

# Jakob Eschbach GmbH

Unterm Ohmberg 7, 34431 Marsberg

## General Terms and Conditions of Sale

(Status: March 2021)

### 1. Scope of Application

- 1.1 These general terms and conditions of sale ("**Sales Terms**") apply exclusively to national and international transactions with entrepreneurs in terms of Section 14 of the German Civil Code ("**BGB**"), legal entities under public law and special funds under public law.
- 1.2 These Sales Terms apply to all deliveries of Jakob Eschbach GmbH („**Seller**“) to the buyer ("**Buyer**"), regardless of whether the Sales Terms are expressly mentioned within subsequent agreements.
- 1.3 Any terms and conditions of Buyer that conflict with or deviate from these Sales Terms shall not become part of the agreement unless Seller has expressly agreed to their validity in writing. These Sales Terms shall also apply if Seller without reservation carries out a delivery to Buyer with knowledge of Buyer's conflicting or deviating terms and conditions.
- 1.4 Individual agreements made with Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case prevail over these Sales Terms. Subject to proof to the contrary, the content of such individual agreements shall be governed by a written contract or written confirmation by Seller.
- 1.5 Any rights of Seller pursuant to statutory law beyond these Sales Terms remain unaffected.

### 2. Formation of Contract

- 2.1 Offers and cost estimates of Seller are subject to change and non-binding unless they are expressly designated as binding offer.
- 2.2 Illustrations, drawings, weight and dimension specifications as well as other descriptions of the delivery or performance contained in the documents relating to the offer are only approximate unless they are expressly designated as binding by written or electronic confirmation. They do not constitute an agreement or guarantee of a respective quality of the delivery or performance. If a specific quality of the delivery or performance has been bindingly agreed with Buyer, Seller shall be entitled to make changes insofar as they are based on mandatory legal provisions and are reasonable for Buyer. Seller reserves the right to make changes to the design and shape of the goods, insofar as the changes are not substantial and are reasonable for Buyer. In case of unreasonable changes, Buyer shall have the right to withdraw from the agreement. Any further claims are excluded.
- 2.3 The owed quality of the goods is conclusively agreed upon in the order and the order confirmation.
- 2.4 Seller may accept orders of Buyer within fourteen (14) days. Within this period, the order shall be a legally binding offer for Buyer within the meaning of Section 145 BGB.
- 2.5 An order placed by Buyer shall only become binding for Seller once it has been confirmed by Seller by means of a written order confirmation. Order confirmations issued using automatic equipment that are not signed or show the signature's name, shall be deemed to be in writing. Silence on the part of Seller with respect to offers, orders, requests or other declarations of Buyer shall only be deemed to constitute consent if this has been expressly agreed on in writing. Insofar as the order confirmation contains obvious errors, spelling mistakes or miscalculations, it shall not be legally binding for the Seller.

### 3. Delivery / Partial Deliveries / Delivery Time / Default

- 3.1 Unless otherwise agreed upon, delivery shall be made in accordance with EXW Incoterms® 2020 (Jakob Eschbach GmbH, Unterm Ohmberg 7, 34431 Marsberg, Germany). At Buyer's request, sole responsibility and expense, the goods will be shipped to another destination ("**Shipment Purchase**"), in which case Seller is entitled to determine the type of shipment (carrier, shipping route, packaging) at its own discretion. At Buyer's request - and at Buyer's expense - the goods shall be insured by a transport insurance policy against the risks to be designated by Buyer.
- 3.2 Seller shall pack the goods at Buyer's expense in accordance with clause 7.1. The return of the packaging shall be agreed separately between the parties.
- 3.3 The agreement of delivery periods is only valid if made in writing. Delivery periods stated by Seller are non-binding unless they are expressly designated as legally binding.
- 3.4 The delivery period shall commence upon dispatch of the order confirmation by Seller, but not before Buyer has fully provided any and all documents, permits and releases to be procured by Buyer, receipt of any agreed upon down payment as well as timely and orderly fulfillment of any other acts of cooperation on the part of Buyer.
- 3.5 Agreed delivery periods shall be deemed to have been met if, by the time such delivery periods have elapsed, Seller has made the goods available at the place of delivery or - in the case of Shipment Purchase pursuant to Clause 3.1 Sentence 2 - has handed over the goods to the person designated to carry out the transport, or if Buyer has indicated its refusal to accept the goods. The delivery is subject to the timely and proper self-delivery of Seller.
- 3.6 If non-compliance with delivery periods is the result of force majeure and/or other hindrances for which Seller is not accountable, e.g. war, terrorist attacks, import and export restrictions, including those affecting Seller's suppliers, the agreed delivery periods shall be extended by the duration of the respective hindrance. This also applies to industrial action affecting Seller and its suppliers.
- 3.7 A delay in delivery only entitles Buyer to withdraw from the agreement if Seller is responsible for the delay.
- 3.8 Without prejudice to its claims for defects Buyer shall accept delivered goods even if they show immaterial defects. Buyer shall also be obliged to accept the goods if the goods made available have been delivered immaterially prematurely.
- 3.9 If Buyer has concluded a framework agreement with Seller for future deliveries with a fixed term and Buyer fails to call off the goods in due time, Seller shall be entitled, after unsuccessful expiration of a reasonable grace period, to deliver and invoice the goods, to withdraw from the contract or, if Buyer has acted negligently, to claim damages in lieu of performance.
- 3.10 Seller is entitled to make partial deliveries, provided this is reasonable for Buyer.

### 4. Transfer of Risk

- 4.1 The risk of accidental loss or accidental deterioration of the goods shall pass to Buyer as soon as Seller places the goods at Buyer's disposal at the agreed place of delivery pursuant to Clause 3.1 Sentence 1.
- 4.2 If the parties agree on a Shipment Purchase, the risk of accidental loss or accidental deterioration of the goods shall pass to Buyer as soon as the goods are placed at the disposal of the person carrying out the transport.
- 4.3 This shall also apply if partial deliveries are made or notwithstanding Clause 3.1 in an individual case Seller has agreed to bear the transport costs.

### 5. Default of Acceptance

- 5.1 If Buyer fails to accept the goods offered to him in due time ("**Default of Acceptance**"), Seller is entitled, after unsuccessful expiration of a reasonable grace period, to invoice the goods, to withdraw from the agreement and, if Buyer has acted negligently, to claim damages in lieu of performance. Additionally, Seller is entitled to demand compensation from Buyer for all additional costs incurred due to Buyer's Default of Acceptance (e.g. storage and receipt of goods).

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5.2 If Buyer is in Default of Acceptance (Clause 5.1), Seller may demand compensation for the resulting damage as follows: 0.5% of the net price of the goods per day of default, but no more than a total of 5% of the net price of the goods. The parties retain the right to claim further damages as well as to provide evidence of lesser damages.

5.3 Notwithstanding Clauses 4.1 and 4.2, the risk of accidental loss or accidental deterioration of the goods shall pass to Buyer at the time Buyer enters into Default of Acceptance.

## 6. Operational disruptions / Force Majeure

6.1 If Seller is hindered from fulfilling its contractual obligations, in particular from delivering the goods on schedule due to force majeure, Seller shall be released from the respective obligation to perform for the duration of the hindrance as well as a reasonable start-up period, without being liable to pay damages to Buyer. The same applies if the performance of its obligations is made unreasonably difficult or temporarily impossible for Seller due to unforeseeable circumstances for which Seller is not responsible, in particular but not limited to official measures (irrespective of their legality), official orders, measures or restrictions due to an epidemic (in particular the Covid-19 epidemic), energy shortage, shortage of means of transport, power failure, failure of telecommunication links or significant operational disruptions.

6.2 Force majeure is defined as all unusual, unforeseeable events independent of the will and influence of the parties, such as in particular but not limited to natural disasters, terrorist attacks, political unrest, epidemics, official measures, blockades, sabotage, embargo, strike, lockout and other industrial action.

6.3 Seller will inform Buyer in a timely manner if such events have occurred.

## 7. Prices

7.1 The agreed upon price in Euro shall apply, which derives from the order confirmation plus VAT and shall be understood as EXW Incoterms® 2020, unless otherwise agreed upon in writing. Notwithstanding EXW Incoterms® 2020, the cost of packing the goods shall not be included in the price and shall be charged to Buyer. The costs for packaging of the goods will be invoiced separately.

7.2 VAT is not included in the price and shall be invoiced separately at the statutory rate applicable on the date of invoicing.

7.3 Notwithstanding Section 195 BGB, Seller's claims for payment of the purchase price are subject to a limitation period of five years.

## 8. Terms of payment / Set-off / Right of retention

8.1 Unless otherwise agreed in writing, all payments shall be made without any deductions within 30 days of the date of invoice - but not before delivery.

8.2 The deduction of a discount shall only be permissible if agreed upon separately in writing.

8.3 If Buyer exceeds the payment period, Seller is entitled to charge default interest at a rate of 9 percentage points above the base interest rate in accordance with Section 247 BGB. Seller reserves all rights to claim further damages.

8.4 If Buyer is in default, Seller is entitled to demand immediate payment on all claims arising from the business relationship with Buyer, regardless of whether these claims are due for payment.

8.5 Buyer may only offset claims by Seller or exercise a right of retention if Buyer's counterclaim is undisputed or final and non-appealable. Buyer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

8.6 Seller shall be entitled to perform or render outstanding deliveries or performances only against payment in advance or the provision of collateral if, after conclusion of the agreement, circumstances become known which are likely to significantly reduce Buyer's creditworthiness and as a result of which payment of outstanding claims of Seller by Buyer arising from the respective contractual relationship is jeopardized. This applies accordingly if Buyer refuses or fails to pay outstanding claims of Seller and there are no undisputed or final and non-appealable counterclaims of Buyer against Seller's claims.

## 9. Warranty / Examination of goods and notice of defect

9.1 Buyer's rights in respect of defects are subject to Buyer having duly complied with its statutory obligation to inspect the goods and to give notice of defects (Sections 377, 381 German Commercial Code ("**HGB**")), in particular to inspect the delivered goods without undue delay upon receipt and to notify Seller without undue delay in writing of any evident defects and defects which were identifiable upon such inspection.

9.2 Buyer is obliged to notify Seller in writing of any hidden defects without undue delay after such defect has been discovered. The notification shall be deemed to be without undue delay within the meaning of Sentence 1 if it is made within eight (8) working days, whereby receipt of the notification by Seller shall be decisive for meeting the notification period.

9.3 Buyer shall describe the respective reported defect in the written notification to Seller.

9.4 If Buyer fails to properly examine the goods and/or give proper notice, the goods shall be deemed accepted and Seller's liability for the defect shall be excluded, including all warranty rights. Section 377 HGB shall apply accordingly.

9.5 Claims for supplementary performance shall be excluded in the case of minor deviations which are reasonable for Buyer.

9.6 In the event of defects of the goods, Seller is entitled at its own discretion to supplementary performance by remedying the defect free of charge ("**rectification**") or by delivering defect-free goods ("**replacement delivery**").

9.7 If the goods are not located at the place of delivery, Buyer shall bear all additional costs resulting from remedying defects incurred by Seller, unless the transfer to another location is in accordance with the contractual usage of the goods. This also applies accordingly to claims for reimbursement of expenses by Buyer pursuant to Section 445a BGB.

9.8 Buyer's warranty rights shall not apply

a) in case of natural wear and tear and natural deterioration,

b) in the event of defects arising after the transfer of risk as a result of improper handling (for example, deviating from the operating instructions), improper storage and care or excessive stress or use or unsuitable operating materials,

c) in the case of defects which arise due to force majeure, special external influences which are not assumed under the agreement, or due to use of the goods which is not in accordance with the agreed or usual usage.

9.9 Seller is not liable for defects resulting from Buyer's request for processing or choice of material deviating from Seller's specifications.

## 10. Liability

10.1 Seller is liable without limitation - irrespective of the legal grounds - in the event of breach of a guarantee or injury to life, limb or health. The same applies to intent and gross negligence of executive bodies and executive employees. Liability for simple vicarious agents (Section 278 BGB) shall be excluded to the extent permitted by law.

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- 10.2 Subject to the exceptions set out in Clause 10.1, Seller is only liable for slight negligence if cardinal obligations are breached. Cardinal obligations are such obligations whose fulfillment is essential for the proper execution of the contract and on whose fulfillment the contractual partner generally relies and may rely.
- 10.3 In the event of a slightly negligent breach of cardinal obligations, default and impossibility, Seller's liability shall be limited to the foreseeable damage typical under the agreement. Indirect damage and consequential damage resulting from defects shall only be eligible for compensation insofar as such damage is typically to be expected when using the goods as intended.
- 10.4 In the event that a delivery is not made on schedule, Seller's liability for any damage incurred by Buyer as a result of the delay shall be limited to a maximum of 5% of the agreed net price, subject to the exceptions set out in this Clause 10. The parties retain the right to claim further damages as well as to provide evidence of lesser damages.

## 11. Limitation

- 11.1 The limitation period for Buyer's claims for supplementary performance, withdrawal from the contract and reduction of the purchase price due to defects shall be twelve (12) months. This shall also apply to contractual and non-contractual claims for damages of Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.
- 11.2 The limitation period for Buyer's claims based on defects shall commence upon delivery of the goods or, if acceptance is required, from the date of acceptance. The limitation period shall also commence upon Default of Acceptance by Buyer.
- 11.3 The limitation period shall not recommence as a result of supplementary performance. The unconditional supplementary performance by Seller does not constitute an acknowledgement of any warranty claims of Buyer on the part of Seller.
- 11.4 The limitation period for claims for damages for breach of other contractual obligations due to slight negligence shall be one (1) year from the end of the year in which the claim arose and Buyer obtained knowledge of the circumstances giving rise to the claim and the person of the debtor or should have obtained such knowledge without gross negligence.
- 11.5 Notwithstanding the foregoing, the statutory limitation period shall apply in the event of injury to life, limb or health, for damages under the Product Liability Act and for damages caused by fraudulent conduct, intent, gross negligence or negligent breach of material contractual obligations.
- 11.6 Notwithstanding Clause 11.1, the statutory limitation period shall apply if the goods are used for a building and a defect in such building results therefrom.

## 12. Retention of Title

- 12.1 All deliveries are subject to retention of title. The goods delivered by Seller shall remain property of Seller ("**Retained Goods**") until Buyer has paid the agreed purchase price in full.
- 12.2 In addition, Seller shall remain owner of the goods until full payment of all secured claims of Seller against Buyer arising from contractual relationships between the parties.
- 12.3 Buyer shall be obliged to treat the Retained Goods with care for the duration of the retention of title. In particular, Buyer shall carry out all necessary inspection and maintenance work on the Retained Goods in a proper and timely manner at its own expense.
- 12.4 The Buyer is obliged to insure the goods at his own expense against any damage caused by fire, water or theft at their original value to a sufficient extent. Buyer hereby assigns to Seller all claims for compensation arising from such insurance. Seller hereby accepts the assignment. If an assignment should not be permissible, Buyer hereby irrevocably instructs the insurer to effect any payments only to Seller. Further claims of Seller remain unaffected. Upon request, Buyer shall provide Seller with evidence of such insurance.
- 12.5 Buyer is not entitled to pledge the Retained Goods to third parties, to assign them to third parties by way of collateral or to make any other dispositions endangering Seller's ownership. Buyer must notify Seller immediately in writing, provide all necessary information, notify the third party of Seller's rights arising from its title and support all measures of Seller to protect Retained Goods, if and insofar as the Retained Goods owned by Seller are seized, confiscated or otherwise exposed to third party access. If the third party is not in a position to reimburse Seller for the judicial and extrajudicial costs of an action pursuant to Section 771 of the German Code of Civil Procedure ("**ZPO**"), Buyer is liable for all losses incurred by Seller.
- 12.6 Buyer is revocably entitled to resell the Retained Goods in the course of ordinary business. Buyer hereby assigns to Seller all claims against the purchaser arising from the resale of the Retained Goods in the amount of the final invoice amount agreed with Seller, including VAT and all subsidiary rights. Seller accepts the assignment. If the Retained Goods are sold jointly with other goods not supplied by Seller, the claim arising from the sale shall be assigned in the ratio of the value of the Retained Goods (final invoice amount including VAT) to the other goods sold. If an assignment is not permissible, Buyer hereby irrevocably instructs the third-party debtor to effect any payments only to Seller.
- 12.7 Buyer is revocably authorized to collect the claims assigned to Seller in trust for Seller in its own name. Seller's right to collect these claims shall not be affected. Seller shall not assert the claims and shall not revoke authorization to collect as long as Buyer duly meets its payment obligations, is not in default of payment, does not suspend its payments and no application is made to open insolvency proceedings against Buyer's assets.
- 12.8 Any processing, mixing, combination or transformation of the Retained Goods by Buyer is always carried out in the name and on behalf of Seller. Buyer's existing expectant right shall remain in force. If the Retained Goods are processed with other goods not owned by Seller, Seller acquires co-ownership of the resulting product in proportion to the objective value of the Retained Goods to the other processed goods at the time of processing. The same applies in the event of mixing. If the mixing takes place in such a way that the Retained Goods are to be regarded as the main object, it is agreed that the Buyer shall transfer co-ownership to Seller pro rata and shall hold the sole ownership or co-ownership thus created on behalf of Seller. If Buyer obtains a claim for compensation against a third party by combining the goods with real property, Buyer hereby assigns such claim to Seller. Seller accepts this assignment.
- 12.9 Seller is obliged to release any collateral to which it is entitled at Buyer's request insofar as the realizable value of the collateral exceeds Seller's claims arising from the business relationship with Buyer by more than 10%, taking into account customary bank valuation discounts. Seller is entitled to choose at its own discretion which collateral shall be released.

## 13. Withdrawal by Seller

- 13.1 Without prejudice to other statutory or contractual rights, Seller is entitled to withdraw from the agreement in the event of breach of contract by Buyer, in particular in the event of default of payment, after expiry of a reasonable grace period.
- 13.2 After declaration of withdrawal, Buyer must immediately grant Seller or its agents access to all Retained Goods and hand them over. After prior notification, Seller is entitled to otherwise realize the Retained Goods in order to satisfy due claims against Buyer. The proceeds of such realization shall be credited against Buyer's liabilities - minus reasonable costs of realization.
- 13.3 Statutory rights and claims shall not be limited by the provisions contained in this Clause 13 in any way.

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## 14. Confidentiality

- 14.1 Buyer shall be obliged to use all information, data, documents and other aids ("**Confidential Information**") to which it has access via Seller or which it otherwise obtains in this context exclusively for the purpose of fulfilling its obligations. Buyer is obliged to treat such Confidential Information as strictly confidential for an unlimited period of time, to implement appropriate security measures to protect the Confidential Information and, in particular, not to make it available to unauthorized third parties. The Confidential Information also includes, in particular but not limited to, computer applications, documented work processes and other know-how of Seller.
- 14.2 The obligations in Section 14.1 do not, however, extend to information that is
- already in the public domain (i.e. easily accessible to any third party) at the time of its transmission by Seller or has become public domain after its transmission without any breach of confidentiality obligations - in particular those of this Clause 14 - and without any breach of the obligations under the agreement or these Sales Terms, or
  - were verifiably already known to Buyer at the time of their transmission, or
  - are to be disclosed by Seller due to official order or legal obligation.
- 14.3 After the agreement has ended, Buyer shall return all Confidential Information generated in connection with the performance or received from Seller or from third parties or obtained in any other way, including any copies made thereof, in an orderly form. If the Confidential Information is in electronic form, it must be irrevocably deleted after a copy has been handed over to Seller. Upon Seller's request, in the event of destruction or deletion, the destruction of the Confidential Information shall be confirmed in writing.
- 14.4 Buyer shall impose an unlimited written obligation of confidentiality on all employees and subcontractors involved in the performance of the agreement in accordance with the whole of Clause 14, also for the period after they leave Buyer to the extent permissible under employment law. Furthermore, Buyer shall disclose the Confidential Information only to those employees and subcontractors necessary for the performance of the agreement. Buyer expressly declares that it shall be liable for any culpable breach by its representatives (in particular employees and subcontractors).
- 14.5 Buyer warrants that no third-party intellectual property rights or copyrights are infringed in the course of its performance. In the event of a corresponding culpable infringement of rights, the Buyer shall indemnify Seller upon first request against third-party claims and reimburse Seller for all damages and expenses arising from such claims.

## 15. Applicable Law / Jurisdiction / Place of Performance

- 15.1 The contractual relationship between Buyer and Seller shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods ("**CISG**").
- 15.2 Exclusive place of jurisdiction - including international jurisdiction - for all claims arising from the business relationship between the parties shall be the registered seat of Seller. However, Seller is also entitled to take action against Buyer at Buyer's place of jurisdiction or at any other permissible jurisdiction.
- 15.3 Place of performance for all performances by the Parties is the registered seat of Seller.

## 16. Severability Clause

Should any provision in these Sales Terms or any provision within the scope of other agreements between Buyer and Seller violate statutory provisions in whole or in part or be or become invalid or unenforceable for any reason whatsoever, this shall not affect the validity of the remaining provision or agreements. The parties are obliged to replace the invalid or unenforceable provision with a valid provision that comes as close as possible to what the parties intended in the economic sense when concluding the agreement.

If there is any inconsistency between the German version of these Sales Terms and any version in any other language, the German version prevails.