

General Terms and Conditions of Sale and Payment

Art 1 General, Scope of the Terms and Conditions

EWIKON's deliveries, services and offers are solely made on the basis of these terms and conditions. Thus, the terms and conditions also apply for all future business relations, even if not explicitly agreed again. Contrary or other terms and conditions of the purchaser which otherwise deviate from EWIKON's terms and conditions will not be recognised, irrespective of how the purchaser declares their terms and conditions. Any counter confirmations of the purchaser with deviating terms and conditions are herewith opposed.

Deviations from these General Terms and Conditions of Sale are only valid if EWIKON confirms them in writing. All agreements made between EWIKON and the purchaser for the purposes of completion of the contract must be in writing. Telecommunicative transmission is sufficient. However, the electronic form is explicitly precluded.

Art 2 Offer/Quotation and Conclusion of the Contract

EWIKON's offers or quotations are subject to change and without obligations. Declarations of acceptance and all orders shall not be valid until confirmed in writing by EWIKON. The same applies for supplements, amendments, deviating agreements or collateral agreements. Drawings, illustrations, dimensions, weights or other performance data or properties are only binding if this is explicitly agreed in writing.

Art 3 Pricing, Price Changes

The prices named by EWIKON in the order confirmation plus the respective statutory VAT are applicable. Additional deliveries and services will be billed separately. If an order is altered after it has been confirmed by the purchaser, the purchaser shall be obliged to bear any resulting additional costs. The level of these will depend on the respective degree of completion.

Insofar as not agreed otherwise, the prices are ex works, excluding packaging and freight.

If the purchaser is a merchant/businessperson, a corporate public law body or a public law special fund: if the completion of the works is delayed by 6 months for reasons for which the purchaser is responsible and if the wages, material costs or marketable cost prices increase up until completion, EWIKON shall be entitled to increase the price by a reasonable amount according to the increased costs.

Art 4 Payment, Due Payment Date

Insofar as not agreed otherwise in writing, EWIKON's demands for payment are payable within 14 days from receipt of the invoice with a 2 % discount or within 30 days without deductions. If the purchaser gets into arrears with the payment, EWIKON shall be entitled to charge interest for late payment at a rate of 8 % above the base interest rate. The same interest rate applies for bills of exchange from the time they are accepted.

EWIKON is entitled, in spite of terms and conditions of the purchaser to the contrary, to first set off any payments against the purchaser's older debts. If costs and interest have already been incurred, EWIKON shall be entitled to set off the payment against the costs first, then the interest and finally against the main accounts receivable.

The payment is not deemed to have been made until EWIKON can dispose of the sum; in the case of payments made with a cheque, when the cheque is redeemed.

If the purchaser fails to meet their payment obligations, does not redeem a cheque, cancels their payments or if other circumstances become known which cause doubt in the purchaser's creditworthiness EWIKON shall be entitled to make the whole of the remaining debt due, even if it has accepted cheques. In this case, EWIKON shall also be entitled to demand advance payments or collateral and to withdraw from any current contracts.

The purchaser is only entitled to offset costs, retention or reduction, even if they have submitted defects notices and made counter claims, if the counter claims have been non-appealably determined by a court or are recognised by EWIKON.

All costs associated with the payment shall be borne by the purchaser.

Art 5 Delivery Date and Delay

The date given by EWIKON in the order confirmation is deemed to be agreed as being approximate and is non-binding. A binding delivery date requires an explicit written agreement. Delivery periods do not commence until all the order details have been fully clarified. In case of subsequent changes to the extent of delivery the delivery deadline shall be extended accordingly. Delivery dates and periods refer to the time at which the goods are ready for dispatch.

EWIKON shall not be deemed responsible for any delivery and performance delays due to force majeure and due to events which essentially make delivery by EWIKON difficult and impossible - including material procurement difficulties, operational disruptions of any kind, strikes, lock outs, personnel shortages, lack of means of transport, official directives, etc. - even if they occur at EWIKON's suppliers or their sub-suppliers, and even with respect to bindingly agreed deadlines and periods. The aforementioned shall entitle EWIKON to postpone the delivery or performance by the duration of the hindrance plus a reasonable start up period or to wholly or partially withdraw from the contract with respect to the not yet fulfilled part.

If the delay lasts longer than 3 months, the purchaser shall be entitled to withdraw from the contract with respect to the not yet fulfilled part, after they have unsuccessfully set a reasonable period for the performance.

Claims for compensation made by the purchaser, in particular pursuant to Art 280 ff BGB are precluded in all these cases; unless EWIKON or its vicarious agents or employees have caused the reason for the withdrawal deliberately or due to gross negligence. However, the level of compensation shall be limited to 15 % of the order total (not including VAT).

Art 6 Transfer of Risk

The risk is transferred to the purchaser as soon as the dispatch has been handed over to the person responsible for the transport or has left EWIKON's works or stores for the purpose of dispatch, irrespective of who bears the freight costs. If the dispatch is delayed for reasons outside of EWIKON's control, the risk shall be transferred to the purchaser with their receipt of notice of readiness to dispatch.

Art 7 Purchaser's Rights and Obligations in Case of Defects

1. The purchaser shall notify EWIKON of any defects in writing immediately, i.e. within one calendar week of receipt of the delivery at the latest. In the case of defects which cannot be determined within this period, despite careful examination, EWIKON shall be informed in writing immediately after they are discovered. If the purchaser fails to notify EWIKON of a defect in good time, the delivered goods shall be deemed as being approved, i.e. the purchaser's rights due to defects shall be precluded.

2. If the purchaser informs EWIKON of a defect in good time acc. to point 1. hereof, their rights shall be oriented to the statutory regulations of Art 437 to 444 BGB with the following amendments:

2.1 In a first step, EWIKON offers to the purchaser the correction of defects. The type and location of correction of defects shall be determined by EWIKON.

If EWIKON fails to correct the non-conformity within a reasonable delay three (3) times in a row, EWIKON is entitled to supply a defects free object instead of correcting the defect. In this case the purchaser shall be obliged to return the defective object to EWIKON at their request. If the purchaser demands that the subsequent fulfilment be undertaken at a location determined by the purchaser but other than the location defined in the purchase contract, EWIKON can meet this demand, whereby any additional expenses for working hours, travel costs and expenses shall be borne by the purchaser at EWIKON's standard rates.

2.2 The entitlement to compensation shall only exist, subject to the provision in Art. 12, for damage or losses deliberately caused by EWIKON, its employees or vicarious agents or by means of gross negligence and shall only extend to the replacement of losses or damage which have been incurred in the product itself, called consequential damages.

2.3 The purchaser's entitlements in the case of defects become statute barred in one (1) year, commencing with the handover of the object to the purchaser.

2.4 Only the contractually defined purchaser is entitled to claim the rights in case of defects and these are not transferable, as long as there is no contradiction to Art. 309 point 9 of German Civil Code

3. The rights in case of defects are precluded in the case of

3.1 wear or damage caused by wear, which especially applies to all parts which are in direct contact with flowing or standing plastic melts, if the melt contains additives, which have an abrasive or corrosive effect;

3.2 failure to follow EWIKON's operating or servicing instructions;

3.3 modifications made to the products by the purchaser, the replacement of parts or use of consumables, which do not meet the original specifications, improper handling, use or repair of the products and incorrect or faulty storage;

3.4 conditions of use for the products, which have not been agreed beforehand between the purchaser and EWIKON in written form as the basis of the order;

3.5 Use of hotrunner control equipment, which does not meet technological state of the art standards at the time the contract is concluded.

In case of minor defects, i.e. bagatelle damages at the product, it is at EWIKON's discretion to offer to the purchaser rectification of the defect or delivery of a brand-new product.

Actions by the purchaser non-conform with the purchase contract and leading to the preclusion of the rights in the case of defects mentioned above shall be deemed the same as the corresponding actions of third parties within the purchaser's sphere, especially any mould makers commissioned by the purchaser, to whom EWIKON delivers the product directly at the instruction of the purchaser.

Art 8 Return of standard components

EWIKON is not obliged to take back defects free work made as instructed, not even if the purchaser subsequently determines that they fully or partly do not require the work or cannot use it.

EWIKON is however prepared to take back unused EWIKON hot-runner standard components. Whether the components are accepted or not will be decided by EWIKON for each respective individual case. EWIKON will credit the purchaser with the returned goods. EWIKON is entitled to charge a handling fee of at least 20% of the credited sum for the additional costs incurred by the return of the goods and to immediately deduct this fee from the credited sum.

Art 9 Reservation of Title

The purchaser shall provide EWIKON with the following securities until all demands have been fulfilled (including all balance demands from the current account), to which EWIKON is entitled from the purchaser for any legal reason whether now or in the future, which EWIKON will release at the demand of the purchaser at its discretion, insofar as their value does not exceed the demand by more than 20 %:

1. The goods remain the property of EWIKON. Processing and transformation of the goods shall always take place for EWIKON as the manufacturer, however without any obligation for EWIKON. If EWIKON's (co) ownership expires due to joining, it shall be deemed already agreed with immediate effect that the purchaser's (co) ownership in the uniform object shall be transferred to EWIKON proportional to the share of the value (invoice value).

The purchaser shall safeguard EWIKON's (co-owned) property free of charge. Goods in which the seller is entitled to (co-)ownership shall be termed reserved goods in the following.

2. The purchaser is entitled to process and to sell the reserved goods in proper business transactions, as long they are not in arrears. Pledging or transfer of ownership as security are not permitted.

Any demands (including all balance demands for current account) which result from the further sale or any other legal reason (insurance, non-permitted action) with respect to the reserved goods shall be herewith transferred by the purchaser to their full extent to EWIKON.

EWIKON irrevocably empowers the purchaser to collect the demands assigned to EWIKON on its account in the purchaser's own name. The authorisation to collect can only be cancelled if the fails to meet their payment obligations or bills of exchange or cheques are not honoured.

In the case of seizure of the reserved goods by third parties, the purchaser shall inform them of EWIKON's (co-) ownership and shall inform EWIKON immediately.

In the case of contract infringements by the purchaser, especially in case of payment arrears, EWIKON shall be entitled to withdraw from the contract, if it has unsuccessfully set the purchaser a reasonable performance deadline beforehand and this deadline has expired. A period of 2 weeks is reasonable. Art 323 Para. 2 ff BGB apply accordingly.

Art 10 Design and/or Construction Changes

EWIKON reserves the right to make design, construction or form changes at any time, especially where such changes are necessary due to the legislator's requirements; however it is not obliged to carry out such changes to already delivered products.

Art 11 Confidentiality and Secrecy

Insofar as not explicitly agreed otherwise in writing, information given to EWIKON by the purchaser within the scope of the business relationship between the parties or information which it has otherwise gained knowledge of shall not be deemed confidential.

Art 12 Liability

Art. 7 Item 2 b applies accordingly for EWIKON's liability. All claims to which the claimant is not explicitly entitled under Art.7 Item 2 b, including those for compensation shall be precluded - no matter the legal reason - insofar as this is legally permissible. In other respects, EWIKON shall only be liable according to the Product Liability Law, due to injury to life/fatal injuries, physical injury or damage to health or due to culpable breach of material contractual obligations. Apart from the liability according to the Product Liability Law, the claim for compensation for breach of material contractual obligations shall only extend to damages incurred on the product itself, even in cases of gross negligence.

Art 13 Applicable Law

These terms and conditions of business and all legal relationships between the parties shall be deemed to be governed by German law with exclusion of the law concerning the international purchase of movable objects, even if the purchaser's registered offices are abroad.

Art 14 Jurisdictional Venue

The jurisdictional venue for all disputes arising directly or indirectly out of the contract relationship shall be 35066 Frankenberg/Eder (Germany), if the purchaser is a merchant/businessperson, a corporate public law body or a public law special fund.

However, EWIKON is entitled to file a suit with the court responsible for the place where the purchaser has their registered offices.

Art 15 Partial Invalidity

Should a term or condition in these General Terms and Conditions of Sale or a provision within the scope of other agreements be or become invalid, the validity of all the remaining terms and conditions and agreements shall remain unaffected.

Art 16 Miscellaneous

If the purchaser wishes to assign rights and obligations arising out of the contract concluded with us to third parties, this shall require our written consent in order to be valid.

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EWIKON

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