

**General Terms and Conditions of Sale and Delivery no.: 01/2011  
of Gebr. Engelfried oHG (hereinafter: ENGELFRIED)  
(Effective: January 2011)**

**I. General points**

1. These General Terms and Conditions of Sale and Delivery no.: 01/2011 apply to the entire - including any future - business relationship between ENGELFRIED and the purchaser. Any other Purchasing or General Standard Terms and Conditions of the purchaser are hereby excluded. They shall not apply. ENGELFRIED is entitled, following appropriate notification, to alter its General Terms and Conditions of Sale and Delivery no.: 01/2011, to be effective for the entire future business relationship with the purchaser.
2. If a framework agreement exists between the purchaser and ENGELFRIED, these General Terms and Conditions of Sale and Delivery shall apply both to this framework agreement and to the individual order.

**II. Conclusion of contract**

1. Quotations from ENGELFRIED are subject to change without notice and are non-binding. The documents forming part of the quotation such as illustrations, drawings, weight and measurement details, provide only approximate figures except where explicitly stated to be binding. If ENGELFRIED provides the purchaser with drawings or technical documents regarding the technical purchase item to be supplied, these shall remain the property of ENGELFRIED.
2. Orders by the purchaser are binding upon the latter. In so far as there is no other written confirmation from ENGELFRIED, the delivery or invoice is regarded as the order confirmation.
3. If the purchaser is a trader, solely written confirmation from ENGELFRIED is definitive with regard to the content of orders and agreements, in so far as the purchaser fails to object immediately in writing. This applies in particular to oral or telephone orders and agreements. In any event, notification to ENGELFRIED is no longer immediate if has not been received by ENGELFRIED within seven days.

**III. Delivery date, scope of delivery, default in delivery**

1. Agreed delivery dates and periods are regarded only as approximate if ENGELFRIED has not confirmed expressly in writing that they are binding. If all details of the order are not clarified by the purchaser in due time and all advance payments from the purchaser are not made in due time, the delivery dates shall be extended accordingly. Delivery dates are deemed to be kept when readiness for dispatch is notified.
2. ENGELFRIED is entitled to make partial deliveries in so far as they do not fall short of a reasonable minimum amount.
3. The purchaser must check and receipt the delivery note. ENGELFRIED must be notified of any objections immediately in writing. Otherwise, the receipted delivery quantity is deemed to be accepted.
4. In the event of delays in delivery due to breakdowns, official measures, the failure of supplies to reach ENGELFRIED or force majeure, the delivery period shall be extended as appropriate. Force majeure also obtains in the event of industrial action including strikes and lawful lockouts at the premises of ENGELFRIED or at the upstream suppliers of ENGELFRIED. Claims by the purchaser for compensation are excluded in such cases within the limits of Section VII (General Limitation of Liability).
5. If the purchaser suffers loss due to a delay in delivery for which ENGELFRIED is responsible, the purchaser may, provided that wider compensation claims are excluded, demand its reimbursement at a rate of 0.5% for each week of the delay, subject to a maximum of 5% of the value of the affected portion of the entire delivery. In the event of default in delivery the purchaser, after setting an appropriate period of grace and stating explicitly that following the expiry of this period he will refuse to accept the goods and services, may withdraw from the contract if the goods and services are not delivered within the period of grace. Wider claims in the event of default in delivery, in particular claims for compensation, are excluded in accordance with the provisions of Section VII (General Limitation of Liability).

#### **IV. Prices, payment terms**

1. Prices do not include value added tax, freight charges, customs duty, postage, packing, insurance and other expenses. The prices in force on the date of delivery are definitive in respect of invoicing for machines straight from the factory. Packaging shall be charged at cost; its return is excluded.
2. In the absence of special agreements, invoices are due for payment immediately without deduction.
3. If the purchaser falls into payment arrears, the vendor is entitled to demand interest on arrears of 10% above the base rate. The right to bring action to enforce a specific default claim remains reserved.
4. The purchaser is entitled to set-off rights only if his counterclaims are established with absolute legal effect and are undisputed or accepted by ENGELFRIED.

#### **V. Passing of risk, acceptance**

1. Risk passes to the purchaser at the start of the loading or dispatch of the delivery item, even if partial deliveries are being made or ENGELFRIED has taken on further liabilities, e.g. shipping costs or delivery and installation and/or commissioning. In so far as the delivery item is subject to factory acceptance, acceptance is definitive with regard to the passing of risk. Acceptance must be carried out immediately on the date for acceptance, alternatively following notification by the supplier of readiness for acceptance, and may not be refused by the purchaser due to the existence only of a non-significant defect.
2. If dispatch or acceptance is delayed for reasons for which ENGELFRIED is not responsible, risk passes to the purchaser from the date of notification of readiness for dispatch or acceptance.

#### **VI. Warranty, formal complaint**

1. ENGELFRIED is liable for defects in delivery subject to the exclusion of further claims as follows:
  - 1.1 For new products for private use (Purchase of Consumer Goods, Section 474 German Civil Code), warranty periods are 24 months from passing of risk; for commercial and/or professional use 12 months.
  - 1.2. For used products, the warranty period from passing of risk for private use (Purchase of Consumer Goods, Section 474 German Civil Code) is 12 months; for commercial and/or professional use warranty is excluded. Used machines are delivered with the accessories still available in the condition they are at the conclusion of the contract. Any liability for obvious or hidden defects is also excluded if the machine has not been inspected beforehand by the purchaser, unless ENGELFRIED has concealed known defects from the purchaser deliberately or through gross negligence.
2. The provisions of paragraph 1 do not apply in the case of warranted qualities or the culpable breach of material contractual duties. Such claims by the purchaser together with claims on account of damage not incurred on the delivery item itself are excluded within legally permissible bounds in accordance with the provisions of Section VII (General Limitation of Liability). If subsequent repairs or deliveries are made within the scope of the warranty, this shall not trigger a new start date for the warranty period.
3. Qualities are only warranted if they are explicitly designated as such in the contract. Oral statements and statements in the documents of ENGELFRIED contain no undertakings. Engelfrieds, specimens, measurements, DIN [German Industry Standard] provisions, performance specifications and other statements regarding the nature of the delivery item are used for the specification and are not warranted qualities. In so far as the materials to be used by ENGELFRIED are specified in the contract, this merely guarantees conformity with the specification and not the suitability of the materials for the contractual purpose. Only when they are patently unsuitable is ENGELFRIED obliged to draw attention to this fact.
4. Damage caused as a result of external influence, improper installation and handling, defective operation or maintenance, corrosion or ordinary wear and tear is excluded from the

warranty. In the latter case, the warranty does not apply in particular to the wear and tear of expendable parts. Expendable parts are all turning parts, all drive parts and tools. In the case of the sale of a machine, these warranty provisions are based on use in single-shift operation.

5. The purchaser is obliged to examine properly the goods delivered immediately following receipt at his own expense and to notify ENGELFRIED immediately in writing of any defects, incorrect deliveries and incorrect deliveries or short quantities clearly incapable of being approved. A preclusive period of seven days from receipt of the delivery applies to such notification. ENGELFRIED must be notified of hidden defects in writing immediately following discovery. Otherwise, Sections 377, 378 of the German Commercial Code in respect of a mutual commercial transaction among traders remain unaffected.
6. Any quality defects in a partial delivery do not constitute an entitlement to reject the remainder of the full quantity unless the purchaser can prove that the acceptance of only one part of the delivery is unreasonable for him taking into account the attendant circumstances.
7. If the purchaser discovers a defect, he may not alter, process or hand over the delivery item to third parties, but must give ENGELFRIED sufficient opportunity and time to satisfy itself of the defect and, if necessary, to undertake the required redress (rectification or replacement delivery); otherwise all defect claims shall lapse. Only in urgent cases where operational safety is endangered and to protect against excessive levels of damage, in which event ENGELFRIED must be notified immediately, does the purchaser have the right to have the defect rectified himself or by third parties and to demand from ENGELFRIED the reimbursement of the required expenditure. Irrespective of the existence of a defect, warranty claims shall also lapse if alteration or repair work is undertaken by the purchaser or a third party without the approval of ENGELFRIED.
8. The vendor must be notified immediately of any damage in transit. The purchaser must arrange the necessary formalities with the carrier and in particular make all determinations necessary to safeguard rights of recourse against third parties. In so far as standard commercial breakage, shrinkage or similar occurrences remain within reasonable bounds, no complaints may be made.
9. Where a complaint is justified, ENGELFRIED shall choose whether to repair the defective goods or supply a replacement. Multiple repairs are permissible.
10. In the event of fault rectification, ENGELFRIED is obliged to bear all required expenditure for the purpose of fault rectification, in particular transport, travel, labour and material costs, in so far as these are not increased by taking the purchased item to a place other than the place of performance.
11. If ENGELFRIED allows a reasonable period of grace given to it for subsequent performance within the meaning of Section 439 of the German Civil Code to expire without rectifying the defect or supplying a replacement, or if a repair or replacement delivery is impossible, fails or for other reasons is refused by ENGELFRIED, the purchaser, who is not a consumer, subject to the exclusion of all further claims concerning the delivery item, has the right only to withdraw from the contract or to reduce the purchase price.

## **VII. General limitation of liability**

1. If the delivery item cannot be used by the purchaser in accordance with the contract due to the fault of ENGELFRIED as a result of failure to provide advice or the provision of incorrect advice before or after the conclusion of the contract or due to the breach of other subsidiary contractual obligations (e.g. operating or maintenance instructions), the provisions of Sections VI and VII.2 shall apply accordingly; wider claims by the purchaser shall be excluded.
2. For damage not incurred on the delivery item itself, ENGELFRIED is liable - for whatever legal grounds - only in cases of
  - intent,
  - gross negligence of the proprietor/the corporate agents or senior executives,
  - culpable injury to life, body, health,
  - defects it has fraudulently concealed or the absence of which it has guaranteed,

- defects in the delivery item, in so far as liability exists under the Product Liability Act for personal injury or physical damage to privately used items.

In the case of the culpable breach of material contractual obligations, ENGELFRIED is also liable for the gross negligence of non-executive employees and for simple negligence, limited in the latter case to reasonably foreseeable damage typical of the contract; further claims are excluded.

### **VIII. Retention of title, collateral security**

1. ENGELFRIED shall retain title to the delivery item until receipt of all payments arising from the supply contract. If the purchaser acts in breach of contract, particularly in the event of default in payment, and if a petition is filed for the commencement of insolvency proceedings, ENGELFRIED is entitled to take back the delivery item following demand for payment and the purchaser is obliged to return it. In the event of attachments or other interference by third parties the purchaser must notify ENGELFRIED immediately in writing.
2. ENGELFRIED is entitled to insure the delivery item at the cost of the purchaser against theft, breakage, fire, water and other damage if the purchaser has demonstrably failed to take out insurance himself.
3. The purchaser is entitled to resell the delivery item in the ordinary course of business. However, he herewith assigns to ENGELFRIED all debts accruing to him by reason of the resale from the buyer or from third parties, irrespective of whether the goods subject to retention of title are being resold without or following processing. The purchaser is authorised to collect these debts even after assignment. The power of ENGELFRIED to collect the debts itself remains unaffected by this; however, ENGELFRIED undertakes not to collect the debts as long as the purchaser properly fulfils his payment obligations. ENGELFRIED may demand that the purchaser disclose to him the assigned debts and their debtors, provide all details required for collection, hand over the associated documents and inform the debtors of the assignment. If the delivery item is resold together with other goods which do not belong to ENGELFRIED, the purchaser's debt to the buyer in the amount of the delivery price agreed between ENGELFRIED and the purchaser is deemed to be assigned.
4. The processing or transformation of goods subject to retention of title shall always be carried out by the purchaser on behalf of ENGELFRIED. If the goods subject to retention of title are processed or inseparably intermixed with other objects not belonging to ENGELFRIED, ENGELFRIED shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title to the other processed or intermixed objects at the time of the processing or intermixing. If ENGELFRIED's goods are combined or inseparably intermixed with other movable objects into a uniform item and if the other item is to be regarded as the principal item, it is deemed to be agreed that the purchaser shall transfer to ENGELFRIED on a proportional basis co-ownership in so far as the principal item belongs to him. The purchaser shall preserve ownership or co-ownership for ENGELFRIED. Otherwise, the same provisions shall apply to the item produced as a result of the processing, transformation or combination and intermixing as to the goods subject to retention of title.
5. ENGELFRIED is entitled to demand appropriate collateral security for the proper discharge of the purchaser's liabilities. ENGELFRIED undertakes to release the collateral security to which it is entitled to the extent that its value exceeds the debts to be secured, in so far as they are not yet discharged, by more than 20%.

### **IX. Obligation of performance, impossibility of performance and non-performance**

1. The delivery obligation and the delivery period of ENGELFRIED are subject to the proviso of proper, full and punctual delivery to it.
2. If complete performance becomes impossible for ENGELFRIED before the passing of risk by reason of a circumstance for which ENGELFRIED is responsible, the purchaser may withdraw from the contract.

In the event of partial impossibility of performance or partial inability to perform, the above

provision shall apply only to the corresponding part. In such case the purchaser may however withdraw from the entire contract if he can prove a legitimate interest in the rejection of the partial delivery.

Wider claims of the purchaser, in particular claims for compensation, are excluded in accordance with the provisions contained in Sections VI and VII.

3. If the impossibility of performance occurs during default in acceptance or due to the fault of the purchaser, the latter remains obliged to render performance.
4. Following the withdrawal of ENGELFRIED from the contract or following its setting of a time limit under penalty of non-delivery, ENGELFRIED is entitled to freely utilise goods re-acquired.

#### **X. Place of performance, place of jurisdiction, applicable law**

1. Except where otherwise contractually agreed, the place of performance for payment and the delivery of goods is the place of business of ENGELFRIED.
2. If the purchaser is a trader, a legal entity under public law or a special fund under public law, the registered office of ENGELFRIED is the place of jurisdiction for all legal disputes, including proceedings involving bills of exchange or cheques; actions against ENGELFRIED may only be initiated there.
3. The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of international civil law, standardised international law and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

#### **XI. Legal validity, data protection**

1. If one of the provisions of these General Terms and Conditions of Sale and Delivery is or becomes ineffective, this shall not otherwise affect the validity of the contract. The statutory provision shall apply in its stead. Under no circumstances shall the relevant provision in these General Terms and Conditions of Sale and Delivery be replaced by general terms and conditions of the purchaser.
2. To become valid, any amendments or additions to the contract require written confirmation by ENGELFRIED; this applies likewise to a departure from the contractual requirement for the written form.
3. Declarations of intent relevant in law, such as notices of termination, notices of withdrawal, and demands for reductions in the purchase price or compensation are only valid if they are made in writing.
4. ENGELFRIED is entitled to process and store the data obtained about the purchaser in connection with the business relationship - even if this originates from third parties - within the meaning of the Federal Data Protection Act and to have it processed and stored by third parties authorised by ENGELFRIED.