

General Terms for Sale of Goods and Services by Eurocoles GmbH & Co.

(Date of most recent changes: November of 2013)

1. General

1.1 The following terms shall apply to all Eurocoles business with customers, for initiation of business activities (consulting, offers, etc.), as well as to all other legal relationships with customers, insofar as these customers are businesses in the sense of Paragraph 14 of the German Civil Code (§ 14 BGB). In the event that any terms of purchase or contracting of Eurocoles customers exist that are in conflict with the present General Terms for Sale of Goods and Services by Eurocoles, or are in conflict with legal stipulations, such terms of business of Eurocoles customers are hereby expressly contradicted. Such contradictory terms of Eurocoles customers also do not become terms of our Agreement, even though Eurocoles may execute deliveries or perform services in full knowledge of such contradictory terms.

1.2 Contractual relationships shall furthermore be subject exclusively to German law. The Hague Convention dated 1 July 1964 with respect to uniform legislation on international purchase and sale, and the United Nations Treaty dated 11 April 1980 on agreements concerning the international purchase and sale of movable goods, shall not apply. If agreements with customers are concluded in English, the following will apply: The Agreement and its terms shall be construed according to German law. If the English legal meaning differs from the German legal meaning of this Agreement and its terms, the German meaning shall prevail.

1.3 Eurocoles quotations are always provided subject to change and/or confirmation, unless a quotation is made expressly on a binding basis, or unless it is stated to apply to a particular length of time. Contracts arise only after confirmation by Eurocoles in text form of the contract, or upon execution of services.

2. Prices

2.1 Prices for Eurocoles services are based on delivery ex works, free on truck or railway wagon, loaded, not including value-added tax to be paid, other taxes accrued, packing, insurance, freight, unloading, assembly, and any customs duties to be applied. Eurocoles will additionally invoice any packing costs at cost price (i.e., without profit being added). Packing material will be accepted for return only at the plant or delivery warehouse (logistics center) that delivered the material, insofar as this has been expressly arranged or specified by law. In such cases, the Customer must bear the costs for transport of packaging to the return point.

2.2 If, after conclusion of the contract, changes take place in the basis of calculation of prices, or increases in taxes (especially value-added tax), or of other fees, of customs duties, or the like, Eurocoles shall be entitled to increase the contractual price in a justified relationship to the changes in pricing basis that have taken place.

2.3 Eurocoles agrees to observe foreign packing, weighing, and customs regulations only if the Customer provides Eurocoles with sufficient details in due time. The Customer shall bear any additional expenses involved herewith.

3. Deliveries and delivery dates

3.1 Delivery and performance dates do not represent business to be conducted at a precisely fixed point in time, or within a specified time frame, unless an agreement to the contrary has been reached in writing.

3.2 Insofar as circumstances for which Eurocoles is not responsible render the execution of accepted contracts and deliveries more difficult, or delay or render impossible such execution of orders, Eurocoles shall be entitled to postpone execution or delivery, entirely or in part, by the length of duration of the encumbrance, without giving rise to claims for restitution of damages by the Customer. Eurocoles shall not be responsible for the consequences of the following: any and all cases of force majeure, to include action taken by public authorities; production interruptions or shutdowns; industrial action (strikes); labor lockouts; interference in working conditions by political or economic circumstances; the lack of the required raw materials or process materials; material shortages; energy-supply difficulties; transport delay by traffic disturbances; or unavoidable events that may occur in conjunction with Eurocoles, Eurocoles sub-contractors, or other companies on whom the proper conduct of Eurocoles operations depends. This stipulation shall also apply if these events occur at a point in time at which Eurocoles is already in delay.

3.3 Eurocoles shall also not be held responsible for other delays if the Customer fails to fulfill, or to fulfill in due time, his obligations to collaborate. This shall especially apply in cases in which the Customer is responsible for obtaining official approval, providing working drawings, furnishing documents for specification of the object of the contract, clarifying all technical details, or rendering advance payments.

3.4 The Customer may take action owing to delay in performance or delivery only if the agreed date of delivery or performance has been exceeded by more than one week. A period of grace stipulated to Eurocoles must be reasonable and must be at least three weeks.

3.5 If Eurocoles undertakes transport of the products to their destinations, the Customer hereby agrees to provide access ways or roads suitable for the transport, insofar as such access does not already exist.

3.6 If, on the basis of an individual contractual agreement, it is agreed that Eurocoles performs installation and assembly work, Eurocoles services – regardless of the agreements made for transport – shall include provision of the installation/assembly staff, the hoisting apparatus, connecting material for the prefabricated components, as well as technical processing in accordance with project specifications and bills of quantities. The Customer shall provide Eurocoles, in due time and at no cost, with energy and water, as well as sufficient space on the construction site for erection and assembly, storage, and standing/parking for cranes and the like. The Customer must provide Eurocoles with binding documentation on any underground pipelines, ducts, and the like, with exact indication of height and axes. The Customer shall protect these pipelines, ducts, and the like against damage that might occur by moving vehicles, or by the installation/assembly work.

3.7 Eurocoles shall be entitled to provide partial deliveries, insofar as this can be deemed acceptable for the Customer.

4. Bearing risk of loss; transport

4.1 If Eurocoles does not accept responsibility for transport of the products, the risk of accidental loss, destruction, or deterioration passes to the Customer upon loading the product onto the transport vehicles at the works (i.e., upon turnover to the carrier). This stipulation shall also apply to partial deliveries.

4.2 If the Customer is responsible for transport of the products, and if no collection has taken place from the plant within seven (7) days after Eurocoles notification of completion, or within seven (7) days after Eurocoles notification that the goods are ready for consignment, then Eurocoles shall assume that the Customer shall be in default in taking delivery, with the consequence that, from this point in time on, the risk of accidental loss, destruction, or deterioration passes to the Customer. Eurocoles shall then, at its discretion, initiate transport of the products by means of the type of consignment that seems most favorable to Eurocoles, or to store the goods in an appropriate manner. Such consignment or storage shall take place on behalf of and at the expense of the Customer.

4.3 If Eurocoles is responsible for transport, the risk of accidental loss, destruction, or deterioration passes to the Customer upon delivery and before beginning of unloading. If Eurocoles has accepted the costs for unloading, risk passes to the Customer upon completion of unloading.

4.4 If Eurocoles is additionally responsible for installation /assembly or other services, such risk passes to the Customer upon acceptance of Eurocoles services in accordance with Section 9 of these Terms.

5. Retention of title until payment in full

5.1 The object of a contract shall remain Eurocoles property until full payment of all claims held by Eurocoles against the Customer, including future claims. If an invoice is outstanding, retention of title shall apply as security for the account claims held by Eurocoles.

5.2 Sale of goods subject to retention of title as security is allowed only as part of proper and permissible business operations carried out by the Customer – and only if the Customer is not in arrears in payment. Other action taken with respect to goods subject to retention of title are not allowed, especially their pledging or assignment as security. In the event of further sale of the goods, the Customer will immediately assign to Eurocoles the amount due for claims held by Eurocoles. Eurocoles will be entitled to revoke this authorization as well as authorization for further sale of the goods subject to retention of title, in the event that the Customer does not satisfy claims held against him by Eurocoles.

5.3 The Customer shall at any and all times provide all requested information to Eurocoles on the goods subject to retention of title and on claims that have accordingly been assigned to Eurocoles. The Customer shall likewise inform Eurocoles without delay of confiscation of goods or claims held by third parties on goods subject to retention of title. The Customer shall provide Eurocoles with the required documentation for these transactions. The Customer shall likewise notify such third parties in writing of the goods subject to retention of title.

5.4 If the Customer processes or alters the goods subject to retention of title, or connects them to other objects, then the Customer shall be considered to have processed, altered, or connected them on Eurocoles' behalf. Eurocoles thereby immediately becomes owners of the objects manufactured by such processing, alteration, or connection. In the event that such ownership not be possible on legal grounds, then the Customer and Eurocoles thereby agree that Eurocoles becomes owners of the new objects at the point in time of their processing, alteration, or connection. The Customer shall safeguard the new objects for Eurocoles with the due diligence of a sound businessman. The new objects created by processing, alteration, or connection shall be considered to be goods subject to retention of title. In the event that these objects are processed, altered, or connected to other objects that do not belong to Eurocoles, Eurocoles shall have joint ownership of the new objects in accordance with the proportion formed (prorata) by the ratio of the value of the processed, altered, or connected goods subject to retention of title, to the total value of the new objects. In the event that the new objects are sold or leased/rented, the Customer thereby assigns to us as security – without the requirement for later, specific declarations – his claim arising from the sale or leasing/rental to a new customer, whereby this assignment shall include all ancillary rights.

5.5 In the event that the goods subject to retention of title are connected by the Customer to real estate or to movables, the Customer also assigns to Eurocoles as security – without the necessity of further, special declarations – the claims that arise to him as remuneration for such connection work, in addition to all ancillary rights. If the Customer is the owner of the real estate, or if he has claims on other legal grounds to rent or lease from this property, then the Customer shall also assign this rent or lease to Eurocoles.

5.6 If the value of the security for Eurocoles claims against the Customer exceeds the value of Eurocoles claims against the ordering party by a total of more than twenty percent (20 %), the Customer will be entitled to request a release of the surplus amount.

6. Payment

6.1 Insofar as nothing to the contrary has been agreed, invoices shall be due for payment in the agreed currency within thirty (30) days, beginning with the date of the invoice. Discounts for early payment shall be granted only after special agreement, and shall be calculated on the basis of the invoiced value ex delivery works, without transport or similar expense items.

6.2 Payment shall be considered to be effective only once Eurocoles can irrevocably dispose of the funds. Eurocoles will accept payment by bill of exchange or check only on the account of performance, and only after special agreement. Discount charges and fees for bills of exchange must be paid by the Customer. If payment by bill of exchange has been agreed, the term of the bill of exchange must not exceed ninety (90) days from the date of the invoice.

6.3 Payments received will be credited against the oldest payables, or those payables that are least secured, with selection of priority to be made by Eurocoles.

6.4 Partial deliveries will be immediately invoiced, and shall be individually due for payment, regardless of final completion of the total delivery. Unless written agreement to the contrary has been made, advance payment upon conclusion of contract shall be credited against the oldest partial delivery in each case.

6.5 If the Customer partially or entirely falls into arrears with payment, or if it becomes evident that the claims held by Eurocoles are endangered by lack of financial stability of the Customer, all claims held by Eurocoles shall immediately become due for payment.

6.6 Offset against counterclaims shall be accepted only in cases of legally confirmed counterclaims, or counterclaims recognized by Eurocoles. The same shall also apply for the assertion of rights of retention to the amounts stated in Eurocoles invoices.

7. Withdrawal from contract and restitution for damages in case the Customer falls into arrears

If the Customer delays the acceptance of Eurocoles deliveries or services, or if he falls into arrears in payments, Eurocoles shall establish an appropriate period of grace for acceptance or payment. If the Customer fails to perform within the grace period, Eurocoles shall be entitled to withdraw partially or completely from the contract, and/or to demand payment for restitution of damages in the amount of twenty percent (20 %) of the agreed price, subject to provision of evidence of specific greater damages, especially the costs of return of goods or services, insofar as the Customer has not provided evidence of lesser damages.

8. Guarantee

8.1 The characteristics of the object of the contract that Eurocoles is obligated to deliver are based exclusively on the contractual agreements with the Customer, and not from any other advertising statements, brochures, consultations, or the like. The legal consequences in case of non-performance are exclusively based on the following stipulations:

8.2 Normally commercially prevalent deviations in dimensions and material, and/or deviations based on manufacturing-technology factors, do not entitle the Customer to declare the object of the contract unacceptable. The usual industrial standards, as well as Eurocoles factory standards, insofar as they exist, shall apply to tolerances.

8.3 The Customer agrees to inform Eurocoles without delay concerning any important knowledge gained in the design of the object of the contract, also in cases subsequent to conclusion of the contract and after partial delivery already rendered, in order to provide Eurocoles with the opportunity to react in an appropriate manner. This stipulation does not, however, require Eurocoles to modify the contractually agreed characteristics of the object of the contract. The Customer shall be responsible for any consequences resulting from his failure to provide such information.

8.4 In case of shortcomings in the products delivered by Eurocoles, Eurocoles shall be liable as follows, under exclusion of further claims:

a. The Customer must provide Eurocoles the possibility of inspecting the rejected object of contract, and of subjecting it to tests and/or examinations.

b. Beginning with delivery, Eurocoles offers a guarantee of one (1) year. Guarantee claims of the Customer concerning construction services and shortcomings in constructed structures lapse five (5) years after project acceptance, unless legal stipulations provide a shorter term, or unless some other stipulation has been agreed by individual contract.

c. Eurocoles shall rectify shortcomings either by reworking or by replacement, as Eurocoles so decides. Our Customer must allow Eurocoles a reasonable period of time and opportunity for rectification of shortcomings. In the event that such rectification fails after several attempts, the Customer may withdraw from the contract, or can demand a price reduction. Paragraph 10 of these Terms shall apply to claims for damages.

9. Acceptance

9.1 If Eurocoles has accepted responsibility for erection/assembly of the object of the contract onsite, or for certain construction services, Eurocoles shall notify the Customer in writing of the completion and/or acceptance readiness of Eurocoles services. Upon receipt of this notification, the Customer shall without delay carry out acceptance of Eurocoles work. The Customer shall be responsible for bearing any expenses involving the acceptance procedures. Non-essential shortcomings determined during inspection of the work shall not entitle the Customer to refuse acceptance.

9.2 In the performance of services, the Customer agrees to formal acceptance of the services as essentially completed in accordance with the contract. Eurocoles services shall be considered to have been successfully accepted upon expiry of fourteen (14) working days after Eurocoles written notification of readiness for acceptance, even if the Customer has not yet performed explicit acceptance. If our Customer has placed our services, or part of our services, into use, acceptance shall be considered to have taken place two (2) weeks after the date of placing the services into use.

10. Liability

10.1 Eurocoles can be held liable for restitution of damages only in cases of intentional culpability or gross negligence on the part of Eurocoles or its agents, or in case of breach of contractual obligations: i.e., of such obligations whose fulfillment are basically essential and on whose reliable observance the Contractual Partners may depend. In the case of non-fulfillment of essential contractual obligations that do not arise from premeditation or gross negligence, liability will be limited to typical and predictable damages.

10.2 All claims for restitution of damages lodged by the Customers shall be limited to the maximum amount of five million euros (€ 5,000,000) per occurrence giving rise to damages.

10.3 The above stipulations do not apply to harm suffered to life, limb, or health. Liability based on product liability regulations and legislation is not affected by these present stipulations.

11. Termination

11.1 In the case of pure services performed, the Customer may terminate a contract only on important grounds, and only for services not yet rendered by Eurocoles.

11.2 If the Customer terminates a contract before completion of the services to be performed by Eurocoles, without Eurocoles being responsible for the termination, Eurocoles shall receive the agreed remuneration for the services already performed, in addition to five percent (5 %) of the agreed remuneration for the services not yet performed at the point in time that the contract was terminated, unless the Customer can evidence the following: that Eurocoles was saved greater expense owing to termination of the contract, or that Eurocoles has earned a greater amount from other Customers by employment of our human resources, or that Eurocoles has willfully and maliciously failed to earn more. The lumpsum payment of five percent (5%) shall not inversely apply if Eurocoles can evidence that it has saved less in expenses, or if Eurocoles has earned less through employment of Eurocoles human resources from other Customers. Eurocoles shall furthermore receive complete compensation for those preliminary services invested in the object of the contract, if Eurocoles was not able apply these services elsewhere.

12. Proprietary rights

12.1 Drawings, tools, and special equipment that Eurocoles produces within the context of execution of the contract will remain Eurocoles property.

12.2 If Eurocoles is required to perform delivery or services in accordance with information, drawings, models, or samples provided by the Customer, or on the basis of use of parts provided by the Customer, the Customer shall be responsible to ensure that the proprietary rights of third parties are not thereby infringed upon. If applicable, Eurocoles shall call the Customer's attention to the rights of third parties of which Eurocoles is aware. The Customer shall grant Eurocoles indemnity from any and all liability with respect to infringement against rights held by third parties, shall recompense Eurocoles for any legal expenses incurred thereby, and shall compensate Eurocoles for any damages incurred in this respect. The Customer shall be responsible for any costs incurred by Eurocoles until that point in time. In the event that a third party prevents Eurocoles from manufacturing or delivering on the basis of proprietary rights belonging to him, Eurocoles shall be entitled to cease work without an examination of the legal circumstances.

12.3 If so requested by the Customer, Eurocoles shall return to the Customer, at his expense, any drawings and samples that have not led to a contract. Otherwise, Eurocoles shall be entitled to destroy these materials three (3) months after submission of the Eurocoles tender.

12.4 Eurocoles shall own the copyrights and, if applicable, commercial proprietary rights, pertaining to the models; molds; fixtures, and jigs; designs; and drawings created by Eurocoles or by third parties on Eurocoles behalf, even though the Customer had paid the costs for these materials.

13. Concluding stipulations

13.1 Eurocoles shall be entitled to process any data received from the Customer on the basis of Eurocoles business dealings with him, in accordance with the stipulations of the pertinent data privacy laws, also to especially include provision of the required data to credit insurers for the purpose of credit insurance.

13.2 The assignment of claims against Eurocoles to which the Customer is entitled, and that arise from business between us, is excluded, insofar as these do not involve money claims.

13.3 In the event that one of the abovementioned stipulations proves to be legally invalid, this shall not affect the legal validity of the remaining stipulations or of the contract as a whole. If a stipulation proves to be partially or completely invalid, the partners to the present Agreement shall without delay attempt to achieve the intended business results in another, legally permissible manner. Insofar as stipulations have been made but have not become constituent parts of the present Agreement, the content of the present Agreement shall insofar be in accordance with legal regulations.

13.4 Place of performance for all contractual and legal claims shall be the respective Eurocoles delivery plant.

13.5 Any disputes arising from or on the basis of this Agreement – including those entailing bills of exchange, checks, or other instruments – shall be settled in the normal court of jurisdiction in Nuremberg, Germany. This stipulation shall apply insofar as the Eurocoles contractual partner can in attributable manner logically be assumed to be a trader (Kaufmann) in the sense of the German Commercial Code (HGB).