

# General Terms and Conditions of Delivery

## A. General, area of application

- I. The present General Terms and Conditions of Delivery are applicable to the company Eifeler Werkzeuge GmbH and its affiliated companies (Eifeler Lasertechnik GmbH and eifeler-Vacotec GmbH). These are referred to hereinafter as "eifeler". All deliveries, services, in particular processing and coating work, engineering work, components, materials, spare parts and systems (hereinafter referred to as "delivered item") and offers by eifeler, are provided exclusively on the basis of these General Terms and Conditions of Delivery. These are an integral part of all contracts, concluded by eifeler with its contract partners (hereinafter referred to as "customers") concerning the deliveries or services offered by it. They are also applicable to all future deliveries, services or offers to the customer, even if they are not again agreed separately.
- II. Terms and conditions of business of the customer or third parties will not apply, even if eifeler does not reject their application separately in individual cases. Even if eifeler refers to a letter containing terms and conditions of business of the customer or a third party, or referring to such, this will not constitute consent to the application of these terms and conditions of business.
- III. Individual agreements made with the customer on a case-by-case basis (including subsidiary agreements, extensions and amendments) will have priority over these General Terms and Conditions of Delivery in all cases. Any such agreements require the written form.
- IV. All declarations and notifications to be issued to eifeler by the customer subsequent to conclusion of the contract (e.g. the setting of deadlines, notifications of defects, declaration on withdrawal or reduction in the selling price), will only be valid if made in writing.
- V. References to the application of statutory regulations are for the purpose of avoiding doubt only. Consequently, the statutory regulations will apply even in the absence of any such clarification, unless they are directly altered or expressly excluded in the present General Terms and Conditions of Delivery.

## B. Offer and conclusion of contract

- I. All offers by eifeler are without engagement and non-binding, unless they are explicitly marked as binding or include a specific deadline for acceptance. This will also apply if eifeler has provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – to which the customer reserves his ownership rights and copyright.
- II. The order by the customer will apply as binding offer of contract. In the absence of any agreement to the contrary resulting from the order, eifeler is entitled to accept this offer of contract within a period of 2 weeks from receipt thereof.
- III. The written contract, including these General Terms and Conditions of Delivery, is exclusively authoritative for the legal relationship between eifeler and the customer. This contract reflects in full all agreements between the contract parties concerning the delivered item. Verbal assurances by eifeler prior to conclusion of the present contract are not legally binding, and verbal agreements between the contract parties will be replaced by the written contract, unless they explicitly state that they will remain applicable in binding manner. Offers submitted by the customer in electronic form will only apply as accepted given an explicit declaration by eifeler. Failure to comment on any such offer does not constitute acceptance. The same will also apply in the case of commercial letters of confirmation sent electronically.
- IV. Extensions and amendments to the agreements made, including to these General Terms and Conditions of Delivery, will only be valid if made in writing. With the exception of Directors or Authorised Officers, the employees of eifeler are not entitled to make deviating verbal agreements. Sending by facsimile will suffice for compliance with the written form, provided the copy of the signed declaration is forwarded.
- V. Information provided by eifeler on the delivered item (e.g. weights, dimensions, values in use, load capacity, tolerances and technical data) as well as representations thereof (e.g. drawings and illustrations), are approximately authoritative only, unless the suitability for use for the contractually envisaged purpose presupposes precise conformity. They are not guaranteed quality features but rather descriptions or identifications of the delivered item. Normal commercial variances and variances on the basis of legal regulations or variances which constitute technical improvements as well as the replacement of components by equal-value parts, are admissible, provided they do not impair the suitability for use for the contractually envisaged purpose.
- VI. eifeler reserves title or copyright to all offers and cost quotations issued by it as well as to drawings, illustrations, calculations, prospectuses, catalogues, models, tools and other documents and aids provided to the customer. The customer is not entitled to make these items accessible to third parties, announce them, use or reproduce them himself or have them used or reproduced by third parties – either as such or content-wise - without the explicit consent of eifeler. Upon request by eifeler, the customer must return these items in full to eifeler and destroy any copies made, if these are no longer required by him in the orderly course of business or if negotiations do not result in conclusion of a contract. All know-how, inventions, patents or similar rights, owned by eifeler, will be provided for the purpose of fulfilment of the contract and will not be transferred to the customer.

## C. Prices

- I. The prices and calculations stated by eifeler are in euros, unless another currency is explicitly agreed. The prices must be agreed in writing and are to be understood as ex-works plus value added tax at the statutory rate as well as other taxes and costs such as transport and packing.
- II. eifeler is entitled to adjust the prices accordingly in the event of increases in wage and material costs.

## D. Terms and conditions of payment

- I. The selling price is payable at the latest 10 days from the date of the invoice, without deductions. If a payment period is stated on the invoice, payment must be made at the latest by this date.
- II. Payment must be made without deduction of any settlement discount, such that eifeler can dispose of the amount on the due date. The customer is only entitled to offset against claims that are undisputed or have been established by declaratory judgment; the customer is only entitled to rights of retention in so far as they concern the same contractual relationship.
- III. The customer will be in default upon expiry of the above payment period. During default, the selling price must be subjected to interest at the respectively applicable statutory rate of default interest. eifeler reserves the right to assert farther-reaching default damage. The claim to the commercial interest after the due date (Section 353 HGB (German Commercial Code)) will remain unaffected with respect to businessmen. If the payment claim is endangered as a result of circumstances occurring subsequently and which result in a significant deterioration in the economic position, eifeler is entitled to accelerate the payment claim.
- IV. The statutory regulations on default of payment will remain unaffected.
- V. If, following conclusion of the contract, it becomes recognisable that the claim to the selling price is endangered through insufficient financial capacity of the customer (e.g. following an application for the opening of insolvency proceedings), eifeler will be entitled to refuse performance in accordance with the statutory regulations and – if applicable following the setting of a deadline - to withdraw from the contract (Section 321 BGB (German Civil Code)).

## E. Collateral

eifeler is entitled to normal collateral based on the nature and scope of its claims, even if these are conditional or limited in time.

## F. Group offsetting

eifeler is entitled to offset all claims, to which it is entitled against the customer, against all claims to which the customer is entitled against eifeler or a company of voestalpine Edelstahl GmbH Vienna, irrespective of the legal grounds.

## G. Retention of title

- I. eifeler will retain title to the delivered item until such time as complete payment is received for all current and future claims under the contract and any ongoing business relationship (secured claims). If the delivered item is a coating and/or processing performance, eifeler will acquire joint ownership to the order product in the amount of the invoice value. The following rulings on retention of title will apply in full to the joint ownership.

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- II. The goods subject to retention of title must not be pledged to third parties or ownership thereof transferred by way of security before complete payment of the secured claims is received. The customer must inform eifeler immediately and in writing if and in so far as third parties access the goods belonging to the customer.
- III. In the event of contract-violating conduct by the customer, in particular non-payment of the due selling price, eifeler will, in accordance with the statutory regulations, be entitled to withdraw from the contract and to demand handover of the goods, based on the retention of title and the withdrawal. If the customer does not pay the due selling price, eifeler can only assert these rights if it has previously unsuccessfully set the customer an appropriate deadline for payment, or if any such setting of a deadline is unnecessary under the statutory regulations.
- IV. The customer is authorised to make onward sale of and/or to process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions will apply in extension.
  1. All goods delivered will remain the property of eifeler (conditional commodities) until fulfilment of all claims, in particular also the respective balance claims, to which the customer is entitled within the scope of the business relationship. This also applies to future and conditional claims, e.g. from acceptor's bills of exchange.
  2. Processing and treatment of the conditional commodities will be performed for the customer, as manufacturer as defined in Section 950 BGB, without obliging eifeler. The processed and treated goods will apply as conditional commodity as defined in Point IV.1.
  3. In the event of processing, joining and mixing of the conditional commodity by the customer with other goods, eifeler will be entitled to joint ownership of the new item in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods used. If eifeler's ownership lapses through joining, mixing or processing, the customer hereby transfers henceforth to eifeler the ownership or expectant rights, to which he is entitled to the new inventory or to the item, in the scope of the invoice value of the conditional commodity – in the event of processing, in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods used – and will keep this for us free of charge. The joint ownership rights of eifeler will apply as conditional commodity as defined in Point IV.1.
  4. The customer is entitled to make onward sale of the conditional commodity only in the ordinary course of business, subject to his normal terms and conditions of business and as long as he is not in default, provided he reserves title and the claims from the onward sale pass to the seller. He is not entitled to dispose of the conditional commodities in any other manner. Use of the conditional commodity for the fulfilment of contracts for work and services/contracts for work and materials also applies as onward sale.

### H. Delivery periods, delivery dates

- I. The delivery period will be agreed individually or stated by eifeler when accepting the order. Delivery periods will begin on the date of the order confirmation. The same applies to delivery dates. All delivery periods and dates are subject to the reserve of unforeseeable production disruptions and on-time delivery to us.
- II. If the customer fails to fulfil contractual obligations – including obligations to cooperate or accessory obligations – on time, eifeler is entitled to extend the delivery periods and dates appropriately according to the requirements of the production process – notwithstanding the rights arising from the default by the customer.
- III. In cases of force majeure, delivery periods/dates will be extended/moved back appropriately. Industrial action in own and outside companies, transport delays, machinery breakdown, acts by sovereign powers and other circumstances for which eifeler is not responsible, will also apply as cases of force majeure. eifeler will inform the customer immediately of the occurrence of force majeure. The customer will be entitled to withdraw from the contract at the earliest six weeks following receipt of the notification.
- IV. In the event of failure to adhere to delivery periods, the customer will not be entitled to the rights under Sections 281, 323 BGB until eifeler has set an appropriate deadline for delivery, which – as such in deviation from Sections 281, 323 BGB – is combined with a statement that he will refuse acceptance of the performance following expiry of the deadline; the claim to fulfilment will be excluded following unsuccessful expiry of the deadline.
- V. In the event of default, eifeler will only be liable for the evidenced delay damage if, after becoming aware of the duration of the delivery delay, the customer informs eifeler of the level of the foreseeable delay damage. If the foreseeable delay damage exceeds 20% of the value of the delivered items affected by the delivery delay, the customer is obliged to make immediate efforts to secure a corresponding covering purchase, if applicable to exploit opportunities for covering purchases demonstrated by eifeler, subject to withdrawal from the contract, for the delivered items affected by the delivery delay; the evidenced additional costs of the covering purchase and the evidenced delay damage for the interim period will be reimbursed by eifeler. Otherwise, liability for the evidenced delay damage is limited to 50% of the value of the delivered items concerned.

### I. Dispatch, packing and passing of risk

- I. Delivery will be ex-works. The goods will be dispatched to another destination at the request and expense of the customer. eifeler will determine the form of dispatch (in particular transport company, dispatch route, packing). Transport insurance will be taken out only at the request of the customer. A precondition for this is a written order from the customer with details of the insurable value. The costs of the transport insurance will be for the account of the customer.
- II. If loading or transport of the goods is delayed for reasons for which the customer is responsible, eifeler will, at its reasonably exercised discretion, be entitled to place the goods in storage at the expense and risk of the customer, to take all measures considered suitable for preserving the goods, and to invoice the goods as having been delivered. The same will apply if goods, notified as ready for dispatch, are not called off within four days. The statutory regulations on default of acceptance will remain unaffected.
- III. In so far as normal commercial practice, eifeler will deliver the goods packed and protected against rust; the costs will be for the account of the customer. Packing, means of protection and transport aids will not be taken back – with the exception of deposit, loading and transport means. Packing that goes beyond the purpose of transport or other special protection, e.g. for long-term keeping or storage, requires an explicit agreement.
- IV. In the event of transport damage, the customer must arrange immediate ascertainment of the facts.
- V. The risk will pass to the customer upon handover of the goods to the freight forwarder or carrier, at the latest however upon leaving the works or warehouse.

### J. Defect claims

- I. The delivered item will be contractually conform if it does not deviate or deviates only immaterially from the agreed specification at the time of the passing of risk. Contractual conformity and freedom from defects of the delivered item will be based exclusively on the express agreements concerning the quality and quantity of the delivered item ordered. A warranty for a specific use or specific suitability will only be assumed in so far as this has been expressly agreed; in other respects, the risk of suitability and use lies exclusively with the customer. eifeler will not be liable for deterioration, loss or incorrect treatment of the delivered item subsequent to the passing of risk.
- II. Contents of the agreed specification and any expressly agreed use will not constitute a guarantee; the assumption of a guarantee requires a written agreement.
- III. The customer must examine goods received immediately upon receipt. Defect claims will only apply if defects are reported immediately and in writing; concealed defects must be reported immediately following their detection. The report will apply as immediate if made within two weeks; in this respect, on-time sending of the report will suffice for adherence to the deadline. Following conducting of an agreed acceptance procedure, the reporting of defects is excluded if these could have been detected during this acceptance procedure. Furthermore, warranty claims are excluded if the customer or third parties carry out inappropriate or unsuitable changes or repairs to the delivered item.

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- IV. In the event of complaints, the customer must grant eifeler an immediate opportunity to check the delivered item subject to complaint; on request, eifeler must be provided with the delivered item subject to complaint, or a sample thereof, at the expense of eifeler. The expense necessary for checking and subsequent fulfilment, in particular transport, travel, labour and material costs (not installation and dismantling costs), will be for the account of eifeler if a defect is actually present. If, however, a request by the customer for removal of a defect proves to be unjustified, eifeler can demand reimbursement of the costs incurred by the buyer.
- V. Given the presence of a material defect, eifeler will, at its choice and taking account of the interests of the customer, provide subsequent fulfilment through either replacement delivery or repair. If the subsequent fulfilment by eifeler is not carried out successfully within an appropriate period, the customer can set an appropriate deadline for subsequent fulfilment; following unsuccessful expiry of this deadline, he can either reduce the selling price or withdraw from the contract; no farther-reaching claims exist.
- VI. Given the presence of a legal defect, eifeler will have a right of subsequent fulfilment through removal of the legal defect within two weeks of receipt of the goods.
- VII. In deviation from Section 438 Subsection 1 No. 3 BGB, the general period of limitation for claims based on material and legal defects is one year from delivery, in the case of coating or processing performances one year from acceptance.
- VIII. Recourse claims of the customer against eifeler under Section 478 BGB are limited to the statutory scope of the third-party defect claims asserted against the customer, and presuppose that the customer has complied with his obligation to report defects to eifeler as per Section 377 HGB.
- IX. The following special aspects apply in addition for coating and processing performances:
1. Given the tight tolerance fields in the functional area, eifeler cannot guarantee any dimensions following CVD coating.
  2. The information provided by the customer on materials is decisive for the parameters for coating or heat treatment. If the information on materials is incorrect, no warranty can be assumed for any changes to the material characteristics.
  3. With tools delivered for PVD and CVD treatment, a precondition is that these are subjected to suitable heat treatment. If this is not the case, no warranty can likewise be assumed for the changes to the material characteristics.
- X. eifeler will process the workpieces handed over using modern technical means and devices, and will assume a warranty for the correct and careful performance of the workpieces taken over. Any form of complaint must be asserted in writing immediately following receipt of the workpieces. Reworking of workpieces subject to complaint without the written consent of eifeler will release eifeler from all liability for defects. Following completion, the workpieces will be checked before leaving the works. Any farther-reaching special checking will be carried out solely on the basis of special agreements and subject to charging of the additional costs. The check on eifeler's premises will not release the customer from his goods-receipt check.
- XI. Claims of the customer for damages or for reimbursement of futile expense will apply only in accordance with the following Subsection and are excluded in other respects.
- K. General limitations of liability**
- I. In the absence of any ruling to the contrary in the present terms and conditions, eifeler will only be liable in cases of intent or gross negligence on the part of its legal representatives or vicarious agents as well as in cases of culpable violation of essential contractual obligations, but then only for contractually typical, foreseeable damage.
  - II. The above limitations of liability do not apply in cases of injury to life, limb and health; claims based on personal damage or damage to privately used items under the product liability law are unaffected.
  - III. No entitlement applies to compensation for damages, not incurred to the delivered item, in cases of slight negligence, unless achievement of the contractual purpose is endangered. This exclusion of liability applies to contractual and extra-contractual liability. This exclusion of liability does not cover contractually typical consequential damage.
- L. Evidence of export**
- If a customer, based outside the Federal Republic of Germany (ex-territorial customer), or his authorised representative collects goods or sends them to the ex-territorial area, the customer must provide eifeler with the evidence of export required for tax purposes. If this evidence is not provided, the customer will then be required to pay the value added tax, at the rate applicable to deliveries within the Federal Republic of Germany, on the invoice amount.
- M. Applicable law**
- The law of the Federal Republic of Germany is applicable, subject to the exclusion of the conflict of laws provisions and subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna CISG Convention) dated 11 April 1980.
- N. Place of performance and place of jurisdiction**
- Place of performance and place of jurisdiction for both contract parties is Düsseldorf. eifeler is entitled to bring legal action against the customer at his general place of jurisdiction.
- O. Sanctions against Iran and Syria**
- The customer is aware of EU and US regulations regarding sanctions against Iran and Syria and similar regulations or statutory provisions in place as well as voestalpine's group policy to control that none of our products are delivered into Iran or Syria (collectively "Regulations"). The customer will fully obey these Regulations non-regarding their applicability on him and will neither (i) deliver the products into Iran or Syria nor resell the products to anyone he knows will do so nor (ii) circumvent this provision in any other way.
- P. Concluding provisions**
- Should eifeler temporarily waive execution of individual provisions, in full or in part, this will not constitute renunciation of subsequent assertion or application of the terms and conditions of delivery as a whole.