



## **General Terms and Conditions of Delivery and Payment of Effertz Tore GmbH**

Status: 1.1.2022

### **1. General**

1.1 All deliveries, services and offers of Effertz Tore GmbH (hereinafter referred to as "Effertz") are made exclusively on the basis of these General Terms and Conditions of Delivery and Payment. These form an integral part of all contracts which Effertz concludes with its contractual partners (hereinafter also referred to as the "Purchaser") for the deliveries or services offered by it. They shall also apply to all future deliveries, services or offers to the Purchaser, even if they are not separately agreed again.

1.2 The terms and conditions of business of the customer or third parties shall not apply, even if Effertz does not separately object to their application in individual cases. Even if the customer refers to a letter containing or referring to the customer's or a third party's terms and conditions, this shall not constitute an agreement to the validity of those terms and conditions.

1.3 Effertz reserves the property rights and copyrights to samples, cost estimates, offers, catalogues, brochures, illustrations, drawings and other comparable documents, as well as information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties.

1.4 Effertz as supplier shall be bound by its offers for four weeks after receipt by the Purchaser.

### **2. Prices**

The prices are in EURO and are - unless otherwise agreed - ex works plus statutory value added tax, packaging, freight, insurance, assembly and building site costs, in the case of export deliveries plus customs duties, fees and other public charges.

If, in the case of an agreed delivery period of more than four months, there is a significant change in certain costs, such as in particular wage, input material or energy costs, the agreed price may be adjusted in accordance with the influence of the relevant costs to a corresponding extent at our reasonable discretion.

### **3. Delivery Time**

3.1 Unless expressly agreed otherwise, the delivery and installation times are non-binding. The delivery period shall commence on the date of the order confirmation, but not before all details essential for the execution of the order, such as in particular binding dimensions, have been determined. It is calculated according to working days (Monday to Friday) and is observed,

a) in the case of contracts where the Purchaser organises the transport, if the Purchaser has been notified within the agreed period that the goods are ready for collection,

b) in the case of delivery without assembly, if Effertz organises the transport, if the goods have left the factory within the agreed period or if the Purchaser declares that he is unable to accept the goods and notifies the Purchaser that the goods are ready for dispatch,

c) in the case of delivery with installation, if the assembly is ready within the period for acceptance by the buyer, or, in the case of contractually agreed testing, for its performance.

3.2 In the event of a delay in delivery or performance, a reasonable period of grace must be set. Insofar as Effertz is prevented from fulfilling its obligations by the occurrence of unforeseeable extraordinary events which it was unable to avert despite exercising reasonable care in accordance with the circumstances of the individual case, the delivery or performance period shall be extended by the duration of the disruption plus a reasonable start-up period. This applies to the occurrence of such events as, in particular, official interventions, operational disruptions, pandemics, industrial disputes, delays in the delivery of essential raw and auxiliary materials both at the Effertz factory and at its suppliers. If the delivery or service is not only temporarily impossible due to the unforeseeable extraordinary events, Effertz is entitled to withdraw from the contract without the Purchaser being able to demand compensation. Such obstacles are to be communicated immediately.

3.3 Effertz is entitled to make partial deliveries if

- the partial delivery is usable for the Purchaser within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is assured and
- the Purchaser does not incur any significant additional expenditure or additional costs as a result (unless Effertz agrees to bear these costs).

### **4. Transfer of Risk and Acceptance**

Unless otherwise agreed, dispatch shall be carriage forward ex works without any obligation to choose the cheapest mode of dispatch. The risk shall pass to the Purchaser when the delivery is handed over to the shipping agent or when it is loaded onto a vehicle of Effertz or of the Purchaser. At the request of the Purchaser, the consignment will be insured by Effertz against

breakage, transport and fire damage at the expense of the Purchaser. If dispatch is delayed for reasons for which Effertz is not responsible, the risk shall pass to the Purchaser upon receipt of the notification of readiness for dispatch. If the Purchaser is in default of acceptance, Effertz shall be entitled to place the goods in its own or a third party's warehouse. The associated costs shall be borne by the Purchaser.

In the case of delivery with assembly, the risk shall pass to the Purchaser on acceptance of the service. In the case of several delivery items with installation, Effertz shall be entitled to partial acceptance of the individual installed systems. If dispatch, delivery, the start or performance of installation is delayed at the request of the Purchaser or for reasons for which the Purchaser is responsible, the risk shall pass to the Purchaser for the duration of the delay.

## **5. Warranty, Maintenance, Liability**

5.1 The discovery of any defects or the absence of warranted characteristics must be made without delay and Effertz must be notified in text form within 8 days of receipt of the delivery with specific details of the defects. The time limit is only observed by receipt of the notification by Effertz.

5.2 All information on the suitability, processing and application of the product, technical advice and other information shall only be binding if given in writing. However, they do not exempt the Purchaser from carrying out his own tests and trials. Effertz shall only be liable for a special use of the products if it has been informed of this in writing beforehand and if it has confirmed it.

5.3 Effertz reserves the right to remedy the reported defects (rectification) or to supply a replacement. If the rectification or replacement delivery fails twice, the Purchaser shall be entitled to the rights of reduction or withdrawal. Effertz shall only be obliged to pay damages under the conditions of 5.6.

After consultation with Effertz, the Purchaser shall give Effertz the necessary time and opportunity to carry out all necessary repairs and replacement deliveries; otherwise Effertz shall be released from liability for defects. Of the direct costs arising from the rectification or replacement delivery, Effertz shall bear the costs of the replacement part including dispatch to the original place of delivery - insofar as the complaint proves to be justified. Otherwise the Purchaser shall bear the costs, in particular the costs of dismantling and installation.

5.4 The warranty does not apply to defects which occur as a result of normal wear and tear, nor to damage which occurs after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, defective construction, unsuitable building ground and such chemical or environmental influences which Effertz was not aware of or which were not recognisable to it under the contract. Effertz shall not be obliged to provide a warranty

if the Purchaser has made changes to the object of purchase or has not concluded a maintenance contract with Effertz, unless the defect would also have occurred in the event of maintenance by Effertz.

5.5 The warranty period shall be one year from delivery or, in the case of delivery with installation, from acceptance, unless Effertz acts intentionally. If the Purchaser himself installs the object of purchase at a third party or if Effertz delivers and, if applicable, installs the object of purchase as a sub-supplier to the client of the Purchaser, the statutory warranty periods shall apply. If the Purchaser is a consumer within the meaning of § 13 BGB, the statutory warranty periods shall apply.

5.6 Claims for damages on the part of the Purchaser, irrespective of the legal grounds, in particular due to breach of obligations arising from the contractual obligation and from tort, are excluded. This shall not apply in the case of:

- a) damages arising from injury to life, limb or health which are based on a breach of duty for which Effertz is responsible, and/or other damages which are based on an intentional, fraudulent or grossly negligent breach of duty by Effertz and/or in the event of the assumption of a guarantee or a procurement risk or in accordance with the Product Liability Act and/or
- b) in the event of a culpable breach of an obligation the fulfilment of which is a prerequisite for the proper performance of the contract, the breach of which jeopardises the achievement of the purpose of the contract and/or compliance with which the Purchaser may rely on. In such a case, Effertz's liability shall be limited to the amount of the foreseeable damage, unless the breach of duty was committed with gross negligence or intent. Claims for loss of profit, saved expenditure, from claims for damages by third parties as well as for other indirect and direct consequential damage cannot be demanded in the case of only simple negligence, unless a quality feature guaranteed by Effertz has the specific purpose of protecting the Purchaser against such damage. In the event of a breach of other obligations Effertz shall not be liable for simple negligence. 5.6a remains unaffected.

5.7 Updates provided by the developer of the software implemented in the object of purchase shall be made available to the Purchaser free of charge for the duration of the warranty obligation. If the update is to be implemented by Effertz, a chargeable order must be placed with Effertz.

## **6. Payment, Offsetting**

6.1 All invoices are due immediately and payable without deduction, unless expressly agreed otherwise. If the Purchaser is in default of payment, interest on arrears shall be charged at a rate

of 8% above the base rate of the European Central Bank, unless the statutory interest on arrears is higher. The creditworthiness of the Purchaser is a prerequisite for all transactions. Effertz shall be entitled to make outstanding deliveries or provide outstanding services only against advance payment or the provision of security if, after the conclusion of the contract, it becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Purchaser and which jeopardise the payment of Effertz's outstanding claims by the Purchaser arising from the respective contractual relationship (including from other individual orders to which the same contract applies). In this case Effertz shall be entitled to withdraw from the contract even after setting a time limit or to claim damages for non-performance if no suitable security is provided within the time limit or if the advance payment is not made. If the Purchaser defaults on part of the performance, Effertz shall be entitled to demand immediate payment of the entire remaining amount due and, if the Purchaser defaults on performance, to withdraw from the contract after expiry of a reasonable period set by Effertz or to claim damages for non-performance. If bills of exchange are accepted, they shall be accepted on account of performance. Discount and collection costs shall be borne by the Purchaser. All payments shall be made directly to Effertz. Representatives and fitters have no authority to collect payments. No interest shall be paid on advance payments.

6.2 The Purchaser shall only be entitled to set-off rights if counterclaims have been legally established, are undisputed or recognised by Effertz and the set-off was notified 14 days before the due date. The Purchaser shall have no right of retention due to disputed, unrecognised or not legally established counterclaims, unless he is neither a registered trader nor a legal entity under public law nor a special fund under public law.

## **7. Retention of Title and Release Clause**

7.1 Effertz shall retain title to the goods until all claims of Effertz against the Purchaser arising from the business relationship, including future claims arising from contracts concluded at the same time or later, have been settled. This shall also apply if individual or all claims of Effertz have been included in a current account and the balance has been struck and recognised.

7.2 The Purchaser shall be entitled to resell the goods subject to retention of title in the ordinary course of business, but he hereby assigns to Effertz by way of security all claims accruing to him from the resale against Purchasers or against third parties. The same shall apply to other claims which take the place of the goods subject to retention of title or which otherwise arise in respect of the goods subject to retention of title, such as insurance claims or claims in tort in the event of loss or destruction. Effertz accepts the assignment. If goods subject to retention of title are sold unprocessed or after processing or combination with items which are the exclusive property of

the Purchaser, the Purchaser hereby assigns to Effertz by way of security the full amount of the claims arising from the resale. If goods subject to retention of title are sold by the Purchaser - after processing/combination - together with goods which do not belong to Effertz, the Purchaser hereby assigns the claims arising from the resale in the amount of the value of the goods subject to retention of title with all ancillary rights and priority over the rest. Effertz accepts the assignment. The Purchaser shall be revocably authorised to collect these claims even after assignment. Effertz's authority to collect the claims itself shall remain unaffected by this; however, Effertz undertakes not to collect the claims as long as the Purchaser duly fulfils his payment and other obligations. The authorisation of the Purchaser to collect the claim shall lapse without the need for revocation if insolvency proceedings or comparable proceedings, e.g. under the German StaRUG, are applied for against the assets of the ordering party. Effertz may demand that the Purchaser informs it of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment.

7.3 Any processing or treatment of the goods subject to retention of title shall be carried out by the Purchaser on behalf of Effertz without any obligations arising for the latter as a result. In the event of processing, combining, mixing or blending of the reserved goods with other goods not belonging to Effertz, Effertz shall be entitled to the resulting co-ownership share in the new item in the ratio of the value of the reserved goods to the other processed goods at the time of processing, combining, mixing or blending. If the Purchaser acquires sole ownership of the new item, the contracting parties agree that the Purchaser shall grant Effertz co-ownership of the new item in proportion to the value of the processed or combined, mixed or blended goods subject to retention of title and shall keep this in safe custody for Effertz free of charge.

7.4 If goods subject to retention of title are installed by the Purchaser as an essential component in the real estate of a third party, the Purchaser hereby assigns the claims for payment arising against the third party or the party to whom it relates in the amount of the value of the goods subject to retention of title with all ancillary rights including such rights to the granting of a security mortgage; Effertz accepts the assignment.

7.5 Effertz shall release the securities to which it is entitled from the retention of title as well as the items or claims replacing them at the request of the Purchaser insofar as their value exceeds the amount of the secured claim by more than 50% on a sustained basis. The choice of the securities to be released shall be made by the Purchaser.

7.6 If third parties gain access to the goods subject to retention of title, in particular by way of seizure, the Purchaser shall immediately draw their attention to Effertz's ownership and inform

Effertz of this in order to enable it to enforce its ownership rights. If the third party is not in a position to reimburse Effertz for the judicial or extrajudicial costs incurred in this connection, the Purchaser shall be liable to Effertz for these.

## **8. Place of Performance, Choice of Law and Place of Jurisdiction**

8.1 The place of performance for all obligations arising from the contractual relationship is the registered office of Effertz.

8.2 The court at the registered office of Effertz shall be responsible for all legal disputes, also in the context of a bill of exchange and cheque process, if the Purchaser is a merchant, a legal entity under public law or a special fund under public law. Effertz shall also be entitled, at its discretion, to sue the Purchaser at another court with legal jurisdiction.

8.3 If the Purchaser is domiciled in a country which is neither a member of the EU nor of EFTA (member states of EFTA are Iceland, Norway, Switzerland and Liechtenstein), 8.2 shall not apply. Instead, all disputes arising out of or in connection with the respective contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the above Rules. The place of arbitration shall be Düsseldorf / Germany. The applicable substantive law shall be the law of the Federal Republic of Germany excluding

- the conflict of laws provisions of the International Civil Code and
- the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

The language of the arbitration proceedings shall be German.

8.4 The law of the Federal Republic of Germany shall apply to the contractual relationship and all claims and rights between the parties resulting therefrom, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **9. Consumer Arbitration Board**

In the event of legal conflicts with consumers (§ 13 BGB), Effertz Tore GmbH declares its willingness to participate in consumer arbitration proceedings in accordance with the Consumer Arbitration Act.

The consumer arbitration board responsible for Effertz Tore GmbH is the General Consumer Arbitration Board of the Zentrum für Schlichtung e.V.

Straßburger Straße 8, 77694 Kehl am Rhein

Telephone +49 7851 795 79 40, Telefax +49 7851 795 79 41

Email: [mail@verbraucher-schlichter.de](mailto:mail@verbraucher-schlichter.de)

Web: [www.verbraucher-schlichter.de](http://www.verbraucher-schlichter.de)