

## **1. Validity and form**

1.1. The following terms and conditions are applicable to any agreements concluded by and between

- elling refractory solutions GmbH,
- e-r-s projects GmbH,
- e-r-s insulation GmbH,
- e-r-s basic GmbH

(hereinafter referred to as: **e-r-s**)

and the relevant customer regarding the sale and delivery of goods together with assembly services.

1.2. The terms and conditions are applicable in business transactions with companies, legal entities under public law and special funds under public law to regulate the agreements as intended in article 1.1 within the scope of our business operations.

1.3. The terms and conditions are exclusively applicable. Deviating terms and conditions of the customer that are not recognised by e-r-s in writing remain without binding effect on e-r-s, even if e-r-s does not expressly object to them. This requirement of consent is applicable in any case, for example even if the customer refers to its terms and conditions in the order and e-r-s does not expressly object to this.

1.4. Any and all agreements concluded by and between the customer and e-r-s for the fulfilment of orders are set forth in text form in agreements concluded for this purpose.

## **2. Offer and conclusion of agreement**

2.1. The order shall only be processed after receipt of the order in text form that must clearly identify the invoice recipient. It is made clear that oral orders are not accepted. An order by the customer, which is to be qualified as a binding offer to conclude an agreement, can be accepted by e-r-s within two weeks by sending an unconditional order confirmation.

2.2. If several payment instalments / milestones were agreed then they can individually not exceed the limit of the commercial credit insurance. The payment instalments must be agreed in such a way that the limit cannot be exceeded between the individual instalments due to agreed payment targets.

2.3. The offers submitted by e-r-s are subject to change and do not have binding effect, unless e-r-s has expressly designated them to have binding effect.

2.4. e-r-s reserves the right to demand reasonable advance payments and/or instalments from the customer, taking the scope of the order and its processing into account, and to make the provision of further services dependent on this.

### 3. Price and payment conditions

- 3.1. Unless stipulated otherwise in individual cases, our current prices at the time of conclusion of the agreement are applicable, ex warehouse, plus VAT at the applicable statutory rate.
- 3.2. Unless stipulated otherwise, the prices of e-r-s are quoted in euros ex works plus the applicable statutory value added tax. Transport costs are not included.
- 3.3. In the event of a sale to destination within the meaning of article 4.1, the customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the customer. If e-r-s does not invoice the transport costs actually incurred in the individual case then a flat-rate transport fee (excluding transport insurance) shall be deemed to have been stipulated. Any customs duties, fees, taxes, and other public charges shall be borne by the customer.
- 3.4. Our trade receivables are continuously ceded to the Deutsche Factoring Bank. The fulfilment of the payment by the customer can only be made by bank transfer to the account at the:  
  
Institution: Landesbank Hessen-Thüringen Girozentrale:  
Account no.: 72000706  
IBAN: DE24300500000072000706  
BIC: WELADEDXXX
- 3.5. Invoices are due for payment without deduction immediately upon receipt by the customer and are to be transferred free of charge, unless the order confirmation specifies a different payment term.
- 3.6. In the event of late payment, the statutory provisions shall apply. Our claim to commercial maturity interest (§ 353 of the German Commercial Code) in respect of commercial customers remains unaffected.
- 3.7. In the event of non-fulfilment or late payment, e-r-s shall be entitled to withhold the documentation of the work carried out or the deliveries made until the customer has complied with its contractual obligations, § 320 of the German Civil Code.
- 3.8. If it becomes apparent after conclusion of the agreement (e.g. through an application to open insolvency proceedings) that the claim of e-r-s to the purchase price is jeopardised by the inability of the customer to pay then e-r-s shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the agreement (§ 321 of the German Civil Code). In the event of agreements for the manufacture of non-fungible goods (customised products), e-r-s shall be entitled to immediately rescind the agreement; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

### 4. Delivery and performance periods

- 4.1. Unless stipulated otherwise, delivery shall be made from the Klötze location, which is also the place of fulfilment for the delivery and any subsequent fulfilment. At the request and expense of the customer, the goods shall be shipped to a different destination (also referred to as a **sale to destination**). Unless

stipulated otherwise, e-r-s shall be entitled to personally determine the type of shipment (in particular transport company, shipping route, packaging).

- 4.2. Delivery periods or deadlines are agreed individually or are specified by us upon acceptance of the order. Delivery periods or deadlines that have not expressly been stipulated as binding shall be deemed to be non-binding. The delivery period specified by e-r-s only commences when the technical issues have been clarified and the customer has duly and timely fulfilled any and all obligations incumbent upon the customer.
- 4.3. e-r-s is always entitled to make partial deliveries and provide partial services, provided that this is reasonable for the customer.
- 4.4. If the customer is in default of accepting delivery then e-r-s shall be entitled to demand compensation for the resulting damages and any additional expenses. The same shall apply if the customer negligently breaches its duty to co-operate. The risk of accidental deterioration and accidental loss shall pass to the customer upon the occurrence of default of taking delivery or default of payment.

## **5. Transfer of risk - Shipping/packaging**

- 5.1. Loading and shipping are carried out uninsured at the risk of the customer. e-r-s shall endeavour to take the requirements and interests of the customer with regard to the type and route of shipment into account; if additional costs are incurred due to the specifications of the customer, they shall be borne by the customer - even if carriage paid delivery has been agreed.
- 5.2. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest upon transfer. In the event of a sale to destination, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the customer upon delivery of the goods to the forwarding agent, carrier or other person or organisation designated to carry out the shipment. If acceptance has been agreed then this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services are also applicable to an agreed acceptance. If the customer is in default of acceptance then this shall be deemed to be equivalent to a transfer or acceptance.
- 5.3. If shipping is delayed at the request or due to the fault of the customer then e-r-s shall store the goods at the expense and risk of the customer. As the occasion arises, notification of availability for shipping is equivalent to shipping.
- 5.4. e-r-s reserves the right to make surplus or deficit deliveries of up to plus/minus 10% of the total quantity for commercial quantities, provided that these deviations were communicated to the customer and are reasonable in consideration of the interests of the customer. The actual delivery quantity shall be invoiced at the stipulated price.
- 5.5. When ordering a certain quantity of goods, the following deviations may occur.
  - a) fewer than 20 pieces up to 2 pieces

- b) 20 up to 100 pieces up to 5%
- c) 100 up to 1000 pieces up to 3 %
- d) over 1000 pieces up to 2%

## **6. Claims for defects of the customer**

- 6.1. The statutory provisions are applicable to the rights of the customer in the event of material defects and defects of title, unless specified otherwise below:
- 6.2. All those parts or services that exhibit a material defect within the warranty period - irrespective of the period of operation - shall, at the discretion of the customer, be repaired, replaced or delivered or provided again, provided that the cause of the defect already existed at the time of the transfer of risk.
- 6.3. The customer must immediately notify the supplier in writing of any material defects. §§ 377 and 381 of the German Commercial Code are applicable insofar as their statutory requirements are met. In the event of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately prior to the said processing. If a defect is discovered during delivery, inspection or at any later point in time then we must be notified accordingly in writing without delay. In any case, obvious defects must be notified in writing immediately upon delivery and defects not visible during the inspection within the same period after discovery. If the customer fails to properly inspect the goods and/or to notify us of defects then our liability for the relevant defect not notified or not notified in a timely fashion or not notified properly shall be excluded in accordance with the statutory provisions. In the event of goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; as the occasion arises, the customer shall in particular not be entitled to claim compensation for the corresponding costs (disassembly and assembly costs).
- 6.4. In the event of notices of defects, the customer can withhold payments to an extent that is in reasonable proportion to the material defects that have occurred.
- 6.5. Initially, the customer shall be granted the opportunity for subsequent fulfilment within a reasonable period of time. If the subsequent fulfilment fails within the meaning of § 440 Subsection 2 of the German Civil Code then the customer can withdraw from the agreement or reduce the fee. However, there is no right of cancellation in the event of an insignificant defect.
- 6.6. Claims for defects shall be out of the question in the event of natural wear and tear or damages arising after the transfer of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating materials, unsuitable building ground or due to special external influences that are not foreseen in the agreement. If the customer or third parties carry out improper modifications or repair work on the purchased product then no claims for defects shall exist for the same and for the resulting consequences.

- 6.7. Claims of the customer for expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase on account of the fact that the object of the delivery has subsequently been taken to a place other than the branch office of the customer, unless the transfer corresponds to its intended use.
- 6.8. The right of recourse of the customer against e-r-s in accordance with § 478 of the German Civil Code in the event of entrepreneurial recourse only exists insofar as the customer has not concluded any agreements with its buyer that exceed the statutory claims for defects.
- 6.9. Article 7 below is applicable to claims for damages or reimbursement of wasted expenses (§ 284 of the German Civil Code).

## **7. Other liabilities of e-r-s**

- 7.1. Unless stated otherwise in these terms and conditions, including the following provisions, e-r-s shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- 7.2. e-r-s shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, e-r-s shall only be liable, subject to statutory limitations of liability (e.g. diligence in its own affairs, insignificant breach of duty), for
- a) damages resulting from injury to life, body or health,
  - b) damages arising from the breach of an essential contractual obligation (obligation of which fulfilment is essential for the proper implementation of the agreement and on compliance of which the contractual partner regularly relies and may rely); in this case, however, the liability of the e-r-s shall be limited to compensation for the foreseeable, typically occurring damages.
- 7.3. The limitations of liability resulting from article 7.2 are also applicable to third parties and in the event of breaches of duty by persons (including in their favour) for whose fault e-r-s is responsible in accordance with statutory provisions. They are not applicable if a defect was fraudulently concealed or a guarantee was given for the quality of the goods and for claims of the customer under the German Product Liability Act.
- 7.4. The customer can only rescind the agreement due to a breach of duty that does not consist of a defect if e-r-s is responsible for the breach of duty. Otherwise, the statutory requirements and consequences are applicable.

## **8. Limitation period**

- 8.1. Notwithstanding § 438 Subsection 1 under 3, the general limitation period for claims arising from material defects and defects of title is one (1) year from the transfer or delivery of the item. This is not applicable if the law prescribes longer periods, e.g. in accordance with §§ 438 Subsection 1 under 2,



444, 445b, and 479 Subsection 1 of the German Civil Code, as well as in cases of injury to life, limb or health, in the event of an intentional or grossly negligent breach of duty by e-r-s and fraudulent concealment of a defect. The statutory provisions on suspension of expiry, suspension and recommencement of time limits remain in full force and effect.

- 8.2. If the goods are a building or an item that was used for a building in accordance with its normal use and has caused its defectiveness (building material) then the limitation period is five (5) years from the transfer or delivery in accordance with the statutory provisions (§ 438 Subsection 1 under 2 of the German Civil Code). Other special statutory provisions on the limitation period also remain unaffected (in particular § 438 Subsection 1 under 1 and Subsection 3, §§ 444 and 445b of the German Civil Code).
- 8.3. The aforementioned limitation periods of sales law are also applicable to contractual and non-contractual claims for damages of the customer that are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 of the German Civil Code) would lead to a shorter limitation period in individual cases. Claims for damages by the customer in accordance with article 7.2 paragraph 1 and article 7.2 paragraph 2 (a) as also in accordance with the German Product Liability Act shall exclusively lapse in accordance with the statutory limitation periods.

## 9. Reservation of title

- 9.1. Until the fulfilment of all claims to which e-r-s is entitled in respect of the customer, now or in the future, in particular the full payment of any and all current and future claims arising from the sale and purchase agreement of an ongoing business relationship (hereinafter referred to as: **secured claim(s)**), the delivered goods (hereinafter referred to as: **reserved goods**) remain the property of e-r-s.
- 9.2. In the event of a breach of contract by the customer, e.g. default of payment, e-r-s shall be entitled to take back the reserved goods and/or to demand the return of the reserved goods on the basis of the reservation of title (hereinafter referred to as: the safeguarding event) after the expiry of a further reasonable payment deadline set by e-r-s, provided that this expires without result. The demand for the return of the reserved goods does not simultaneously constitute a declaration of rescission. Rescission can be declared in the event of a safeguarding event.
- 9.3. As the occasion arises, e-r-s shall be entitled to commercialise the reserved goods. The commercialisation proceeds shall be offset against the amounts owed to it by the customer, in the course of which e-r-s shall be entitled to charge a reasonable amount for the additional expenses of the said commercialisation and to deduct this amount from the proceeds.
- 9.4. The customer must treat the reserved goods with care and insure them adequately at its own expense against fire, water damage, and theft at replacement value. Any maintenance and inspection work that becomes necessary must be carried out by the customer in good time at its own expense.
- 9.5. The customer is entitled to sell and/or use the reserved goods in the ordinary course of its business as long as the customer is not in default of payment. Pledges or transfers of ownership by way of security are not permitted. The customer hereby assigns the claims arising from the resale or any other legal

reason with regard to the reserved goods to e-r-s in full or for the amount of our possible co-ownership share in the instances as intended in article 9.6 in full by way of security. e-r-s hereby accepts this assignment. It revocably authorises the customer to collect the claims assigned to it in its own name alongside e-r-s. The direct debit authorisation can be revoked at any time if the customer does not properly meet its payment obligations. If the customer does not fulfil its payment obligation then e-r-s can require that the customer notifies us of the assigned claims and their debtors, provides any and all information necessary for collection, transfers the relevant documents, and notifies the debtors (third parties) of the assignment.

- 9.6. Any processing or transformation of the reserved goods by the customer shall in any case be carried out on behalf of e-r-s. If the reserved goods are processed with other items not belonging to e-r-s then e-r-s acquires co-ownership of the new item in the proportion of the value of the reserved goods (final invoice amount) to the other processed items at the time of processing.
- 9.7. The new item created by processing shall be subject to the same provisions as the reserved goods. In the event of inseparable mixing of the reserved goods with other items not belonging to e-r-s then e-r-s shall acquire co-ownership of the new item in the proportion of the value of the reserved goods (final invoice amount) to the other mixed items at the time of mixing. If the item of the customer is to be regarded as the main item as a result of the mixing then the customer and e-r-s agree that the customer shall transfer co-ownership of the said item to e-r-s on a pro rata basis; e-r-s hereby accepts the transfer. The customer shall hold the resulting sole or co-ownership of the item for us.
- 9.8. In the event of access by third parties to the reserved goods, in particular attachments, the customer shall draw attention to the reservation of title of e-r-s and forthwith inform it in order that it can enforce its ownership rights. If the third party is not in a position to reimburse e-r-s for the judicial or extrajudicial costs incurred in connection therewith then the customer shall be liable for the said costs.
- 9.9. e-r-s is required to release the securities to which it is entitled insofar as the realisable value of its securities exceeds the claims to be secured by more than 10%, in the course of which it is entitled to select the securities to be released.

## **10. Assignment**

Assignment of the claims of the customer requires the prior written consent of e-r-s in order to be effective. e-r-s can refuse its consent if there is a legitimate interest in maintaining the accounts receivable relationship with the customer. § Section 354a of the German Commercial Code remains unaffected.

## **11. Settlement**

Settlement of counterclaims of the customer with payment claims of e-r-s is only permitted if these

claims are undisputed or were legally established.

## **12. Force majeure**

e-r-s shall not be liable for impossibility of delivery or for delays in delivery if they are caused by force majeure or other events that were not foreseeable at the time the agreement was concluded (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, industrial actions, lawful lockouts, lack of labour, energy or raw materials, difficulties in obtaining necessary official permits, pandemics or epidemics, official measures or the failure of suppliers to deliver or to deliver correctly or in a timely fashion despite a congruent hedging transaction concluded by e-r-s) for which e-r-s is not responsible. If the said events make the delivery or performance of e-r-s significantly more difficult or impossible and the hindrance is not only of a temporary nature then e-r-s shall be entitled to rescind the agreement. In the event of hindrances of a temporary nature, the delivery or performance deadlines shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay then it can rescind the agreement by means of an immediate written declaration to e-r-s.

## **13. Warranty declarations**

Recommendations given by or on behalf of e-r-s by employees with regard to the quality, composition, handling, and properties of the goods delivered or the services provided shall never be qualified as a guarantee. Guarantees by e-r-s are only given by written declaration on the part of e-r-s.

## **14. Ownership and copyright of planning documents of e-r-s**

e-r-s retains ownership of any and all illustrations, drawings, calculations, plans and any and all other documents that it submits to the customer as part of an order. They are subject to the copyright of e-r-s and, where applicable, other property rights. The customer can only disclose these documents to third parties with the written consent of e-r-s, regardless of whether they are labelled as confidential.

## **15. Applicable law and place of jurisdiction**

These terms and conditions and the contractual relationship between us and the customer shall be governed by the laws of the Federal Republic of Germany with the exclusion of international standardised law, in particular the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction for any and all disputes arising from agreements between the parties, including those relating to the validity of such agreements or these General Terms and Conditions of Delivery and Sale, shall be the court with local jurisdiction for the town of Klötze.