



## **General terms and conditions of delivery and business for products and services of the company EVO GmbH**

- below: EVO -

### **for use in business dealings with companies**

#### **1 General provision**

1. These legal terms and conditions apply exclusively to the legal relationship between EVO and the customer in connection with deliveries and/or services from EVO (hereinafter referred to as deliveries/services). General terms and conditions of the purchaser only apply to the extent that EVO has expressly agreed to them in writing.
2. EVO reserves its property and copyright exploitation rights without restriction on cost estimates, drawings, offer documents and other documents and plans relevant to the order. These may only be made accessible to third parties with the prior consent of EVO and, if a contractual relationship between EVO and the customer does not materialize, must be returned to EVO immediately upon request.
3. Offers from EVO are always non-binding. Prices and descriptions of the delivery item as well as performance information and other assurances are only binding for EVO if they have been confirmed by EVO in writing or in text form or have been confirmed in writing or in text form.

#### **2 Conclusion of contract**

A contract and/or order between EVO and the customer only comes into existence if and insofar as a written contract has been concluded between the parties and/or an order from the customer has been confirmed in writing by EVO. Instead of the written form, the text form can also be selected.

#### **3 Rates**

1. All prices quoted are ex works excluding packaging costs and plus the applicable statutory sales tax.
2. Price quotations shall only be binding for EVO if they have been agreed upon in writing in the contract between EVO and the buyer and/or declared binding in a written order confirmation issued by EVO in writing or in text form.

#### **4 Delivery**

1. Delivery periods and delivery dates for the manufacture and/or delivery are only binding for EVO if they have been expressly agreed on in writing or in text form or have been confirmed by EVO in writing or in text form.
2. Partial deliveries as well as excess or short deliveries of up to 10% of the sold delivery quantity by EVO are reasonable for the customer.
3. An agreed delivery period is considered met if the delivery item has arrived at the destination or has left EVO's company within the agreed period or by the agreed date, whichever is agreed between the parties. Failure to meet deadlines or deadlines is due to
  - a. Force Majeure (mobilization, acts of terrorism, riot, strike, lockout and similar events)
  - b. Virus and other attacks by third parties on EVOs IT system, insofar as these were carried out in spite of the usual care for protective measures



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- c. Obstacles due to national and international regulations of foreign trade law or other circumstances for which EVO is not responsible (lack of energy, delays in supplying the EVO with essential components and delivery components, import difficulties, operational and traffic disruptions)

the deadlines and dates are extended accordingly.

4. If EVO cannot be on time for reasons other than unforeseen events acc. 3, the customer is entitled to withdraw from the contract after setting a reasonable grace period. Claims for damages by the customer due to delay in delivery as well as claims for damages by the customer instead of performance are excluded in the event of the customer's withdrawal. This disclaimer does not apply in cases of intent and gross negligence on the part of EVO. A change in the burden of proof to the detriment of the customer is not associated with the above regulations.

## 5 Payment

1. Payments are made without a cash discount in such a way that EVO can dispose of the payment amount on the due date. The customer bears the costs of payment transactions. The purchaser's rights of retention, which are not based on the same contractual relationship, as well as offsetting against disputed or not legally established claims by the purchaser are excluded.
2. If the payment deadline is exceeded, the buyer owes default interest of 8% above the base rate p.a., the assertion of a higher default damage by EVO remains unaffected.

## 6 Retention of title

1. The objects of delivery (reserved performance) remain the property of EVO until all claims against the customer arising from the business relationship have been fulfilled.
2. Processing of the reservation service is done for EVO as a manufacturer within the meaning of § 950 BGB, the processed and processed service is considered a reservation service. The orderer keeps the resulting new item for EVO with the care of a prudent businessman. EVO and the purchaser agree that EVO is in any case entitled to co-ownership of the new item in the amount of the share that results from the ratio of the value of the combined or mixed reservation service to the value of the other goods at the time of connection or mixing.
3. If the customer sells the reserved service, he will assign his future claims from the resale against his customers with all ancillary rights to EVO as a security, without the need for further special explanations. If the reservation service is resold together with other items without the reservation service agreeing a single price, the customer assigns that part of the total price claim to EVO that corresponds to the price of the reservation service invoiced by EVO.
4. Until further notice, the purchaser is authorized to collect assigned claims from the resale. In the event of a delay in payment or another important reason, EVO is entitled to revoke the customer's direct debit authorization. In addition, EVO can disclose the assignment of security after prior warning and within a reasonable period of time and utilize the assigned claims. The above regulations also apply to factoring transactions of the customer. At EVO's request, the customer must notify the assignment and provide EVO with all the documents necessary to assert his rights against the customer of the customer and to provide the necessary information.
5. The purchaser must immediately notify EVO of pledges, seizures or other dispositions or interventions by third parties.



6. If the value of the existing security exceeds EVO's claims against the purchaser by more than 20%,
7. During the existence of the retention of title, the purchaser is prohibited from pledging or transferring ownership by way of security and the further sale to resellers in the ordinary course of business is only permitted under the condition that the reseller receives payment from his customer or makes the reservation that the property is only on the customer passes over if the latter has fulfilled its payment obligations.

## 7 Shipping and transfer of risks

1. Dispatch from EVO's headquarters is in any case at the expense and risk of the customer. The customer also bears the costs for the desired express or express delivery. Dispatch route/transmission type and dispatch type are chosen by EVO, unless otherwise agreed. EVO is only obliged to take out transport insurance with the express and written instructions of the customer; the costs of insurance are borne by the customer. Shipping is to the best of EVO's knowledge, excluding any liability of its own. EVO is not responsible for changes and deteriorations of the goods during transport or due to improper storage.
2. The risk passes to the purchaser as soon as the service has left EVO's headquarters, even if EVO has taken on further services such as freight-free shipping, delivery or the like. If EVO has informed the purchaser that the goods are ready for dispatch or collection, the risk passes to the purchaser if he does not retrieve or collect the goods and a reasonable period has been set unsuccessfully.

## 8 Warranty

1. The customer must examine the delivered goods/services immediately after receipt. Visible defects must be reported to EVO in writing within one week of receipt of the goods/service. If this does not happen, the goods/services are considered accepted.
2. The purchaser's claims for defects do not exist if there is only an insignificant deviation from the agreed quality, if there is only an insignificant impairment of usability, if there is natural wear and tear, or if there is any damage that arises in the sphere of the purchaser after the transfer of risk as a result of incorrect or negligent handling.
3. Defective deliveries/services are to be repaired, delivered new or provided again free of charge by EVO. In the event of failure to remedy the defect and/or subsequent performance, the customer has the right to reduce or to withdraw from the contract.
4. Claims for damages by the customer due to a material defect are excluded. This does not apply in the event of fraudulent concealment of the defect, non-compliance with a quality guarantee, injury to life, limb or health and in the event of a willful or grossly negligent breach of duty by EVO. A change in the burden of proof to the detriment of the customer is not associated with the above regulations. Further claims of the customer due to a material defect are excluded.
5. EVO only guarantees the suitability of the delivered goods/services for the purpose intended by the customer if this has been expressly agreed in writing. Insofar as the goods correspond to a released initial sample, these are considered to be free of defects. Tolerances for form and machining dimensions are based on the applicable DIN regulations.
6. Claims for material defects become statute-barred 12 months from the start of the statutory limitation period. This period does not apply, as long as the law stipulates longer periods, in the event of intent,





fraudulent concealment of a defect and non-compliance with a quality guarantee. The legal regulations regarding the suspension of expiry and the restart of the deadlines remain unaffected.

## 9 Liability of EVO

1. Unless otherwise stipulated above, EVO and its vicarious agents are liable for claims for damages in accordance with the legal provisions, but limited in amount to the amount of coverage within the scope of liability insurance coverage in favor of EVO. The coverage amounts to

- a. € 5,0 Mio. for personal injury
- b. € 5,0 Mo. for damage to property
- c. € 1,0 Mio. for financial losses

However, the aforementioned maximum amounts are available for a maximum of 2 times for all damages within an insurance year. Any liability on the part of EVO for loss of profit by the customer is excluded.

2. The above limitation of liability does not apply in the event of intent, gross negligence, product liability cases or culpable injury to life, limb or health. In any case, the purchaser's claim for damages in the event of a breach of essential contractual obligations is limited to the foreseeable damage typical of the contract. A change in the burden of proof to the detriment of the customer is not associated with the above regulations.

## 10 Industrial property right

1. Unless otherwise agreed, EVO is obliged to provide the delivery free of industrial property rights and copyrights of third parties only in the customers country. If a third party raises legitimate claims against the customer due to a violation of such property rights by services provided by EVO and used by the customer in accordance with the contract, EVO shall only be liable to the customer if EVO chooses so and at its own expense for the services/deliveries concerned either generate a right of use that can change the services/deliveries to such an extent that the property right is not violated or the service/delivery can be exchanged. If this is not possible for EVO on reasonable terms, the purchaser is entitled to the statutory right of withdrawal, claims for damages are based on the above provisions.

2. The above-mentioned obligations of EVO only exist insofar as the purchaser notifies EVO in writing or in text form about the claims asserted by the third party, an infringement is not acknowledged and EVO reserves all defense measures and settlement negotiations. If the customer ceases to use the service/delivery for damage reduction or other important reasons, he is obliged to point out to the third party that the cessation of use does not involve acknowledgment of an infringement of property rights.

3. Claims of the customer are excluded if the violation of property rights is caused by special requirements of the customer, by an application of the customer that is not foreseeable by EVO or by the fact that the service/delivery is changed by the customer or used together with products not supplied by EVO.

## 11 Tools and materials

EVO assumes no liability for the fact that the materials supplied by the customer, the products to be provided and the tools provided are free from defects in material and legal defects. Claims for material defects arising from the defectiveness of materials supplied by the customer, products to be provided or tools provided are excluded.



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## 12 Place of jurisdiction, place of performance, applicable law

1. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered office of EVO.

EVO is however also entitled to sue at the customer's registered office. The place of performance is the registered office of EVO.

2. This contract, including its interpretation, is subject exclusively to German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 13 Severability clause

The contract concluded on the basis of these general delivery and business terms remains effective and binding in its remaining parts even if individual provisions are legally ineffective.

09. February 2018