

# **Conditions of Sale for Business Customers (Entrepreneurs)**

## **Eisele Pneumatics GmbH & Co. KG, Waiblingen**

### **§ 1 General**

(1) These conditions of sale shall apply to agreements that are concluded between Eisele Pneumatics GmbH & Co. KG, Waiblingen (hereinafter “**Eisele**”) and its business customers (hereinafter “**Customer**”), insofar as these conditions of sale are validly incorporated. General terms and conditions of the Customer that contradict or deviate from these conditions of sale shall not form part of the agreement unless Eisele expressly consents in writing to the application of such general terms and conditions. These conditions of sale shall also apply if we unconditionally perform deliveries to the Customer while being aware of general terms and conditions of the Customer that contradict or deviate from these conditions of sale.

(2) Any arrangements reached between Eisele and the Customer with respect to an agreement shall be in writing. If the Customer does not agree with the application of these conditions of sale, it shall notify Eisele hereof without undue delay.

(3) These conditions of sale shall only apply vis-à-vis entrepreneurs within the meaning of sec. 310(1) German Civil Code. Within the scope of ongoing business relations our conditions of sale shall also apply to future deliveries and services unless they are expressly agreed on anew.

### **§ 2 Offers; order acceptance**

(1) Unless the offer expressly provides otherwise, the offers from Eisele shall be without obligation and exclusively understood as an invitation to submit an offer. Any agreements between Eisele and the Customer shall require written order confirmation by Eisele vis-à-vis the Customer.

(2) Descriptions and price information in catalogs, price lists, circulars, brochures or the like shall not be binding and shall merely serve to provide general information to prospective customers about the services offered by Eisele, unless we expressly confirmed this information when concluding an agreement. This also applies, in particular, to illustrations as well as to details regarding the size and weight of our products and services.

### **§ 3 Delivery periods, partial deliveries**

(1) Any agreed delivery period shall begin, unless otherwise specified, on the day on which the order confirmation is received by the Customer.

(2) Eisele’s compliance with the delivery obligation requires the timely and proper fulfillment of the Customer’s cooperation obligations. Eisele reserves the right to plead non-performance.

(3) Eisele shall have the right to withhold delivery from the Customer if Eisele has a payable claim against the Customer.

(4) Eisele shall have the right to make partial deliveries to an extent that is reasonable for the Customer.

(5) Unforeseeable events of force majeure such as, in particular, war, riot, strike, lockout, measures by public authorities and resulting limitations of the capacity of pre-suppliers shall release Eisele from its delivery obligation for the duration of such events and for an additional two weeks. Should any of the aforementioned events last more than 6 weeks, both parties shall have the right to rescind the agreement if it becomes unreasonable for Eisele to render services.

#### **§ 4 Transport, shipping, insurance**

Shipments shall be made ex works from the Waiblingen site (Incoterms 2010). Should this be deviated from, the customer shall nevertheless bear the risk associated with the delivery unless expressly otherwise specified.

#### **§ 5 Price**

Prices shall be set in euros.

#### **§ 6 Payments**

(1) Invoices shall become payable immediately following receipt of the goods without a cash discount deduction, unless otherwise explicitly agreed.

(2) If Eisele accepts payment by bill of exchange, this shall be done on account of performance only. All bill of exchange expenses shall be borne by the Customer; it shall not be entitled to a cash discount deduction.

(3) As long as the Customer is not merely in arrears by an insignificant amount, Eisele can make the performance of services to be rendered contingent on prepayment by the Customer. Should the prepayment not be made within a reasonable time limit, Eisele shall have the right to cancel all orders not yet filled if the consideration has not been paid by the customer by the time at which the time limit expires.

#### **§ 7 Reservation of title**

(1) Eisele reserves title to the goods until all of Eisele's claims against the Customer that have already arisen have been paid in full. In this connection the legal grounds on which Eisele's claims against the Customer are based are irrelevant. This also includes, in particular, balance claims from current account. Claims for which a bill of exchange is negotiated or a check is issued to Eisele shall not be deemed satisfied until the bill of exchange or check is paid or cashed.

(2) The Customer shall, without undue delay, inform Eisele in writing of intervention by third parties such as, for example, attachment or execution by means of which rights of Eisele (in particular, Eisele's reservation of title) are impaired.

(3) If the third party is not able to reimburse Eisele for the in-court and out-of-court costs of an action pursuant to sec. 771 German Code of Civil Procedure, the Customer shall be liable for the resulting shortfall.

(4) The processing or alteration of goods by the Customer shall always be carried out on behalf of Eisele. If the product is processed with other objects not belonging to Eisele, Eisele shall acquire joint ownership of the new thing based on the ratio of the value of the goods to the other processed items at the time of the processing. Otherwise, the thing arising from the processing shall be subject to the same provisions as the goods for which title is reserved.

(5) The Customer may resell the reserved goods only within the scope of its regular business operations. It shall be entitled and authorized to resell the reserved goods provided that the claims it accrues against its purchasers or third parties due to the resale, transfer to Eisele. The claims of the Customer arising from the resale of the reserved goods are now assigned to Eisele. Eisele accepts such assignment. The Customer shall not be entitled to otherwise dispose of the reserved goods; in particular, it may not pledge or assign the reserved goods by way of security. The Customer's right to sell the reserved goods shall expire in the event of a considerable worsening of the Customer's financial situation (insolvency, threatening insolvency, opening of insolvency proceedings) if the Customer ceases making payments from the proceeds collected and/or gets into arrears.

(6) The Customer shall be authorized to collect the assigned claims until revocation by Eisele. Eisele shall have the right to revoke the collection authorization at any time. The Customer shall not have the right to assign the claim to third parties. Eisele shall not make any use of the right of revocation as long as the Customer duly complies with its payment obligations. At Eisele's request, the Customer shall inform its purchasers of the assignment to Eisele and provide Eisele with the necessary information and documents for collecting the claim. With respect to the expiry of the Customer's collection authorization, para. 5 shall apply *mutatis mutandis*.

(7) Eisele undertakes, upon the Customer's request, to release the security to which it is entitled in accordance with the above provisions insofar as its realizable value exceeds the claims to be secured by more than 10%. Eisele shall have the right to decide which security is released.

## **§ 8 Rights**

Eisele shall reserve its copyrights in illustrations, drawings, calculations, drafts and other documents that were prepared by Eisele. This shall apply, in particular, to written documents that are designated as "confidential". The Customer must receive Eisele's express written consent before passing on such documents to third parties.

## **§ 9 Guarantee, inspection**

(1) Insignificant discrepancies, in particular technical improvements or product enhancements, shall not constitute defects within the meaning of sec. 434 German Civil Code.

(2) Furthermore, it shall not constitute a defect where the products are not free from anti-wetting substances, in particular silicone or light lubrication. Although the products are silicone-free when they leave production, it cannot be guaranteed that the products will be absolutely free from silicone or entirely free from other anti-wetting substances, since Eisele's suppliers (packaging suppliers) cannot issue any corresponding guarantees.

(3) The goods delivered within the scope of commercial transactions shall be inspected by the Customer without undue delay and, if a defect is detected, this shall be notified in writing, without undue delay, no later than within two weeks after receiving the goods (patent defect) or after discovery of the defect (latent defect).

(4) If it can be demonstrated that the goods have a defect at the time of the transfer of risk, the Customer can demand subsequent performance. Eisele can decide whether to repair or replace the defective goods. The Customer shall have the right to a reduction or to rescind the agreement if subsequent performance fails. This is the case if two replacement deliveries were also defective or two repair attempts were unsuccessful. Should goods that are allegedly defective, but actually fault-free, be returned, Eisele shall be at liberty to charge the Customer a reasonable amount to cover expenses incurred by Eisele in this connection, in particular for the repeated inspection of the goods.

(5) Warranty claims of the Customer based on defects shall become statute-barred 12 months after delivery of the goods. This shall not apply with respect to items that, due to their customary manner of use, were used for a building and caused the defectiveness of that building; in this case the claim shall only become statute-barred after five years. There shall be no warranty claim for downgraded goods, special items, waste and goods that are not new. There shall be no claims to reduction or the exercise of a right of rescission if the claim to subsequent performance has become statute-barred.

## **§ 10 Liability**

(1) Eisele shall not be liable for direct or indirect damage (for example, due to an operational interruption or lost profits of the Customer), irrespective of the legal grounds therefor.

(2) The above exclusion of liability shall not apply:

(i) in the event of willful or grossly negligent breaches of duty by the governing bodies, employees or vicarious agents of Eisele;

(ii) in the event of an injury to life, limb or health;

(iii) in the event of a breach of material contractual duties. In the latter case, liability of Eisele shall, however, be limited to damage typically foreseeable upon conclusion of the agreement. For damage that could not be foreseen by Eisele, liability shall be limited to the value of the order.

(3) The above restrictions and limitations shall not be applied to liability provisions that are required by law, such as, for example, those of the Product Liability Act.

## **§ 11 Final provisions, applicable law, jurisdiction**

(1) Agreements between Eisele and the Customer shall be exclusively governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and private international law.

(2) Waiblingen shall be the sole place of jurisdiction for all disputes arising from or in connection with the business relations between Eisele and the Customer, provided that the Customer is a dealer. The place of jurisdiction shall also apply to actions pertaining to checks or bills of exchange.

(3) Should a provision of these conditions of sale be or become invalid or impracticable, this shall not affect the validity of the remaining conditions of sale. Eisele and the Customer undertake, in such a case, to replace the invalid or impractical provision with a valid or practicable provision that comes as close as possible to the spirit and purpose of the provision to be replaced.

(4) Should these conditions of sale contain an unintended omission, this shall be filled with a provision that Eisele and the Customer would have agreed on had they considered the need for a provision governing the respective issue.

Waiblingen, August 2011

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