



General Terms and Conditions of Sale, ESK-SIC GmbH, May 09th 2008

1. General

- 1.1 Deviations from these general terms and conditions of sale - in particular application of general terms and conditions of sale used by the Purchaser - require our express permission.
- 1.2 ESK-SIC GmbH's offers for individual orders are binding and may only be accepted on the terms offered within 2 days from receipt of offer.
- 1.3 Offers for conclusion of general supply contracts are not binding in respect of price, delivery time and quantity. Individual orders on the terms of the general supply contract are offers for conclusion of contract which are accepted by ESK-SIC GmbH in the form of written order confirmations.
- 1.4 Conclusion of contracts and ESK-SIC GmbH's delivery obligation shall be subject to orderly and timely receipt of the goods from ESK-SIC GmbH's own suppliers by ESK-SIC GmbH. Sentence 1 shall apply only if ESK-SIC GmbH is not responsible for the non-receipt of goods from ESK-SIC GmbH's own suppliers by ESK-SIC GmbH, sentence 1 shall apply especially if ESK-SIC GmbH has concluded a corresponding supplies contract with its own suppliers.

2. Invoicing

- 2.1 Our prices are stated as ex works net prices less packing unless there is express written agreement to the contrary.
- 2.2 For individual supply under the terms of a general contract ESK-SIC GmbH is entitled to offer a price which differs from the price under the terms of a general supply agreement and which forms an integral part of the contract following written confirmation by the Purchaser. If the said price is not confirmed in writing no individual contract in respect of the supply ordered shall materialize.

3. Payment

- 3.1 ESK-SIC GmbH invoices shall be paid within 30 days of receipt and delivery of goods by transfer to our account 3 177 403 00, Bank Clearance Code 370 800 40 at the Dresdner Bank AG, Cologne.
- 3.2 Should the Purchaser fall into arrears by allowing this period of 30 days to elapse he shall be invoiced arrears on interest of 8 percentage points over base rate, right of enforcement being reserved.
- 3.3 In the event of arrears and justified doubts regarding Purchaser's ability to pay or creditworthiness the advance performance obligation of ESK-SIC GmbH shall not apply.
- 3.4 The Purchaser is only authorised to offset or to exercise a right of retention as a consequence thereof unless the underlying counterclaims are either undisputed or have been conclusively determined by a court.

4. Retention of Title

- 4.1 Up to the point of receipt of payment in full of all ESK-SIC GmbH claims arising from the business relationship with the Purchaser goods sold remain the general property of ESK-SIC GmbH (retention of title). The Purchaser is authorised to dispose of or process the goods purchased within the ordinary course of business up to the point of withdrawal of ESK-SIC GmbH from the Contract of Sale concluded between it and the Purchaser.
- 4.2 ESK-SIC GmbH retention of title also extends - to the extent that it is lawfully permissible - to products ensuing through processing, amalgamation or combination of the goods at the full value of the latter, whereby ESK-SIC GmbH shall be deemed the manufacturer. Should there exist, in the event of any amalgamation, processing or combination with third party goods, any right of title of the latter to their goods, ESK-SIC GmbH shall acquire joint title to the unitary item ensuing as a consequence of processing, amalgamation or combination of the goods in proportion to the respective invoice values of the processed goods. If the third party security rights are actually or legally less than this proportion the difference shall accrue to ESK-SIC GmbH.

- 4.3 In the event of claims against third parties arising from the resale of goods to third parties by the Purchaser - where there is a current account agreed with the third party - the Purchaser hereby assigns the respective final balance to ESK-SIC GmbH as security - in the case as defined under 4.2 this shall be at the level of the ESK-SIC GmbH joint title share.

The Purchaser is authorized to collect such claims up to the point of the withdrawal of ESK-SIC GmbH from the contract and until cessation of his payment to ESK-SIC GmbH. The Purchaser is only authorised to assign these claims - even for the purpose of claim collection by factoring - on the basis of an express authorization by ESK-SIC GmbH to that effect.

ESK-SIC GmbH is entitled to collect those claims assigned to it as security as defined in preceding sentence 1 in the event that the Purchaser falls into arrears with his purchase price payment obligation and if ESK-SIC GmbH has withdrawn from the agreement with the Purchaser. In such an event the Purchaser shall notify his respective Purchaser of the assignment of the claim to ESK-SIC GmbH and shall provide ESK-SIC GmbH with a copy of the said notification.

- 4.4 Should any third party intend or attempt to frustrate or hamper implementation or render impossible those rights of ESK-SIC GmbH arising under the terms of Paragraphs 4.1 to 4.3 the Purchaser shall inform ESK-SIC GmbH about this circumstances. The Purchaser has a duty of notification vis-à-vis ESK-SIC GmbH in particular in the event that any creditor of the Purchaser is pursuing enforcement upon the Purchaser's assets or if insolvency proceedings have been initiated in respect of the Purchaser's assets.
- 4.5 In order to enforce any claim for restitution consequent upon the said retention of title ESK-SIC GmbH must withdraw from the contract of sale with the Purchaser.
- 4.6 Should the value of securities granted to ESK-SIC GmbH by the Purchaser exceed the purchase price claim secured by more than 40% the excess security shall be averted by release of the securities accorded ESK-SIC GmbH and specified in preceding sentence 2 until the 140% limit is reached. In the event of excess security retentions of title to goods for which the Purchaser has already paid shall be released.
- 4.7 In the event that a country's law, in whose scope the sold goods are delivered to, doesn't permit the retention of title but permit rights similar to the mentioned rights in paragraph 4.1 to 4.3 to the Seller, ESK-SIC GmbH and the Purchaser agree that it is to give such right to ESK-SIC GmbH. If any law does not permit extended retention of title, yet recognizes simple retention of title as permissible, ESK-SIC GmbH - irrespective of the securities yet to be accorded it under preceding sentence 1 - shall have such a simple reservation of title to the goods sold to the Purchaser. The Purchaser undertakes - in the event that such right is conceded - to cooperate in fulfilling the necessary formalities.

5. Delay, Guarantee and Damages

- 5.1 Unless there is agreement to the contrary delivery times are in principle unbinding. In case a non-binding date of delivery or non-binding time of delivery shall be exceeded for more than 12 weeks, the Purchaser shall be entitled to specify to ESK-SIC GmbH in written form a reasonable period in which ESK-SIC GmbH shall supply the goods ordered by the Purchaser.
- 5.2 Guarantee claims are time-barred within one year from receipt of goods.
- 5.3 The Purchaser undertakes to immediately inspect the delivered goods - if reasonable by test working - for defects (in respect of agreed quality or in the event of no quality agreed in respect of suitability for use) and to submit complaints immediately. Should the Purchaser fail to meet his obligation under preceding sentence 1 the goods shall be deemed approved unless it is a matter of a defect which was not recognizable by inspection. Should any such defect appear later complaint

notification must take place immediately following discovery otherwise the goods shall be deemed approved even with regard to the said defect.

- 5.4 Complaints (notice of defects) shall only be taken into account if raised or sent in writing accompanied by pieces of evidence for the defect (sample of bad delivery) within 8 days of receipt of goods - and in the case of hidden defects immediately following their discovery but at the latest 1 year following receipt of goods.
- 5.5 Goods which are the subject of complaint shall only be returned to ESK-SIC GmbH immediately following prior notification.
- 5.6 A quality or durability guarantee shall only be assumed by ESK-SIC GmbH if the said guarantee is assumed expressly and in writing vis-à-vis the Purchaser.
The form of the guarantee shall be determined by the written guarantee to be provided to the Purchaser by ESK-SIC GmbH as defined in preceding sentence 1.
- 5.7 ESK-SIC GmbH is only liable to the Purchaser for any infringement of essential contractual obligations to the extent of customary damage suffered in typical ESK-SIC GmbH transactions. Accordingly liability for all damages caused by infringement of essential contractual obligations by ESK-SIC GmbH within the framework of a supply agreement by and between the Purchaser and ESK-SIC GmbH is limited to the respective net purchase price for goods of that respective supply agreement as maximum liability sum. Supply agreement as defined under sentence 2 shall be – separately - every individual agreement by and between ESK-SIC GmbH and the Purchaser concerning the supply of ESK-SIC GmbH's goods to the Purchaser that is concluded through acceptance of the Purchaser's order or of the Purchaser's individual order under the terms of a general supply agreement by ESK-SIC GmbH or through acceptance of ESK-SIC GmbH's offer by the Purchaser. Extension of liability limitation and maximum liability sum pursuant to sentence 2 and 3 through summation of net purchase prices of various individual supply agreements by and between the Purchaser and ESK-SIC GmbH, especially those which are concluded on the basis of an individual order by the Purchaser under the terms of a general supply agreement by and between ESK-SIC GmbH and the Purchaser or those which are concluded on the basis of prior and/or following individual orders by the Purchaser, shall not apply. Preceding sentences 1 to 4 do not apply if loss of life, physical injury or damage to health occurs as a consequence of negligent breach of duty on the part of ESK-SIC GmbH or negligent or intentional breach of duty on the part of legal representatives or assistants of ESK-SIC GmbH who fulfill ESK-SIC GmbH's contractual obligations under instructions of ESK-SIC GmbH.

In the event of breach of insignificant contractual obligations ESK-SIC GmbH is liable to the Purchaser only in cases of gross negligence and intent unless the case relates to loss of life, physical injury or damage to health. In the case of liability for damages arising from loss of life, physical injury or damage to health ESK-SIC GmbH is also liable for negligent breach of duty by ESK-SIC GmbH; beyond this any liability is excluded. In the event of liability for insignificant contractual obligations - with the exception of damages arising from loss of life, physical injury or damage to health in the sense of preceding sentence 5 - ESK-SIC GmbH limits liability to the extent of customary damage suffered in typical ESK-SIC GmbH transactions. Accordingly liability for all damages caused by infringement of insignificant contractual obligations by ESK-SIC GmbH within the framework of a supply agreement by and between the Purchaser and ESK-SIC GmbH is limited to the respective net purchase price for goods of that respective supply agreement as maximum liability sum. Supply agreement as defined under sentence 9 shall be – separately - every individual agreement by and between ESK-SIC GmbH and the Purchaser concerning the supply of ESK-SIC GmbH's goods to the Purchaser that is concluded through acceptance of the Purchaser's order or of the Purchaser's individual order under the terms of a general supply agreement by ESK-SIC GmbH or through acceptance of ESK-SIC GmbH's offer by the Purchaser. Extension of liability limitation and maximum liability sum pursuant to sentence 9 and 10 through summation of net purchase prices of various single supply agreements by and between the Purchaser and ESK-SIC GmbH, especially those which are concluded on the basis of an individual order by the Purchaser under the terms of a general supply agreement by and between ESK-SIC GmbH and the Purchaser or those which are concluded on the basis of prior and/or following individual orders by the Purchaser, shall not apply.

- 5.8 Contractual damages claims which are not the result of faulty supply of goods are time-barred within one year.
- 5.9 Exclusion of liability or limitation of liability under Paragraph 5.7 does not affect ESK-SIC GmbH liability under the Product Liability Act.
- 5.10 If performance of the main contractual service obligations is rendered temporarily impossible due to instances of *force majeure*, i.e. such circumstances and events as may not be prevented through application of the care expected of proper business management, the parties' main contractual service obligations shall be suspended for the duration of the impediment. The same applies if the cases of *force majeure* cited in preceding sentence 1 apply to any ESK-SIC GmbH supplier or if any change of ESK-SIC GmbH supplier is not possible or possible in time.
- 5.11 Should the delays here resulting exceed a period of 6 weeks both parties are entitled to withdraw from the contract in respect of the scope of supply affected. This shall not apply if a fixed deal has been agreed between the parties or if the Purchaser can demonstrate that the time up to any possible release from the contract is unreasonable for him; in this case a shorter period for release from the contract shall apply. If the Purchaser can demonstrate in the event of any partial delivery already made that this partial delivery is of no use to him without the additional partial delivery as yet not made as a consequence of the suspension of main contractual service obligations, he may withdraw from the contract within a shorter period in respect of the scope of delivery already made under the additional preconditions of preceding sentence 3.

6. Place of performance, choice of law and place of jurisdiction

- 6.1 Place of performance for delivery of the goods is the departure point of the goods; for payment place of performance is Frechen. Unless there is anything to the contrary agreed between the parties the ESK-SIC GmbH delivery obligation constitutes a debt to be discharged at the domicile of the debtor; in the event of any agreement to the contrary, in particular in the event of an agreement that ESK-SIC GmbH shall also arrange transportation of the goods it shall be an obligation to be performed at the debtor's place of business.
- 6.2 The outline agreement agreed between the parties and the individual orders and purchase contracts which follow under the terms of the outline agreement including those purchase contracts outside any such outline agreement shall be subject to German law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 6.3 If the Purchaser is a trader the place of jurisdiction for all disputes arising from the outline agreement concluded between ESK-SIC GmbH and the Purchaser, individual orders and purchase contracts which follow under the term of the outline agreement including such purchase contracts outside any such outline agreement shall be as decided by ESK-SIC GmbH Cologne, the Purchaser's general place of jurisdiction or the capital of that country in which the Purchaser has his official place of business.