

<p><b>1 Scope</b></p> <p>1.1 The following GTC of Carl Eichhorn KG exclusively apply to all deliveries and services of Carl Eichhorn KG. They also apply to all future business relationships of Carl Eichhorn AG with the customer. Any general terms and conditions of the customer that are conflicting with or deviating from the present GTC shall not be recognised, unless Carl Eichhorn KG has explicitly approved their applicability in writing. The present GTC also apply if Carl Eichhorn KG, while having knowledge of such general terms and conditions of the customer that are conflicting with or deviating from the present GTC, provides services to the customer without reservation.</p> <p>1.2 The GTC of Carl Eichhorn KG exclusively apply to businesses.</p> <p><b>2 Offers; Conclusion of Contract</b></p> <p>2.1 Offers of Carl Eichhorn KG are without obligation unless Carl Eichhorn KG explicitly declares the offer binding in an individual case.</p> <p>2.2 The customer is bound by its order for 14 days after receipt of the order.</p> <p>2.3 Orders submitted by the customer shall be deemed to be accepted by Carl Eichhorn KG, if confirmed in writing via order confirmation by Carl Eichhorn KG or its representatives within 14 days after receipt of the respective order.</p> <p><b>3 Written Form</b></p> <p>All agreements on deliveries and services of Carl Eichhorn KG have to be set out in writing. Declarations of travellers, sales agents or employees of Carl Eichhorn KG with regard to the conclusion and/or amendment of a contract are only binding for Carl Eichhorn KG after explicit written confirmation by Carl Eichhorn KG., e.g. in the form of an order confirmation.</p> <p><b>4 Time of Delivery and Services; Delivery Method; Partial Delivery; Quantity; Default</b></p> <p>4.1 The relevant point in time for the beginning of agreed delivery periods is the conclusion of the contract. Delivery periods are deemed to be met if the goods are dispatched or the customer has been informed that the goods are ready for dispatch or collection before the expiry of the delivery period.</p> <p>4.2 Unless set out otherwise, Carl Eichhorn KG determines the delivery method.</p> <p>4.3 Partial deliveries may be made within the agreed delivery periods if they are announced to the customer at least three working days before the planned delivery. The customer may object to a partial delivery if it cannot be reasonably expected from the customer to accept it.</p> <p>4.4 Due to mandatory production requirements, customary surplus or short deliveries of the goods ordered by the customer may occur. Carl Eichhorn KG is entitled to make such surplus or short deliveries if the customer can reasonably be expected to accept such deviation from the agreed quantity.</p> <p>The quantity actually delivered will be invoiced. The above-mentioned deviations have to be taken into account by the customer when placing an order.</p> <p>4.5 Claims for damages of the customer for default are subject to clause 10 of the present GTC and, for the rest, to the statutory provisions. Carl Eichhorn KG is not in default as long as the customer itself is in default with its obligations to perform.</p> <p>4.6 In case of default of acceptance by the customer or a violation of other duties to cooperate, Carl Eichhorn KG is entitled to charge the usual storage costs in accordance with section 354 German Commercial Code (HGB), even when storing goods in one of their own plants, at least, however, 1% of the invoiced amount of the goods for each month of default of acceptance. Carl Eichhorn KG expressly reserves further claims. If Carl Eichhorn KG asserts the minimum flat fee provided for in this clause 4.6 above, the customer shall have the right to prove that no or less damage has been incurred.</p> <p><b>5 Passing of Risk</b></p> <p>5.1 The risk of accidental loss or accidental deterioration of the goods passes over to the customer upon handover, in case of sale by dispatch upon the delivery of the goods to the person or institution instructed with the transport; this also applies if the transport is made by Carl Eichhorn KG.</p> <p>5.2 Handover is deemed effected if the customer is in default of acceptance.</p> <p><b>6 Return of Transportation Aids; Stock Account</b></p> <p>6.1 Carl Eichhorn KG maintains a stock account over pallets, cover plates, frames and other transportation aids owned by Carl Eichhorn KG (hereinafter referred to as Transportation Aids) for the customer and the customer regularly receives account statements for this account.</p> <p>6.2 Upon the delivery of goods by Carl Eichhorn KG or a person instructed to transport the goods, the customer shall as a rule provide a sufficient amount of Transportation Aids for return. Otherwise the Transportation Aids shall be handed over by the customer directly to Carl Eichhorn KG or to a person instructed with transport upon the next delivery. The customer shall settle the stock account as soon as possible.</p> <p>6.3 The records on the stock account are maintained based on proof of dispatch. The customer shall confirm receipt of the Transportation Aids received. Returned Transportation Aids are credited to the stock account in favour of the customer. Carl Eichhorn KG will settle the stock account regularly, usually on a quarterly basis. A debit balance for the customer determined in this way will be invoiced to the customer at the purchase price applicable at the point in time of invoicing and shall be settled by the customer without undue delay.</p> <p><b>7 Prices; Terms of Payment; Default; Set-off; Withholding of Payment</b></p> <p>7.1 For deliveries and services of Carl Eichhorn KG the agreed prices apply plus statutory VAT. As far as the individual contract does not provide otherwise, the invoiced amounts are immediately due for payment and payable within 30 days after the date of the invoice in full without deductions. As a rule, cash payment shall be deemed agreed. Payment by bill of exchange is not accepted.</p> <p>7.2 In case of payment default of the customer, Carl Eichhorn KG is entitled to demand annual default interest in the amount of 9 percentage points above the applicable base interest rate (section 247 German Civil Code; BGB). The assertion of a higher damage is not excluded.</p> <p>7.3 In case of an obvious lack of the customer's ability of performance, e.g. due to a deterioration of the customer's financial situation, Carl Eichhorn KG is entitled to revoke the term or extension of payment originally granted, to claim immediate payment and to assert the statutory claims for the orders not yet completed.</p> <p>7.4 The customer is only entitled to set-off or withhold payment if its counter-claim is determined in a legally binding manner, undisputed or acknowledged.</p> <p><b>8 Reservation of Ownership; Assignment of Claims</b></p> <p>8.1 Carl Eichhorn KG generally retains the ownership of the delivered goods until the receipt of the full invoiced amount for the respective delivery and further until the full payment of all claims by Carl Eichhorn KG from the business relationship with the customer.</p> <p>8.2 The same shall apply to export deliveries, i.e. to all deliveries into countries outside the country in which we have our head office. In case the laws of such country do not allow for such retention of ownership in the manner as aforementioned, the customer undertakes to provide to Carl Eichhorn KG equivalent security for all claims of Carl Eichhorn KG against him.</p> <p>8.3 The customer is obliged to treat the goods that are subject to reservation of ownership with care and in particular to protect them from humidity and damage. The customer has to take out sufficient insurance for the goods at original value and to extend its professional liability insurance to the goods. Upon the request of Carl Eichhorn KG the customer is obliged to prove the existence of insurance cover. The customer hereby assigns all claims from the insurance policy or against any liable party to Carl Eichhorn KG. Carl Eichhorn KG hereby accepts the assignment.</p> <p>8.4 As long as the reservation of ownership is in place the customer is not entitled to pledge the goods, assign them as security or otherwise dispose of the goods. The customer is entitled to resell and process the goods in the ordinary course of business as long as the customer is not in default of payment. The customer herewith assigns to Carl Eichhorn KG all claims in the amount of the invoiced amount of the claims of Carl Eichhorn KG that the customer receives from reselling the goods to third parties; this applies irrespective of whether the goods are resold without or after processing. Carl Eichhorn KG herewith accepts the assignment.</p> <p>8.5 The customer remains authorised to recover the claims assigned under clause 8.3 even after the assignment. Carl Eichhorn KG reserves the right to recover the claims if the customer is in default of payment. In this case, Carl Eichhorn KG may request that the customer discloses the assigned claims and the debtors, provides all information necessary for recovery, hands over any related documents and informs the debtors about the assignment.</p> <p>The customer is obliged to immediately inform Carl Eichhorn KG in writing of any attachments or other third-party interventions so that Carl Eichhorn KG can bring a third-party proceeding. Carl Eichhorn KG is entitled to claim the refund of the in- and out-of-court costs for the third-party proceeding from the customer if the proceeding was successful and the compulsory enforcement against the third party as the debtor was attempted without success.</p> <p>8.6 The treatment and processing of the goods shall always be made in the name and on behalf of Carl Eichhorn KG. If the goods are processed with objects that do not belong to Carl Eichhorn KG, Carl Eichhorn KG acquires co-ownership of the newly produced good commensurate to the value of the goods delivered by Carl Eichhorn KG as compared to the value of the other processed objects.</p>	<p><b>9 Warranty for Defects; Drop Shipping; Rights of Regress</b></p> <p>9.1 The customer's warranty rights are subject to the customer duly fulfilling its obligation of inspection and giving notice of defects in accordance with section 377 German Commercial Code in writing. The customer has to notify Carl Eichhorn KG in writing of obvious defects without undue delay and at the latest within a period of five working days after receipt of the goods, and of hidden defects without undue delay and at the latest within a period of five working days after discovery of such defects. The relevant point in time for compliance with these periods is the receipt of the notice of defects.</p> <p>The customer bears the full burden of proof regarding all prerequisites for the assertion of claims, in particular for the defect itself, for the point in time of the discovery of the defect, for the defect notice being made in good time and the proper storage of the goods.</p> <p>9.2 If the goods are not delivered by Carl Eichhorn KG but directly by their supplier or a transport entity instructed by them (drop shipping), the customer has to notify defects in compliance with the above-mentioned periods and requirements to the supplier of Carl Eichhorn KG and immediately inform Carl Eichhorn KG thereof in writing. If the supplier is demonstrably unknown to the customer, clause 9.1 applies.</p> <p>9.3 If the customer violates the obligations under clauses 9.1 and 9.2, the assertion of warranty claims with regard to the defect in question is excluded. This does not apply if Carl Eichhorn AG has fraudulently concealed the defect.</p> <p>9.4 As the sample cartons of Carl Eichhorn KG are partly manufactured by hand, there may be minor deviations of the delivered goods from the sample cartons.</p> <p>9.5 Deviations in colour and quality of the goods, in the gluing, sewing and printing as well as differences in weights within the production-related tolerance range do not constitute defects and have to be accepted by the customer. The assessment of customary or technically inevitable deviations shall be based on the inspection catalogue for corrugated cardboard boxes issued by Verband der Wellpappenindustrie e.V., Hilpertstr. 22, Darmstadt, Germany, and available to Carl Eichhorn KG as well as the DIN Standards for corrugated cardboard packaging, each as amended from time to time.</p> <p>9.6 Carl Eichhorn KG does not assume liability for the fitness for use of the packaging for a specific purpose unless this was expressly assured to the customer in writing.</p> <p>9.7 Carl Eichhorn KG does not assume liability for defects in goods that are owed to the fact that the customer did not comply with a technical specification issued by Carl Eichhorn KG with regard to the performance of an act of cooperation.</p> <p>9.8 For defects of the goods that already existed at the point in time of the passage of risk Carl Eichhorn KG may – subject to the provisions set out in clauses 9.1 to 9.7 – chose to fulfil their warranty obligation by either rectification or replacement (alternative performance).</p> <p>Carl Eichhorn KG can predicate the alternative performance towards the customer on the payment of an appropriate partial remuneration for the services provided.</p> <p>The partial remuneration shall be assessed in consideration of the notified defect.</p> <p>9.9 In case of subsequent delivery of goods that are free of defects, the customer is obliged to return the originally delivered, defective goods.</p> <p>9.10 If alternative performance is not successful, if Carl Eichhorn KG refuses alternative performance or if alternative performance cannot be reasonably expected from Carl Eichhorn KG, the customer is entitled within the context of the statutory provisions to choose to rescind from the contract in accordance with clause 11 below or to reduce remuneration.</p> <p>9.11 Claims for damages and refund of expenses against Carl Eichhorn KG for defects are governed by clause 10 of the present GTC.</p> <p>9.12 The customer supports Carl Eichhorn KG with regard to the detection and rectification of defects as far as the customer is able to do so and it can be reasonably expected.</p> <p>9.13 The customer has no warranty or liability claims for defects that occur as a result of changes made to the goods without approval of Carl Eichhorn KG.</p> <p>9.14 The warranty period is one year as of the delivery of the goods. This does not apply in case of gross negligence on the part of Carl Eichhorn KG, the absence of warranted qualities or fraudulent concealing of a defect as well as in case of a culpable injury to life, body or health. In these cases the statutory limitation provisions shall apply. The mandatory provisions for the supplier's recourse (sections 445b, 478 German Civil Code) shall also remain unaffected.</p> <p><b>10 Liability for Damages and Refund of Expenses</b></p> <p>10.1 Carl Eichhorn KG is only liable for damages or refund of expenses – irrespective of the legal reason – if the damage was caused by the culpable violation of a material contractual obligation (cardinal obligation) in a way that jeopardises the achievement of the contractual purpose or can be attributed to intent or gross negligence.</p> <p>10.2 In the event that Carl Eichhorn KG is liable for the violation of a material contractual obligation in accordance with clause 10.1 above without it being a case of intent or gross negligence, such liability is limited to the extent of damage the occurrence of which Carl Eichhorn KG had to reasonably expect at the time of the conclusion of the contract due to circumstances they had knowledge of at such point in time.</p> <p>10.3 The aforementioned limitations or exclusions of liability do not apply in case of mandatory provisions for supplier's recourse (sections 445a, 478 German Civil Code), culpable injury to life, body or health, for liability claims under the German Product Liability Act and in case of a contractually agreed non-fault obligation to assume liability or if Carl Eichhorn KG fraudulently concealed a defect.</p> <p>10.4 Claims for damages become time-barred after one year as of the beginning of the statutory limitation period. This does not apply in case of gross negligence on the part of Carl Eichhorn KG and in case of a culpable injury to life, body or health. In these cases the statutory limitation provisions shall apply.</p> <p>10.5 To the extent the liability of Carl Eichhorn KG is excluded or limited pursuant to the provisions above, the same shall apply to the personal liability of its management, employees, representatives or vicarious agents.</p> <p><b>11 Customer's Right of Rescission</b></p> <p>11.1 In case of a breach of duty for which Carl Eichhorn KG is responsible, the customer is entitled to rescind from the contract in accordance with the statutory provisions. The rescission right is excluded if Carl Eichhorn KG is not responsible for the circumstances giving rise to the rescission right.</p> <p>11.2 If a breach of duty for which Carl Eichhorn KG is responsible relates to a partial performance, the customer may in cases of default, poor performance and impossibility only rescind the entire contract if the remaining performance is not of interest to the customer. In case of a culpable poor performance, rescission is excluded if the breach of duty, in particular a defect, is insignificant.</p> <p>11.3 The rescission right is also excluded if the customer is responsible or partly responsible for the default, poor performance or impossibility as far as Carl Eichhorn KG is not at contributory fault or the circumstances that are outside the responsibility of Carl Eichhorn KG arise at a time when the customer is in default of acceptance. In cases of breach of a secondary obligation the customer only has a rescission right if it cannot reasonably be expected of the customer to continue the contract.</p> <p>11.4 The customer's right to rescind the contract in case of partial impossibility that is outside the responsibility of both parties in accordance with clause 11.2 remains unaffected.</p> <p><b>12 Applicable Law; Place of Jurisdiction</b></p> <p>12.1 The law of the Federal Republic of Germany applies under exclusion of the UN Convention on Contracts for the International Sale of Goods.</p> <p>12.2 The exclusive place of jurisdiction for disputes arising from the business relationship is Jülich.</p>
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