

General Terms and Conditions

Engelmann Wärmehähler GmbH

The English version of the General Terms And Conditions was prepared solely for information purposes. The German version alone shall be authoritative in any case of dispute, controversy or litigation.

§ 1 Validity

Our sales conditions are effective exclusively – also for future contracts. Conditions of the customer that may be different from our conditions have no validity. Our terms of sale are also then valid when we carry out the delivery without reservation in knowledge of the differing conditions of the customer. Our conditions of sale are only valid in relation to merchants as defined in § 310 BGB.

§ 2 Conclusion of the Contract

(1) Our offers are subject to change without notice. The order is a legally binding offer. We can accept this offer according to our choice either by sending a written confirmation of the order, or by delivery of the ordered goods to the customer.

(2) Documents belonging to our offer such as brochures, catalogues, drawings, illustrations, descriptions, technical data, references to standards and statements in advertising media are not warranted characteristics and are not agreements of quality as according to § 434 BGB. Deviations of the delivered item from such descriptions and from offers, prototypes, pilot lots, samples and pre-deliveries are permissible within the limits as set by relevant technical standards, in particular the respectively valid DIN norms.

§ 3 Prices

(1) Provided no other terms have been specifically given in the confirmation of the order our prices are valid ex factory in Wiesloch-Baiertal, excluding packaging, which will be charged additionally. The statutory sales tax is not included in our prices. The sales tax will be billed separately at the specific applicable rate. Deduction of discount requires a separate written agreement.

(2) Our invoices are payable in full within 30 days of the date of the billing. If a customer fails to pay by the due date, we have the right to charge an additional 15% (lump-sum default interest), or, at the minimum, the rate of the statutory default interest according to § 288 BGB (presently, between contractors, 8% above the base rate according to § 247 BGB) starting on the date of the default. In the case of the lump-sum default interest the customer may prove that no damage has been caused to us, or that the damage is significantly lower than the lump-sum. This is not the case for the statutory default interest. Possible default damages in excess of this amount are hereby not affected.

(3) For contracts with an agreed delivery time of longer than four months we reserve the right to raise our prices in correspondence to increased costs occurred due to increases in standard wages or price increases for materials. If the price increase amounts to more than 5% of the original price the customer has to the right to cancel the order.

(4) The customer is only entitled to set-off when his counterclaims have been legally established, are undisputed, or have been recognized by us.

§ 4 Delivery Times

(1) Delivery due date periods begin with the sending of the order confirmation. They have been held to when the ordered items have left our premises or notification of their readiness for shipment has been given before the date elapses. This also holds when a delivery date is determined not by the date itself but by a specific time period.

(2) Delivery due date periods extend themselves accordingly in the case of measures taken in the framework of labor disputes as well as in the case of unforeseeable events as long as these have a considerable influence on the production or the delivery of the ordered goods. This is also valid when such conditions or situations arise at a supplier of ours. We are obliged to inform our customer of such conditions without delay.

(3) If we default in the delivery due date, and our customer suffers a loss because of this, the customer has the right to demand for each full week of default a lump-sum compensation at the rate of 1% of the delivery value, at the maximum, however, of 5% of the value of the delivery. We reserve the right to prove to the customer that no, or significantly less damage has ensued as a result of the delay in delivery. Further damage compensation claims are only justified when the default is due to maliciousness or gross negligence. Moreover, in the case of slight negligence, our compensation claim obligations are limited to the amount of 30% of the foreseeable typical contract damages.

(4) Adherence to our delivery obligations assumes the prompt and proper compliance of the customer to his or her obligations.

§ 5 Transfer of Risk

(1) Provided that no other terms have been explicitly agreed upon, delivery is ex factory in Wiesloch-Baiertal. Upon the transfer of the ordered item to the transport carrier or shipping agent, but at the latest when the goods leave our premises, the risk of accidental destruction of the goods is transferred to the customer.

(2) If the customer so wishes, the delivery item will be covered by transport insurance. The costs are to be paid by the customer.

(3) In the case of a 'delivery free' order we will carry the cost of the transport. Transfer of risk of accidental destruction is still as according to § 5 (1) at the moment of transfer of the delivery goods to the transport carrier or shipping agent. If the delivery item is to be insured for transport, the customer is to pay the costs for this insurance.

§ 6 Warranty of Goods

(1) The customer is obliged to inspect the delivered item for obvious defects. Such defects and deficiencies include missing operating instructions or handbooks as well as their lack of clearness; substantial, visible damages; a shortage in delivery; or the delivery of the wrong item. Such obvious deficiencies are to be claimed within 10 business days.

(2) Defects which first become visible later are to be claimed within 10 business days of their first notice by the customer.

(3) The delivered goods will be accepted as according to contract in any case of breach of the customer's obligation to inspect and claim. Provided a claim has been made within the appointed time, the subsequent fulfilment of the contract will be carried out according to the guidelines in the following paragraphs.

(4) Defects and/or deficiencies in the delivered item will be rectified within one year of the date of delivery after claim by the customer. This occurs at the choice of the customer according to possible subsequent fulfilment procedures provided by statute. In the case of a replacement delivery, the customer is required to return the original deficient delivered goods.

(5) If the deficiency can not be rectified within a reasonable amount of time or if the subsequent fulfilment is a failure for any other reason, the customer may demand a reduction in price or may withdraw from the contract, at his own choice. A failure in subsequent fulfilment can first be established after we have been given sufficient, at least three, opportunities to fulfil the order, when we have refused or unreasonably delayed the subsequent fulfilment, or when the situation becomes unacceptable for the customer for other reasons.

(6) Any other claims by the customer beyond the above-mentioned are excluded. This includes in particular compensation claims for lost profits or other pecuniary damages. The preceding liability restrictions do not apply when the cause of the damages is maliciousness or gross negligence. They also are not valid when the customer asserts a claim because of the absence of a warranted qualification.

(7) If an obligation which is a substantial part of the contract is breached by negligence, our liability is limited to the foreseeable damage.

(8) The warranty period of one year begins at the transfer of the ordered item. The same deadline is valid for compensation claims for consequential harm caused by a defect as long as no claims are asserted due to unlawful acts.

§ 7 Liability

We exclude our liability for breaches of obligations due to slight negligence as far as these do not affect substantial contractual obligations, damages due to injury to life, body or health or guaranties, or as far as claims under product liability law are not affected. This exclusion is also valid for our vicarious agents.

§ 8 Retention of Title

(1) We retain the title of ordered goods until all due payments have been provided as stated in the contract. In the case of conduct by the customer contrary to the terms of the contract we have the right to take back the ordered item. The taking back of the goods or the seizure of the property in question amount to a cancellation of the contract.

(2) In the case of seizure of the goods or other interventions by third parties the customer is to inform us in writing without delay.

(3) Processing or remodelling of the ordered goods by the customer is always done for us. If the ordered item is processed with other objects not belonging to us, we acquire the joint ownership of the new resulting item in proportion to the value of the ordered item in relation to the value of the added objects at the time of the processing.

(4) If the ordered item is mixed or compounded with other objects not belonging to us, we acquire joint ownership of the new resulting item in proportion to the value of the ordered item in relation to the value of the other mixed or compounded item at the time of the mixing or compounding. If the object of the customer is to be considered the main object, the customer is to transfer us co-ownership proportionately.

(5) We obligate ourselves to release our lawfully entitled trade securities upon demand of the customer in so far as the value of our securities exceeds the claims to be secured by more than 20 %.

§ 9 Copyrights

(1) We retain the proprietary rights and copyrights of all our drawings, illustrations, preliminary cost estimates, calculations and other documents. These documents may not be made available to third parties. All documents require our prior approval before being made accessible or given to third parties. If offers, drawings, or other documents are enclosed, the customer must return these and any copies thereof upon demand without delay.

(2) In so far as we produce and deliver items on the basis of drawings, models, samples or other documents given to us by the customer, the customer takes upon himself the responsibility of guaranteeing that the rights of third parties are not infringed upon. The customer exempts us from all costs that may be incurred in the case of recourse, in particular from necessary legal costs. At the same time, we have the right to stop work – without obligation of a legal examination - on items on which third parties have claimed the rights to, and in the case of fault by our customer, to claim compensation damages.

§ 10 Place of Fulfilment

(1) Place of fulfilment is Wiesloch-Baiertal.

(2) Place of jurisdiction is our place of business, as long as this can be lawfully agreed upon.

(3) For all legal relations German law is valid exclusively, with the exclusion of the rules of conflicts of law and the United Nations Convention on the International Sale of Goods (CISG).

Engelmann Wärmehändler GmbH

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