

General Terms and Conditions of Sale and Delivery (AGBV)

of EVG Martens GmbH & Co. KG

Our General Terms of Business serve to simplify the handling of our business. Please read the following provisions carefully, in order to avoid misunderstandings between us.

Clause 1

General points – Scope

- (1) Our General Terms and Conditions of Sale and Delivery ("AGBV") conclusively regulate the legal relations between ourselves and our customers (albeit subject to relevant legal rules), both during **online sales** (at the online shop) and during **traditional sales** that do not take place online (unless explicit reference is made below to a particular form of sales, the rules in question shall apply to both forms). Our customer acknowledges the binding nature of these provisions with respect to future transactions with us. Any provisions laid down by the customer that differ from these rules shall be disregarded and we hereby expressly oppose them. Our Terms of Business shall be deemed to have been accepted at the latest when delivery is taken of the supply or service in question. Agreements that go beyond these rules shall only be validly incorporated provided they have been confirmed in writing. We reserve the right to amend these provisions and/or individual parts thereof, unilaterally if necessary, in the future. The current version of the Terms of Business shall apply, based at all times on the timing of conclusion of the contract in question.
- (2) Our General Terms and Conditions of Sale and Delivery (AGBV) shall apply exclusively to **businesses (§ 14 BGB [German Civil Code]), public sector legal entities and public law special trusts.**
- (3) Our online shop may be used exclusively by **businesses (§ 14 BGB), public sector legal entities and public law special trusts.** By using the online shop (at the latest by placing an order) a customer confirms that it is trading commercially and is not a consumer for the purposes of § 13 BGB. The customer must provide us with appropriate evidence (trade licence etc.) on request.
- (4) Duties in electronic business transactions pursuant to § 312e (1) Nos. 1 – 3 BGB shall not apply.

Clause 2

Contract conclusion

- (1) During traditional sales, our offers shall apply for a maximum of thirty days, unless a different time limit is set out in individual quotations. Contracts shall materialise when an offer is accepted within that period, when we provide a written order confirmation or when we execute the order.
- (2) The products and services offered for sale in the online shop represent non-binding invitations to the customer to make an offer. In this respect, the specifications and details of the products and services offered by us shall be non-binding. A declaration of intent to conclude a contract on the part of the customer shall always represent an offer. The customer shall remain bound by the offer, provided we hold in stock or can deliver within a reasonable period the required specification and quantity of the products and services it orders. If the customer does not receive a precisely confirmatory notification from us within 14 days of provision of its offer, and we have not yet begun to execute the order, the customer shall no longer be bound by its offer. Confirmation by us of receipt of an order/offer does not represent a declaration of acceptance.
- (3) Declarations of intent given by us during contract conclusion shall always be subject to proper and timely delivery by our own suppliers, unless we are ourselves responsible for any incorrect delivery or failure to deliver. If contract execution should prove to be impossible for us, for example owing to the unavailability of a certain product, we shall immediately inform our customer of this fact. Any consideration already partially or fully paid shall immediately be reimbursed.
- (4) We reserve the right to vary from descriptions and details in prospectuses, quotations and written documents in technical and design terms, and to make performance, design and material changes as part of technical progress, without the customer being entitled to derive any rights therefrom. Details relating to our products (technical data, dimensions and the like) shall all be close and approximate; they shall not constitute guaranteed conditions, unless an explicit written guarantee is given in this respect.
- (5) We reserve title and copyright to samples, drawings, cost estimates and the like (including those in electronic format). They may not be made accessible to third parties without our consent and must be returned immediately on request.

Clause 3

Shipment – Delivery – Transfer of risk

- (1) Agreements on a binding delivery period (time of performance) in traditional sales must be set out in writing, and in online sales they must at least be set out in text format. Timely performance shall presuppose that all commercial and technical questions have been clarified between the customer and ourselves and that the customer has fulfilled all the obligations incumbent on it, for example has paid a deposit.
- (2) We shall be deemed to have respected the delivery period provided, by the end of that period, our product has left the factory or we have declared readiness for shipment. If an acceptance procedure is required, then the acceptance date shall be decisive; this shall not apply in the event of a justified refusal to accept.
- (3) We shall inform the customer immediately if we are unable to deliver on time. The delivery period shall be reasonably extended if we are not responsible for the delay, for example in the event of power cuts, import difficulties, plant or transport problems, strikes, force majeure or delays by our supplier. If we cannot deliver even after a reasonable time extension, then both the customer and ourselves shall be entitled to withdraw from the contract. The customer may not claim damages as a result.
- (4) We shall be entitled to effect part-deliveries, if the customer can reasonably be expected to accept this situation.
- (5) We shall be responsible for selecting the contractor to be commissioned with shipping. This selection shall take place following a careful and conscientious examination in the customer's interests. By handing over the goods to the contractor commissioned to deliver them, we shall be deemed to be meeting the delivery obligation incumbent on us. The risk associated with any damage suffered by the goods shall transfer to the customer at the same time. The same shall apply if

we take responsibility for other payments, such as in particular shipping or delivery costs. If an acceptance procedure is required, then the risk shall transfer at the time of acceptance.

- (6) If shipment or acceptance is delayed or fails to take place through circumstances for which the customer is responsible, risk shall transfer to the customer as soon as we have notified it of readiness for shipment or acceptance.

**Clause 4
DEFECT CLAIMS (WARRANTY)**

- (1) WE WARRANT THAT THE PRODUCTS AND SERVICES PROVIDED BY US ARE OF THE AGREED CONDITION AT THE TIME OF TRANSFER OF RISK, OR IF NO AGREEMENT HAS BEEN CONCLUDED IN RELATION TO THEIR CONDITION, THAT THE PRODUCTS AND SERVICES ARE SUITABLE FOR NORMAL USE AND THAT THEIR CONDITION IS THE SAME AS IS CUSTOMARY FOR ITEMS OF THE SAME CATEGORY, AND WHICH THE CUSTOMER CAN EXPECT ON THE BASIS OF THAT CATEGORY. WE ACCEPT NO LIABILITY:
- A) IF OUR PRODUCTS ARE NOT APPROPRIATELY STORED, INSTALLED, COMMISSIONED OR USED BY THE CUSTOMER OR BY THIRD PARTIES;
 - B) FOR NORMAL WEAR AND TEAR;
 - C) FOR IMPROPER MAINTENANCE;
 - D) IN THE EVENT OF THE USE OF INAPPROPRIATE OPERATIONAL RESOURCES;
 - E) IN THE EVENT OF LOSSES THAT ARISE THROUGH REPAIRS OR OTHER WORK BY THIRD PARTIES, WHICH WE DID NOT EXPLICITLY APPROVE.
- (2) THE CUSTOMER SHALL BE OBLIGED TO IMMEDIATELY CHECK AND EXAMINE WITH DUE CARE THE PRODUCTS SUPPLIED BY US. WE MUST BE NOTIFIED IN WRITING OF ANY OBVIOUS DEFECTS IMMEDIATELY, NO LATER THAN 3 DAYS FOLLOWING RECEIPT OF THE GOODS. IF AN OBVIOUS DEFECT IS NOT NOTIFIED WITHIN THE 3 DAY PERIOD, THE DELIVERED GOODS SHALL BE DEEMED TO HAVE BEEN APPROVED. AN EXCLUSION PERIOD OF THREE MONTHS FROM TRANSFER OF RISK SHALL APPLY FOR DEFECTS THAT ONLY BECOME OBVIOUS AT A LATER DATE. THE WARRANTY RIGHTS SHALL LAPSE AT THE END OF THAT PERIOD. WRITTEN NOTIFICATION OF DEFECTS UNDER WARRANTY MUST ALSO BE GIVEN IMMEDIATELY, NO LATER THAN 3 DAYS AFTER THEY BECOME APPARENT.
- (3) OUR LEGAL LIABILITY FOR DEFECTS SHALL BE RESTRICTED TO SUBSEQUENT PERFORMANCE, I.E. IN THE EVENT OF A DEFECT FOR WHICH WE ARE RESPONSIBLE, WE SHALL HAVE THE RIGHT TO ELECT, WITHIN A REASONABLE PERIOD, EITHER TO REMEDY THE DEFECT AT OUR OWN EXPENSE (REPAIR) OR TO EXCHANGE THE DEFECTIVE PRODUCT BY PROVIDING A REPLACEMENT (SUBSEQUENT DELIVERY). THE CUSTOMER MUST IMMEDIATELY PROVIDE US WITH ADEQUATE OPPORTUNITY TO PROVIDE SUBSEQUENT PERFORMANCE, FAILING WHICH WE SHALL BE EXEMPTED FROM LIABILITY FOR THE RESULTING CONSEQUENCES. IF THE SUBSEQUENT DELIVERY FAILS ONCE OR THE REPAIR FAILS TWICE, THE CUSTOMER MAY ELECT EITHER TO DEMAND A REDUCTION IN THE PURCHASE PRICE OR, IN THE CASE OF SERIOUS DEFECTS, TO WITHDRAW FROM THE CONTRACT.
- (4) WE SHALL ONLY BEAR THE COSTS ARISING THROUGH THE REPAIR, IN PARTICULAR TRAVEL AND TRANSPORT COSTS, PROVIDED THE CUSTOMER HAS NOT MOVED THE PRODUCTS DELIVERED TO IT TO A LOCATION OTHER THAN THAT TO WHICH THEY WERE FIRST DISPATCHED. WE SHALL BEAR THE COSTS OF A REPLACEMENT DELIVERY. REPLACEMENT DELIVERY SHALL IN PRINCIPLE BE MADE TO THE LOCATION TO WHICH THE PRODUCTS WERE INITIALLY DISPATCHED, UNLESS AGREED OTHERWISE BETWEEN THE PARTIES.
- (5) WE SHALL BE LIABLE FOR ONE YEAR FROM DELIVERY OR ACCEPTANCE IN THE CASE OF NEWLY MANUFACTURED PRODUCTS AND WORK, INCLUDING THE ASSOCIATED PLANNING AND SUPERVISORY SERVICES. WE ACCEPT NO LIABILITY IN THE EVENT OF THE SALE OF USED PRODUCTS.
- (6) DEFECT CLAIMS BY THE CUSTOMER OVER AND ABOVE THOSE DESCRIBED UNDER (1) TO (5) ABOVE SHALL BE EXCLUDED. WE THEREFORE ACCEPT NO LIABILITY FOR DAMAGE THAT HAS NOT ARISEN ON THE PRODUCT ITSELF, NOR FOR OTHER FINANCIAL LOSSES SUFFERED BY THE CUSTOMER. NOR MAY THE CUSTOMER DERIVE ANY RIGHTS FROM A DEFECTIVE PART-DELIVERY IN RELATION TO THE REMAINING BATCHES.

**Clause 5
LIABILITY**

- (1) OUR LIABILITY, IRRESPECTIVE OF ITS LEGAL BASIS, SHALL BE RESTRICTED TO INTENT AND GROSS NEGLIGENCE (CONTRARY LIABILITY RESTRICTIONS IN THESE TERMS OF BUSINESS MUST BE INTERPRETED AND ADAPTED ACCORDINGLY). ANY SUCH LIABILITY SHALL BE RESTRICTED TO PREDICTABLE, TYPICALLY ARISING LOSSES. SPECIFICALLY, WE ACCEPT NO LIABILITY FOR CIRCUMSTANCES THAT DO NOT REPRESENT THE ACTUAL PURPOSE OF THE CONTRACT. NOR DO WE ACCEPT LIABILITY FOR AN INFRINGEMENT OF MINOR CONTRACTUAL OBLIGATIONS AS A RESULT OF MINOR NEGLIGENCE, AND/OR FOR NON-MINOR ANCILLARY OBLIGATIONS ARISING OUT OF THE CONTRACT.

THIS SHALL NOT APPLY:

- A) IN THE EVENT OF PERSONAL INJURY (ALBEIT ONLY WHERE WE WERE OR SHOULD HAVE BEEN AWARE OF THAT RISK);
 - B) IN THE EVENT OF LOSSES CAUSED THROUGH THE ABSENCE OF A CONDITION GUARANTEED BY US;
 - C) IN THE EVENT OF CLAIMS ARISING OUT OF THE PRODUKTHAFTUNGSGESETZ [GERMAN PRODUCT LIABILITY ACT].
- (2) WE ACCEPT NO LIABILITY, DURING CONTRACT EXECUTION, FOR THE FACT THAT THE IMPLEMENTATION OF A CUSTOMER ORDER PROCESSED IN ACCORDANCE WITH CUSTOMER WISHES THAT ARE EXPLICIT OR ARE INHERENT IN THE ORDER IS NOT IN BREACH OF STATUTORY PROVISIONS, AND IN PARTICULAR THAT NO THIRD PARTY RIGHTS ARE INFRINGED AS A RESULT. IN THIS CASE, THE CUSTOMER SHALL HOLD US ENTIRELY HARMLESS WITH RESPECT TO ANY ASSOCIATED CLAIMS.
- (3) ANY LIABILITY INCURRED BY US SHALL BE EXCLUSIVELY TOWARDS THE CUSTOMER AS A CONTRACTING PARTNER. INVOLVED THIRD PARTIES MAY IN NO CIRCUMSTANCES MAKE ANY CLAIM UNDER THE CONTRACT CONCLUDED BETWEEN OURSELVES AND THE CUSTOMER.

Clause 6

Prices – Terms and conditions of payment - Default – Retention of title

- (1) In the absence of any separate agreement, prices shall be ex works including loading. Shipping, unloading and packaging costs shall not be included and shall be charged separately. Value added tax at the statutory rate shall be added to the prices.
- (2) We shall be entitled to increase the prices for the services to be provided by us under the contract to a reasonable extent, in accordance with a general increase in costs, provided more than six weeks have elapsed between the date of conclusion of the contract and the agreed delivery date, and if thereafter, up to the point of delivery, our suppliers' prices or other costs associated with our products increase. The same shall apply in the case of open-ended delivery agreements.
- (3) The amount payable by the customer shall fall due for immediate payment, without deduction, upon receipt of an invoice raised following the transfer of risk. The customer shall be in default of payment at the latest 30 days thereafter. The customer must indemnify us the resulting default loss plus an additional 8 percentage points above the base rate (default interest rate). Statutory rules shall apply.
- (4) All the goods delivered to the customer shall remain our property (product subject to retention of title) until payment in full of the entire amount. The customer shall accept full liability for such goods to which we retain title. We shall be entitled to insure the goods subject to retention of title against theft, breakage, fire, water and other damage, at the customer's expense, unless the customer provides evidence of the fact that it has itself contracted such insurance. As a result, the customer hereby assigns all claims against the insurer to us.
- (5) If the customer falls into arrears by more than ten days with all or a significant proportion of a due instalment (including a part-payment), and fails to remedy the situation despite a reasonable payment date set by ourselves, we shall be entitled to withdraw from the contract. If we collect the product subject to retention of title, this shall constitute a declaration of withdrawal. The same shall apply if an insolvency application is filed in relation to the customer's assets and is not withdrawn within ten days. If the customer fails to comply with the request for return, or if the product subject to retention of title risks being lost or destroyed, we shall be entitled to take possession of the product subject to retention of title. To this end, we may access the place at which the product subject to retention of title is located. The customer shall bear the associated costs if we take back the product subject to retention of title.
- (6) If the product subject to retention of title is processed, combined or mixed with other goods not belonging to us, we shall acquire joint ownership of the new item in the ratio of the value of the product subject to retention of title to the other processed, combined or mixed items.
- (7) The customer shall be entitled to sell the product subject to retention of title to a third party during the normal course of its business; however, it hereby assigns to us all receivables due to it out of the resale.
- (8) If the customer defaults in acceptance, we shall be entitled to claim the resulting supplementary expenses (e.g. storage costs) and if necessary, to definitively sell the product.
- (9) A customer shall in no circumstances be permitted to undertake setoff using its own receivables. By way of exception, this shall not apply to receivables that have been made legally binding under a judgment or are uncontested. Nor shall the customer be entitled to refuse to pay on the ground of warranty claims, unless we have acknowledged the customer's complaint in writing.

Clause 7

Severability clause – Governing law – Place of jurisdiction

- (1) If individual provisions of these Terms of Business should be or become entirely or partially invalid or should contain a loophole, this shall not affect the validity of the remaining provisions. The deficient or incomplete provision must be reworded in order to produce a provision whose financial and legal sense approximates as closely as possible that of the deficient provision, but which is valid and/or complete.
- (2) The governing law shall be German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (3) The exclusive place of jurisdiction shall be the court with competence for our place of business. We reserve the right to also sue the customer at the court of the latter's place of business. Unless stated otherwise in the contract, the place of performance and place of payment shall be our registered office.