

General Terms and Conditions of Sale and Delivery EITEC GmbH (effective July 2024)

I. General and Scope of Application

1. The following General Terms and Conditions of Sale and Delivery ("GTCS") apply to all business relations between EITEC Führungsbahnschutz-Systeme GmbH ("EITEC") and its respective business partners who purchase goods from EITEC ("Customer").
2. These GTCS only apply to Customers who are entrepreneurs within the meaning of § 14 German Civil Code (BGB), legal persons under public law or special assets under public law.
3. The GTCS in their respective version apply as a framework agreement also for future contracts with the Customer without EITEC having to refer to them again in each individual case; the respective current version of the GTCS is available at www.eitec.de/en/agb.
4. These GTCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer will only become part of the contract if and insofar as EITEC has expressly agreed to their application in writing, i.e. in written or text form (e.g. letter, e-mail, fax). This requirement of consent applies in any case, for example even if the Customer refers to his general terms and conditions in the context of the order and EITEC does not expressly object to them.
5. As a clarification, EITEC points out that individual agreements with the Customer and information in EITEC's order confirmation take precedence over these GTCS. For the content of such an individual agreement, a written contract or EITEC's written confirmation is decisive; the parties reserve the right to prove the contrary.
6. Legally relevant declarations and notifications by the Customer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTCS includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, shall remain unaffected.
7. References to the applicability of statutory provisions only have a clarifying meaning. Even without such clarification, the statutory provisions apply insofar as they are not directly amended or expressly excluded in these GTCS.
8. Personal data is saved by EITEC to the extent permitted by law.

II. Offers and Conclusion of Contract

1. All offers are made without obligation, including delivery quantity, delivery time and price. Any promises made with regard to quantity, delivery dates and prices are only legally binding once they have been confirmed in writing by EITEC or the order has been executed.
2. The order of the goods by the Customer is deemed to be a binding offer of contract. Unless otherwise stated in the order, EITEC is entitled to accept this contractual offer within three weeks after its receipt by EITEC.
3. Contracts are deemed to be concluded when EITEC confirms acceptance in writing upon receipt of an order. This written order confirmation alone is decisive for the kind and scope of the delivery.

III. Delivery Time

1. The details of the delivery time are non-binding unless they have been expressly confirmed as binding by EITEC. A transaction for delivery by a fixed date is only established if this is expressly agreed.
2. If EITEC is unable to meet binding delivery dates for reasons for which EITEC is not responsible (non-availability of the performance), EITEC will inform the Customer thereof without undue delay and notify the Customer of the expected new delivery date. If the service is also not available within the new delivery period, EITEC is entitled to revoke from the contract in whole or in part; EITEC will immediately refund any counter-performance already made by the Customer. A case of non-availability of the service in this meaning is in particular the non-timely self-delivery by a supplier of EITEC, if EITEC has concluded a congruent covering transaction, in the event of other disruptions in the supply chain, for example due to force majeure or EITEC is not obliged to the procurement in the individual case.
3. The event of default is determined in accordance with the statutory provisions. EITEC is not in default of delivery without a prior warning notice.
4. The rights of the Customer according to clause VIII. of these GTCS as well as the statutory rights of EITEC, in particular in case of an exclusion of the duty of performance (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance remain unaffected).

IV. Delivery, Passing of Risk

1. Delivery will take place FCA (INCOTERMS 2020) from the location of EITEC in 85301 Schweitenkirchen, Otto-Hahn-Ring 13, Germany, or from another location to be named by EITEC; the same applies to the place of performance for the delivery and any cure. At the request and expense of the Customer, the goods are shipped to another destination (sale by dispatch).
2. Insurance against transport damage will only be provided upon written request and at the expense of the Customer.
3. The receipt of the goods is to be confirmed by the Customer stating the day and hour.
4. Partial deliveries are permissible to an extent that is reasonable for the Customer, in particular if the partial delivery is usable for the Customer within the scope of the contractual intended purpose, the delivery of the remaining ordered goods is ensured and the Customer does not thereby incur significant additional expense or additional costs.
5. EITEC is entitled to use subcontractors for the delivery of the goods.

V. Prices and Payments

1. Prices are FCA (INCOTERMS 2020) from the location of EITEC in 85301 Schweitenkirchen, Otto-Hahn-Ring 13, Germany, or from another location to be named by EITEC, plus statutory VAT and plus packaging.
2. The goods delivered by EITEC are payable without deduction within thirty (30) days from the date of invoice. Cash discounts, if contractually agreed, are not granted if the Customer is in default with the payment of previous invoices. EITEC is not obliged to accept bills of exchange and/or cheques. If EITEC accepts bills of exchange and/or cheques, this is done on account of performance. If it becomes apparent after conclusion of the contract (e.g. by application for opening of insolvency proceedings) that EITEC's claim to the purchase price is jeopardised by the Customer's lack of ability to pay, EITEC is entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a notice period - to revoke the contract (§ 321 BGB). In the case of contracts for the manufacture of not fungible items (custom-made products), EITEC may declare revocation immediately; the statutory regulations on the dispensability of specifying a period of time remain unaffected.
3. As soon as the Customer is in default with a payment resulting from the entire business relationship with EITEC, EITEC is entitled to make further deliveries only against advance payment.
4. Upon expiry of the aforementioned payment deadline, the Customer is in default without warning notice. In all other respects, EITEC's rights and obligations are governed by the statutory provisions.
5. The assertion of rights of retention or offsetting with counterclaims of the Customer are excluded unless the claims have been established in a final and binding judgment or undisputed by EITEC. In the event of defects in the delivery, the counter rights of the Customer remain unaffected, in particular in accordance with clause VII. no. 7 of these GTCS.

VI. Retention of Title, Processing

1. EITEC expressly reserves title to the delivered goods until all present and future claims against the Customer arising from the business relationship have been settled.
2. The Customer may resell and/or process the delivered goods in the ordinary course of business as long as he is not in default of payment. The Customer has to ensure that EITEC's retention of title remains in force as far as possible and herewith assigns to EITEC all claims in the full amount or in the amount attributable to the co-ownership share to which it is entitled against third parties from the resale. EITEC accepts the assignment. EITEC can demand that the Customer discloses the assigned claims and their debtors on request.
3. As long as the Customer fulfils his obligations from the current business relationship with EITEC, the assignment is treated as a silent assignment, so that the Customer is also entitled to collect the claims to this extent. EITEC reserves the right to collect the claim itself as soon as the Customer does not properly fulfil his payment obligations and is in default of payment. In this case, the Customer has to name the Customer of the goods at the request of EITEC, to hand over to EITEC the documents necessary for the assertion of its rights and to inform the Customer of the assignment.
4. In the event of a resale of the goods on credit, the Customer has to retain title. The Customer is not permitted to assign as security or pledge the goods subject to EITEC's retention of title or to make any other impairments to these goods. The Customer has to notify EITEC immediately in writing of access of third parties to the goods subject to retention of title or the assigned claims, handing over the documents necessary for the intervention. If the third party is not able to reimburse the judicial or extrajudicial costs incurred by us in this connection, the Customer is liable for them. The Customer also has to inform EITEC immediately in writing if an application for the opening of insolvency proceedings is filed.
5. If the realisable value of the existing securities exceeds the total claim to be secured by more than 10%, EITEC will release securities at the Customer's request at EITEC's discretion.
6. The retention of title extends to the products created by processing, intermixing or combining EITEC's goods at their full value, whereby EITEC is deemed to be the manufacturer. If, in case of processing, intermixing or combination with goods of third parties, their retention of title remains, EITEC acquires co-ownership in proportion to the invoice values of the processed, intermixed or combined goods. In all other respects, the same applies to the resulting product as to the goods delivered under retention of title.

VII. Quality of EITEC Products, Warranty Rights

1. Regarding the quality of EITEC products: Wipers, link aprons, bellows, roller blinds, telescopic covers, cover systems, Machine protection gates and lamellar grilles are subject to wear in dynamic use depending on the application. Telescopic and other machine guard covers contain components (e.g. wipers, gliders, bearings, driving elements, springs etc.) that are also subject to wear depending on the application.
2. The Customer's claims for defects presuppose that the Customer has complied with its statutory obligations to inspect and give notice of defects (§§ 377, 381 German Commercial Code (HGB)). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent upon delivery, inspection or at any later time, EITEC must be notified thereof in writing without undue delay. In all cases, the receipt of the notice of defects by EITEC is decisive. In any case, obvious defects are to be notified in writing within eight (8) days from delivery and defects not recognisable during the inspection within the same period from discovery. If the Customer fails to properly inspect and/or notify the defect, EITEC's liability for the defect not notified or not notified in time or not notified properly is excluded in accordance

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with the statutory provisions. In the case of goods intended for incorporation, fitting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, in particular, there shall be no claims by the buyer for reimbursement of corresponding costs ("removal and installation costs").

3. If claims for defects are not excluded under these GTCS, the statutory provisions apply, unless otherwise stipulated below. In all cases, the rights of the Customer arising from separately issued guarantees, in particular on the part of EITEC, remain unaffected.
4. The basis of EITEC's warranty is above all the agreement reached on the quality of the goods and the suitability for the use intended under the contract (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by EITEC (in particular in catalogues or on EITEC's Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it is to be assessed according to the statutory regulation whether a defect exists or not (§ 434 para. 3 BGB). Public statements made by the manufacturer or on his behalf, in particular in advertising or on the label of the goods, take precedence over statements made by other third parties.
5. Customary deviations of the delivery items are reserved as far as they do not unreasonably affect the Customer, do not affect the usability of the goods and this is caused by important operational requirements of EITEC. EITEC is entitled to make changes to the ordered product without special consent of the Customer, if these are necessary due to technical development or represent a technical improvement of the product, as far as this does not unreasonably impair the Customer. EITEC will inform the Customer about the change within a reasonable period of time.
6. If the delivered product is defective, EITEC may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). The right of EITEC to refuse cure under the statutory provisions remains unaffected. In the event of a replacement delivery, the Customer has to return the defective product to EITEC upon request of EITEC in accordance with the statutory provisions; however the customer does not have a right of return.
7. EITEC is entitled to condition the cure owed on the Customer paying the purchase price due. However, the Customer is entitled to retain an appropriate part of the purchase price in relation to the defect.
8. The Customer has to give EITEC the time and opportunity necessary for the owed cure and in particular to enable the inspection of the goods complained about.
9. Cure does not include the disassembly, removal or deinstallation of the defective goods or the incorporation, fitting or installation of a defect-free item if EITEC was not originally obliged to perform these services; claims of the Customer for reimbursement of corresponding costs ("removal and installation costs") remain unaffected.
10. The expenses required for the purpose of inspection and cure (in particular transport, travel, labour and material costs as well as, if applicable, removal and installation costs) are borne or reimbursed by EITEC in accordance with the statutory provisions if there is in fact a defect. Otherwise, EITEC may demand reimbursement from the Customer of the costs incurred from the unjustified requests for cure (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Customer.
11. In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Customer has the right to remedy the defect himself and to demand reimbursement from EITEC for the expenses objectively necessary for this. EITEC is to be informed immediately of such a self-help, if possible in advance. The right of self-help does not exist if EITEC would be entitled to refuse a corresponding cure according to the statutory provisions.
12. Claims of the Customer for damages or reimbursement of futile expenditures also exist in the case of defects only in accordance with clause VIII. and are otherwise excluded.
13. Liability for the sale of used goods is excluded except as provided in clause VIII.
14. The Customer is entitled to the statutory rights of revocation. If there is only an insignificant defect, the Customer is only entitled to a reduction of the agreed price. Otherwise, the right to a reduction is excluded.

VIII. Other Liability

1. EITEC is liable for damages - irrespective of the legal grounds - within the scope of fault based liability in the event of intent and gross negligence. In the case of simple negligence, EITEC is liable subject to statutory limitations (e.g. for diligence in own affairs, insignificant breach of duty) only
 - 1.1. for damages resulting from injury to life, body or health, and
 - 1.2. for damages arising from the breach of a material contractual obligation (obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies or may rely on); in this case, however, EITEC's liability is limited to the compensation of the foreseeable, typically occurring damage.
2. The limitations of liability resulting from clause VIII. no. 1. also apply to breaches of duty by or in favour of persons whose fault EITEC is responsible for according to statutory provisions. They do not apply insofar as EITEC has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods and for claims under the Product Liability Act (ProdHaftG).
3. Because of a breach of duty which does not consist of a defect, the Customer may only revoke or terminate the contract if EITEC is responsible for the breach of duty. A free right of termination of the Customer (in particular according to §§

650, 648 BGB) is excluded. In all other respects, the statutory provisions and legal consequences apply.

IX. Limitation Period

1. In deviation from § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects or defects of title is one (1) year from delivery. Insofar as acceptance has been agreed, the limitation period commences with acceptance.
2. The above periods of limitation under the law on sale of goods also apply to contractual and non-contractual claims for damages by the Customer based on a defect in the goods, unless the application of the regular statutory period of limitation (§§ 195, 199 BGB) would lead to a shorter period of limitation in individual cases. However, the Customer's claims for damages under clause VIII no. 1 sentence 1 and sentence 2 no. 1.1 as well as under the Product Liability Act (ProdHaftG) become statute-barred exclusively in accordance with the statutory limitation periods.

X. Resale

1. The delivery item is sold to the Customer for his business operations. Resale to consumers is not permitted.
2. The Customer is obliged to prohibit any resale to consumers and indemnifies EITEC from all claims in connection with such a sale.

XI. Property Rights and Copyrights, Shapes and Tools

1. EITEC is the owner of and retains copyright with respect to all tools, models, samples, shapes, drawings, illustrations, calculations and other documents used for the production of EITEC's products or made for the production of these products (manufacturing equipment). This also applies if the manufacturing equipment has been paid for in whole or in part by the Customer. Subsidies paid by the Customer for necessary manufacturing equipment do not rescind EITEC's exclusive right to dispose of the manufacturing equipment at any time.
2. If the Customer has paid for a share of the manufacturing equipment as agreed, but delivery does not take place for reasons for which EITEC is not responsible, reimbursement of the subsidies paid is excluded.
3. Any other use of the manufacturing equipment for the production of items for third parties is generally permissible. Only in the case of an agreement expressly confirmed by EITEC in writing is EITEC obliged to manufacture exclusively for the Customer with the manufacturing equipment in question.
4. Customer subsidies are not amortised or otherwise reimbursed. EITEC carefully stores and maintains all manufacturing equipment. The costs of maintaining the production equipment resulting from normal tool wear and tear are borne by EITEC. However, EITEC is not liable for damage that occurs to the manufacturing equipment despite proper handling. EITEC's obligation to store expires if no further orders are received from the Customer within 2 years of the last delivery.

XII. General Customs Provisions

1. The fulfillment of the contract is subject to the provision that there are no obstacles due to national and/or international legal provisions, in particular (US-re-) export control laws, as well as embargo regulations or other export restrictions of a national or international nature. The Customer complies with the applicable provisions of national and international export control law when reselling and passing on the products to third parties. In any case, the Customer observes and complies with the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America when reselling products to third parties.
2. In particular, the Customer is obliged to ensure that export transactions are carried out in accordance with customs and export control regulations. If the Customer violates this obligation, EITEC reserves the right to pass on to the Customer any fines or similar (legal fees, etc.) paid by EITEC.
3. Before reselling and passing on the EITEC products to third parties, the Customer checks and takes appropriate measures to ensure that
 - 3.1. the terms and conditions of all relevant and currently applicable sanctions lists of the European Union and the United States of America regarding legal transactions with companies, persons or organizations listed therein are complied with;
 - 3.2. the Customer does not violate any embargo of the European Union, the United States of America and/or the United Nations - also taking into account any restrictions on domestic business and any prohibitions on circumvention - by selling or transferring the EITEC Products or providing services related to them to third parties; and
 - 3.3. the goods of EITEC are expressly not delivered to third parties for military, in particular prohibited or subject to authorization, armaments-related, nuclear or weapons-related use, unless the necessary authorizations have been obtained and do not violate other currently valid international sanctions regulations;
4. In order to carry out export control checks within the scope of EITEC's activities or at the request of external authorities, the Customer shall, at EITEC's request, immediately provide EITEC with all information and/or documentation available to it about
 - the final recipient
 - the final destination and
 - the intended useof the EITEC products supplied by the Customer to third parties and any services provided by the Customer in this connection, as well as any applicable export control restrictions.

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5. The Customer immediately and fully indemnifies EITEC against all claims asserted by authorities or other third parties against EITEC due to the Customer's non-compliance with or violation of the above export control obligations and undertakes to compensate EITEC for all damages and expenses incurred by EITEC in this connection (costs, legal fees, expenses, fines, etc.). EITEC is entitled to demand advance payments.
6. In the event of violations of export control law, both parties may withdraw from/terminate the contract or cancel the remaining partial services.
7. Delays due to import or export controls suspend delivery times.

XIII. No-Russia/No-Belarus Clause

1. The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 or, in the case of Belarus, within the scope of Art. 8g of Council Regulation (EU) 2024/1865.
2. The Customer shall undertake its best efforts to ensure that the purpose of Section XIII.1. is not frustrated by any third parties further down the commercial chain, including by possible resellers.
3. The Customer shall establish and maintain an appropriate monitoring mechanism to detect conduct by third parties in the commercial chain, including potential resellers, that would defeat the purpose of Section XIII.1.
4. The Customer shall immediately and fully indemnify EITEC against all claims asserted by authorities or other third parties against EITEC due to the customer's failure to comply with or breach of the above obligations under export control law as set forth in Section XIII.1. to Section XIII.3. and undertakes to compensate EITEC for all damages and expenses incurred by EITEC in this connection (costs, legal fees, expenses, fines, etc.). EITEC is entitled to demand advance payments.
5. In the event of non-compliance, EITEC may be legally obliged to terminate the business relationship and report the matter to the competent authorities.
6. Any violation of Section XIII.1 to Section XIII.3. shall constitute a material breach of an essential element of the Agreement, and EITEC shall be entitled to seek appropriate remedies, including, but not limited to:
 - 6.1. Termination of or withdrawal from the contract and
 - 6.2. contractual penalty, the amount of which is at the reasonable discretion of EITEC but may be subject to judicial review. The assertion of other rights, in particular claims for compensation for further damages, shall remain unaffected by this. However, the contractual penalty shall be offset against claims for further damages.
7. The Customer shall immediately inform EITEC of any problems in the application of any of Sections XIII.1 to XIII.3, including any relevant third party activities that may frustrate the purpose of Section XIII.1. The Customer shall provide EITEC with information on compliance with the obligations under Sections XIII.1. to XIII.3. within two weeks of a simple request.

XIV. Final Provisions

1. The place of performance for payments is determined by the location of EITEC in 85301 Schweitenkirchen, Otto-Hahn-Ring 13, Germany.
2. If the Customer is a merchant within the meaning of the HGB, a legal person under public law or a special asset under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Ingolstadt, Germany. The same applies if the Customer is an entrepreneur within the meaning of § 14 BGB. However, EITEC is also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the general place of jurisdiction of the Customer. Mandatory statutory provisions, in particular on exclusive jurisdiction, remain unaffected.
3. For these GTCS and the contractual relationship between us and the Customer, the laws of the Federal Republic of Germany apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
4. Any changes or amendments to the respective delivery or purchase contract require the written form.
5. Should individual provisions of these GTCS or a provision within the scope of other agreements be or become invalid in whole or in part, the validity of the remaining provisions remain unaffected. The wholly or partially invalid provision is to be replaced by a valid and enforceable provision which comes as close as possible in economic and legal terms to the purpose of the provision intended by the parties.