the Seller is not liable for the destruction, loss or damage of the Goods;

- the Seller shall be entitled, without prejudice to any other rights, either to insist on performance or, after the expiry of a reasonable period of grace, to pass from a claim for performance to a claim for damages;

- the Seller may offer the Goods concerned on the market again without granting a period of grace. The mere fact that the Goods are offered again by the Seller shall not release the parties from performance.

## 9.4 If the Seller is in default of delivery, the Customer may only assert the claims or rights to which it is entitled under these Terms and Conditions or by law if it has again granted the Seller a reasonable grace period of at least 2 weeks in writing and the default in delivery is still continuing at the expiry of the grace period. Compliance with the delivery period shall be subject to the timely fulfillment of the Customer's contractual obligations.

## 10. Transfer of Title

The title shall pass to the Customer after the Customer's payment obligations have been fulfilled in full in accordance with Clause 7.1 and the Customer's collection obligations have been fulfilled in full in accordance with Clause 9.2.

## 11. Cancellation, Contract Termination

### 11.1 If the Seller becomes aware of circumstances that give rise to justified doubts about the Customer's performance of the contract, the Seller may refuse to perform its obligations until the Customer makes payment or provides security. If the Customer fails to make payment or provide security within a reasonable period of time set by the Seller, the Seller may withdraw from or terminate the contract. This shall also apply if the performance has already been rendered in whole or in part by the Seller.

Furthermore, the Seller may declare all claims arising from the business relationship due and payable, irrespective of previous deferrals or of the term of any promises of payment that may have been accepted.

### 11.2 The Seller shall also be entitled to terminate the contract if it becomes apparent that the Goods are to be exported to a country or to an end Customer to which the Goods may not be exported due to trade restrictions or embargoes of the country of dispatch or Germany.

In the aforementioned case, the Seller shall inform the Customer immediately and refund the contract value without delay. The Seller or ProdEq shall not be liable for any further damage.

# General Terms and Conditions of Sale and Delivery of ProdEq Deutschland GmbH

## 12. Force Majeure

Force majeure, labor disputes, riots, official measures or other unforeseeable, unavoidable or serious events shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected contractual partner is in default. The contractual partners shall be obliged to provide the necessary information without delay within the scope of what is reasonable and to adjust their obligations to the changed circumstances in good faith.

## 13. General Liability

13.1 The Seller shall be liable in the event of intent or gross negligence, fraudulent concealment of defects, injury to life, limb or health or under the Product Liability Act in accordance with the law. In the event of an assumed warranty, the Seller shall be liable in accordance with any warranty provisions.

In the event of simple negligence, the Seller shall only be liable in the event of a breach of a material contractual obligation, limited to compensation for the foreseeable damage typical of the contract. Such an essential contractual obligation is an obligation the fulfillment of which makes the proper performance of the contract possible in the first place and on the observance of which the Customer regularly relies and may rely and the violation of which endangers the achievement of the purpose of the contract. In all other cases of ordinary negligence, the liability of the Seller is excluded.

13.2 Claims of the Customer due to defects shall become statute-barred after 12 months from the passing of risk, other claims after 12 months from the statutory commencement of the limitation period. Notwithstanding sentence 1 of this Section 13.2, (1) in the event of liability due to acceptance of a warranty, the warranty provisions shall apply and (2) in the event of fraudulent concealment of a defect as well as in the event of claims for damages under the Product Liability Act, due to injury to life, limb or health and due to intentional or grossly negligent breach of obligations, the statutory provisions shall apply.

13.3 Clause 4.7 on liability for the sale of used Goods shall remain unaffected by this clause 13.

13.4 The Client is aware that in the event that ProdEq acts on behalf of a third party when entering into the Agreement, ProdEq shall not assume any liability of its own under the Agreement. In this case, all claims of the Client arising from the Agreement shall be made directly against the third party represented by ProdEq as Seller.

13.5 The Buyer shall indemnify the Seller against all claims of third parties, in particular against product liability claims and against claims due to environmental damage arising after the time of the passing of risk.

## 14. Jurisdiction and Applicable Law

14.1 The place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Cologne/Germany. The Seller is also entitled to raise a claim at the Customer's place of business.

14.2 The language of the court is German. German law shall apply to the legal relationship in connection with the contractual relationship.

## 15. Others

15.1 Amendments to the contract and other legal declarations between the Seller and the Customer must be made in text form. This also applies to a waiver of the text form requirement.

15.2 If any part of a contract concluded between the Seller and a Customer is or becomes invalid or unenforceable, this shall not affect the validity of the remainder of the contract. The parties are then obliged to replace the ineffective part of the contract by an agreement which comes closest to the economic purpose of the ineffective agreement.