



General Conditions of Sale  
of eddylab GmbH

eddylab GmbH

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## **1 General Information, Scope**

- 1.1 The following General Conditions of Sale ("terms and conditions") of eddylab GmbH (the "Seller") shall apply to all commercial relationships with our contractual partners ("the Buyer"). These terms and conditions shall only apply where the Buyer is an entrepreneur (under Section 14 of the German Civil Code [BGB]), a legal person under public law or a special fund under public law.
- 1.2 The terms and conditions apply, in particular, to contracts relating to the sale and/or delivery of moveable goods ("product") irrespective of whether the Seller itself manufactures the Product or purchases it from a supplier (in accordance with Sections 433 and 651 of the German Civil Code).
- 1.3 Our terms and conditions apply exclusively. Terms and conditions of the Buyer that contradict, deviate from, or supplement those of the Seller shall only form a part of the contract if and insofar as the Seller expressly consents to their application. This requirement for consent is applicable in all cases. For example, it also applies where we carry out a delivery to the Buyer, without any reservations and having knowledge of their terms and conditions.
- 1.4 Individual agreements concluded separately with the Buyer (including ancillary agreements, additions and modifications) shall take precedence over these terms and conditions in all cases. A written contract and/or our written confirmation is required for the contents of said agreements to take force, unless otherwise agreed.
- 1.5 Legal declarations and notices that are to be made by the Buyer to us after the contract has been concluded (e.g. defining deadlines, notification of defects, declarations regarding revocation of the contract or reductions in price) are only effective if made in writing.
- 1.6 Any references made to the application of statutory provisions are for clarification purposes only. In the absence of such clarification, statutory provisions shall nevertheless apply, unless they have been directly modified or expressly excluded by these terms and conditions.

## **2 Offers**

- 2.1 Unless the offer states otherwise, offers are valid for a period of 60 days, subject to prior sale. A contract only arises once there has been an express order confirmation.
- 2.2 Unless expressly specified as binding in the offer, all technical data, material data etc. is considered to describe approximate values customary within the industry. Should there be any modifications, the Buyer shall only be informed if they relate to a warranty of condition.
- 2.3 The Seller retains title to and copyright over any of the records and documents it makes available to the Buyer, including those in electronic format. These records and documents must not be made available to third parties without the prior written consent of the Seller. If an order is not placed with the Seller, all such records and documents, including any copies that may have been made, must be returned upon request without delay.
- 2.4 The Buyer must check the product information contained in catalogues, prospectuses and other written documents to make sure it is suitable for the intended application, before it is adopted and applied. This also applies to the choice of suitable materials. The Buyer must inform itself as to the possible uses of the product.
- 2.5 There shall be no obligation on the Seller's part to check whether the information or specifications provided by the Buyer are correct and/or lawful. The Buyer assumes sole liability in

relation to such information. This applies, in particular, to the liability for any violation of industrial property rights (see Section 11).

2.6 Drawings, preliminary designs and contributions to discussions that are made as part of advice provided during contractual negotiations are not binding. The Buyer cannot assert any claims of any kind against the Seller on the basis of such documents and/or services, unless the latter has acted wilfully or with gross negligence.

2.7 Any samples requested shall be charged according to cost.

### **3 Conclusion of Contract**

3.1 When the Buyer places an order for the product this shall be deemed to constitute a binding contract offer. The Seller is entitled to accept this contract offer within 14 days of receipt thereof, unless the order states otherwise. With regard to blanket orders, the Seller is entitled to accept the contract offer within three weeks of receipt thereof. A blanket order is a contract under which a specified quantity of a particular product is requested by the Buyer over a set period of time, in partial deliveries to be determined. The quality requirements for the goods as well as the conditions of delivery and payment shall be the subject of a firm agreement.

3.2 Acceptance shall take the form of a written order confirmation.

3.3 The type and scope of the Seller's contractual obligations are set out in the order confirmation. The Buyer is obliged to check all the information contained in the order confirmation and to state any objection immediately in writing should there be any discrepancies.

### **4 Delivery Period and Delay in Delivery**

4.1 The delivery period starts as soon as the order confirmation has been sent, but not before all technical and commercial questions have been resolved. It ends when the product is shipped or notification is given that the product is ready to be shipped. In addition, whether the delivery period is observed depends on whether the Buyer meets its obligations, particularly those in relation to payment.

4.2 If any amendments are requested by the Buyer, the delivery period shall restart from the date on which the order confirmation is amended.

4.3 The Seller is not liable for impossibility of delivery or delays in delivery due to force majeure or other events which are unforeseeable at the time the contract was concluded (e.g. any type of operational breakdown, difficulties in the procurement of materials or energy, delays to transport, strikes, shortage of staff, energy or raw materials, official measures, non-delivery by suppliers or deliveries by suppliers that are not correct or subject to delay) and for which the Seller is not responsible. If such events should render delivery or performance significantly more difficult or impossible for the Seller and the obstacle is not merely temporary in nature, the Seller may revoke the contract. If there exist obstacles that are temporary in duration, the delivery or performance period shall be extended, or the date for delivery or performance shall be postponed, for the duration of the hindrance in addition to a reasonable start-up period. If, because of the delay, the Buyer cannot reasonably be expected to accept the delivery or performance, it may revoke the contract by providing the Seller with immediate written notice.

4.4 The Seller only has the right to make partial deliveries if (i) partial delivery can be used by the buyer in accordance with the contractually agreed intended use, (ii) the delivery of the remaining goods that have been ordered is guaranteed and (iii) this does not entail considerable

extra effort on the part of the Buyer or cause it to incur additional costs (unless the Seller indicates that it is willing to assume these costs).

## **5 Delivery, Transfer of Risk, Acceptance Delay in Acceptance**

- 5.1 Unless stated otherwise, the place of performance for all of the obligations arising from the contractual relationship shall be Otterfing.
- 5.2 The delivery method and type of packaging shall be determined by the Seller, taking into account any applicable obligations.
- 5.3 The risk is transferred to the Buyer, at the latest, once the item being delivered is handed over to the forwarder, carrier or any other third party tasked with carrying out the shipment. This is also applicable in cases where partial deliveries are carried out or the Seller has undertaken to provide other, additional services (e.g. shipping). If shipment or delivery is delayed due to factors for which the Buyer is responsible, the risk is transferred to the Buyer from the date on which the product is ready for shipment and the Buyer is notified of this by the Seller.
- 5.4 Storage costs after transfer of risk shall be borne by the Buyer. The Seller shall only insure the shipment against theft, breakage, damage in transit, fire damage, water damage or other insurable risks if the Buyer expressly requests this.
- 5.5 Should the Seller default on a delivery or performance or should a delivery or performance become impossible for the Seller for any reason, its liability in relation to damages shall be limited in accordance with Section 9 of these terms and conditions.

## **6 Prices and Terms of Payment**

- 6.1 Prices apply to the scope of the performance and delivery specified in the order confirmation. Additional or special services will be charged separately. All prices are ex works and are given in Euros. They do not include packaging or statutory sales tax. Neither do they include any customs duties that are due if the product is to be exported or any other charge or fee levied by a public authority.
- 6.2 Unless agreed otherwise, the agreed price (without deductions and excluding taxes) must be paid within 14 days once payment is due and an invoice or similar request for payment has been received. If payment is to be made in advance, the agreed price (without deductions and excluding taxes) must be paid within 14 days once payment is due and an invoice or similar request for payment has been received
- 6.3 When the aforementioned payment period comes to an end the Buyer shall enter into default regardless of whether another time limit for payment is set. During default, interest shall be charged on the purchase price in accordance with the applicable statutory interest rate. The Seller reserves the right to assert claims for further damages caused by default. This does not affect our right to assert claims for commercial default interest against merchants pursuant to Section 353 of the German Commercial Code (HGB).
- 6.4 If it becomes apparent, after the contract has been concluded, that our entitlement to consideration is jeopardised by the other party's inability to perform (e.g. due to an application to commence insolvency proceedings), we shall be entitled, under the relevant statutory provisions, to refuse performance and, if necessary, to revoke the contract with advance formal notice (Section 321 of the German Civil Code). We shall be able to immediately revoke contracts concerning non-fungible items (items made to specification); cases where statutory provisions do not make it necessary to define a deadline or time limit remain unaffected.

6.5 Set-off against counterclaims of the Buyer or the retention of payments on the basis of these claims is only admissible if the counterclaims are uncontested or have been finally and non-appealably established.

6.6 The Buyer shall bear the costs of providing security, letters of credit in relation to overseas transactions and any similar expenses.

## **7 Retention of Title**

7.1 The product delivered (the "Product Subject to Retention of Title") shall remain the property of the Seller until full payment of all claims that result from the commercial relationship with the Buyer. As long as title is retained, the Buyer is not entitled to attach, assign as security, or relinquish the claim on the product without the consent of the Seller. The Seller must be informed immediately in the event of attachment by a third party or the commencement of insolvency proceedings.

7.2 If the Buyer processes the Product Subject to Retention of Title to create a new item, such processing shall be done on behalf of the Seller. Acquisition of ownership by the Buyer pursuant to Section 950 of the German Civil Code is excluded. If the Product Subject to Retention of Title is processed, mixed, or transformed using products not belonging to the Seller, the Seller acquires co-ownership of the new item in line with the proportion of the invoice value of the products it supplied to that of the other products at the time of processing. The Buyer shall keep the new product safe for the Seller with the due care of a prudent merchant.

7.3 The new product shall be considered to be a Product Subject to Retention of Title within the meaning of these terms and conditions. The Buyer hereby assigns part of its claims arising from resale of this new Product Subject to Retention of Title to the Seller, amounting to a proportion of the value of the Product Subject to Retention of Title corresponding to the ratio between the invoice value of Products Subject to Retention of Title and that of products supplied by the other party. If the new item is resold together with other products not belonging to the Seller for a combined price, the Buyer, in so doing, assigns to the Seller part of its claims corresponding to the proportion of the value of the entire delivery that is represented by the value of the Product Subject to Retention of Title.

7.4 The Buyer shall also assign to the Seller as security any claims against third parties arising from the combination of the Product Subject to Retention of Title with real property.

7.5 The Buyer has the revocable right to collect the claims arising from resale as part of the normal course of business. Notwithstanding the above, the Seller has the right to collect claims itself if the Buyer has violated its contractual obligations, in particular if it defaults on payment. On request, the Buyer shall name the debtors of the assigned claims and notify them of the assignment. The assertion of claims for retention of title and in particular the demand that the products be returned shall only constitute revocation of the contract if there is an express indication that this is the case.

7.6 The Seller undertakes, at its discretion, to release the securities to which it is entitled, at the Buyer's request, provided the realisable value of these securities exceeds the claims to be secured by more than 10%.

## **8 Claims for Defects by the Buyer**

8.1 The warranty period shall be two years from the date of delivery, or, if acceptance is required, from the date of acceptance. This period shall not apply to claims by the Buyer for damages arising from injury to life, limb or health or from wilful or grossly negligent breaches of duty on the part of the Seller or its agents. These shall be subject to the time-bar stipulated in the relevant legislation.

- 8.2 The delivered products must be subjected to careful inspection immediately after they have been delivered to the Buyer or a third party specified by the Buyer. If the Seller does not receive written notification of any defect within seven (7) working days, the Buyer will be deemed to have accepted any obvious defects in the product, or any other defects that would have become apparent upon immediate careful inspection. With regard to other defects, the Buyer will be deemed to have accepted the products if the Seller does not receive written notification of any defects within seven (7) working days from the date on which the defect became apparent. However, if normal use of the product would have resulted in the defect becoming apparent to the Buyer sooner, the period for notification of defects shall be adjusted accordingly. Any product that is the subject of a complaint is to be returned freight prepaid to the Seller at its request. If the notification of defects is justified, the Seller shall reimburse the costs of the least expensive shipping method. This shall not apply if the costs rise due to the fact that the product is somewhere other than its place of intended use.
- 8.3 If the product delivered has any material defects, the Seller is obliged to choose either to repair or replace the product within a reasonable period of time. If there is a failure to carry out these measures i.e. if it is not possible to repair or replace the product, if the Seller refuses to do so, or if there is an unreasonable delay, the Buyer has the right to revoke the contract or to have the purchase price reduced accordingly.
- 8.4 With regard to defects that the Buyer could have identified with reasonable time and effort, all claims arising from liability for material defects become void as soon as the product is processed or installed.
- 8.5 The Seller does not assume any liability in relation to the service life of the products, especially if the products are placed under extreme and unforeseen operating conditions. Claims relating to premature destruction are excluded.
- 8.6 For products manufactured in accordance with the Buyer's drawings or specifications, the Seller shall only be liable for material defects that are caused by a failure to comply with these specifications. This has no effect on mandatory liability under the German Product Liability Law (Produkthaftungsgesetz), nor does it affect liability for wilful or grossly negligent acts.
- 8.7 Liability for material defects does not apply to normal wear and tear, nor does it apply to damage that occurs after the transfer of risk as a result of inappropriate or negligent handling or use that was not in accordance with the contract or specifications.
- 8.8 Liability for material defects that do not affect the value or usability of the product is also excluded.

## **9 Other Forms of Liability**

- 9.1 The liability of the Seller to pay damages is limited in accordance with Section 9 of these terms and conditions. This is the case regardless of the legal basis for liability, whether this is due to impossibility of performance, deficiencies or errors in delivery, default, breach of contract, breach of duty during contractual negotiations or tort, provided the Seller is at fault.
- 9.2 The Seller shall not be liable for acts of simple negligence by its bodies, legal representatives, employees or any other agents unless such acts involve a material breach of contract. Material contractual provisions include the obligation to deliver the product on time, to ensure that it is free from legal defects as well as such material defects that pose a limit to its functionality or usability that is more than merely insignificant, as well as breaches of duties to provide advice, to provide protection or take care, which are meant to enable the product to be used as

intended, or which aim to protect the life and limb of those employed by the Buyer or to protect its property from substantial damage.

- 9.3 If, for these reasons, the Seller is liable to pay damages under Section 9.2, such liability is limited to damage that the Seller foresaw as a possible consequence of breaching the contract or that it ought to have foreseen if it had acted with due care and attention at the time of concluding the contract. Indirect and consequential damages resulting from product defects can only be claimed if such damages are those typically to expected provided if the product is used as intended.
- 9.4 In cases where the Seller is liable for simple negligence, its obligation to pay damages for material defects or any additional financial loss resulting from such defects is limited to a sum of EUR 1,000,000 for each claim (in accordance with the amount covered at that time by its product liability insurance or liability insurance). This also applies when this liability relates to a material breach of contract.
- 9.5 The exclusions and limitations of liability set out above shall be applied, in the same manner, to the benefit of the bodies, legal representatives, employees and other agents of the Seller.
- 9.6 If the Seller provides technical information or acts in an advisory capacity and this does not fall within the scope of its contractual obligations, this advice or information is to be provided free of charge and without giving rise to any liability. The advice of the Seller is only binding if this is confirmed by the Supplier to the Buyer in writing. The Supplier does not accept any liability for the usability of the item or the economic success of the Buyer.
- 9.7 The limitations of liability pursuant to Section 9 of these terms and conditions are not applicable to the liability of the Seller arising from wilful behaviour, for guaranteed quality features, arising from injury to life, limb or health or pursuant to the German Product Liability Law.
- 9.8 If the Buyer contributes materials for the production of products that it has ordered, these materials will only be insured against theft while they are on the premises of the Seller. Liability for the loss or deterioration of these materials shall only arise if the Seller acts wilfully or with gross negligence.
- 9.9 In cases where the product bought from the Seller has to be repaired, the Buyer does not have the right to claim for damages resulting from loss of production during the period in which the Seller is repairing the item. This period also includes the anticipated time it would take to transport of the item from the Buyer to the Seller and back, as well as the time it usually takes for spare parts to be delivered to the Buyer.

## **10 Violation of Property Rights**

The Buyer guarantees that, in performing the contract, no property rights will be violated by way of its own drawings or samples, those of a third party or any customer-supplied products. The Buyer shall defend itself in any ensuing litigation at its own cost, and reimburse the Seller for all related expenses.

## **11 Applicable Law and Venue**

- 11.1 If the Buyer is a merchant, a legal person under public law or special fund under public law, or if its general venue is not in the Federal Republic of Germany, the venue for any dispute arising from the commercial relationship between the Buyer and the Seller shall be Munich (Regional Court Munich II [Landgericht München II]) or the location of the Buyer's registered office. However, the exclusive venue for actions brought against the Seller shall be Munich (Regional Court Munich II). This provision does not affect any statutory provisions that stipulate an exclusive place of jurisdiction.

11.2 The relationship between the Seller and the Buyer shall be exclusively governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

## **12 Final Provisions**

12.1 If there are omissions in the contract or terms and conditions, these shall be addressed by applying such legally effective provisions as the parties to the contract would have agreed, in accordance with the commercial aims of the contract and the purpose of these terms and conditions into account, had they been aware of such omissions.

12.2 The Buyer acknowledges that the Seller will save data arising from the contractual relationship for the purpose of data processing, in accordance with Section 28 of the German Federal Data Protection Act (Bundesdatenschutzgesetz), and reserves the right to transfer such data (e.g. assurances) to third parties insofar as this is necessary for the contract to be performed.

Otterfing, 22.06.2018

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