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**G**eneral

**T**erms and

**C**onditions

**EUROSAND**<sup>®</sup>

[www.eurosand.de](http://www.eurosand.de)

Member of **ZIEGLERGROUP**<sup>®</sup>

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## **§ 1 Applicability**

### **1.1**

These General Terms and Conditions (hereafter referred to as GTC) apply to all business relationships between EuroSand GmbH (hereinafter referred to as EuroSand), Pressather Straße 95 - 92637 Weiden, and entrepreneurs (§ 14 BGB), legal persons governed by public law or special assets governed by public law.

### **1.2**

The General Terms and Conditions of EuroSand GmbH also apply to all future transactions with the purchaser, even if in individual cases no explicit reference is made to.

### **1.3**

Conflicting or deviating terms and conditions of the purchaser shall not apply, unless EuroSand has expressly agreed to their validity in writing. These General Terms and Conditions also apply if EuroSand carries out the orders without reservation in the knowledge of conflicting or deviating conditions of the purchaser. Even then, the purchaser's General Terms and Conditions do not become part of the contract.

### **1.4**

Individual agreements with the purchaser (including ancillary agreements, addendums, and amendments) take precedence over these Terms and Conditions. However, the purchaser is burdened with proof of the existence and content of such agreements insofar as he invokes them.

### **1.5**

The General Terms and Conditions of EuroSand GmbH apply to all orders, whether by e-mail, fax, in writing, by phone or in any other way. In addition, unless these General Terms and Conditions provide otherwise, the legal provisions of the German Commercial Code, the German Civil Code and the Incoterms of the International Chamber of Commerce in Paris in the current version at the time of delivery or performance (currently Incoterms 2020) shall apply.

### **1.6**

Relevant Statements (for example: deadlines, notification of defects, cancellation, or reduction) must be provided at least by e-mail, unless the law provides for a stricter regulation.

### **1.7**

The contract language is German. These Terms and Conditions are also available in other languages; in case of contradictions or doubts of interpretation the German version takes precedence.

## **§ 2 The conclusion of a Contract**

### **2.1**

Our offers are subject to change and non-binding. This shall also apply if we provide the purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form.

### **2.2**

The ordering of the goods by the purchaser by telephone, in writing, by e-mail or in any other way is considered as a binding contract offer by the purchaser. Unless otherwise stated in the order, we are entitled to accept this contract offer within 2 weeks of receipt.

### **2.3**

Acceptance can be made either in writing/by e-mail (e.g. by order confirmation) or by sending the ordered products to the purchaser with notification. In the latter case, the contract is concluded upon arrival of the goods at the purchaser or, if earlier, upon the dispatch notification.

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## **§ 3 Prices, payment**

### **3.1**

Deliveries and prices are ex works EuroSand GmbH, Weiden (EXW - Incoterms 2020), unless expressly agreed otherwise.

### **3.2**

All prices are quoted in EUR and are exclusive of VAT, unless expressly stated otherwise. Fees, taxes and other ancillary costs such as customs, freight, transport insurance or external packaging costs (e.g. crates, collicos, pallets, boxes, cartons) are not included in the prices.

### **3.3**

The purchase price is due and to be paid within 30 days of the invoice date without deduction. However, even in the context of an ongoing business relationship, we are entitled at any time to carry out a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation. Deviating payment shall only be effective if it has been expressly agreed upon. EuroSand GmbH reserves the right to withhold the delivery of the ordered goods until the purchaser has made advance payment or a suitable security for the goods has been provided by the purchaser.

### **3.4**

EuroSand has the right to assign claims against the purchaser to third parties. In this case, the purchaser expressly agrees to the transfer of all data required to assert the claim.

## **§ 4 Offsetting and Right of Retention**

The purchaser of EuroSand has the right to set-off or of retention only if the claims of the purchaser based on the same contractual relationship, are legally established or are undisputable. § 369 HGB remains unaffected. In the event of defects, buyer's counter-claims remain unaffected.

## **§ 5 Reservation of title**

### **5.1**

The following agreed reservation of title serves as security for all of our current existing and future claims arising from the existing supply relationship, including balance claims from a current account relationship limited to this supply relationship.

### **5.2**

Until full payment of all claims arising from the purchase contract and from the legal relationship with the purchaser, the delivered goods remain the property of EuroSand. In the event of processing, connection or mixing with items not belonging to EuroSand, EuroSand acquires co-ownership in proportion to the invoice value of the reserved goods to the invoice values of the other materials. The purchaser shall keep the reserved goods free of charge for EuroSand. The purchaser must treat the goods subject to retention of title with care. He is obliged to insure the reserved goods at his own expense against fire, water and theft damages sufficiently to the new value and already assigns his claims for compensation from these insurance contracts to EuroSand. EuroSand hereby accepts the assignment.

### **5.3**

Until revocation, the purchaser is entitled to resell the goods in the ordinary course of business; however, he hereby assigns to EuroSand GmbH all claims in the amount of the invoice value (including VAT) from the sale of the goods including bills of exchange and cheques as security for the respective claims. EuroSand hereby accepts the assignment. After the sale of goods in which EuroSand has co-ownership, the assignment shall be limited to the share of the claim which corresponds to its co-ownership share.

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#### **5.4**

The purchaser remains entitled to collect this claim even after assignment. The entitlement of EuroSand GmbH to collect the outstanding money themselves remains unaffected by this. EuroSand GmbH temporarily refrains from collecting the claim as long as and insofar as the purchaser fulfils his payment obligations to EuroSand GmbH, he is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been made. In this case, EuroSand GmbH may require the purchaser to notify it of the assigned receivables and their debtors, to provide all necessary information for collection, to hand over the relevant documents and to notify the third party of assignment and to disclose it.

#### **5.5**

The goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims. If third parties seize the goods subject to retention of title, in particular by seizure, the purchaser will immediately inform them of the ownership of EuroSand GmbH and inform us of this in order to enable us to enforce our ownership rights. If the third party is not able to reimburse EuroSand GmbH for the judicial or extrajudicial costs incurred in this connection, EuroSand's purchaser shall be liable for such costs.

#### **5.6**

The EuroSand GmbH will release the goods subject to retention of title and the goods or receivables replacing them on request if their value exceeds the amount of the secured receivables by more than 20%.The choice of items to be released thereafter is the responsibility of EuroSand GmbH. If EuroSand GmbH withdraws from the contract- in particular in the event of late payment- it is entitled to demand the goods subject to retention of title.

### **§ 6 Delivery and delivery dates**

#### **6.1**

Unless expressly assured by EuroSand inwriting, all specified/shared delivery dates are non-binding, even if the purchaser request or specifies desired delivery dates in the order. Force majeure of any kind, such as unforeseeable operations, traffic or dispatch disruptions, shortage of raw materials or auxiliaries, legitimate strikes, legitimate lockouts, etc. exempt EuroSand GmbH from the obligation of delivery or of acceptance for the duration and extent of the disruption. This also applies if these disruptions occur the supplier of the EuroSand GmbH. The purchaser shall be immediately informed of the event of force majeure. At the earliest 6 weeks after receipt of this notification, both contracting parties are entitled to withdraw from the contract.

#### **6.2**

If the purchaser is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the purchaser is responsible, we shall be entitled to demand compensation for the damage resulting therefrom, including additional costs. We are also entitled to charge storage in the usual amount, beginning with the delivery date or - in the absence of a delivery date - with the notification that the goods are ready for dispatch, provided that the purchaser is legally obliged to accept the goods at that time.

#### **6.3**

EuroSand GmbH is entitled to make partial deliveries, as far as reasonable for the purchaser, and to a corresponding partial invoicing.

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## **§ 7 Rescission by EuroSand GmbH**

### **7.1**

After conclusion of the contract, EuroSand GmbH has the right to refuse delivery, if, - based on information provided by a commercial agency or other agencies or other objective circumstances (e.g. due to an application for the opening of insolvency proceedings)- the assumption is justified that the claim for payment of the purchase price is endangered by a lack of ability to pay on the part of the purchaser (cf. § 321 BGB). In this case, EuroSand GmbH shall inform the purchaser accordingly and shall give him the opportunity, within a time limit, to provide a suitable security or to make advance payment, in turn against delivery of the ordered product. EuroSand GmbH shall be entitled to withdraw from the contract if the deadline expires without result. The withdrawal of EuroSand is not possible as long as EuroSand accepts the security provided.

### **7.2**

If EuroSand GmbH should be inhibited from delivery for a long period of time (8 Weeks) by an act of force majeure or by any other at the time of the closing of the contract unforeseeable events, as listed in §6, and if EuroSand GmbH is not responsible for this circumstance, EuroSand GmbH is entitled to rescission without the purchaser having any claim for compensation. If we are unable to meet binding delivery dates for reasons beyond our control (non-availability of performance), EuroSand GmbH shall inform the purchaser of this immediately and will at the same time inform the purchaser of the expected new delivery date. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any already received payments without delay. In particular, the non-availability of the service in this sense is deemed to be the non-timely delivery by EuroSand's suppliers, if EuroSand GmbH has concluded a congruent hedging transaction, neither we nor our suppliers are in fault or we are not obliged to procure in individual cases.

### **7.3**

If EuroSand GmbH exercises its right of withdrawal under this provision, all claims for damages of the purchaser are excluded, unless claimants are acting intentionally, for guaranteed characteristics, for injury to life, body or health or in accordance with the Product Liability Act.

## **§ 8 Guarantee and Objection**

### **8.1**

Claims of warranty of the purchaser due to a defect in the goods (including hidden minor or false delivery) only arise if the purchaser complains to the EuroSand GmbH of the deficiency in writing within 10 days after receipt of the goods or in the case of hidden deficiencies immediately after their discovery in writing, indicating the alleged defect. Otherwise all warranty claims and the associated claims for damages are excluded. In all cases, the special statutory provisions remain unaffected in the event of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse according to §§ 478 BGB). Claims arising from supplier recourse are excluded if the defective goods are further processed by the purchaser or another contractor, e.g. by incorporation into another product which has been further processed.

### **8.2**

The purchaser's obligation to inspect extends to the entire delivery received. Decisive for the timeliness of the complaint is the receipt of the complaint in written form at EuroSand GmbH.

### **8.3**

The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions and manufacturer's details which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods. However, we reserve the right to minor material-related deviations from the illustrations or descriptions in catalogues, samples or showpieces on which the order is based, in particular colour or grain deviations. Such material-related deviations shall not constitute a defect.

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#### **8.4**

As long as and to the extent that justified defects are notified, EuroSand GmbH shall be obliged, at its option to be taken within a reasonable period of time, to deliver a defect-free item in exchange for the surrender of the defective item or to remedy the defect. In any case, the purchaser is obliged to properly pack the defective item and send it to EuroSand GmbH to enable EuroSand GmbH to fulfil its warranty obligations. In case of a justified notice of defect EuroSand GmbH shall bear the associated, comprehensible, reasonable and proven expenses.

#### **8.5**

If the supplementary performance fails (after two attempts), the purchaser is entitled to either reduce the agreed purchase price or to withdraw from the contract. In the case of minor defects, the purchaser shall not be entitled to withdraw from the contract. If a defect is due to the fault of EuroSand GmbH, the purchaser may claim damages with the restrictions set out in § 9.

#### **8.6**

The warranty period is one year from the transfer of risk of the goods. The reduction of the warranty period to one year does not apply to claims of the purchaser for which liability is not limited (§9).

#### **8.7**

The warranty does not extend to alleged defects caused by natural wear or improper handling. In particular, EuroSand GmbH is not liable for changes in the goods due to improper handling or storage.

#### **8.8**

EuroSand's warranty obligation does not exist, if the purchaser itself makes an improvement or has it remedied by third parties without the consent of EuroSand.

#### **8.9**

The liability of EuroSand GmbH within the scope of the warranty only exists for direct damages, but not for indirect and/or consequential damages. The aforementioned limitation periods of the law of sale shall also apply to contractual and non-contractual claims for damages of the purchaser which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages by the purchaser as a result of intent, gross negligence and for damages resulting from injury to life, body or health as well as under the Product Liability Act shall be subject to the statutory limitation periods.

#### **8.9**

Note on transfer of risk: The risk of accidental loss or deterioration is transferred to the purchaser upon handover to the company commissioned to carry out the transport.

### **§ 9 Limitation of liability**

#### **9.1**

EuroSand is liable for damages - regardless of the legal basis – in the context of fault based liability only in the case of intent and gross negligence. In the case of ordinary negligence EuroSand is liable, subject to a milder measure of liability according to statutory provisions (for example because of diligence in its own affairs), only

- a. For damages from violation to life, body, or health,
- b. For damages arising from significant violation of an essential contractual obligation (an obligation, the fulfilment of which makes possible the proper implementation of the contract and upon the adherence to which the contracting partner regularly relies and is allowed to rely); in this case, however, the liability is limited to the compensation of foreseeable and typically occurring damages.

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## **9.2**

The limitations of liability mentioned in figure 9.1 also apply to breaches of duty through or to the advantage of those persons, whose culpability EuroSand is responsible for, according to statutory provisions. They do not apply, if a defect is fraudulently withheld or if a guarantee for the nature of the goods was undertaken, and also for claims of the buyer according to the Product Liability Act.

## **9.3**

The buyer can only rescind or give notice because of a breach of duty, which does not exist in a defect, if the EuroSand is responsible for the breach of duty. A free right of the buyer to give notice (especially according to §§ 650, 648 BGB) is excluded.

## **9.4**

Liability is generally limited to a sum to the amount of the value of the goods of the applicable delivery. Liability for lost profit, subsequent damages or for damages due to the claims of a third party, is excluded. This shall not apply in the case of liability for intent and gross negligence as well as in the cases listed in sentence 1(a) and (b) of figure 9.1 as well as in the case of liability according to the Product Liability Act.

## **9.5**

For damages caused by inappropriate handling of the delivered goods EuroSand does not undertake any liability. EuroSand is also not liable for the work of third parties, caused to the goods after delivery.

## **9.6**

The liability of EuroSand and its pre-suppliers for harm caused by a defective product only exists in the context of the compulsory provisions of the Product Liability Act.

## **9.7**

As long as EuroSand GmbH provides technical information or acts in an advisory capacity and this information or consultation is not part of the contractually agreed scope of services owed by EuroSand, this shall be done free of charge and to the exclusion of any liability.

## **9.8**

In case of loss or damage, EuroSand GmbH will not replace samples and templates sent to us.

## **§ 10 Default of payment/Lump sum reminders/Costs of legal action**

### **10.1**

Should the buyer enter into arrears of a payment or if he discontinued payments, all other accounts will also immediately be due for payment without the need for a special default notice, regardless of the granting of any possible extension for payment. Partial payment agreements or similar agreements shall lapse.

### **10.2**

If EuroSand GmbH has withdrawn from the contract in accordance with § 7, it is be entitled to claim damages in addition.

### **10.3**

In the event that the purchaser is in default of payment, EuroSand GmbH is entitled to revoke the purchaser's right to resale of the goods, the right of collection and his right of possession of all goods not fully paid for.

### **10.4**

From the time of default of payment, EuroSand GmbH is entitled to demand interest for default in the amount of 10% points above the base interest rate of the European Central Bank as a result of arrears. After default of payment, EuroSand GmbH is also entitled to demand the granting of direct possession of the goods and to select and remove them from the purchaser's premises.

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## **10.5**

After default of payment has occurred, EuroSand is entitled to charge the purchaser lump sum of 40.00 Euros for the further reminder run in accordance with § 288 para. 5 BGB (German Civil Code) in addition to the default interest pursuant according to § 10.4; this lump sum shall be set off against any further damage consisting of legal costs. We reserve the right to claim higher damages.

## **10.6**

The purchaser shall bear all costs, fees and expenses incurred in connection with any legally successful legal action taken against him outside Germany.

## **§11 Image Rights and Copyright**

### **11.1**

All utilised graphics and photos are subject to German Copyright law. These Copyright laws are to be found in the possession of EuroSand GmbH or in the possession of partners of EuroSand GmbH. Any use without express approval is not permitted. The same applies to the preformulated product descriptions by EuroSand GmbH or by its partners.

### **11.2**

Graphics/images can be made available to the purchaser in particular for the purpose of product presentation. In this case, the purchaser shall receives non-exclusive rights of use limited to the specifically requested purpose of use; sub-licensing or modification (editing/remodelling) of the images/graphics is not permitted.

## **§12 Data protection**

### **12.1**

Data necessary for business purposes, complaints, or dispatch processing will be compiled, saved and processed by EuroSand GmbH to the extent that this is necessary for the processing of the contract with the purchaser.

### **12.2**

All personal data will be handled confidentially and only passed on to third parties when this is necessary for the implementation of the contract (payment service providers, transport companies etc.).

### **12.3**

Our purchaser is entitled to view any ordinarily saved data, to demand alterations and/or to make deletions.

## **§13 Applicable law, Court of Jurisdiction, Place of Delivery and Final Provisions**

### **13.1**

German law shall apply to contracts with EuroSand to the exclusion of the UN Sales Law.

### **13.2**

If the purchaser is a merchant as defined by the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Weiden in the Upper Palatinate. The same applies if the purchaser is an entrepreneur as defined in § 14 BGB. In all cases, however, we are also entitled to take legal actions at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the purchaser. Priority legal provisions, in particular on exclusive jurisdiction, remain unaffected.

### **13.3**

The place of performance of all delivery obligations, including subsequent performance, as well as payments and other obligations from all contractual relationships to which these General Terms and Conditions apply, is Weiden in the Upper Palatinate.



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**13.4**

Should a provision of these general terms and conditions or of the contract be ineffective or become ineffective, the applicability of the rest of the terms will not be affected. Ineffective or unenforceable provisions will be consensually replaced by an effective or enforceable provision shall be mutually replaced by an effective or enforceable provision which, in its economic result, comes as close as possible to the ineffective or unenforceable provision.

**13.5**

All agreements, subsidiary agreements, assurances and contract amendments must be made in writing. This also applies to the waiver of the written form agreement itself. The priority of the individual agreement in written, textual or oral form (§ 305b BGB) remains unaffected.