

Terms and Conditions of Sale, Delivery and Payment of eQ-3 AG for Non-Consumers

1. Scope of Application

- 1.1 The following Terms and Conditions of Sale, Delivery and Payment apply to any and all contracts, deliveries and other services, including consulting services and information, performed for non-consumers.
- 1.2 They also apply to any and all future contracts with the Customer and to any and all deliveries and other services to be performed for him in the future.
- 1.3 Objection is raised here and now to the application of contrary terms and conditions of business.

2. Offers, Conclusion of Contracts

- 2.1 Unless otherwise stipulated in writing, our offers are non-binding. No order shall be deemed accepted until we have confirmed it in writing. The text of our order confirmation is the sole binding text with respect to the order.
- 2.2 No orders submitted to us, modifications of or amendments to contracts or secondary agreements shall be binding unless in writing. Orders submitted by telephone or in other forms shall be deemed accepted upon dispatch or issue of the products and invoice.

3. Prices, Price Lists

- 3.1 Our prices are shown ex our works or the pertinent dispatching warehouse (in accordance with INCOTERMS 2000) as specified in our offer. Prices in effect at the point in time of the submission of the order apply. Prices are shown excluding VAT which will be applied in the statutory amount and itemised in the invoice.

4. Payment

- 4.1 All payments shall be made free of charges and without deductions to our bank account by the specified date.
- 4.2 The Customer shall be deemed in default of payment upon receipt of the first payment reminder or, if no reminder is sent, 30 days after the due date and receipt of an invoice pursuant to Section 286 (3) BGB (German Civil Code). In the event of default of payment, we are entitled to default interest pursuant to Section 288 BGB; we reserve the right to prove that there has been a greater loss or damage as a consequence of the default.
- 4.3 Offsetting of any Customer's claims which have not been acknowledged or finally adjudicated is excluded. This provision applies as well to rights of retention based on such counterclaims if and when the claims are not based on the same contractual relationship.
- 4.4 If and when there are changes in the Customer's economic circumstances subsequent to the date on which our order confirmation was sent which would justify concerns that he would be unable to meet his payment obligations, we are entitled to withhold delivery of the products or to request the provision of security; if the Customer does not fulfil our request for security within a reasonable period, we are entitled to cancel the contract.
- 4.5 Cheques will be accepted solely on account of payment. Payments by cheque shall not be deemed fulfilment until the amount has been irrevocably credited to our account.

5. Delivery

The delivery period commences as of the dispatch date of our order confirmation, but not, however, before any and all questions related to the order have been clarified. Our compliance with the delivery period presumes the due time and proper fulfilment of the Customer's contractual obligations, in particular, but not limited to, his payment obligations.

Agreed delivery periods will be extended reasonably in the event of the occurrence of unforeseen hindrances which are beyond our control such as strikes, lock-outs, operational disruptions and delays in the delivery of preliminary supplies, regardless of whether such hindrances occur in our own operations or in our suppliers' operations. We are not accountable for such circumstances even if we are already in default of delivery.

- 5.1 Our delivery obligation is subject to the reservation of complete and proper delivery to us by our suppliers unless the non-delivery or delay has been caused by us. We are entitled to make reasonable partial deliveries.
- 5.2 Excess or shortfall deliveries of up to 2% are permissible in the case of customised products and will be taken into account in the invoice.
- 5.4 If and when dispatch is delayed at the Customer's request or as a consequence of other reasons for which we are not accountable, the Customer bears the additional costs which are incurred as well as the risk of accidental loss or accidental worsening of the consignment products as per report of readiness for shipping. If the products are stored in our works (or on our agents' premises), we are entitled to charge a minimum of 0.5% of the price of the consignment for each and every month or part thereof of storage. We reserve the right to assert more extensive claims, in particular, but not limited to, claims based on Section 373 HGB (German Commercial Code).
- 5.5 The dependable shipment of the ordered products will be assured by forwarders we have engaged. The Parties are in agreement that, in the event of dispute, the Customer bears the onus of proof that a consignment has not been received.

6. Transfer of Risk, Shipment, Packaging, Acceptance

- 6.1 The risk transfers to the Customer as of the dispatch of the products from our works or dispatch warehouse (pursuant to INCOTERMS 2000), including the dispatch of partial deliveries.
- 6.2 Products are shipped for the account and at the risk of the Customer; unless the Customer has given instructions regarding the shipment, we will select the least expensive means of transport and the least expensive transport route. Packaging will be billed at cost unless otherwise agreed.
- 6.3 If and when we assume the transport insurance within the scope of the general policy we have concluded, any claims will be regulated in accordance with the terms and conditions of the insurance policy upon submission of the requested documentation.
- 6.4 If and when we are accountable for the transport damage, the Customer is obligated to notify us in writing without delay, but no later than 10 days after

receipt of the consignment, of any transport damage which has occurred.

- 6.5 The Customer may not refuse to accept consignments because of minor defects.

7. Retention of Title

- 7.1 We retain title to the products until all of the payments due pursuant to the specific delivery contract as well as to any and all other contracts which have been concluded between the Customer and us at the point in time of the conclusion of this contract have been received.
- 7.2 The Customer is authorised to resell the products to which we retain title (reserved goods) in the ordinary course of his business. However, he assigns to us, here and now, any and all claims from such resale, regardless of whether the reserved goods are resold before or after processing or whether they are bound to land or to movable objects or not. If and when the reserved goods are resold after processing or in combination with other products which do not belong to us, or if and when they are bound to land or to movable objects, the Customer's claim against his customers shall be deemed assigned to us in the amount of the delivery price for the reserved goods agreed between the Customer and us.
- 7.3 The Customer is authorised to collect this claim even after the assignment. This authorisation is without prejudice to our entitlement to collect the claim ourselves; however, we covenant not to do so as long as the Customer properly meets his payment obligations. If and when the Customer exercises his collection authorisation, we are entitled to the collected revenue in the amount of the delivery price for the reserved goods agreed between the Customer and us. We may in particular request that the Customer inform us of the assigned claim, its amount and the debtor, provide any and all information required for collection, hand over to us the pertinent documentation without delay and notify the debtor in writing of the assignment.
- 7.4 Any processing or alteration of the reserved goods is done on our behalf as manufacturer in accordance with Section 950 BGB, but does not obligate us in any way. If and when the reserved goods are processed in combination with other products, we acquire co-ownership in the new product in the ratio of the market value of our goods to the value of the other processed products at the time of the processing. The Customer will safeguard the new product for us free of charge, applying the care and diligence usual in the business.
- 7.5 We covenant to release upon request the security to which we are entitled if and when its realisable value exceeds the amount of the secured claims by more than 20%.
- 7.6 The Customer is not entitled to pledge the reserved goods or to assign them to third parties by way of security. In the event of a breach of contract by the Customer, in particular, but not limited to, default of payment, we are entitled to repossess the goods. Our repossession or pledging of the goods shall not be interpreted as a declaration of cancellation unless we expressly declare the cancellation in writing. The Customer shall notify us in writing without delay in the event of liens or other third-party attachments.
- 7.7 Right to Documents

We reserve without limitation our rights to any and all cost estimates, drawings, specifications and other documents, in particular, but not limited to, ownership and utilisation rights under copyright laws. No such documents may be made available to third parties or otherwise utilised without our prior consent and must, upon request, be returned to us without delay if and when the contract is not awarded to us.

Sentences 1 and 2 apply mutatis mutandis to the Customer's documents; however, we may disclose any such documents to those third parties to whom we have legally assigned deliveries or who work for us as subcontractors, provided that we have concluded non-disclosure agreements with such third parties.

8. Warranty of Characteristics, Complaints, Material Defects

- 8.1 Information contained in brochures, catalogues, advertisements and price lists or in the documentation supporting an offer, drawings, pictures, samples, brochures, technical information and catalogues and other technical specifications as well as recommendations for use are non-binding and do not release the Customer from the obligation to examine the products for their suitability for the intended purposes, procedures and uses. They do not become contractual components unless, and solely to the extent that, we have expressly confirmed their binding nature. Solely those descriptions stipulated in the order confirmation as such shall be deemed warranties of characteristics. Application, use and processing of the procured products are the sole and exclusive responsibility of the Customer. We expressly reserve the right to make any modifications of the design, engineering, selection of materials and production, even after dispatch of the order confirmation, provided that this does not cause any changes in the price and/or the essential functional data or the delivery time and the Customer can reasonably be expected to accept the modification.
- 8.2 No claims due to defects arise in the event of merely minor deviations from the agreed characteristics, minor impairment of the usability, natural wear or tear, or damage caused after the transfer of risk by incorrect or negligent handling and storage or excessive strain, or damage resulting from unusual external circumstances which were not presumed by the contract, or in case of software errors which cannot be reproduced. If the Customer or third parties carry out improper modifications or maintenance work, there will be no claims for defects for such work and the resulting consequences. Moreover, our warranty obligation presumes that the products are installed and commissioned correctly and are used in precise compliance with our operating instructions.
- 8.3 Any and all parts or services displaying a material defect within the limitation period — excluding any consideration of the operating time — shall at our option be subsequently improved or newly delivered or newly performed, provided that the cause was present at the time of the transfer of risk.
- 8.4 Claims due to material defects are subject to a limitation period of 24 months. This provision does not apply if and when legal statutes of Sections 438 (1)

- (2) (structures and objects for structures), 479 (1) (right of recourse) and 634a (1) (2) (construction defects) BGB provide for longer periods as well as in cases of injury to life, body or health, of wilful or grossly negligent breach of obligation by the Supplier and of fraudulent concealment of a defect. The above provisions are without prejudice to statutory regulations regarding the suspension of expiration, suspension and recommencement of the periods.
- 8.5 The Customer shall examine the consignment and services immediately upon their receipt. Section 377 HGB applies. The Customer shall notify us in writing of any material defects within a period of two weeks. This period commences upon the delivery of the products to the Customer for obvious defects. If and when notification of the defects is not submitted in good time, the assertion of any warranty claims is excluded. Dispatch of the notification in good time shall be deemed compliance with the period. The Customer bears the full onus of proof for any and all circumstances establishing a claim, in particular, but not limited to, the defect itself, the point in time at which the defect was discovered and the good time submission of the complaint of defect.
- 8.6 If and when the complaints of defect have been submitted in good time and correct form, the Customer may retain payments solely to an extent which is in reasonable relationship to the material defects which have occurred. The Customer may retain payments solely if and when there is no doubt about the legitimacy of the complaint of defects. If and when the complaint of defects is not justified, we are entitled to request reimbursement of the expenses we have incurred from the Customer.
- 8.7 We must initially be given an opportunity for subsequent performance within a reasonable period. Any parts which have been replaced shall, upon request, be returned to us free of charge. If the subsequent performance fails (in accordance with Section 440 BGB), the Customer may – without prejudice to any damage compensation claims pursuant to Art. 11 – cancel the contract or reduce the consideration.
- 8.8 Customer's claims for any expenditures required for the purpose of the subsequent performance, in particular, but not limited to, transport, infrastructure, labour and material costs, are excluded to the extent that the expenditures are increased because the delivered product has subsequently been taken to a location other than the original delivery address of the Customer, unless the relocation is in accordance with the proper use of the product.
- 8.9 Customer's recourse claims against us pursuant to Section 478 BGB (entrepreneur's recourse) are possible solely to the extent that the Customer has not concluded any agreements with his customers in excess of statutory claims due to defects. Furthermore, No. 8 applies mutatis mutandis with regard to the scope of the Customer's right of recourse against us pursuant to Section 478 (2) BGB.
- 8.10 In all other respects, Art. 11 applies with respect to damage compensation claims. (Exclusion of damage compensation claims) More extensive claims, or claims other than those regulated in this Art. 9, of the Customer against the Supplier and the latter's vicarious agents because of a material defect are excluded.
- 8.11 The return of products is permitted solely by providing an RMA number which has been obtained from us beforehand. Unreported returns without RMA numbers will not be accepted and will be returned to the Customer at his expense.

9. Impossibility; Adaptation of Contract

- 9.1 If and when the delivery is impossible, the Customer is entitled to request damage compensation unless the Supplier is not accountable for the impossibility. However, the Customer's damage compensation claim is limited to a maximum of 10% of the value of that part of the delivery which cannot be carried out in useful operation due to the impossibility. The above restriction does not apply to mandatory liability due to wilful intent, gross negligence or injury to life, body or health; it does not include a reversal of the onus of proof to the Customer's detriment. It is without prejudice to the Customer's right to cancel the contract.
- 9.2 If and when unforeseeable events within the sense of Art. 6 (2) significantly change the economic significance or content of the consignment or have a major impact on the Supplier's operations, the contract will be reasonably adapted in accordance with principles of good faith. If and to the extent this is not economically justifiable, the Supplier has the right to cancel the contract. If and when he exercises this right of cancellation, he shall notify the Customer without delay upon recognising the scope of the event, even if and when an extension of the delivery period has initially been agreed with the Customer.

10. Exclusion of Damage Compensation Claims

- 10.1 We are liable – regardless of the legal basis – for loss or damage occurring as a consequence of failure to execute or of improper execution of suggestions or advice given before or after conclusion of the contract or as a consequence of the breach of other contractual subsidiary obligations — in particular, but not limited to, instructions regarding operation and maintenance of the delivered product — which does not occur to the delivered product itself solely and exclusively in the event of wilful intent, gross negligence of our directors and officers or our executive employees, of culpable injury to life, body and health, of defects which we have fraudulently concealed or whose absence we have guaranteed, of defects in the delivered products to the extent that liability is mandated by the Product Liability Act for personal injury or material damage to objects used privately.
- 10.2 In the event of culpable breach of cardinal contractual obligations, we are also liable for gross negligence of non-executive employees and for slight negligence; in the latter case, however, our liability is limited to the loss or damage typical of the contract which can reasonably be foreseen. Contractual penalty claims by the Customer's customers are under no circumstances

foreseeable or typical for us. To this extent, indirect loss or damage is excluded.

Any more extensive damage compensation claims are excluded.

- 10.3 If and when the Customer is entitled to assert damage compensation claims pursuant to this Art. 11, any such claims will become time-barred upon expiration of the limitation period applicable to claims for material defects pursuant to Art. 9. The statutory limitation periods apply to damage compensation claims pursuant to the Product Liability Act.
- 10.4 The use of the contractual products in medical applications or in areas which directly serve personal safety is prohibited.

11. Software

11.1 Software for the Customer's Own Internal Use

The Customer is granted a non-exclusive, non-transferable user right to the programs and the related documents and subsequent supplements for his internal use with the products for which programs are provided. We retain any and all other rights to the programs and documentation, including any copies and subsequent supplements.

The Customer shall ensure that these programs and documents are not accessible to third parties without our prior consent. Copies may be made solely for archival purposes, as replacements or for use in the search for errors. The provision of source programs is subject to separate written agreement. If and when the originals bear a notice referring to copyright protection, the Customer shall apply this notice to the original. Unless otherwise agreed, the right of utilisation shall be deemed granted upon delivery of the order and delivery of programs, documentation and subsequent supplements. Modifications of the programs are prohibited; we are not liable for any loss or damage suffered because of the use of programs modified by the Customer or third parties.

We point out to the Customer that the possibility of errors in the software program cannot be fully excluded in the current technical stage of development. The Customer will examine the software immediately after its delivery and notify our company in writing of any obvious errors without delay. We warrant that the software essentially corresponds to the description in the documentation or the specifications in the order confirmation with regard to its functional operation.

We do not warrant either specific characteristics of the software programs or their suitability for customer purposes or customer requirements of a more extensive nature than that described in the above provision. We are not liable for the replacement of data unless we caused their destruction by gross negligence or wilful intent and the Customer has taken steps to ensure that these data can be reconstructed with a reasonable expenditure of time and money from data material which has been recorded in machine-readable form.

11.2 Software for Resale by the Customer

No user right of any nature is granted to the Customer for software which the Customer has acquired, either separately or in combination with products, for the purpose of resale to end users. This provision applies to any and all types of software which are included with or installed on the products we have delivered. The Customer is prohibited from decompiling, analysing or modifying the software. Enclosed software shall be handed over on the unopened, original data carriers.

12. Data Protection

Declaration on personal data

Personal data include information such as name, address or e-mail address which can be associated directly with a person (party concerned).

Personal data given to us by the Customer are used for the processing of the order, the delivery of the products and the processing of the payment.

As appropriate, we will obtain information about previous payment behaviour and creditworthiness from credit agencies. We reserve the right to propose a specific means of payment in response to the information we have received.

In accordance with Section 28 BDSG (German Federal Data Protection Act), we point out that we store received data in an electronic data processing system. The data we have received are handled in compliance with the BDSG and the German Teleservices Act (Teledienststatengesetz).

By the act of communicating personal data in the form of an order, a request for brochures, contact forms or similar means, the Customer declares his agreement with the storage and utilisation of the provided data and the data created by use for advertising addressed to the Customer (e.g. information about new products, special offers, discount campaigns) and for market research purposes.

In accordance with the German Federal Data Protection Act, the person concerned has a right, free of charge, to information regarding the stored data and, as appropriate, a right to correction, blockage or deletion of said data.

13. Place of Performance, Venue, Proper Law

13.1 Place of performance is Leer.

13.2 Venue for any and all disputes arising from our legal relationship to the Customer is Leer. However, we are entitled to file suit at the Customer's registered office.

13.3 Sole and exclusive proper law is German law, excluding application of the laws of conflict and excluding application of the UN Convention on the International Sale of Goods.

14. Severance

- 14.1 Should one of the clauses agreed above be invalid, in whole or in part, the validity of the Terms and Conditions of Sale, Delivery and Payment as a whole will not be affected. The Parties are in agreement that an invalid clause will be replaced by a valid clause which comes as close as possible to the sense of the invalid clause.