



Terms and Conditions of EBCO GmbH, 79774 Albruck, Germany, Gewerbestrasse 10

1. Applicability

- 1.1 These General Terms and Conditions (GTC) apply to all present and future offers, orders, deliveries and services (hereinafter: "Services") of EBCO GmbH (hereinafter: „EBCO“).
- 1.2 These GTC apply exclusively to companies (§ 14 BGB, German Civil Code), public-law entities or special funds under public law (hereinafter: "Customer").
- 1.3 Our Customer's general terms and conditions contrary or deviating from these GTC shall not apply, even if we do not expressly object to them. The unconditional acceptance or execution of an order does not make our Customers' general terms and conditions part of the contract.

2. Offers and Conclusion of contract

- 2.1 Our offers are subject to confirmation and valid for a period of 30 days, unless otherwise expressly stated.
- 2.2 By placing an order, the Customer makes a binding offer to enter into a contract, which we can accept within 14 days. The contract is concluded upon receipt of our order confirmation by the Customer. The order confirmation can be sent by post, fax or e-mail.
- 2.3 The scope and object of our Services are determined by the order confirmation. Documents attached to our offers, information on the website or in brochures serve only to inform the Customer.
- 2.4 If the Customer wishes to make changes or extensions to the order after conclusion of the contract, the additional costs incurred in this respect are to be remunerated separately. In this case, we will prepare a supplementary, non-binding cost estimate, which we will send to the Customer in text form. The Customer can submit his order to us on the basis of this supplementary cost estimate by signing and returning it by post, fax or e-mail within 14 days. By placing the order, the Customer bindingly declares his supplementary contract offer, which we can accept within one week. The contract for the supplementary services requested by the Customer is concluded upon receipt of our order confirmation by the Customer. The order confirmation can be sent by mail, fax or e-mail.

3. Object of our Services; Delivery of inserts by the Customer; Surplus in the foaming of inserts

- 3.1 The object of our Services consists in the production and delivery of products individually manufactured for the Customer.
- 3.2 If the foaming of inserts is the object of our Services, the following shall apply:
 - (a) The Customer undertakes to deliver the inserts at his own expense at least 14 days before the start of production, unless otherwise agreed in individual cases. In case of late or incomplete delivery of the inserts by the Customer, we are entitled to interrupt or reschedule production.
 - (b) Metal and plastic inserts must be delivered free of grease, wooden inserts dry.
 - (c) Since the foaming of inserts usually results in an average surplus of 10%, even if properly performed, the Customer undertakes to deliver a surplus of 10%. The Customer agrees that EBCO is entitled to destroy any surplus of delivered inserts which are no longer usable after production and are sorted out.
 - (d) We endeavour to produce the quantity of products as accurately as possible, as ordered by the Customer. As there is an average surplus of 10% when foaming inserts, even if properly performed, we are entitled to deliver short or excess quantities of up to 10%. Shortfalls and surpluses shall be remunerated by the Customer according to the agreed unit price.

4. Prices; Terms of Payment; Excess and short quantities; Tool cost share

- 4.1 Prices are net prices plus the statutory value added tax, if applicable.
- 4.2 The prices indicated in the order confirmation shall apply.
- 4.3 Short and excess quantities shall be remunerated according to the agreed unit price.
- 4.4 The costs for the manufacturing of tools and molds which are produced by us or a third party commissioned by us for the purpose of a Customer's order shall be charged to the Customer at a tool cost share of 75% of the total costs. The Customer's share of the tool costs is due for payment upon placement of the order.
- 4.5 If the Customer requests changes before completion of the tools which affect the planning and manufacturing of the tools, we shall be entitled to demand reimbursement from the Customer of 25% of the tool costs incurred by us. The costs for subsequent changes to the tool shall be borne in full by the Customer.
- 4.6 Invoices are due for payment without deduction within 14 days after receipt. If the Customer is in default of payment, the statutory provisions on default of payment shall apply.
- 4.7 We shall be entitled to demand advance payments in an appropriate amount for the Services to be provided by us and the expenses to be incurred in the course of the execution of the order (cost of materials, external services, etc.). We are entitled to start working on the order only after receipt of the advance payment.
- 4.8 Any advance payments made shall be deducted from the final invoice.

5. No Set-off and Assignment

- 5.1 The Customer shall only be entitled to a right of retention as well as the right of set-off if his counterclaims are undisputed, legally established, acknowledged by us or based on warranty claims.
- 5.2 The Customer shall not be entitled to assign claims arising from the contract concluded with us to third parties.

6. Customer's obligations to cooperate

- 6.1 The Customer shall support the performance of our Services at any time by active cooperation.
- 6.2 Upon request, the Customer shall immediately provide us with the information required for the performance of our Services, in particular project-relevant information on the state of the art, technical drawings, documents, data as well as models and prototypes.
- 6.3 The Customer shall be liable for incorrect or incomplete information and documents as well as for the consequences resulting thereof for the development and production of the products, insofar as these are the result to the Customer's individual specifications.
- 6.4 The Customer shall notify us immediately of any subsequent changes to the information or documents provided to us. We will check whether and under which conditions the Customer's change requests can still be implemented, depending on the progress of production of the products, and if necessary, submit a supplementary offer to the Customer. The Customer is not entitled to claim the implementation of subsequently communicated changes.
- 6.5 If the Customer does not or not fully comply with his obligations to cooperate, we shall be released from our obligation to provide the Services. This applies in particular if the information provided by the Customer is incorrect or incomplete.

7. Delivery; Transfer of risk; Time of performance

- 7.1 Delivery shall be FCA ("Free Carrier") Gewerbestrasse 10, 79774 Albruck, Germany Incoterms 2020. At the Customer's request, we shall ship to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route and packaging of the packaging material). The Customer bears the shipping or transport costs.
- 7.2 In the case of delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration shall pass upon delivery to the forwarding agent, carrier or other person designated to carry out the shipment.
- 7.3 Delivery / Service dates indicated in the order confirmation shall not be binding, unless expressly agreed otherwise in individual cases.
- 7.4 If we are temporarily prevented from rendering the performance in due time by circumstances for which we are not responsible - on an agreed delivery date or within an agreed delivery period - in particular due to operational disruptions, strikes, lockouts, official decrees and cases of force majeure for which we are not responsible, we shall be released from our obligation to render the performance for the duration of the disruption and to the extent of its effects. The agreed time of performance shall be extended by the duration of the impediment to performance. If the execution of the order is delayed by more than three months, both EBCO and the Customer are entitled to withdraw from the contract with regard to the affected service.

8. Warranties and Rights in case of defects; Limitation Period

- 8.1 In case of delivery of products and provision of Services, the Customer's warranty claims are limited to the right of supplementary performance. If the supplementary performance fails, the Customer may, at his discretion, demand a reduction of the remuneration or withdraw from the contract.
- 8.2 The Customer is obliged to inspect the delivered products for defects without delay and to notify us in writing (by e-mail or fax) of any obvious defects in the delivered products immediately after delivery or occurrence of the defect. § 377 HGB (German Commercial Code) shall apply.
- 8.3 If the Customer sets his own specifications regarding material, design and type for the performance of our Services, we shall manufacture the products in accordance with the Customer's specifications. If we manufacture according to the Customer's specifications, we do not assume any warranty for defects based on the Customer's specifications, unless these are due to a defect identifiable by us. The Customer undertakes to exempt us from liability for direct and indirect damages caused by his specifications.
- 8.4 The general limitation period for claims arising from material defects and defects of title, with the exception of claims for damages, is one year from the handover of the manufactured products to the Customer or, in the case of distance selling, from the handover to the forwarding agent, carrier or other person designated to carry out the shipment.

9. Retention of Title

- 9.1 Until all our claims arising from the business relationship with the Customer have been completely settled, we shall retain title to the products delivered and the tools manufactured by us (hereinafter: "Retained Goods").
- 9.2 The Customer may neither pledge the Retained Goods to third parties nor assign them as security before the secured claims have been paid in full. The Customer shall notify us immediately in writing if and to the extent that third parties have access to the Retained Goods that are our property.
- 9.3 The Customer may resell the Retained Goods in the ordinary course of business. In this case, the Customer assigns to us his claims from the resale of the Retained Goods in the amount of the final invoice amount agreed between us and the Customer, including value-added tax; we hereby accept the assignment. This assignment shall apply irrespective of whether the Retained Goods have been resold without or after processing by the Customer. The Customer remains authorized to collect the claim even after the assignment. Our authority to collect the claim remains unaffected. However, we will not collect the claim as long as the Customer meets his payment obligations, is not in default of payment and in particular no application for the opening of insolvency proceedings has been filed or payments have been suspended.
- 9.4 If the Customer has resold the Retained Goods and is in default of payment, an application for the opening of insolvency proceedings is filed or payments have been suspended, we can demand that the Customer informs us of the claims assigned as security from the resale of the Retained Goods and their debtors, provides us with all information necessary for the collection of the claims, hands over to us the necessary documents and informs the debtor of the assignment.
- 9.5 If the value of the Retained Goods or the recoverable value of the securities available to us exceeds the claims to be secured by more than 10%, we shall be obliged to release the securities. We shall be entitled to select the securities to be released at our discretion.

10. Tools; Drawings

- 10.1 The tools manufactured for the performance of Customer's orders are the property of EBCO. EBCO is not obliged to hand over the tools. EBCO will keep the tools for a period of two years after the last delivery to the Customer; if the Customer does not place another order for which the respective tool is required within two years EBCO is entitled to destroy the respective tool.
- 10.2 Tools manufactured according to drawings or samples provided by the Customer shall be used exclusively for orders of this Customer. EBCO reserves the right to use the tools also for other purposes if the Customer does not pay for the Services provided by EBCO or does not pay as agreed.
- 10.3 If we manufacture products on the basis of drawings, models or samples provided by the Customer, the Customer shall be responsible for ensuring that intellectual property rights of third parties are not infringed thereby. In this respect, the Customer shall indemnify us against any third-party claims. If we are prohibited by third parties from producing or delivering the products due to an infringement of third-party intellectual property rights, we shall be entitled, without further examination of the factual and legal situation, to stop work and demand reimbursement of our expenses from the Customer. In this case, the Customer undertakes to indemnify us from all third-party claims and to assume all necessary costs of an extrajudicial and judicial defence of the claims as well as to support us to the best of his ability with the necessary information in the defence against third-party claims.

11. Liability

- 11.1 We shall be liable without limitation in accordance with the statutory provisions for injury to life, physical injury or damage to health, in accordance with the Product Liability Act, for assumption of a quality guarantee, in the case of fraudulent concealment of defects and for damages caused intentionally.
- 11.2 We shall also be liable for a grossly negligent breach of duty in accordance with the statutory provisions. In the event of a breach of a non-essential contractual obligation, liability shall be limited to the foreseeable damage typical of the contract.
- 11.3 In the event of slight negligence, we shall only be liable if essential contractual obligations are breached. In this case, our liability shall be limited to the foreseeable damage typical of the contract, the occurrence of which could have been expected.
- 11.4 In all other respects our liability is excluded.
- 11.5 Essential contractual obligations are those whose fulfilment enables the proper execution of the contract at all and on whose observance the Customer regularly relies and may rely.
- 11.6 The above-mentioned exclusions and limitations of liability shall also apply in favour of EBCO's organs, legal representatives, employees and other vicarious agents.

12. Confidentiality and Data Protection

- 12.1 We are obliged to treat confidentially the Customer's personal and business data, which become known to us in the course of our activities for the Customer, unless the Customer releases us from this obligation or there are legal obligations to disclose, e.g. towards public authorities.
- 12.2 We are obliged to use all knowledge of the Customer's trade secrets as well as of documents and information marked as confidential obtained in the course of the execution of the order only for the execution of the order and - even after termination of the order - to keep it confidential.
- 12.3 We process our Customer's data required for the execution of the order in compliance with the applicable data protection regulations.

13. Jurisdiction; Place of performance; Applicable law

- 13.1 Place of performance, also for subsequent performance, is the registered office of EBCO in Albruck, Germany.
- 13.2 The sole place of jurisdiction for all disputes arising out of or in connection with the performance of the Services shall be Waldshut-Tiengen, Germany.
- 13.3 The law of the Federal Republic of Germany shall apply; the UN Convention on the International Sale of Goods (CISG) shall not apply.