

General Terms and Conditions of Purchase

§ 1 General, scope of application

1. All deliveries, services and offers from our suppliers are based on the following General Terms and Conditions of Purchase (AGB-E). They are an integral part of all contracts, including future contracts, which EISENBAU KRÄMER (hereinafter: EBK) concludes with its suppliers and other contractors (hereinafter: supplier or suppliers) for the deliveries or services offered by them. They only apply if the seller is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law and in particular also for all future deliveries, services or offers, even if they are not agreed again separately.
2. The terms and conditions of EBK's suppliers or third parties do not apply. This also applies if their validity is not expressly contradicted in individual cases. The reference to a letter from a supplier or third party which contains general terms and conditions or refers to such does not constitute an agreement to their validity.
3. The supplier knows the way in which the plates are processed at EBK. The supplier guarantees that the plates delivered by him are suitable for the intended purpose and for the intended processing without any restrictions. If necessary, it is the supplier's responsibility to obtain information from EBK about the method of processing and/or the application at its customer, and to do so before delivery. This also applies to external partners who work with plates purchased from third parties, such as surface processing or structural changes.
4. Individual agreements made by EBK with the supplier in individual cases (including ancillary agreements, supplements and amendments) take precedence over these AGB-E in all cases. A written contract or written confirmation from EBK is decisive for the content of such agreements.
5. References to the validity of legal regulations are only for clarification purposes. Even without such clarification, the statutory provisions shall apply unless they are permissibly amended directly or expressly excluded in these AGB-E.
6. Legally relevant declarations and notifications to be made by the supplier to EBK after conclusion of the contract, such as setting deadlines, must be made in writing in order to be effective.
7. In the event that supplementary agreements of any kind are made, these AGB-E shall also apply to these agreements, unless provisions are expressly made in them that modify the provisions of these Terms and Conditions of Purchase.

§ 2 Orders and contracts

1. An order placed by EBK shall be deemed binding at the earliest when it is placed in writing or when it is confirmed. The supplier is obliged to inform EBK of obvious errors (such as spelling and calculation errors) and obvious incompleteness of the order including the order documents for the purpose of correction or completion before acceptance. In the absence of such notification, the contract shall be deemed not to have been concluded.

2. The supplier is obliged to confirm orders from EBK in writing within a period of 5 working days or, in particular, to execute them without reservation by dispatching the goods. In the case of heavy plate orders, the order must be confirmed within 10 calendar days.
3. Delayed acceptance shall be deemed a new offer and shall require acceptance by EBK.
4. Cost estimates are not to be remunerated separately unless this has been expressly agreed. For the period of validity, they shall be the binding basis for all orders arising from them.

§ 3 Prices, terms of payment

1. The price stated in the order shall be binding for at least four months, calculated from the date of receipt of the offer. The agreed prices are fixed prices, even if delivery is to be made more than six months after conclusion of the contract.
2. Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance). The supplier shall take back packaging material upon request. In the case of heavy transports, the supplier shall obtain all necessary permits and shall bear all other associated burdens.
3. Unless otherwise agreed, EBK shall pay the purchase price within 30 days of delivery of the goods and receipt of the invoice with a 3% discount and within 60 days net. The receipt of the transfer order by the bank executing the transfer is sufficient for the timeliness of the payment owed by EBK.
4. The statutory provisions apply to the occurrence of default, whereby a written reminder by the supplier is required in each case, if applicable. In the event of delayed payment, EBK shall owe interest on arrears in the amount of 5 % points above the base interest rate in accordance with § 247 BGB (German Civil Code); interest on arrears (§ 353 HGB) shall not be owed.
5. EBK is entitled to the right of set-off, retention and assertion of the defence of non-performance of the contract within the framework of the statutory provisions. In particular, EBK is entitled to withhold due payments as long as it is still entitled to claims from incomplete or defective services against the supplier.
6. The assertion of a right of set-off or retention by the supplier requires the existence of a legally established or undisputed counterclaim.

§ 4 Delivery time and delivery, transfer of risk

1. The delivery time (delivery date or period) stated by EBK in the order or otherwise applicable according to these AGB-E is binding, unless otherwise agreed. If the delivery time is not specified in the order, it shall be 2 weeks from the conclusion of the contract. Early deliveries are not permitted. If the day on which the delivery must be made at the latest can be determined on the basis of the contract, the supplier shall be in default on expiry of this day, without a reminder from EBK being required.

<ol style="list-style-type: none"> 2. The supplier is obliged to inform EBK immediately in writing if circumstances arise or become apparent to the supplier that the delivery time cannot be met. However, this information does not prevent the supplier from being in default if the delivery is not made on time. 3. If the supplier does not perform or does not perform within the agreed delivery time or is in default, the rights of EBK - in particular to withdraw from the contract and to claim damages - shall be determined in accordance with the statutory provisions. An unconditional acceptance of the delayed delivery/service does not constitute a waiver of the claims for damages to which EBK is entitled. 4. In the event of a delay in delivery, EBK is entitled, after prior written warning to the supplier, to demand a contractual penalty amounting to 0,1% for each commenced calendar day of the delay in delivery, up to a maximum of 10% of the respective order value. Irrespective of this, the supplier shall compensate EBK for all damages incurred as a result of the delay. The contractual penalty is to be offset against the damage caused by delay to be compensated by the supplier. EBK declares the reservation of the contractual penalty until the invoice has been paid in full. Acceptance of the delayed delivery does not constitute a waiver of the contractual penalty. 5. The supplier is entitled to have the service owed by him performed by third parties (e.g. subcontractors) with the prior written consent of EBK. The supplier shall bear the procurement risk unless expressly agreed otherwise in writing in individual cases. 6. The supplier is obliged to inform EBK immediately if the agreed and confirmed delivery dates cannot be met. The supplier is not entitled to make partial deliveries without EBK's prior written consent. Ordered quantities are binding. 7. Delivery shall be made "DAP – delivery at place – Incoterms 2020" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to EBK's place of business in Kreuztal-Kredenbach. The respective place of destination is also the place of performance (obligation to deliver). 8. The delivery must be accompanied by a delivery note stating the date (installation and dispatch), the content of the delivery (article number and quantity) and the order ID (date and number) of EBK. The delivery note and invoice must also state the batch numbers of the delivered goods. If this delivery note is missing or incomplete, EBK is not responsible for any resulting delay in the processing/payment of the delivery. All documents specified with the order, in particular works test certificates, other test certificates and confirmations must be provided with the delivery of the goods. If these documents are not provided or are provided too late, the goods as a whole are not delivered properly and on time. The supplier shall fully compensate for any resulting damage. Payment targets or payment deadlines shall commence from the time the complete documents are sent. 9. Even if dispatch has been agreed, the risk shall only pass to EBK when the goods are handed over to it at the agreed destination and there at the storage location. 	<p>§ 5 Safeguarding of ownership, confidentiality</p> <ol style="list-style-type: none"> 1. Illustrations, plans, drawings, calculations, instructions for execution, product descriptions and other documents provided are always confidential. EBK expressly reserves the right of ownership and copyright. The supplier may only use documents of the aforementioned type for the fulfilment of the respective contract concluded with EBK. Without the express written consent of EBK, the supplier may neither make them accessible to third parties nor use or reproduce them in any other way himself or through third parties. The supplier is obliged to return these documents in full at the request of EBK if they are no longer required in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. In this case, copies of the aforementioned documents made by the supplier are to be destroyed; the only exceptions to this are storage within the scope of statutory storage obligations and the storage of data for backup purposes within the scope of normal data backup. EBK may request written confirmation of the destruction. 2. Tools, devices and models that EBK makes available to the supplier or that are manufactured for contractual purposes and charged separately to EBK by the supplier remain the property of EBK or become the property of EBK. They are to be identified by the supplier as the property of EBK, carefully stored, secured against damage of any kind and only used for the purposes of the contract. In the absence of an agreement to the contrary, the contractual partners shall each bear half of the costs of their maintenance and repair. However, insofar as these costs are attributable to defects in such items manufactured by the supplier or to improper use on the part of the supplier, its employees or other vicarious agents, they shall be borne solely by the supplier. The supplier shall notify EBK immediately of any damage to the item that is not merely insignificant. Upon request, he is obliged to return the items to EBK in proper condition if they are no longer required by him for the fulfilment of the contracts concluded with EBK. 3. If the supplier processes, mixes or combines objects provided by EBK in the course of further processing, this performance is carried out for EBK. In such cases, EBK is the manufacturer of the overall product. 4. Retention of title by the supplier only applies insofar as it relates to EBK's payment obligations for the respective products to which the supplier retains title. Beyond this, extended or prolonged retentions of title in particular are not permitted. <p>§ 6 Warranty claims</p> <ol style="list-style-type: none"> 1. In the event of defects in the goods supplied by the supplier, EBK shall be entitled to the statutory warranty claims without restriction, unless otherwise stipulated below. 2. The supplier is liable in particular for ensuring that the goods are legally and technically marketable at the time of transfer of risk to EBK, that they correspond to the state of the art and science, that they are suitable for the intended purpose without restriction and that they have the agreed quality. In any case, those product descriptions that are the subject of the respective contract, in particular by designation or reference in the order, or were included in the contract in the same way as these AGB-E are deemed to be an agreement on the quality, regardless of whether the product description originates from EBK, the supplier or the manufacturer.
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3. In deviation from section 442 subsection 1 sentence 2 of the German Civil Code (BGB), EBK shall also be entitled to claims for defects without restriction if the defect remained unknown at the time of conclusion of the contract as a result of gross negligence.
4. The legal regulations (§§ 377, 381 HGB) apply to the commercial obligation to inspect and give notice of defects, with the following proviso: deadlines and obligations of inspection are only set in motion when all agreed documents are complete. EBK's obligation to inspect is limited to defects which become apparent during the incoming goods inspection under external inspection including the delivery documents as well as during the quality control in the random sampling procedure (e.g. transport damage, wrong and short delivery). If personal acceptance has been agreed, there shall be no obligation to inspect the incoming goods.

Otherwise, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. EBK's obligation to give notice of defects discovered later remains unaffected. In all cases, a complaint (notice of defect) shall be deemed to have been made without delay and in good time if it is notified to the supplier within 10 working days. The inspection shall not be considered late if the goods to be processed, which are not obviously defective, are inspected before processing. Quality documents submitted by the supplier, in particular as test certificates, are deemed to be warranted properties which EBK is not obliged to check prior to processing.

5. EBK does not waive warranty claims (e.g. MPQT plates) by accepting or approving samples or specimens submitted. If defects are only discovered after acceptance or approval in the course of further examinations, such as HIC or SSC testing, the supplier must accept this against himself. In this case he cannot refer to the fact that EBK started processing before these tests were completed.
6. The supplier shall remedy all defects notified within the limitation period without delay in such a way that EBK does not incur any costs. The supplier shall bear the costs of the rectification of the defect or the replacement delivery/service including all ancillary costs (such as freight).
7. If the supplier does not fulfil its obligation of subsequent fulfilment - at EBK's discretion - by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery) within a reasonable period set by EBK, EBK may remedy the defect itself and demand reimbursement of the expenses required for this from the supplier or a corresponding advance payment. If subsequent performance by the supplier has failed or is unreasonable for EBK (e.g. due to the threat of disproportionate damage, risk to operational safety or particular urgency), no deadline needs to be set. The supplier shall be informed of such circumstances without delay.
8. Otherwise, EBK shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions in the event of material defects and/or defects of title. Claims for damages and reimbursement of expenses in accordance with the statutory regulations remain unaffected.

§ 7 Supplier recourse

The legally determined recourse claims within a supply chain (supplier recourse in accordance with §§ 478, 479 BGB) are available to EBK without restriction in addition to the claims for defects. In particular, EBK is entitled to demand exactly the type of subsequent performance (repair or replacement) from the supplier that EBK owes its customer in the individual case. The statutory right of choice (§ 439 Para. 1 BGB) of EBK shall not be restricted by this.

2. Before EBK recognises or fulfils a claim for defects asserted by its customers (including reimbursement of expenses in accordance with §§ 478 Para. 3, 339 Para. 2 BGB), EBK shall notify the supplier and request a written statement with a brief summary of the facts. If the statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by EBK shall be deemed to be owed to the customer; in this case, the supplier shall be obliged to prove the contrary.
3. The claims of EBK from supplier recourse also apply if the goods have been further processed by EBK or one of its customers before they are sold to a consumer, e.g. by incorporation into another product.

§ 8 Industrial property rights

1. The supplier shall be responsible in accordance with section 2 for ensuring that the products supplied by him do not infringe any industrial property rights of third parties in countries of the European Union or other countries in which he manufactures the products or has them manufactured.
2. The supplier shall be obliged to indemnify EBK against all claims made by third parties against EBK due to the infringement of industrial property rights referred to in paragraph 1 and to reimburse EBK for all necessary expenses in connection with this claim. This claim does not exist insofar as the supplier proves that he is neither responsible for the infringement of industrial property rights nor should have been aware of it at the time of delivery if he had exercised commercial diligence.
3. The further legal claims of EBK remain unaffected.

§ 9 Product liability

1. The supplier is responsible for all claims asserted by third parties for personal injury or damage to property that can be traced back to a defective product supplied by him and he is obliged to indemnify EBK against the resulting liability. If, as a result of a defective product supplied by the supplier, EBK is obliged to carry out a recall action towards third parties, the supplier shall bear all costs associated with the recall or inspection action.
2. Irrespective of his liability towards EBK, the supplier must take out and maintain product liability insurance in an appropriate amount and provide EBK with evidence of this upon request. In case of doubt, it is the supplier's responsibility to agree a risk assessment with EBK regarding the appropriate amount of product liability insurance.

§ 10 Attacks by third parties

1. Should EBK be attacked by third parties with regard to the infringement of property rights and/or product liability, EBK shall inform the supplier of this immediately. For his part, the supplier is obliged to support EBK to the best of his ability and at his own expense in the defence against the claims asserted against EBK.
2. EBK is entitled to immediately take suitable measures to defend itself against such claims by third parties. The supplier will be informed of this as soon as possible. In order to defend against such claims, EBK is entitled to call in lawyers or experts at the supplier's expense, insofar as this is necessary in EBK's opinion.

3. The supplier's right to take suitable measures itself to defend itself against asserted claims in such cases shall remain unaffected.

§ 11 Assignment

The supplier is not entitled to assign his claim arising from the contractual relationship to third parties. This shall not apply insofar as monetary claims are concerned.

§ 12 Choice of law and place of jurisdiction

1. Subject to deviating regulations in these AGB-E, the place of performance for both parties and the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the registered office of EBK in Kreuztal.

EBK is free to choose whether to file a claim against the supplier at the supplier's general place of jurisdiction or in Bochum or Siegen.

2. The contracts concluded between EBK and the supplier are subject to the law of the Federal Republic of Germany excluding the Convention on the International Sale of Goods (UN Sales Convention).

§ 13 Secrecy and data protection

The supplier undertakes to treat as a trade secret all commercial and technical details which are not in the public domain and which become known to them through the business relationship. Recipes, drawings, models, templates, samples, specifications, data, designs and similar items may not be handed over or made accessible to third parties without authorisation.

EBK points out that personal supplier data is processed on the basis of the BDSG (federal data protection act) and the DSGVO (basic data protection regulation).

§ 14 Salvatorian clause

Should any of the above provisions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. In this case, the invalid or unenforceable provision shall be replaced by a valid and enforceable provision which comes as close as possible to the regulatory objectives pursued by the invalid or unenforceable provision. The same shall apply to the filling of any gaps in the contract.