

## General Terms and Conditions of Sale and Delivery for Foreign Business of extrutec GmbH based in Moos

*(As of December 2021)*

### 1. General, scope

1.1 Sales, deliveries and other services by extrutec GmbH ("**extrutec**") to the customers named in clause 1.3 shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery for Foreign Business ("**Terms of Delivery**"), which the customer accepts by placing the order or acknowledging receipt of the delivery. Unless otherwise agreed, the Terms of Delivery apply in the version valid at the time of the customer's order or at least in the version last communicated to him in text form as a framework agreement also for similar future contracts, without extrutec having to refer to them again in each individual case.

1.2 The Terms of Delivery shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer or third parties only become part of the contract if and only insofar as extrutec has expressly agreed to their validity. This consent requirement applies in any case, for example even if extrutec, knowing the terms and conditions of the customer, carries out the delivery to the customer without reservation. In addition, the application of conflicting or additional terms and conditions of the customer is

excluded, even if extrutec does not expressly contradict them.

1.3 The Terms of Delivery shall only apply to customers domiciled outside of the Federal Republic of Germany who, when concluding the contract, are exercising their professional or commercial activity, as well as to foreign legal entities under public law or a foreign special fund under public law.

1.4 The "General Terms and Conditions of Sale and Delivery for Domestic Business" of extrutec shall apply to customers domiciled in the Federal Republic of Germany.

1.5 Legally relevant declarations and notifications (e.g. withdrawal, reduction in price or notifications of defects) that are to be submitted by the customer after the contract has been concluded must be made in writing (e.g. letter, email, fax) to be effective. Statutory formal requirements and further evidence, especially in the case of doubts about the legitimacy of the declaring party, remain unaffected by this provision.

1.6 References to the applicability of statutory provisions in the Terms of Delivery are only for clarification purposes. The statutory provisions also apply without such a reference, unless they are changed or excluded in these Terms of Delivery.

## 2. Conclusion of contract, content of the contract

- 2.1 Offers of extrutec are subject to change and non-binding. This shall also apply if extrutec provides the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, etc.), other product descriptions or documents - also in electronic form -.
- 2.2 The order of the goods by the customer is considered a binding contract offer. Unless otherwise stated in the order, extrutec is entitled to accept this contract offer within 2 weeks of receipt.
- 2.3 A contract shall only be concluded by the order confirmation of extrutec and shall be governed exclusively by the contents of the order confirmation and these Terms of Delivery. extrutec may also declare acceptance by delivering the goods to the customer.
- 2.4 Verbal promises made by extrutec prior to the conclusion of the contract shall not be legally binding and verbal agreements between the contracting parties shall be replaced by the written contract unless it is expressly stated in each case that they shall continue to be binding.

## 3. Product descriptions, offer documents, reservation of right of modification

- 3.1 Information in catalogs, price lists, brochures and other information material provided to the customer by extrutec (e.g. drawings and illustrations) as well as information describing the product (e.g. weights, dimensions, utility values, load-

bearing capacity, tolerances and technical data) are only approximate unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but rather descriptions or identifications of the delivery or service. Guarantees must be expressly agreed in writing.

- 3.2 extrutec reserves the right to make material changes and other deviations customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, as long as they do not impair the usability for the contractually intended purpose, as far as the agreed function and visual appearance are not changed thereby and the change is reasonable for the customer. Further changes require the consent of the customer.
- 3.3 Further changes or additions to the agreements made, including these Terms of Delivery, must be made in writing in order to be effective. To comply with the written form, transmission by telecommunication is sufficient, in particular by fax or e-mail, provided a copy of the signed declaration is sent. With the exception of managing directors or authorized signatories, the employees of extrutec are not entitled to make verbal agreements deviating from the written agreement.
- 3.4 extrutec reserves all possibly existing property rights, copyrights, name rights

and intellectual property rights to the documents, models, tools and other objects handed over to the customer, in particular cost estimates and samples. The customer may not make these documents and objects available to third parties, either as such or in terms of content, disclose them, use them itself or through third parties or reproduce them without the express consent of extrutec. At the request of extrutec, it shall return these documents and items to extrutec in full and destroy any copies made if they are no longer required by it in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of electronically provided data for the purpose of normal data backup. The aforementioned documents and items are to be kept secret from third parties, even after the termination of the contract. The obligation to maintain confidentiality shall not expire until the knowledge contained in the documents provided is generally known.

#### **4. Delivery and performance deadlines and dates**

- 4.1 Delivery and performance deadlines and dates promised by extrutec (also in order confirmations) are only binding if extrutec has expressly promised or agreed a fixed period or a fixed date in writing.
- 4.2 Agreed delivery and performance periods shall commence upon conclusion of the contract, but not before the customer has provided the documents, releases and complete clarification of any product-related questions to be

answered by the customer as well as the details of the desired services to be provided by the customer, in particular the desired equipment of the delivery item.

- 4.3 Delivery and performance deadlines shall be deemed to have been met if the circumstances causing the transfer of risk (clause 5.3) have occurred prior to their expiry. The same applies to compliance with delivery and performance dates. In the event of delays in delivery for which extrutec is responsible, extrutec shall only be liable to the extent specified in clause 9.
- 4.4 Insofar as extrutec is unable to meet delivery and performance deadlines and dates due to force majeure (e.g. war, acts of terrorism, riots, pandemics or similar events) or other events that were unforeseeable, unavoidable and beyond the control and responsibility of extrutec at the time of the conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, lack of labor, energy or raw materials, difficulties in obtaining the necessary official permits or official measures or the lack of, incorrect or late delivery by suppliers, attacks by third parties on the IT system of extrutec despite taking the usual care, obstacles due to applicable regulations of foreign trade law), the delivery and performance deadlines and dates shall be extended or postponed (non-availability of the service) - even during a delay - for the duration of the disruption.

extrutec shall notify the customer immediately of the beginning and the end of the disruption. If the disruption lasts longer than three months or if it is determined that it will last longer than three months, both contracting parties can withdraw from the contract. Any consideration already provided by the customer will be reimbursed immediately by extrutec. For delivery items which extrutec does not produce itself, the correct and timely self-delivery is reserved.

## **5. Scope of delivery, shipping, transfer of risk, acceptance and transport insurance**

5.1 The place of delivery shall be determined according to the delivery clauses agreed between extrutec and the customer, which shall be interpreted according to the current version of the Incoterms. Unless a special delivery clause has been agreed, delivery shall always be EXW in accordance with the current version of the Incoterms at the registered office of extrutec. If the goods are transported to the customer, this shall be done at the customer's risk. The choice of the mode of shipment and the shipping route is at the free discretion of extrutec.

5.2 extrutec can make partial deliveries and / or partial services for justified reasons, provided that this is reasonable for the customer, the delivery of the remaining ordered goods is ensured and the customer does not incur any significant additional expenses or costs (unless extrutec agrees to bear these costs).

5.3 Unless otherwise agreed, the risk shall pass to the customer at the time the goods were made available to it. If the goods are transported to the customer, the risk shall pass to the customer at the latest when the first carrier takes delivery of the goods. If the transport of the goods is delayed due to circumstances for which extrutec is not responsible, the risk shall pass to the customer upon notification of readiness for shipment or acceptance.

5.4 Transport insurance coverage is only provided on request and at the customer's expense. In case of damage, extrutec assigns the claims from the insurance to the customer step by step against performance of the contractual service by the customer (including reimbursement of the insurance premium).

5.5 The acceptance must take place immediately on the acceptance date, alternatively after notification by extrutec of readiness for acceptance. The customer may not refuse acceptance in the event of an insignificant defect. Insofar as an acceptance has to take place, the purchased item shall be deemed to have been accepted if

- the delivery and, if extrutec also owes the installation, the installation has been completed,
- extrutec has notified the customer of this with reference to this fiction of acceptance and has requested the customer to accept the goods,

- twelve working days have elapsed since delivery or installation or the customer has started to use the purchased item (e.g. has put the delivered system into operation) and in this case six working days have elapsed since delivery or installation and
- the customer has failed to accept the goods within this period for a reason other than a defect notified to extrutec which makes the use of the purchased item impossible or significantly impairs it.

5.6 In the event that the customer is in default of acceptance with regard to the delivery items, extrutec shall be entitled to charge the customer for all necessary additional expenses incurred due to the untimely acceptance of the delivery items. In the case of storage on the premises of extrutec, storage costs in the amount of 2% of the sales value of the goods per month shall be charged.

## 6. Prices

6.1 In the absence of a special agreement, the prices quoted are ex works (EXW) for the scope of services and deliveries listed in the order confirmations plus packaging, shipping, insurance and the taxes and other charges associated with the delivery. Additional or special services will be charged separately. Payments shall be made in the currency stated in the offer or in the order confirmation of extrutec.

6.2 The statutory value added tax is not included in the prices of extrutec; it shall

be shown separately in the invoice at the statutory rate.

6.3 Insofar as the agreed prices are based on the list prices of extrutec and delivery is to take place more than four months after the conclusion of the contract, the list prices of extrutec valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

6.4 If extrutec has taken over the installation or assembly, the customer shall bear not only the agreed remuneration but also all necessary additional costs such as travel and transport costs.

## 7. Payment terms, creditworthiness of the customer

7.1 Unless otherwise agreed, invoices from extrutec are due for payment by the customer 14 days after the invoice date without any deduction. Payment shall only be deemed to have been made when extrutec can dispose of the amount without recourse (receipt of payment).

7.2 extrutec shall be entitled to issue partial invoices for partial deliveries and / or services within the meaning of clause 5.2.

7.3 Bills of exchange and checks shall only be accepted as a means of payment by extrutec after a special agreement between the contracting parties. In these cases, payment shall only be deemed to have been made after unconditional crediting to the specified account of extrutec. All costs incurred with payment

by bill of exchange or check plus statutory value added tax shall be borne by the customer and shall be due immediately.

7.4 The customer is only entitled to set-off or to assert a right of retention if its counterclaim is undisputed, acknowledged or legally established.

7.5 The customer shall be in default of payment upon expiry of the payment period specified in clause 7.1. If the customer is in default of payment, extrutec shall be entitled, without prejudice to other legal remedies, to demand interest at the rate of 7% p.a. The assertion of further damage caused by default remains unaffected.

7.6 If, after the conclusion of the contract, extrutec becomes aware of circumstances which justify reasonable doubts about the solvency or creditworthiness of the customer and which jeopardize the payment claim of extrutec under the contract, extrutec shall be entitled to perform outstanding deliveries and / or services only if the customer makes an advance payment or provides security and the customer has settled any other due claims from the business relationship that are economically related. Furthermore, extrutec shall be entitled to withdraw from the contract in whole or in part and to claim damages if the customer fails to perform the aforementioned services after expiration of a reasonable period of time.

7.7 Unless otherwise agreed, the payments of the customer received by extrutec shall settle the customer's debts in the order of their due date in accordance with clause 7.1.

7.8 If no credit insurance can be obtained for the customer, extrutec shall be entitled to demand advance payment.

## **8. Obligation to examine, defectiveness, notice of defects, rights of the customer in the event of defects**

8.1 The customer shall inspect the delivery items immediately after their delivery to the customer and shall immediately notify extrutec in writing of any defects visible upon delivery of the delivery items, at the latest within one week after delivery, and shall precisely describe the type of defect. The customer shall notify extrutec in writing of hidden defects within a period of one week after the time when it has discovered them or should have discovered them. Otherwise, the customer loses his claims for defects in relation to these defects, regardless of the reasons given by the customer for the non-compliance with these requirements. The timely dispatch of the written notification of defects by the customer shall be sufficient for compliance with the aforementioned weekly deadlines, provided that the notice of defects sent in due time has actually been received by extrutec.

8.2 Unless otherwise stated in the contract, a defect shall not be deemed to exist if the delivery item does not comply with the technical and other standards applicable

in the country of destination or if the delivery item is not suitable for purposes for which comparable goods are usually used. Deviations in the surface, structure and color of individual parts of the delivery shall also not constitute a defect, provided they are due to production technology and are reasonable.

- 8.3 If a defect of the delivery item cannot be determined after a notice of defect by the customer, the customer shall reimburse extrutec for the costs incurred in connection with the inspection of the delivery item.
- 8.4 In case of a defectiveness of the delivery item, extrutec shall be entitled to remedy the defect by rectification or replacement delivery.
- 8.5 Insofar as the defectiveness of the delivery item is not remedied within a reasonable period of time by rectification or replacement, the customer may demand a reduction in the purchase price.
- 8.6 In the event of a defect in the delivery item, the customer shall not be entitled to withdraw from the contract instead of reducing the purchase price in accordance with clause 8.5 unless the defect constitutes a material breach of duty. There shall be no material breach of contract if the lack of conformity is remedied within a reasonable grace period set by the customer which must be at least six weeks.

8.7 The customer's rights in the event of defects in the delivery item shall expire within twelve months after delivery of the delivery item to the customer.

8.8 In case of defects in components of other manufacturers that extrutec cannot remove for reasons of licensing or factual reasons, extrutec shall, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the customer. In the case of such defects, warranty claims against extrutec only exist under the other conditions and in accordance with these Terms of Delivery if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, for example, due to insolvency, is futile. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the customer against extrutec shall be suspended.

8.9 A delivery of used items agreed with the customer in individual cases shall be made to the exclusion of any warranty for material defects.

8.10 The customer shall be obliged to grant extrutec the opportunity for subsequent performance within a reasonable period of time.

## **9. Liability, compensation for damages**

9.1 extrutec shall be liable to the customer for damages - in particular for consequential damages due to delayed delivery and / or performance or defectiveness of the

delivery item - only in case of gross negligence or intent.

9.2 Subject to the provision of clause 9.3, extrutec shall be liable in accordance with the statutory and contractually non-modifiable product liability rules.

9.3 If a third party, who has acquired the delivery item from the customer or via one or more intermediary sellers in the sales chain, raises claims against extrutec because of an alleged product defect of the delivery item in accordance with the provisions of foreign law, the customer undertakes to indemnify extrutec from all claims of the third party asserted in or out of court, insofar as the delivery item complied with the technical and other standards applicable in the Federal Republic of Germany with regard to product safety and thus no defectiveness of the delivery item existed in relation to the customer.

9.4 Insofar as the liability of extrutec is excluded or limited on the basis of the above provisions, this shall also apply to the personal liability of the employees, workers, representatives and agents of extrutec.

9.5 The customer can only withdraw or terminate due to a breach of duty, which does not consist of a defect, if extrutec is responsible for the breach of duty. A free right of termination of the customer is excluded.

9.6 Insofar as extrutec provides technical information or acts in an advisory capacity and this information or advice is

not part of the contractually agreed scope of services owed by extrutec, this shall be done free of charge and with the exclusion of any liability.

## **10. Retention of title**

10.1 The delivery item shall remain the property of extrutec until the purchase price has been paid in full by the customer within the meaning of clause 7.1.

10.2 The customer shall be obliged to take all necessary measures to preserve the retention of title in accordance with clause 10.1 or a functionally equivalent security interest recognized in the country of destination (registered office of the customer). If the customer violates this obligation, this shall constitute a material breach of contract.

## **11. Intellectual Property rights**

11.1 In accordance with this clause 11, extrutec guarantees that the delivery item is free of industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.

11.2 In the event that the delivery item infringes an industrial property right or copyright of a third party, extrutec shall, at its option and at its own expense, modify or replace the delivery item in such a way that no third party rights are infringed any more, but the delivery item continues to fulfill the contractually agreed functions, or procure the right of



use for the customer by concluding a license agreement with the third party. If extrutec does not succeed in this within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages of the customer are subject to the limitations of clause 9 of these Terms of Delivery.

- 11.3 In case of legal infringements by products of other manufacturers or sub-suppliers delivered by extrutec, extrutec shall, at its option, assert its claims against the manufacturers and sub-suppliers for the account of the customer or assign them to the customer. In these cases, claims against extrutec exist in accordance with this clause 11 only if the judicial enforcement of the aforementioned claims against the manufacturer and sub-suppliers was unsuccessful or, for example, due to insolvency, is futile.

## **12. Place of jurisdiction, applicable law**

- 12.1 The place of jurisdiction for all disputes arising from the contract shall be Moos (Federal Republic of Germany), the registered office of extrutec. Deviating from sentence 1, however, extrutec is also entitled to sue the customer in the courts at the place of performance of the delivery obligation in accordance with these Terms of Delivery or a prior individual agreement or at the general place of jurisdiction of the customer.
- 12.2 The law of Switzerland including the United Nations Convention of April 11, 1980 on the International Sale of Goods

(CISG) applies to these Terms of Delivery and the contractual relationship between the contracting parties.

## **13. Final provisions**

- 13.1 Should individual or several provisions of the contract and / or these Terms of Delivery be or become invalid or unenforceable, this does not affect the validity of the contract and/or the Terms of Delivery. In such a case, the contracting parties undertake to replace the invalid or unenforceable provision with a valid or enforceable provision that comes as close as possible to the economic intent. The same shall apply to the filling of loopholes in the contract.
- 13.2 The contracting parties are mutually obliged to take all reasonable measures necessary to achieve the purpose pursued by the contract and to refrain from anything that impairs the achievement and maintenance of the contract.