

General Terms and Conditions of Business of ekz



Status at 1. December 2007

§ 1 Sphere of validity, Entering in a contract, The requirement for written form

- (1) The General Terms and Conditions of Business of ekz shall apply in commercial transactions with legal entities established under public law and public law special funds. They shall apply for all ekz offers, goods and services, deliveries, including those in the future provided that an agreement is not made to the contrary in a particular case. By placing an order, taking receipt of the order confirmation and also by taking receipt of goods and services from ekz, the customer accepts these terms and conditions as being binding for him.
- (2) If the customer's terms and conditions of business are contrary to, or differ from these terms and conditions of ekz they shall hereby be expressly rejected. The general terms and conditions of business of ekz shall also apply in those cases in which ekz supplies goods or services without reservations in the knowledge that the customer's terms and conditions of business are contrary to, or differ from, his own.
- (3) The offers of ekz shall be subject to change without notice and non-binding, unless they expressly include a statement to the contrary. A contract with the customer shall only materialise once ekz accepts the customer's order in writing by sending him an order confirmation or by rendering the goods or services. The period of acceptance for ekz is 4 weeks from receipt of the order.
- (4) In cases of doubt, warranties or assurances covering condition or durability, agreements on condition or statements on the use of the item supplied as well as side agreements made prior to the order being confirmed by ekz, shall only be valid if ekz confirms them in writing. Agreements as well as information in the offers made by ekz on the condition or concerning the use of the supplied items shall take precedence over the information shown in the brochures, display goods, drawings, descriptions and other ekz documents.
- (5) If the standard German supply contract terms [VOL/B] and for building work the standard German building contract terms [VOB/B] have been agreed, the following shall apply in the sequence given in the event of contradictions in the contract.
 - a) The specifications
 - b) The special terms and conditions of contract
 - c) Any additional terms of contract there may be
 - d) The general technical terms of contract
 - e) VOL/B and / or VOB/B
 - f) The general terms and conditions of business of ekz.

§ 2 Prices

- (1) Unless a note has been expressly stated to the contrary in ekz price lists, prices do not include value added tax; this shall be shown separately at the statutory rate on the date on which the invoice is raised. Provided that an agreement has not been made to the contrary, (Cf § 2 Section 4), packing, dispatch and assembly costs are not included in the prices, but are passed on as a charge separately.
- (2) The respective list prices of ekz at the point in time at which the performance (Delivery, book repair, handling media etc.) is rendered, for fixed price products the prices and terms and conditions prescribed in each case shall apply. In so far as ekz renders performance within 4 months of entering into the contract (acceptance of the order) the list prices at the point in time at which the contract is signed shall apply for products not having fixed prices. The same shall apply if the point in time of performance is delayed over and beyond this period of time solely as a result of ekz being to blame.
- (3) Performances not included in the order or which differ from the specifications and which are carried out at the customer's request, shall be invoiced by ekz in addition.
- (4) Irrespective of the consignment risk, books and non-book media shall be delivered to end customers within Germany carriage-free. Cross -border deliveries shall be delivered carriage-free to the Federal Republic of Germany border. Provided that no other written agreement has been made to the contrary, goods shall be supplied from the place of fulfilment (Cf. for this § 9 Section 1).
- (5) Additional costs incurred by ekz as a result of default in acceptance on the part of the customer, as a result of delays on the building work on the customer side when libraries are being fitted out for example, (Storage costs, rate of interest etc.) shall be invoiced to the customer in addition to the agreed price.

§ 3 Scope of performance and default in performance

- (1) ekz is allowed to deliver part consignments if the law on sales applies to the consignment. If consignments do not come from stocks held by ekz, supply obligations shall only be entered into subject to the reservation that ekz itself is supplied with the correct goods and on time.
- (2) Delivery periods shall begin on the date of the order confirmation but not however before all the preconditions to performance that the customer has to satisfy have been rendered by the customer. The delivery periods shall have been satisfied if the item to be delivered has left the works or the customer has been notified that the goods are ready for dispatch before the delivery period expires.

- (3) Disruptions to business operations for which ekz is not to blame, in particular as a result of labour disputes, cases of force majeure, unforeseeable operational disruptions, official intervention, not only affecting ekz but also its suppliers and sub-contractors shall extend the delivery period as appropriate. ekz shall not be responsible for the circumstances described above even in those cases in which they occur during a default already existing. ekz shall inform the customer straight away of the performance not being available for the reasons named above. If the disruptions last for more than four months or if the hindrances render the performance of ekz permanently impossible ekz shall be entitled to withdraw from part or all of the contract. The customer shall not be entitled to compensation claims for damages on account of such a withdrawal from the contract.
- (4) If, for reasons for which it is to blame, ekz is in default, the customer shall be entitled to demand lump sum default compensation for each full week of default amounting to 0.5 % of the value of the consignment up to a maximum of 10 % of the value of the consignment. Claims by the customer over and above this shall not be admitted if the preconditions of § 7 have not been satisfied or if a specific delivery period has been agreed as being binding as a principal duty in a given instance.
- (5) If the customer sets a reasonable subsequent period for performance or subsequent fulfilment once ekz is already in default, he shall be entitled to withdraw from the contract once this period has expired without success. A period of time will not have to be set if the statutory preconditions of § 323 Section 2 of the German Civil Code [BGB] are satisfied. The customer may only assert compensation claims for damages subject to the preconditions of § 7.

§ 4 Payment, The right to offset and The right of retention

- (1) ekz's purchase price and claims based on contract work are, in so far no terms of payment have been granted by a reference on the invoice, payable immediately. Prompt payment discounts cannot be subtracted.
- (2) ekz reserves the right to demand cash in advance or cash on delivery from those placing their first order with ekz.
- (3) If the customer is in default with a payment, all terms for payment which may have been granted shall lapse for other invoices. Besides which ekz is entitled to only render other performances against cash in advance or to dispatch consignments for cash upon delivery.
- (4) The customer may only offset accounts against ekz claims if they are not contested or if they have been declared final and absolute in a court of law. The customer shall only be entitled to assert a right of retention on account of counter claims based on the same contractual relationship as that on which the claim of ekz is based.

§ 5 Documents protected by copyright (Cost estimates, drawings and other documents prepared by ekz)

- (1) Rights of use under copyright law shall not be assigned over to the customer subject to express contractual agreements to the contrary. When print work is supplied by ekz to customers it is forbidden in particular for them to duplicate the work and above all to copy it and to disseminate it, to play back the work in public and to allow users access to it – in particular in networks such as the internet, to process it and to reproduce the processed work and to play it back in public. The onward transmission of rights of use to third parties is likewise forbidden.
- (2) Cost estimates, drafts, drawings, illustrations. Calculations and other documents prepared by ekz shall remain the property of ekz in so far an order is not placed and not must be either reproduced, played back in public, or processed, or made accessible to by third parties without the consent of ekz.

§ 6 Reservation of title

- (1) ekz shall reserve the title to all goods supplied until all its accounts from the entire business relationship including those from subsequent contracts have been fulfilled. This shall also apply in those cases in which the purchase price of specific consignments designated by the customer have been paid. The reservation of title for current account arrangements shall be regarded as a security for ekz's outstanding balance claim of account.
- (2) The processing and treatment of the goods subject to ekz's reservation of title shall always be carried out for ekz without liabilities accruing to ekz as a result. The new goods created by processing and treatment are the property of ekz and shall be regarded as goods subject to reservation of title within the meaning of the terms and conditions below. If the goods to which ekz has title are combined, blended or connected with other items, the customer shall assign his title and co-title rights to the new item here and now to ekz. The customer shall keep the items to which ekz has a title or co-title in safekeeping for ekz with the care exercised by a prudent businessman.

- (3) The customer may sell the goods subject to the title or co-title of ekz in a normal commercial transaction, provided that he is not in default with payment. The customer is not allowed to assign the goods by way of a security or to pledge the goods. As soon as he enters into a contract with ekz, the customer shall assign to ekz the accounts to which he is entitled from the sale or from accounts to which he is entitled on the basis of other legal reasons against his buyer together with all subsidiary rights, as a security, in full and in the event that ekz has co-title, in proportion. The customer is entitled to collect the assigned accounts in the course of his proper business transactions as long as he is not in default with payment to ekz.
- (4) In the event of conduct in breach of the contract by the customer, in particular in the event of default in payment or if insolvency proceedings are opened on the customer's assets or an application is made to open such proceedings, ekz may demand that the goods subject to reservation of title are returned. Taking back the goods as well as them being levied in execution at the application of ekz shall only constitute withdrawal from the contract in those cases in which this is expressly stated in writing by ekz, unless compulsory statutory regulations provide otherwise.
- (5) At the customer's request ekz shall undertake to release the securities to which it is entitled in accordance with these terms and conditions to the extent that their estimated value exceeds more than 150% of all accounts to be secured.

§ 7 General limitation of liability

- (1) The liability of ekz to pay compensation for damages regardless of whatever legal reason, in particular on account of impossibility, default, the supply of incorrect or defective goods, breach of contract, breach of duties during contractual obligations and unlawful acts is limited in accordance with this § 7 in so far as ekz is in each case to blame.
- (2) ekz shall not be liable in cases of ordinary negligence on the part of its executive bodies, legal representatives, employees or other assistants. This exclusion of liability shall not apply for a breach of cardinal obligations important for the contract for which ekz is to blame, in so far as the achievement of the contractual objective is jeopardised as a result of the breach. In the event of defects such notified jeopardy shall only exist if the defects are considerable and in those cases not before, the prerequisites of § 8 Section (7) have been satisfied. The obligation to supply goods free of defects on time as well as the duty to provide advice, protection and to exercise proper care the objective of which is to enable the customer to use the delivered item in accordance with the contract or to protect the life and limb of the customer's staff or third parties of the customer's property from considerable damage constitutes an important part of the contract.
- (3) In so far as ekz is liable on the merits to pay compensation for damages in accordance with § 7 (2), this liability shall be limited to damages which ekz foresaw when signing the contract as a possible consequence of a breach of contract or should have foreseen in consideration of the circumstances of which it was aware or of which it should have been aware, when applying a normal level of care in entering into a business transaction. Besides which, indirect damage and consequential damage which is the result of defects in the delivered items will only qualify for replacement in so far as such damages are typically to be expected if the supplied item is used for its intended use.
- (4) The above exclusions and limitations of liability shall apply equally for the benefit of the executive bodies, legal representatives and employees and other assistants of ekz.
- (5) Advice and recommendations by ekz, in particular the production of equipment designs shall be given without any obligation by ekz and excluding all liability provided that they are not part of the scope of performance owed and contractually agreed by ekz.
- (6) The limitations of this § 7 shall not apply for the liability of ekz on account of wilful conduct, for guaranteed characteristics, on account of death, personal injury and physical harm or under the German Product Liability Act.
- (7) If the customer is also to blame, for example, for the inadequate fulfilment of obligations to co-operate or organisational defects, these are to be charged to the customer.
- (8) The customer is obliged to notify ekz of any damage there may be within the meaning of the above liability regulations straight away in writing or to allow ekz to carry out a survey so that ekz is informed of them at an early stage as possible and if necessary can limit the damage together with the customer.

§ 8 Customer rights in the event of defects

- (1) The customer vouches that drawings and other information supplied by him are appropriate and true to dimension and agrees with the actual conditions as well as not being in breach with third party proprietary rights. If this is not the case, the customer shall have to reimburse the additional expenditure incurred as a result. ekz shall not accept any liability for damage and defects attributable to incorrect or incomplete information supplied by the customer.
- (2) ekz shall not accept any liability for such damage and defects attributable to wear and tear caused by normal or excessive use, defective or negligent handling by the customer or third parties, (such as for example excessive loads or faulty assembly), defective construction work, the effects of the weather, chemical or physical influences (E.g. exposure to light) provided that these factors are not attributable to ekz. The same shall apply for software defects which are not reproducible. Discrepancies from the condition owed which are no more than minor, in particular quantity and quality tolerances normal within the trade or colour or grain discrepancies of material surfaces normal within the trade, shall not constitute quality defects.

- (3) A complaint about manifest defects with regard to quantities, condition, dimensions etc. must be notified with 14 days of delivery and other defects coming to light subsequently must be notified within 14 days of discovery. These periods are cut-off periods. Notified defects will not be accepted once work on processing or treating the goods has begun.
- (4) Each defect must be notified in writing stating the alleged individual defect in detail. Technical defects in books or other media maybe notified by returning them with a written request enclosed for a replacement. Their receipt shall not however constitute any agreement to an offer to withdraw from the contract. Moreover, returns not agreed in advance will not be allowed. Costs incurred by us as a result of unauthorised returns may be invoiced by ekz. Irrespective of any defects there may be, the customer shall have to take delivery of the goods and store them properly.
- (5) In each case in which defects are notified ekz is to be allowed an opportunity to inspect the goods about which a complaint has been made.
- (6) If quality defects are substantiated, notified properly and on time, and the cause of which already existed at the point in time at which risk passed over, ekz shall, as it chooses, render subsequent fulfilment by rectifying the defect or supplying a fault-free thing in return for the defective item supplied.
- (7) If ekz refuses to render subsequent fulfilment, or this is unsuccessful, or the customer not agreed in advance to accept it, the customer may withdraw from the contract or reduce the purchase price.
- (8) The customer may assert claims for compensation for damages in line with statutory regulations, if a defect is maliciously concealed from him or if ekz has by way of exception furnished a quality warranty. The customer may only assert compensation claims for damages over and above this subject to the preconditions in § 7.
- (9) Unless we are liable on account of intent, the customer's warranty claims shall become time-barred in 12 months counting from the passing of risk. This period of limitation shall apply for all claims, in particular also those claims for compensation for consequential damage caused by any defects there may be.
- (10) The customer's claims on account of the expenditure necessary for the purposes of subsequent fulfilment, in particular, transport costs, travelling expenses, labour and the cost of materials are inadmissible, to the extent that the expenses have increased because the item has been subsequently relocated to a location other than the customer's branch, unless its relocation is in keeping with its normal use.

§ 9 Place of performance, Consignment risk, Transport insurance, Method of dispatch

- (1) The place of fulfilment for the contract is Reutlingen. If ekz does not supply from Reutlingen, but from another supply depot, this shall be the place of fulfilment for the delivery obligation of ekz. The place agreed as the location where the assembly obligations are to be carried out shall be the place of fulfilment for assembly obligations, irrespective of the customer's duty to bear the travel expenses and daily separation allowances.
- (2) Transport insurance shall only be taken out for the customer's benefit at the customer's express request and for his account. The customer shall have to claim damage in transit against the haulier or shipping organisation himself.
- (3) If no other agreements exist to the contrary, ekz may specify the method of dispatch at his equitable discretion. It shall not accept liability for selecting the cheapest method of dispatch.

§ 10 Place of jurisdiction, Applicable law, Storing data

- (1) The place of jurisdiction for all disputes, including those concerning legal action based on drafts and cheques shall be Reutlingen for legal transactions with registered businesses, legal entities under public law and public law special fund organisations. Reutlingen shall be the place of jurisdiction for disputes arising from the business relationship with other German customers in the event that the customer relocates his home or normal whereabouts outside the Federal Republic of Germany after the contract is signed or his place of residence or normal whereabouts are unknown at the point in time at which legal action is taken.
- (2) Reutlingen shall also apply as a place of jurisdiction for other parties to a contract with ekz who have no general place of jurisdiction within the Federal Republic of Germany.
- (3) The legal relationships shall only be governed by the law of the Federal Republic of Germany even if business transactions have been entered into with customers outside the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (4) ekz points out that it will save the customer's data for the purposes of fulfilling a contract in accordance with § 27 et seq. of the German Federal Data Protection Act [BDSG].

ekz.bibliotheksservice GmbH
 Bismarckstraße 3
 72764 Reutlingen
 Tel. +49 (0) 7121 144-0
 Fax +49 (0) 7121 144-280
 info@ekz.de

www.ekz.de