



# General Conditions of Purchase and Commission Processing of ECO Schulte GmbH & Co. KG

■ SYSTEM TECHNOLOGY FOR THE DOOR



**Item 1 Scope**

1. The following Conditions of Purchase and Commission Processing shall apply for all purchase contracts, service contracts and contracts for work and materials of ECO Schulte GmbH & Co. KG (hereinafter referred to as the "Buyer") as purchaser or ordering party. For future orders, these Conditions of Purchase and Commission Processing shall also be regarded as included, even when they have not been expressly referred to again.
2. Deviations from these Conditions of Purchase shall only be a component of the contract when and so far as these deviations have become the content of an expressed written individual agreement between the Buyer and the vendor/contractor (hereinafter referred to as the "Supplier").
3. General Terms and Conditions of Business of the Supplier are contradicted. They shall only be considered agreed when and so far as the Buyer has expressly agreed to them in writing. Even without expressed contradiction of the conditions of the Supplier, the acceptance of deliveries and payment of the purchase price/the remuneration shall not be considered as implied acceptance by the Buyer.

**Item 2 Content of contract**

1. The written and signed order, instructions and delivery schedules shall be relevant for the content and scope (quality and quantity) of orders, instructions and delivery schedules. Orders and delivery schedules transmitted by data transmission and EDP print-out shall also be valid without a signature.
2. All subsidiary agreements, augmentations, etc. must be recorded in the above form in order to be valid.
3. The decisiveness of the written order shall also apply for other declarations, assurances, etc. issued by the Buyer's staff.
4. Where the Buyer places the order on the basis of technical documents, drawings, plans, tolerance details, etc., these shall also be considered a component part of the contract, so that the values and norms specified by the Buyer shall determine the deliverables.
5. No binding character shall apply in the case of obvious errors, typing errors and calculation errors. In this case, and in the case of missing or incomplete documentation, the Supplier must notify the Buyer without delay.
6. The Supplier shall accept the Buyer's orders within 5 working days in writing. The delivery of the ordered goods within this period shall be deemed as an unconditional acceptance. Any delayed acceptance can be denied by the Buyer.

**Item 3 Property rights and copyright**

1. All drawings, illustrations, plans, calculations, execution instructions, product descriptions, models or samples, material, containers or packaging material made available by the Buyer to the Supplier for the purpose of executing the order shall remain the property of the Buyer and are to be returned on request.
2. The Supplier shall be obliged to maintain confidentiality regarding all drawings, models, samples, instructions or other documentation made available to him by the Buyer or become known to the Supplier in any other way in the context of the execution of the contract. This confidentiality obligation shall remain in effect even after the termination of the Contract. The Supplier is prohibited from granting third parties discovery and inspection of the documents, etc. specified above, or making them available to third parties in any manner without the prior written approval of the Buyer. This confidentiality obligation shall only be ceased, if and insofar as the relevant knowledge has become generally known or the Buyer has waived this confidentiality obligation in writing.
3. Furthermore, the Supplier is also prohibited from supplying to or manufacturing for third parties tools or devices or the merchandise manufactured with same - regardless of their production stage - based on the drawings, models or samples of the Buyer without the prior written approval of the Buyer. This shall apply according for all items developed on the basis of details, ideas, plans or other cooperation (tests, trials, etc.) of the Buyer. The Buyer shall be entitled to the intellectual property rights - and where legally permissible - the copyright to all the above specified items. In the event of infringements of the obligations in accordance with paragraphs 1.-3., the Supplier shall be obliged to compensate the Buyer for all the resulting losses.
4. The tools and other auxiliary material necessary for the execution of the agreed contractual performance are, as a rule, to be provided by the Supplier at his own expense.
5. The Supplier shall be authorized to process material provided by the Buyer. The processing shall ensue through the Supplier for the Buyer. The Buyer shall acquire the ownership of the new goods as a manufacturer within the meaning of Section 950 BGB, while the Supplier holds the goods in custody for the Buyer free of charge. In the case of processing with other goods not supplied by the Buyer, the Buyer shall be entitled to co-ownership of the new goods, in the ratio of the value of the provided material to the other processed goods at the time of processing.
6. If the Buyer makes a down payment or advanced payments on tools or goods, the ownership of the tools or goods (pro rata) shall transfer to the Buyer at the time of receipt of the payment by the Supplier, in the ratio of the value of the payment to the overall value. The handover shall be replaced by custody of the tools/goods by the Supplier. The Supplier shall be responsible for ensuring that the tools/goods are identified as the property of the Buyer. To the maximum possible extent, goods are to be identified and stored separately until delivered to the Buyer, so that separation is possible at any time.
7. In the event of violation of obligations by the Supplier, the provided material, packaging and goods are to be handed over to the Buyer at the Buyer's request.

8. The Supplier shall be obliged to insure the material, goods and packaging provided by the Buyer against typical losses.
9. Furthermore, in executing the respective order, the Supplier shall be obliged to observe the EC Machinery Directive, the relevant accident prevention, health and safety and legal stipulations, as well as the generally recognized safety, operational and occupational health regulations.

**Item 4 Conditions of delivery**

1. The Supplier shall not be entitled to involve sub-contractors to render the contractually owed services without the prior written consent of the Buyer.
2. The Supplier shall not be entitled to make part-delivery or to make over-delivery or under-delivery.
3. The transport of the goods shall ensue at the Supplier's risk and at his expense.
4. The danger of accidental perishing and/or loss shall transfer to the Buyer with the handover of the goods at the registered office of the Buyer or the destination point stipulated by him.
5. The Supplier shall be obliged to use the packaging made available by the Buyer in individual cases. Otherwise, same shall be entitled to refuse acceptance of the goods. If the goods are nevertheless accepted, the costs for repackaging shall be deducted from the purchase price/from the remuneration.
6. Every delivery of goods - even part deliveries expressly authorized by the Buyer - is to be accompanied by a bill of lading showing the date (issue date and delivery date), the content of the delivery (item number and quantity) plus the order identification (date and number) of the Buyer. In case of a missing or incomplete shipping note the Buyer shall not be responsible for any consequent delayed processing and payment of these goods. Apart from this shipping the Seller has to send the Buyer a written shipping notice.
7. Any Buyer's default shall be subject to the legal provisions. However, the Supplier has to expressly offer his performance to the Buyer even if a specific or definable calendar date has been agreed for any of the Buyer's acts of cooperation or assistance.

**Item 5 Delivery and performance deadlines/Delay**

1. The performance periods specified in the written order are binding. Receipt of the goods at the destination point specified by the buyer shall be relevant for the timeliness of deliveries or subsequent performance; for the timeliness of deliveries incl. installation as well as other work performance, their point of acceptance shall be relevant.
2. The unreserved acceptance of a delayed delivery/service does not constitute a waiver of any claims for damages.
3. When the Supplier is responsible for the non-observance of the performance date, the Buyer can demand compensation of each full week of delay amounting to 0.5 % each, in total however a maximum of 5 % of the price for the part of the performance affected by the delay. The parties reserve the right to provide proof of lower or higher losses.
4. If the Supplier fails to deliver within the period of grace granted by the Buyer, the Buyer shall be entitled to withdraw from the contract and, in the event of culpable violation of obligations by the Supplier, (additionally) demand compensation for the losses caused by the delay or compensation instead of the performance.
5. In the case of business to be settled on a fixed date within the meaning of Section 376 HGB, no notification of a grace period is required for the exercising of the right of withdrawal and the assertion of compensation claims.
6. In cases of force majeure (e.g. natural disasters, mobilisation, war, etc.) or in cases of other similar events (e.g. strike, lock-out, etc.) the Buyer shall be temporarily released from the obligation to accept or perform until their elimination or termination. Notification of the Supplier is to ensue as soon as possible.
7. If the Supplier cites "circumstances releasing him from his delivery obligation", in particular events of force majeure, he shall be obliged to notify the Buyer in writing, without delay. Should he fail to observe this notification obligation, he shall lose the right to cite same.

**Item 6 Prices and conditions of payment**

1. Offers or cost estimates of the Supplier shall ensue, as a matter of principle, free of charge and with a binding character. The agreed prices are net prices, delivery free of charge. The VAT at the respectively valid rate shall be shown separately.
2. The agreed prices are fixed prices. The agreed prices include all services and ancillary services of the Supplier (e.g. assembly and installation) as well as all ancillary costs (e.g. cost of proper packaging, transport costs including necessary transport and liability insurances)
3. Any contract clause intended to facilitate a unilateral price increase by the Supplier on the prices stipulated in the order is expressly contradicted. If the Supplier's costs for raw materials or manufacture increase, he shall bear this price variation risk. He is neither entitled to increase the prices, making delivery of the goods dependent on the Buyer's agreeing to the increased prices, nor to withdraw from the contract. Other arrangements shall apply only for the statutory consequences in the event of disruption of the inherent basis of the contract within the meaning of Section 313 BGB.
4. Invoices are to be issued in duplicate by the Supplier on the day of dispatch of the goods.
5. Payments shall ensue on the 15th or 30th of the month following receipt of the proper invoice and the expiry of the payment period, provided the goods have been delivered by then.
6. The Buyer does not owe any maturity interest. In case of default payments the statutory provisions apply.





7. The statutory rights of offsetting and retention as well as the plea of non-performance or incomplete performance apply for the Buyer. The Buyer shall in particular be entitled to retain due payments as long as the Buyer has claims due to incomplete or defective deliveries.
8. The assignment of receivable accounts of the Supplier arising from the business relationship with the Buyer is permitted only with the prior agreement of the Buyer.
9. The Supplier's rights of offsetting and retention only apply in cases of validly established counterclaims, counterclaims which are ready for judgment and undisputed counterclaims.
10. The title of the delivered goods shall be transferred unconditionally and regardless of the payment of the purchase price. However, if the Buyer accepts in an individual case the Seller's offer to transfer the title of the goods to be delivered upon the payment of the purchase price as a condition precedent, such retention of title shall expire with the payment of the purchase price. The Buyer shall be entitled to resale the delivered goods in the ordinary course of business subject to the assignment in advance of the respective payment claims. Any further form of a retention of title shall be excluded unless expressly agreed on in writing, in particular the enlarged and forwarded retention of the Supplier's title as well as the retention of the Supplier's title prolonged to the further processing.

**Item 7 Warranty**

1. Despite of Article 442 paragraph 1 sentence 2 German Civil Code the warranty rights of the Buyer remain unaffected even if the relevant defect has remained unknown at the conclusion of the contract due to Buyer's gross negligence.
2. The Buyer shall meet his commercial inspection obligation by conducting spot checks of the goods sent to him as customary in the industry.
3. The notification of defects is within the time limit when the Buyer sends the written notification of defects to the Supplier within 14 days of the discovery of the defect; where obvious defects are concerned, the written notification of defects must ensue within 14 days of receipt/acceptance of the goods. The acceptance/approval shall ensue in any case subject to inspection for freedom from defects, in particular for rightness, completeness and suitability for intended purpose.
4. If a material defect becomes evident within six months of transfer of risk, it will be assumed that the item was already defective at the time of transfer of risk, unless this assumption cannot be consistent with the type of item or defect.
5. In the case of justified notification of defect, the Buyer can demand, at his discretion, rectification (elimination of defects) or subsequent delivery (replacement delivery). The expenses arising within the framework of the subsequent performance shall be borne by the Supplier.
6. The costs of inspection and supplementary performance of the Seller (including costs of dismantling and reinstallation) are to be born by the Seller, even if it becomes apparent that a product defect does not exist. The statutory compensation liability of the Buyer in case of unjustified product remedy requests remains in place. However the Buyer shall only be responsible in this respect if he knows or gross negligently does not know that a product defect does not exist.
7. The supplementary performance of the entire delivery can also be demanded when only a part of the performance is defective.
8. If the Supplier is unable to do so, if he fails to comply with the request within the specified period of grace, if the supplementary performance fails or if a setting of a period of grace is dispensable, the Buyer shall be entitled to reduce the purchase price/the remuneration, withdraw from the contract and, when the Supplier is responsible for the defect, to demand compensation. This shall also include the costs of any procurement of a replacement or the costs of a rectification by a third party. Section 637 BGB shall remain unaffected.
9. The compensation shall encompass all losses adequately proven to be caused by the defective item.
10. If a fault is not recognizable through appropriate material inspection in advance and the faulty nature of the delivered item therefore can only be determined during production, the Supplier shall be liable, provided he is responsible for the defectiveness of the item, in addition to his obligation to make supplementary performance, for all losses arising from the discontinuance and delay of production as well as for the expenses already fruitlessly incurred.
11. The compensation shall also cover losses resulting from the fact that the defective item, through installation or amalgamation, lead to a faulty product. Therefore, in individual cases, the compensation also encompasses compensation for losses and added expense, to the rendering of which the Buyer is obliged within the framework of the statutory warranty and recourse liability (Sections 478 f. BGB).
12. A warranty period of three years shall apply for the products manufactured by the Supplier or for the order/work executed by him, unless the statutory warranty period would lead to a longer warranty period. In this event, the statutory warranty periods, including the regulations relating to recourse liability (Sections 438, 479 BGB) and the statutory suspension of the statute of limitations in accordance with Section 479, Subsection(2) BGB shall apply.
13. In the case of subsequent delivery, a new warranty period commences with delivery of the new goods in place of the defective ones. The restart of the warranty period shall not occur to the extent that the Supplier has expressly indicated prior to the subsequent delivery that he is not obliged to make subsequent delivery and is supplying the replacement only for reasons of goodwill or to amicably settle a dispute.

**Item 8 Product liability**

1. For faults in the goods for which the Supplier is culpable, same shall indemnify the Buyer, and where necessary, his customer, for the resulting product liability upon first demand to the extent that he would be directly liable.
2. The Supplier shall be obliged, on the instructions of the Buyer, to execute all necessary measures within the framework of product monitoring including, in individual cases, warning campaigns or product recalls. The Supplier must reimburse the Buyer for the costs incurred by the Buyer as a result of product recalls.
3. The Supplier's reimbursement obligation pursuant to Item 8.2 above shall be reduced pro rata, if and insofar as the Buyer has not recognized the defect due to gross negligence or the defect is evident.
4. The Supplier must insure himself adequately against the risks arising from product liability. On request, corresponding proof of insurance is to be provided.

**Item 9 Industrial property rights**

1. The Supplier shall be liable for ensuring that his goods or services delivered, and their use by the Buyer, do not infringe patents or other industrial property rights of third parties in the countries, in which the goods are produced by the Supplier or a third party or in which the Buyer sells the products (in particular, the countries of the Europe, Asia, India and North America). He shall indemnify the Buyer and his customers from all claims from the use of industrial property rights of this kind and reimbursed the Buyer for all necessary costs triggered in connection with these claims.
2. Furthermore, the Supplier shall be obliged to compensate the Buyer for all further losses incurred as a result of the infringement of the industrial property rights of third parties in the countries, in which the goods are produced by the Supplier or a third party or in which the Buyer sells the products (in particular, the countries of Europe, Asia, India and North America).. This shall also include the costs of legal advice and representation.
3. This shall not apply when the Supplier has manufactured the goods on the basis of Buyer's drawings, models or other similar descriptions or arrangements and does not know or, in the context of the goods manufactured by him, cannot know that industrial property rights are infringed as a result.

**Item 10 Compensation**

1. Compensation claims of the Supplier, regardless of the legal grounds, in particular regarding infringement of obligations arising from the contractual obligations and from unauthorised actions, are excluded, except in cases of mandatory liability for intentional or grossly negligent conduct, injury to life, limb or health or infringement of major contractual obligations.
2. The compensation claim for the infringement of major contractual obligations shall, however, be limited to the foreseeable losses provided a limitation is not excluded for another reason due to intentional or grossly negligent actions or injury to life, limb or health.

**Item 11 Data protection**

1. The provisions according to the current data protection law apply.
2. The data protection declaration required by the data protection law is deposited on the Buyer's website, which is expressly referred to here. <https://www.eco-schulte.com/datenschutzerklaerung/>

**Item 12 Miscellaneous**

1. For the legal relationship relating to this contract, German substantive law shall apply, excluding the UN Convention on Contracts for the International Sale of Goods.
2. Sole court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the place of business of the Buyer.
3. Place of performance for all goods and services, including payments shall be the place of business of the Buyer.
4. Should any provision of these Terms and Conditions of Business, or a provision within the framework of other agreements, be or become invalid, the validity of the other provisions or agreements shall not be affected.

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