

General Terms and Conditions of Sale and Delivery of ESN Bahngeräte GmbH

1. Scope

(1) Our General Terms and Conditions of Sale and Delivery shall apply exclusively. We shall not recognize any terms or conditions of the purchaser that oppose or deviate from our General Terms and Conditions unless we have expressly agreed to their validity in writing. Our General Terms and Conditions shall apply even if we supply the purchaser without reservation in the knowledge of opposing or deviating terms or conditions of the purchaser. They shall also apply to any and all future business with the purchaser.

(2) Our Terms and Conditions of Sale and Delivery shall apply exclusively to legal entities under public law, special funds under public law and entrepreneurs within the meaning of Section 310 Paragraph 1 of the German Civil Code [BGB].

2. Conclusion of Contract, Bidding Documents

(1) A contract shall be concluded by the fact that we accept the contract offer submitted through the purchaser's order in writing with our order confirmation.

(2) Any sale shall be in accordance with samples, illustrations or descriptions. Slight deviations in the object of purchase with regard to design, dimension, form and color shall not justify complaints on the part of the purchaser.

(3) We reserve the rights of ownership and copyright to illustrations, drawings, calculations and other documents. This provision shall also apply to those written documents designated as "confidential." The purchaser shall be required to obtain our express consent in writing prior to their disclosure to third parties.

(4) Partial deliveries shall be permitted insofar as they are reasonable for the purchaser.

3. Prices, Terms of Payment

(1) Our prices shall apply "ex works" (EXW Incoterms) excluding packaging unless otherwise specified in the order confirmation.

(2) Our prices do not include the legally valid value added tax; it shall be shown separately in the invoice in the respective legally valid amount on the day of the invoice.

(3) Deduction of cash discount shall require a separate written agreement.

(4) The net purchase price (without any deduction) shall be due for payment within 30 days as of the date of invoice unless otherwise specified in the order confirmation. Statutory regulations shall apply with regard to the consequences of delayed payment.

(5) The purchaser shall be responsible for any customs duties, consular fees as well as taxes, charges and fees otherwise imposed outside of the Federal Republic of Germany and any costs in connection therewith. In the case of delivery including customs duties or other charges the price indicated shall be based on the rates valid at the time of the offer. Actual costs shall be invoiced. Any applicable value added tax shall be additionally invoiced. We shall be obliged to observe foreign packaging, weighing and customs regulations if the purchaser provides us with precise information in due time. The purchaser shall be responsible for any additional costs associated therewith.

(6) The purchaser shall be entitled to assert rights to setoff only if the purchaser's counterclaims are the subject of a declaratory judgment, are undisputed or recognized by us. Furthermore, the purchaser may only exercise a right of retention only insofar as the purchaser's counterclaim is based on the same contractual relationship.

4. Delivery Period

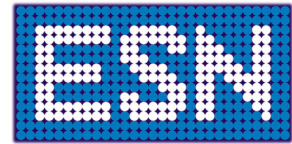
(1) Commencement of the delivery period indicated by us presupposes clarification of all technical matters.

(2) Furthermore, compliance with our delivery obligation presupposes timely and proper fulfillment of purchaser's obligations. Defense of lack of performance of the contract shall remain reserved.

(3) If the purchaser is in default of acceptance or culpably violates any other duties to cooperate, then we shall be entitled to require compensation for the damage and any additional expenditure incurred as a result. The right to assert further claims shall remain reserved.

(4) Insofar as the prerequisites of Paragraph (3) are given, then the risk of accidental loss or deterioration of the object of purchase shall pass to the purchaser at the point in time at which the purchaser defaults on acceptance or is in debtor's delay.

(5) All cases of operational disruptions due to force majeure, strikes, lockouts or similar events or causes beyond our sphere of influence shall relieve us from our obligation to perform the contract for the duration and scope of such impediments. This provision shall also apply if these circumstances exist at one of our suppliers and delay the



supply to ourselves. Any failure to deliver on the part of the manufacturer for which we may not be held responsible shall entitle us to cancellation of contract.

5. Passing of the Risk, Packaging

- (1) Delivery “ex works” (EXW Incoterms) shall be agreed unless otherwise specified in the order confirmation.
- (2) Any required packaging shall be invoiced at cost price. Carriage free return of packaging in undamaged condition shall be accepted and the packaging costs reimbursed.

6. Liability for Defects

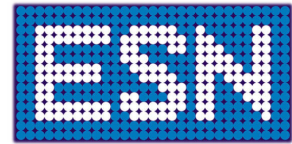
- (1) Any and all purchaser’s claims based on defects shall presuppose that the purchaser has properly complied with the purchaser’s obligations to inspect and notify in accordance with Section 377 of the German Commercial Code [HGB].
- (2) Insofar as a defect of the object of purchase is present, then we shall initially have the option of providing for subsequent performance through elimination of the defect or to deliver a new item free of defects.
- (3) If subsequent performance fails, then the purchaser shall have the option of rescission or requiring a reduction in price. As a rule subsequent improvement shall be considered as having failed with the second futile attempt unless less or more attempts at subsequent improvement are appropriate and reasonable for the client due to the subject matter of the contract or the nature of the defect.
- (4) We shall not assume any warranty for damage due to improper use, storage, operation and incorrect or careless handling. Warranty shall likewise be excluded for errors caused through interventions by the purchaser or third parties on the purchaser’s behalf.
- (5) The period of limitation for claims based on defects shall amount to 12 months, calculated as of passing of the risk. Statutory periods of limitation shall apply in the cases of No. 8 Paragraphs (1) and (2).

7. Industrial Property Rights

- (1) We shall be liable to the purchaser for violation of industrial property rights of third parties within the scope of the following regulations. Fulfillment of this obligation presupposes that the purchaser immediately informs us with regard to claims arising out of industrial property rights asserted against the purchaser by third parties and takes action in agreement with us when it comes to dealing with such claims and the pursuit of the purchaser’s rights; if any of these prerequisites are not fulfilled, then we shall be released from our obligations. In the event of violation of industrial property rights of third parties and if therefore the purchaser is prohibited with legally binding effect from use of an object of purchase either in part or as a whole, then we shall at our own discretion and at our own expense provide the purchaser with the right to use the object of purchase, design the object of purchase free of any infringement of industrial property rights, replace the object of purchase by another of equivalent performance that does not violate any industrial property rights or take back the object of purchase and refund the purchase price. Our liability shall not apply in event that the purchaser makes changes to the object of purchase, installs additional devices or connects the object of purchase to other devices or equipment and thus violates industrial property rights of third parties.
- (2) Likewise we shall not be liable for violation of third party industrial property rights for an object of purchase that is manufactured in accordance with drawings, developments or other information from the purchaser. In this case the purchaser shall be obliged to indemnify us against any and all claims asserted by third parties.
- (3) The purchaser shall not be entitled to further or other claims on account of violation of industrial property rights of third parties. In particular we shall also not provide compensation for consequential damage such as loss of production and use or lost profit. However, this provision shall not apply insofar as mandatory liability is required by law for customary foreseeable damage and in cases of intention or gross negligence or violation of material contract obligations through slight negligence. The purchaser’s right to cancellation of the contract shall remain unaffected.
- (4) The purchaser shall not acquire any right to use industrial property rights that are available to us and which relate to interaction between the object of purchase with other items.

8. Other Liability

- (1) We shall be liable without restriction for intention and gross negligence.
- (2) For slight negligence we shall be liable only in the case of damage caused by injury to life, limb, health or violation of a material contract obligation. Material contract obligations shall be contractual obligations whose performance is required in order to achieve the aim of the contract and compliance with which the purchaser has relied and should always rely.
- (3) In the case of slightly negligent violation of material contract obligations our liability shall be limited to foreseeable, typically occurring damage.
- (4) The above limitations of liability shall also apply to the benefit of our legal representatives, employees and vicarious agents.



- (5) The above limitations of liability shall not apply insofar as we have fraudulently concealed a defect or assumed a warranty with regard to the quality of the purchase item. Liability in accordance with German product liability law shall remain unaffected.
- (6) Liability shall be excluded unless otherwise regulated in the above.

9. Retention of Title

- (1) We reserve the right to ownership of the purchased goods until receipt of all payments from the business relationship with the purchaser. The retention of title shall also extend to the recognized balance insofar as we enter any claims against the purchaser in our current account (current account reservation).
- (2) In the event that the purchaser engages in behavior contrary to the terms of the contract, in particular in the case of delayed payment, we shall be entitled to repossess the purchased goods. Repossession of the purchased goods by us shall not be equivalent to cancellation of the contract unless we have expressly declared such cancellation in writing. Attachment of the purchased goods by us shall always represent cancellation of the contract. We shall be entitled to exploit the purchased goods following repossession of same, while the proceeds of any exploitation shall be set off with the purchaser's liabilities less reasonable exploitation costs.
- (3) The purchaser shall be obliged to handle the purchased goods with care; in particular the purchaser shall be obliged to sufficiently insure same for their replacement value at the purchaser's own expense against damage caused by fire, water and theft. If maintenance and inspection work are required, then the purchaser shall be responsible for timely performance of such.
- (4) The purchaser shall be obliged to immediately notify us in writing in the event of attachment or any other intervention by third parties so that we may file a complaint in accordance with Section 771 of the German Code of Civil Procedure [ZPO]. If the third party is unable to reimburse us for the court and out of court costs of a complaint in accordance with Section 771 ZPO, then the purchaser shall be liable for any loss that we may incur.
- (5) The purchaser shall only be entitled to resell the purchased goods in the normal course of business upon obtaining our written consent; however, the purchaser shall already now assign any and all claims in the amount of the final invoice amount of our claim, including the value added tax, which accrue to the purchaser vis-à-vis the purchaser's customers or third parties from resale, irrespective of whether the delivery item has been resold with or after processing. The purchaser shall remain authorized to collect such claims even after assignment. Our authority to collect such claims by ourselves shall also remain unaffected. However, we shall be obliged to refrain from collection of any and all claims as long as the purchaser meets the purchaser's payment obligations arising out of the collected proceeds, is not in delay of payment and in particular no request for institution of insolvency proceedings has been submitted or payment has been suspended. However, if this is the case, then we may require that the purchaser informs us of the assigned claims and the respective debtors, provides any and all information required for collection, surrenders the pertinent documents, while notifying respective the debtors (third parties) of the assignment.
- (6) Processing or transformation of the purchased goods by the purchaser shall always be performed for us. If the purchased goods are processed with items that do not belong to us, then we shall acquire co-ownership of the new item in proportion to the value of the purchased goods (final invoice amount including value added tax) to the other processed items at the time of processing.
- (7) We shall be obliged to release the collaterals to which we are entitled at the purchaser's request insofar as the realizable value of our collaterals exceeds the claims to be secured by more than 10%. We shall have the option of selecting the collateral to be released.

10. Final Provisions

- (1) The place of performance shall be our place of business.
- (2) Our place of business shall also be the place of jurisdiction insofar as the purchaser is a merchant. However, we shall also be entitled to bring action against the purchaser at the latter's place of business.
- (3) The law obtaining in the Federal Republic of Germany shall apply to any and all contracts between us and the purchaser; application of the regulations of the UN Sales Convention (CISG) shall be excluded.
- (4) Should any of the provisions of these General Terms and Conditions of Sale and Delivery be or become invalid, then the validity of the remaining provisions shall not be affected. Instead of the invalid provision, respectively relevant statutory provisions shall apply. The same shall apply in the event that these General Terms and Conditions of Sale and Delivery should contain a gap.