

Conditions of Sale and Delivery

I. General terms

1. These Conditions of Sale and Delivery for Eutrac Stromschienen GmbH, hereinafter referred to merely as "Eutrac" or "The Supplier", are valid for all present and future agreements regarding deliveries and services.
2. Terms and conditions of customers that differ from the terms set out here shall only become binding providing Eutrac has expressly agreed to this in writing beforehand in each individual case.
3. These Conditions of Sale and Delivery do not apply for legal relations with consumers in the sense of § 13 BGB (German Civil Code).

II. Confidentiality

The contract parties shall treat all business and technical data as well as all documents disclosed to them as part of the business relationship as confidential unless these are explicitly identified as being available to public. Both parties will access and process data of this nature provided by the other party only in accordance with the contract purpose. This data will be in particular protected against unauthorized access and may be shared with third parties only with the consent of the contracting party. Both parties agree to keep and store all data received in such a way that it is protected from unauthorized access by third parties.

III. Pricing and costs

1. All of The Supplier's offers, be this for products or services, are subject to change (without notice).
2. All of The Supplier's prices are quoted "ex works" without packaging and subject to the respective legally applicable VAT (henceforth: net merchandise value).
3. For any sale with a net merchandise value of €130.00 or less, The Supplier reserves the right to charge a processing fee to the amount of €15.00. If The Customer wish deliver quantities that do not correspond to the packing units (= VPE), the supplier reserves the right to charges a surcharge of 5% of the value of the goods for the products concerned.

IV. Terms of payment

1. First orders are only accepted against payment in advance
2. Unless otherwise agreed, all invoices are payable net only within 30 days of the date of the invoice. Cheques and invoices eligible for rediscounting are only accepted on account of performance. All associated costs for this shall be borne by The Customer.
3. The Supplier's claims to payment can only be offset by counter claims of The Customer that are indisputable or found valid by final judgement. Customers are entitled to exercise their right of retention only in cases where their counter claim is indisputable or found valid by final judgement.

V. Time of delivery

1. If available in stock within 5 working days, otherwise the delivery times specified by The Supplier are non-binding. In the case of reasonable delays, he is not liable for consequences of delay, in particular claims for compensation of any kind. If the delivery period is exceeded, The Customer can not withdraw from the contract without providing a reasonable grace period. A delivery period shall be considered as having been observed if the item for delivery is dispatched from The Supplier's plant or warehouse prior to this expiring.
2. Delivery periods shall be extended for a reasonable period of time if circumstances arise for which Eutrac was neither responsible or nor had control over and which led to a delay in The Supplier's performance. This is especially valid when:
 - a) the documents, certifications or clearances due from The Customer were not received on time; customers do not meet their contractual payment obligations or a customer does not fulfil or realize other duties or obligations to cooperate on time,
 - b) sub-suppliers, subcontractors or other persons – upon whose delivery and performance Eutrac is dependent for its performance to customers – have not delivered to Eutrac on time, in full or correctly,
 - c) situations of force majeure or other unforeseeable occurrences occur (e.g. legal or illegal strikes, fires, natural disasters) which prolong performance.
3. In situations covered under paragraph 2, Eutrac is entitled to withdraw from the contract if performance is not possible for an indefinite duration or if expenditure is required on its part which stand in great disproportion to the performance interests of our customers in light of the contents of the relevant contractual obligations and the principle of good faith.
4. The Customer is obligated to take receipt of the performance as soon as Eutrac has indicated its readiness to perform. In the event that the performance is delayed (at the request of The Customer) for more than one month after Eutrac has indicated its readiness to perform, Eutrac shall be entitled to invoice The Customer for a storage fee. This shall be a lump sum amounting to 0.5% of the net merchandise value for every month or partial month commenced up to a maximum of 5%. The contract parties reserve the right to provide evidence of any lower or higher storage fees incurred.

VI. Passing of risk

1. Risk shall be transferred to The Customer on departure from The Supplier's plant or warehouse. This is also valid for the shipping of goods, even where Eutrac has prepaid the shipping costs and/or used its own employees for shipment.

VII. Insurance and claims regarding damage during transport or other breakages

1. If requested by The Customer, Eutrac shall cover the shipment with insurance against damage and loss during transport. The costs for this shall be borne by The Customer.

2. The Customer must examine the goods for transport damage and breakages immediately after delivery. The Customer must point out all discernible damage immediately to the transport company and must conduct a written assessment of damages. This applies also where the packaging appears undamaged on the outside. The Customer must give notice of damages not evident immediately after their discovery and record an assessment of these damages.
3. Eutrac shall only recognize reports of damage providing notification takes place within 2 days of the date of delivery and providing transport damage or other breakages were detected upon delivery or as part of an inspection. Damage notifications for transport damage or breakages not evident must be submitted within 2 days of the date of their discovery.

VIII. Custom-made goods

Custom-made shall be understood as constructive modifications to existing types of track systems or track systems accessories and as fabrications based on designs provided by Eutrac or The Customer. Custom-made also includes special, non-standard coloured tracks and accessories as well as curved track systems. On cancellation of custom-made product orders, a processing fee to the amount agreed minus costs not expended shall become payable. This shall amount to 20% of the net merchandising value. The contract parties reserve the right to provide evidence that the processing fee is higher or lower in specific cases. Guideline prices shall be regarded as non-binding up to the point where a finalized quotation is specified. With custom-made goods with a net merchandise value above €25,000 or with a time of performance of more than 3 months, payments are due as follows unless agreed otherwise with The Customer:

- 1/3 of the purchase price on submitting of the order
- 1/3 on the goods being made available for delivery
- 1/3 within 30 days of issuing the invoice.

IX. Reservation of proprietary rights

1. The deliveries shall remain the property of The Supplier until all claims on the part of The Supplier with regard to The Customer have been fulfilled, even if the invoice price for payments designated as special payments has been paid. In case of an outstanding account, proprietary rights shall apply for deliveries (reserved goods) as a security for The Supplier's balance account.
2. Any work performed by The Customer on the reserved goods and the processing hereof on behalf of The Supplier shall be done to the exclusion of acquisition of ownership in accordance with § 950 BGB (German Civic Code). The Supplier shall remain the proprietary owner of the subsequent item in order to protect the claims of The Supplier in accordance with 1. above.
3. If The Customer processes the reserved goods by combination and/or mixing with other goods that do not belong to The Supplier, the terms of §§ 947, 948 BGB (German Civic Code) shall apply with the consequence that the co-ownership of The Supplier with regard to the new item then becomes reserved goods in the sense of these conditions.
4. The Customer is only permitted to sell on these reserved goods as part of its usual business operations under the condition it likewise agrees reservation of proprietary rights with its client in accordance with 1. to 3. above. All other dispositions over the reserved goods on the part of The

Customer, in particular pledging as collateral and ownership by way of security are hereby precluded.

5. In case of the goods being sold on, The Customer shall surrender to The Supplier immediately any payments arising from the sale and other claims to their client together with all ancillary rights until such time as all claims on the part of The Supplier have been fulfilled. On request, The Customer shall provide information and hand over documentation required for The Supplier to assert their legal rights with regard to The Customer's client.
6. If the reserved goods are sold on by The Customer after processing or work in accordance with 2 above or together with other goods not belonging to The Supplier, the purchase price payment shall be surrendered in accordance with 5 but only to the amount of the invoice value of The Supplier's reserved goods.
7. If the value of the securities that exist for The Supplier exceeds the total payments by more than 20%, The Supplier shall be liable on request by The Customer to release the securities at the discretion of The Supplier.
8. Any pledging as collateral or garnishment of the reserved goods must be reported to The Supplier without delay. Any intervention costs incurred shall then be borne by The Customer.
9. In case of conduct on the part of The Customer that infringes the contract, in particular delays in payment, Eutrac reserves the right to take back the reserved goods. The Customer is obliged to hand over these goods in such cases. This redemption or assertion of proprietary rights does not constitute a withdrawal from the contract here except in cases where The Supplier declares this expressly in writing. In cases where The Supplier asserts their proprietary rights by redemption of the reserved goods, The Supplier is then authorised to sell these goods via a private sale or else submit them for auction. This redemption of the reserved goods, which shall not be regarded as withdrawal from the contract, shall however take place at no more than the contracted price. Eutrac reserves the right to make further claims for damage compensation, in particular for loss of profits here.

X. Warranty/post-performance

1. The assertion of claims for defects assumes that a customer has fulfilled their obligations for notification of defects and due diligence in accordance with § 377 HGB (German Code of Civil Procedure).
2. With regard to the defect warranty, The Supplier is authorised, at their own discretion, to fulfil the terms retrospectively by means of rectification of the defect or else to deliver a new item free of defects and/or provide a new unblemished performance.
3. Any removal or installation costs for defective goods shall be reimbursed by The Supplier to The Customer or distributor to an appropriate amount on request where liability for the defect(s) in question is justified. Where an individual product is defective, the reimbursable removal and installation costs shall be restricted to 30% of the net merchandise value. In case of series faults, the cost reimbursement shall be restricted to 10% of the net merchandise value of the relevant performance.

4. Claims for damages and added expenditure reimbursement claims on the part of The Customer may only be asserted in accordance with the legal stipulations, taking into account the provisions in XI.
5. Liability for defects here does not refer to natural and normal wear of the goods in question. Liability shall furthermore be precluded where defects are due to erroneous or negligent handling, excessive loading, unsuitable operating resources, inadequate construction work, unsuitable construction surfaces or unsuitable chemical, electronic or electrical factors that cannot be anticipated in the contract or if operating and maintenance tasks are not adhered to.
6. No liability shall be assumed for defects or damage that arise due to unprofessional modifications or repair work on the part of The Customer or a third party.
7. The statutory limitation period for claims for damages is 1 year starting from handover to The Customer.

XI. Exclusion of liability/reduction

1. Claims to liability for damages and/or additional expenditure are precluded regardless of their nature and the time The Supplier's obligation was infringed, except in cases where deliberate action or gross negligence pertains on the part of The Supplier.
2. Liability for damages and/or reimbursement of additional expenditure shall however not be precluded where obligations which must first be completed for the contract to be implemented and on which The Customer might rely (essential contract obligations) have been negligently infringed by The Supplier at minimum. The extent of this liability shall however in such cases be limited to predictable damage and costs. Claims for loss of profits or other indirect damages or consequential damage shall be precluded regardless of the reason.
3. Restrictions of liability and exclusions from liability in accordance with XI.1. and 2. shall not apply for claims due to fraudulent conduct or in case of liability for assured characteristics of state, for claims according to the product liability law and those arising due to endangerment to life, limb and good health.
4. In cases where liability is precluded or restricted, this shall also apply for the liability of employees, temporary workers and other vicarious agents acting for The Supplier.

XII. Return delivery for reasons of goodwill

Return deliveries of goods outside of the warranty for defects require the prior written agreement of The Supplier and shall be done so at the cost of The Customer. The Supplier is authorised to calculate a processing fee of up to 20% of the net merchandise value. All return deliveries has to be made DDP Eutracs warehouse Berlin. The Supplier will only accept return deliveries in original packaging and re-sellable condition. A credit note for return deliveries will be made accordingly. Return deliveries of custom-made items are generally not accepted (please see also paragraph VIII)

XIII. Copyright and other protection rights, right of ownership to documents

Eutrac reserves all rights of ownership and copyright for quotations, drawings and other documents made available in order to bring about a contractual relationship or conclude an agreement, or to prepare for, assist with or handle the procedure for this, (hereafter: documents). These documents may only be made accessible to third parties providing Eutrac has granted its express written approval beforehand or if this is essential in order to fulfil the purpose for which they were provided. Should a contractual relationship not arise or where an agreement could not be reached or the contractual relationship is terminated due to expiry of the validity period or its cancellation, all documents shall be returned without delay and The Customer's own copies destroyed (in particular those in digital or printed form).

XIV. Data protection

The Supplier shall inform The Customer that their data is to be saved for the purposes of implementing the business workflow.

XV. Other specifications

1. The sole place of performance shall be Germany/Berlin.
2. The jurisdiction and venue for all (direct and indirect) disputes shall be Germany/Berlin providing The Customer is a business person, a person under public law or a separate asset under public law.
3. German law shall be used to regulate all contractual relations to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG)
4. Should individual clauses of these Conditions of Sale and Delivery be or become invalid, all other clauses or agreements shall continue to remain effective. The parties shall then replace any ineffectual clause with an effective clause that most approximates the purpose originally striven towards.

Eutrac Stromschienen GmbH