

## Terms and Conditions of Sale

Ernst & Engbring GmbH

### Definitions:

In these Terms and Conditions of Sale the following definitions shall apply:

- E&E** : Ernst & Engbring GmbH with its registered office in Oer-Erkenschwick, registered in the Commercial Register at Recklinghausen Local Court under HRB 6623;
- Customer** : The natural person(s) or legal entity(ies) named in the Contract with whom E&E has entered into the Contract and who may be jointly and severally liable for the obligations under the Contract;
- Order Confirmation** : The written confirmation by E&E relating to the conclusion of the Contract entered into with the Customer, in the sense of a commercial letter of confirmation;
- Parties** : E&E and the Customer jointly

### § 1 Scope

1. The following terms and conditions apply exclusively to all contractual relationships that relate to deliveries and services provided by the company E&E with companies in the sense as understood by § 14 BGB (Civil Code), special funds under public law, legal entities under public law for which these General Terms and Conditions (GTC) have been declared applicable. Any deviating provisions, in particular the Customer's terms and conditions of purchase, only become part of the contract if this has been expressly agreed in writing between the parties.
2. If any framework agreements have been concluded between the parties, then these shall take precedence. The same shall apply with regard to any separate agreements in the supply contract itself. If any individual provisions of a concluded framework agreement and/or a supply agreement and these Terms and Conditions of Sale contradict each other, then these provisions shall have priority in the following order of precedence:
  - the individual supply contract,
  - the framework agreement between the parties and
  - E&E Terms and Conditions of Sale

Insofar as the delivery contract and/or the framework agreement does not contain any special regulations, these Terms and Conditions of Sale shall also apply.

3. E&E Terms and Conditions of Sale can be viewed on their website at [www.eue-kabel.de](http://www.eue-kabel.de).

## § 2 Conclusion of a Contract

1. Contracts are concluded when E&E accepts a corresponding offer from the Customer. The contract confirmation sent by E&E to the Customer is for declaratory purposes only.
2. In the event that E&E makes an offer to the Customer, these are always non-binding and remain valid for four weeks from receipt - unless otherwise stated on the offer. If the Customer accepts the offer made by E&E within the offer period, this acceptance must be made in writing or in text form. The contract confirmation then sent by E&E to the Customer is only used for declaratory purposes in the sense of a commercial letter of confirmation.
3. If E&E issues any guarantee declarations to the Customer, then these must be in writing for them to be effective.
4. If, after the conclusion of the contract, E&E is unable to procure the original materials specified in the contract due to the current market and raw materials situation, E&E will immediately inform the Customer of this and then submit an offer to the Customer for a subsequent change of contract in accordance with § 311 Para. 1 BGB, provided that E&E is able to procure technical components of the same type and quality. The Customer then has the opportunity within a period of 14 days from receipt of this offer to subsequently change the contract or, in writing, to withdraw from the contract or to terminate it.

## § 3 Prices / Terms of Payment

1. The deliveries and services from E&E are carried out at the prices and under the conditions agreed between the parties to the contract.
2. Unless otherwise agreed between the parties, the prices are ex-works or E&E warehouse plus any costs that arise from the application of the Packaging Act and any applicable statutory sales tax in line with the tax regulations in their currently valid version.
3. **The contractually agreed prices are binding. This does not apply if there is a significant change in the pricing of any relevant cost factors between the conclusion of the contract and delivery such as, in particular, the costs for wages, raw materials, freight etc. In this case E&E is entitled to adjust the contractually agreed prices.**

**A significant change in the aforementioned sense is to be assumed if one of the relevant cost factors has increased by 5% and this increase cannot be attributed to the entrepreneurial risk sphere of E&E.**

**In such a case, E&E will inform the Customer about the price adjustment in writing or in text form. The Customer then has the option of withdrawing from the contract in writing within a period of 14 days from receipt of this declaration.**

4. If the parties agreed on a basic price when concluding the contract, E&E is entitled to charge metal surcharges. The calculation basis for this is the copper price determined by E&E on the day when the contract was concluded. The sales price increases or decreases accordingly by the difference between the copper base price and the current copper rate. The same applies to billing for cables made of silver or other raw materials.

In the case of prices including metal surcharge (e.g. copper, aluminium etc.), there is no metal billing.

5. Unless otherwise contractually agreed, all invoices from E&E are due within 30 days of receipt without deduction. Invoicing can be in written or text form, unless otherwise agreed between the parties.

When accepting bills of exchange and checks, this is only done by E&E by way of performance and not in lieu of performance. E&E is entitled to revoke the deferral involved in accepting a bill of exchange at any time. The bank discount and collection charges on the expiry date are borne by the Customer. Unless otherwise agreed, E&E is entitled at any time to make the delivery of goods dependent on a down payment on the purchase price or on an advance payment.

6. If the Customer is in default of payment, E&E shall be entitled, after setting a reasonable grace period for effecting payment, to withdraw from the contract and/or to claim damages in lieu of performance.
7. The Customer may only assert those rights of retention against claims of E&E which arise out of this contractual relationship and may only set off those claims that are undisputed or have become res judicata.

#### **§ 4 Call-off Goods**

1. If the Parties have contractually agreed on the performance of goods on call, E&E shall keep the agreed quantities in stock for the duration of the contractually agreed period of time.

The Customer may declare the call-off of the goods in whole or in part within the contractually agreed period in writing or in text form.

2. Unless otherwise agreed between the parties, the Customer shall call off the Call-off Goods in full within the contractually agreed call-off period. If the Customer does not comply with this obligation, E&E shall be entitled to invoice for the part of the call-off goods not yet fully paid for. In all other respects, E&E's rights under §§ 293, 280 et seq. BGB (Civil Code) shall remain unaffected.
3. If the Customer calls off the call-off goods in full within the agreed call-off period, E&E shall waive its right to claim the agreed storage fee, unless agreed otherwise.

## **§ 5 Delivery**

1. Agreed delivery dates or performance dates are non-binding, unless expressly agreed otherwise in the contract.
2. Unless otherwise contractually agreed, the delivery period shall commence upon conclusion of the contract. This shall not apply if the parties have agreed on the Customer's duties to cooperate and the Customer has not yet fulfilled his duties to cooperate. In that case, the delivery period shall not commence until the Customer has provided E&E with proof in text form or in writing that he has fulfilled his duties to cooperate. Duties to cooperate are in particular, if nothing else has been contractually agreed, that the Customer still has to obtain items, documents, approvals and/or releases.

The same shall apply in the event that E&E has made the delivery or service dependent on a down payment or advance payment. The delivery period shall then commence when the down payment or advance payment has been credited to E&E's business account.

3. Unless otherwise agreed by the parties, the delivery period shall be deemed to have been complied with if E&E has made the delivery or service available at its factory or warehouse. If the parties have contractually agreed on a debt to be discharged by remittance [Schickschuld], the delivery period shall be deemed to have been complied with if E&E has handed over the delivery or service to a carrier within the delivery period. If the parties have contractually agreed on an obligation to deliver, the delivery period shall be deemed to have been complied with if E&E has affected (performed) the delivery or service at the contractually agreed place of performance.
4. E&E shall only be liable for delays in delivery if E&E is responsible for such delays. E&E shall be responsible for such delays if the delays in delivery are due to intent or gross negligence.
5. If dispatch or delivery is delayed by more than one month after notification of readiness for dispatch at the Customer's request or due to the Customer's conduct, E&E reserves the right to charge the Customer storage costs amounting to 0.7% of the net purchase price including metal surcharges of the delivery items concerned for each month or part thereof, but not exceeding a total of 8.4% of the value. The Customer shall be at liberty to prove lower storage costs. In addition, E&E shall be entitled, after setting and fruitless expiry of a reasonable deadline, to otherwise dispose of the delivery item and to supply the Customer with reasonable extended deadlines. Further claims, in particular any rights arising from §§ 293 ff. BGB or §§ 280 et seq. BGB shall remain unaffected, as shall the claim for performance.

## **§ 6 Transfer of Risk**

1. Unless otherwise contractually agreed by the parties, the place of performance shall be the factory or warehouse of E&E specified in the contract.

2. If the service and delivery is shipped to the Customer at the Customer's request in accordance with the contractual agreement, the risk of accidental loss or accidental deterioration shall pass to the Customer upon dispatch of the service and delivery to the Customer, at the latest upon leaving the factory premises or the storage site. The costs of shipment shall in any case be borne by the Customer.
3. E&E is entitled to partial performance contrary to § 266 BGB. In the event of partial performance, the Customer may not withdraw from the entire contract even in the case of an insignificant partial performance; § 323 V BGB is waived in this respect.

### **§ 7 Refusal to accept**

1. If the Customer unlawfully refuses to accept the delivery and/or service, E&E may - insofar as it is a question of acceptance - set the Customer a reasonable deadline for acceptance. If the Customer has not accepted the delivery and service from E&E within the time limit set, E&E shall be entitled to claim damages in addition to the remuneration. E&E's further statutory claims shall remain unaffected.
2. **In the event that the Customer unlawfully refuses acceptance, E&E may demand a contractual penalty from the Customer in the amount of up to 100% of the net order value, which shall be reviewed for reasonableness by the competent court in each individual case. The Customer shall be at liberty to prove to E&E that the actual damage has been less.**

### **§ 8 Retention of title and ownership**

1. The delivered goods (reserved goods) shall remain the property of E&E until all claims to which E&E is entitled against the Customer now or in the future have been satisfied, including any balance claims from a current account. If the Customer acts in breach of contract - in particular if the Customer is in default of a claim for payment - E&E shall have the right to withdraw from the contract after having set a reasonable deadline for performance. The Customer shall bear the transport costs incurred for the return. If E&E takes back the goods subject to retention of title, this shall already constitute a withdrawal from the contract. It shall also constitute a rescission of the contract if E&E has the goods subject to retention of title seized. E&E shall be entitled to realise the reserved goods taken back by E&E. The proceeds of the realisation shall be offset against the amounts owed by the Customer after E&E has deducted a reasonable amount for the costs of the realisation.
2. The Customer must treat the reserved goods with care. He must sufficiently insure them at his own expense against fire, water and theft at replacement value. The Customer is obliged to mark the goods subject to retention of title in a clearly visible way and sufficiently (obligation to mark).
3. The Customer may use the reserved goods and resell them in the ordinary course of business as long as he is not in default of payment. However, he may not pledge the

reserved goods or assign them by way of security. The Customer hereby assigns to E&E in full, by way of security, the Customer's claims against its customers arising from the resale of the retained goods as well as the Customer's claims against its customers or third parties arising from other legal grounds (in particular claims arising from tort and claims for insurance benefits, including all current account balances). E&E accepts this assignment.

The Customer may collect these claims assigned to E&E for its account in its own name on behalf of E&E as long as E&E does not revoke this authorisation. This shall not affect E&E's right to collect such claim itself; however, E&E shall not assert the claim itself and shall not revoke the direct debit authorisation as long as the Customer duly meets his payment obligations.

However, if the Customer acts in breach of contract - in particular, if the Customer is in default of payment in respect of a claim for payment - E&E may require the Customer to inform E&E of the assigned claims and of the respective debtors, to notify the respective debtors of the assignment and to hand over to E&E all documents as well as to provide all information required by E&E to assert the claim.

4. Any processing or transformation of the retained goods by the Customer shall always be carried out for E&E. If the retained goods are processed with other items that do not belong to E&E, E&E shall acquire co-ownership of the new item in the ratio of the value of the retained goods (final invoice amount including VAT) to the other processed items at the time of processing. In all other respects the same shall apply to the new items resulting from the processing as to the retained goods.

If the retained goods are inseparably combined or mixed with other items not belonging to E&E, E&E shall acquire co-ownership of the new item in proportion of the value of the retained goods (final invoice amount including VAT) to the other combined or mixed items at the time of combination or mixing. If the retained goods are combined or mixed in such a way that E&E's item is to be considered the main item, the Customer and E&E already agree that the Customer shall transfer co-ownership of such item to E&E on a pro rata basis. E&E accepts this transfer.

The Customer shall hold the sole ownership or co-ownership of an item thus created in safe custody for E&E.

5. In the event of the seizure of the reserved goods by third parties or other interventions by third parties, the Customer must point out E&E's ownership and must immediately notify E&E in writing so that E&E can enforce its ownership rights. If the third party is not able to reimburse E&E for the court costs or out-of-court costs incurred in this connection, the Customer shall be liable for these costs.
6. If the Customer so requests, E&E shall be obliged to release the securities to which it is entitled to the extent that their realisable value exceeds the value of E&E's outstanding claims against the Customer by more than 10%. E&E may select the securities to be released in this respect.

7. If E&E suffers a loss of rights as a result of the provisions of §§ 946 - 950 BGB, E&E may demand compensation in money in the sense of a claim for compensation for use from the party in whose favour the change in rights occurs.

## **§ 9 Packing**

1. With regard to packaging, all deliveries by E&E shall be made in accordance with statutory provisions. The Customer undertakes that, when reselling the goods delivered by E&E, it shall comply with the statutory provisions with regard to packaging.
2. For cable deliveries, E&E shall deliver either on standard drums of the company Kabeltrommel GmbH & Co. KG (KTG) or on its own drums. The following applies in detail:
  - a. Insofar as E&E delivers on standard drums for cables and wires of the company KTG, the Customer hereby expressly and irrevocably acknowledges the validity of the General Terms and Conditions of the company KTG also for this contractual relationship. The terms and conditions of the company KTG can be viewed on the Internet at [www.kabeltrommel.de](http://www.kabeltrommel.de). In any case, KTG remains the owner of the standard drums.
  - b. If the delivery is made on E&E's own reels or spools, these shall - unless otherwise contractually agreed - also be sold to the Customer. The costs for the spools or own drums shall then be shown separately on the invoice. If the parties have agreed that the spools / own drums shall not be sold, E&E shall have a lien on the spools / own drums. The Customer shall then return the spools / own drums to E&E at his own expense six months after delivery, step by step against return of the pledge paid, whereby the Customer shall be obliged to perform in advance.

The amount of the deposit retained shall be shown separately by E&E on the invoice to the Customer, namely for own drums and spools.

## **§ 10 Warranty**

1. E&E's products are manufactured according to national and international regulations as well as according to the specification agreed with the Customer.
2. The statutory provisions shall apply to the Customer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. In all cases, the special statutory provisions on the reimbursement of expenses in the event of final delivery of the newly manufactured goods to a consumer (supplier's recourse pursuant to §§ 478, 475a, 445b or §§ 445c, 327 Para. 5, 327u BGB) shall remain unaffected, unless an equivalent compensation has been agreed, e.g. within the scope of a quality assurance agreement.

3. The basis of E&E's liability for defects is primarily the agreement reached on the quality and the presumed use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by E&E (in particular in catalogues or on E&E's internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed upon, it shall be assessed according to the statutory regulation as to whether a defect exists or not (§ 434 Para. 3 BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the label of the goods, shall take precedence over statements made by other third parties.
4. In the case of goods with digital elements or other digital content, E&E shall only owe the provision of the digital material and, if applicable, the updating of the digital content insofar as this is expressly based on a quality agreement pursuant to Section 3. In this respect, E&E shall not be liable for any public statements made by the manufacturer or other third parties. Only in the event that E&E is the manufacturer according to statutory provisions shall E&E owe the provision and, if applicable, the updating of the digital content for goods with digital elements or other digital content to the extent that this is expressly stipulated in a quality agreement pursuant to Section 3.
5. E&E shall in principle not be liable for defects of which the Customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the Customer's claims for defects are subject to the condition that the Customer has complied with its statutory duties of inspection and notification (§§ 377, 381 HGB – Commercial Code). In the case of goods intended for installation and other further processing, an inspection must in any case take place immediately before processing. The inspection shall not only relate to random samples but to the entire goods. If a defect becomes apparent upon delivery, inspection or at any later time, E&E shall be notified thereof immediately in writing or in text form. In any case, all obvious defects shall be notified in writing or in text form within five working days of delivery and any defects not apparent upon inspection shall be notified in writing or in text form within the same period as a discovery. If the Customer fails to duly inspect and/or notify the defect, E&E's liability for a defect not notified in time or not properly notified shall be excluded in accordance with statutory provisions. In the case of goods intended for incorporation, attachment 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; in this case, the Customer shall in particular have no claims for reimbursement of any corresponding costs (removal and installation costs).
6. If the delivered goods are defective, E&E may first choose whether to remedy the defect by repairing the defect or by delivering non-defective goods (replacement delivery). The same shall apply in the event that E&E owes for the production of a specific work. If the type of subsequent performance chosen by E&E is unreasonable for the Customer in an individual case, the Customer may reject it. The right of E&E to refuse subsequent performance under the statutory conditions shall remain unaffected.



7. E&E is entitled to make any supplementary performance owed dependent on the Customer paying the purchase price due. However, the Customer is entitled to retain a part of the purchase price that is reasonable in relation to the defect.
8. The Customer shall give E&E the time and opportunity necessary for the subsequent performance owed and in particular shall hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Customer shall return the defective item to E&E upon E&E's request in accordance with the statutory provisions; however, the Customer shall not have a claim for return. Subsequent performance shall not include the removal, dismantling or disassembly of the defective item, nor the installation, fitting or assembly of a non-defective item if E&E was not originally obliged to perform such services; the Customer's claims for the reimbursement of corresponding costs (removal and assembly costs) shall remain unaffected.
9. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs shall be borne by E&E or reimbursed by E&E in accordance with statutory provisions and these Terms and Conditions of Sale, if a defect actually exists. Otherwise, E&E may recover from the Customer the costs incurred as a result of the unjustified request to remedy the defect if the Customer knew or was negligent in not knowing that there was actually no defect.
10. In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Customer shall have the right to remedy the defect himself and to demand reimbursement from E&E of the expenses objectively necessary for this purpose. E&E shall be notified immediately of any such self-remedy, if possible in advance. The right to remedy the defect itself shall not apply if E&E would be entitled to refuse to remedy the defect in accordance with statutory provisions.
11. If a reasonable period to be set by the Customer for subsequent performance has expired unsuccessfully or is dispensable in accordance with statutory provisions, the Customer may withdraw from the purchase contract or reduce the purchase price in accordance with statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.
12. Any claims by the Customer for damages or reimbursement of futile expenses shall only exist in the event of defects in accordance with § 11 and are otherwise excluded.

## **§ 11 Liability**

1. Unless otherwise provided for in these Conditions of Sale, including the following provisions, E&E shall be liable for any breach of contractual or non-contractual obligations in accordance with statutory provisions.
2. E&E shall be liable for damages - regardless of the legal grounds - within the scope of debt liability / fault liability in the event of intent and gross negligence. In the event of

ordinary negligence, E&E shall be liable, subject to the statutory limitations of liability (e.g. due care in its own affairs; insignificant breaches of duty), only for

- a. damage resulting from injury to life, limb or health,
  - b. damages resulting from the breach of a material contractual obligation (obligation, the fulfilment of which is essential for the proper execution of the contract or on the observance of which the contractual partner regularly relies or may rely); in this case, however, E&E's liability is limited to compensation for the foreseeable, typically occurring damage.
3. The limitations of liability resulting from the preceding number also apply to third parties and in the event of breaches of duty by persons (also in their favour) whose fault E&E is responsible for, according to statutory provisions. They do not apply if a defect has been fraudulently concealed or if a guarantee has been given for the quality of the goods and for customer claims under the Product Liability Act.
  4. The Customer may only rescind or terminate the contract due to a breach of obligation that does not involve a defect if E&E is responsible for the breach. The Customer's free right of termination (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
  5. E&E and the Customer agree that in the manufacture of cables - production-related - excess or short deliveries can generally occur up to 10% deviation from the order quantity as is customary in the trade. The same applies in particular to order quantities of up to 1000 meters with a deviation of up to 15%, order quantities of up to 500 meters up to 20% and order quantities of 200 meters up to 30%. In such a case, E&E and the Customer agree that E&E's liability in relation to the excess or short delivery is excluded from the warranty rights.

This does not apply if the customary excess or short delivery has been fraudulently concealed or if a guarantee has been given for the quality.

The clause in Section 11, Item 5, Sentence 1 does not apply in the case of fixed-length production where the Customer has made a clear agreement with E&E when concluding the contract, in particular with regard to the cable lengths, before placing the order. In this case, E&E will check the feasibility and take this into account when preparing the offer when concluding the contract.

## **§ 12 Statute of Limitations**

1. Notwithstanding Section 438 Para. 1 No. 3 BGB, the general limitation period for claims arising from material and legal defects is one year from delivery. If acceptance has been agreed, the limitation period begins with acceptance.
2. If the goods are items that have been used for a building in accordance with their usual purpose or have caused the building to be defective (building material), the statutory

period of limitation is five years from delivery (§ 438 Para. 1 No. 2 BGB), provided that E&E has pointed out that an inspection in accordance with BauPVO (Building Products Regulations) is necessary. If this notice is missing, the goods may not be installed permanently in buildings. The statute of limitations is then based on the statutory provisions for movable property. Other special statutory regulations on the statute of limitations remain unaffected (in particular Section 438 Para. 1 No. 1, Para. 3, Sections 444, 445b BGB).

3. The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Customer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims for damages by the Customer pursuant to § 11 Para. 2 Sentence 1 and Sentence 2a as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with statutory limitation periods. This shall also apply in the event that E&E has fraudulently concealed the defect; in such a case, the Customer's claims shall become time-barred in accordance with the regular statutory limitation provisions.
4. Unless E&E has expressly stated this on the submitted offer, the goods and items offered by E&E are not construction products within the meaning of the BauPVO, marked according to DIN: EN50575.

### **§ 13 Industrial property rights / confidentiality**

1. E&E is a manufacturer and distributor of all types of insulated wire and cable. Among other things, E&E is the owner of patents and other industrial property rights and administers such rights. All rights to patents, utility and design patents, trademarks, equipment, other industrial property rights as well as copyrights in respect of the subject matter of the contract and the services, shall remain with the respective holders of the rights. This also applies to any product designations, software and the rights to names and trademarks.
2. Each party has a legitimate interest in the confidentiality of the confidential information disclosed in the course of the conclusion of the contract. Both E&E and the Customer therefore undertake to treat the confidential information transmitted or otherwise made available in each case as strictly confidential and not to make it available to third parties, either in whole or in part, unless the parties have previously agreed in writing to its disclosure to third parties and the third party has undertaken to maintain confidentiality in the appropriate manner in a separate agreement to be concluded. This applies both to any confidential information disclosed before and after the signing of the separately applicable agreement.
3. All drawings, tools, software, moulds, devices, models, templates, samples and similar items supplied, used or made available by or for E&E shall be and remain the property of E&E. They may not be handed over or otherwise made accessible to unauthorised third parties. If the aforementioned items are manufactured for E&E, they shall already become the property of E&E upon creation or manufacture. The reproduction of such

items is only permitted within the scope of operational requirements and the provisions of patent law, trademark law, copyright law and the law on competition.

4. Insofar as the parties have concluded a non-disclosure agreement (NDA), this agreement shall take precedence over § 13 Nos. 2 - 4 with regard to the content stipulated therein.
5. In the event that claims are asserted against the Customer by third parties for direct infringement of property rights, including copyright, due to deliveries or services provided by E&E, E&E shall indemnify the Customer with respect to the claims for damages identified or settled against the Customer as well as with respect to court costs and attorneys' fees, but only under the following conditions:
  - a. The Customer shall immediately inform E&E of any claim or warning by a third party, in particular before issuing a cease-and-desist declaration or a declaration of obligation, without having previously taken any steps to defend itself and/or having engaged a lawyer. This does not apply to any immediate measures that must be initiated before E&E can be informed;
  - b. Only E&E is authorised to initiate defensive measures and to instruct lawyers to carry out the defensive measures and/or to issue statements and/or to conduct other negotiations. Upon E&E's request, the Customer shall engage an attorney to represent it at E&E's expense;
  - c. The Customer shall inform E&E immediately and continuously about the matter and in particular shall provide the necessary information and documents;
  - d. All notifications to E&E in this context must be made in text or written form.
6. E&E shall not be liable if the rights of a third party are violated as a result of changes to the subject matter of the contract or parts thereof, provided that the subject matter of the contract itself does not constitute a violation of the law. Furthermore, liability shall not apply if the Customer, after being warned by a third party or aware of a possible violation of third-party rights, has nonetheless carried out further acts of use, unless E&E has consented to further acts of use in writing.
7. In the event that it is legally established that any further use of the subject matter of the contract infringes third-party property rights, including copyrights, or that the Customer believes that there is a risk of property rights or copyright lawsuits, E&E can, at its own expense and at its own discretion, either provide the Customer with the right to continue using the subject matter of the contract or to replace or change the subject matter of the contract in such a way that an infringement no longer exists or is at least less likely. Such measures in no way entitle the Customer to assert any further claims against E&E.

#### **§ 14 Force Majeure**

A case of force majeure is an event coming from outside, caused by elementary forces of nature or by the actions of third parties, which is unforeseeable according to human insight and experience, which cannot be prevented by economically justifiable means even with the utmost care that is reasonable under the circumstances, or made harmless and which cannot be provided for by virtue of its frequency. Cases of force majeure are in particular natural disasters such as floods, earthquakes, fires, storms, droughts, pandemics and epidemics as well as war, riots, terrorist attacks or civil unrest and government measures such as embargoes or foreign exchange restrictions. If one party is prevented from fulfilling its essential contractual obligations by such an event, the other party is entitled to withdraw from the contract. The claim to delivery and performance as well as the claim to the contractually agreed counter-performance shall then expire; deliveries and/or performances and counter-performances already made shall be returned. Upon E&E's request, the Customer shall appoint a lawyer to represent it at E&E's expense.

#### **§ 15 Current account clause**

The parties agree that a current account relationship (overdraft facility) shall not be established between them within the framework of the current business relationship or in individual cases. A separate agreement in writing is required to establish a current account relationship.

#### **§ 16 General provisions**

1. The place of jurisdiction shall be Recklinghausen, insofar as the Customer is a fully qualified merchant, a legal entity under public law or a special fund under public law. German law shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the International Sales Convention. Unless otherwise agreed, the contractual language shall be German.
2. All agreements, including those concerning collateral agreements, shall require written confirmation by E&E in order for them to be effective. This shall also apply to any waiver of this clause. No rights and obligations shall be created by any practice in individual cases that deviates from the text of the contract.
3. Should the Customer be a majority of persons (e.g. a partnership under civil law), the members/shareholders hereby authorise each other to issue and receive declarations of intent in connection with the business relationship with E&E. Changes in the form of the company, the place of business, the place of residence, the company name or similar changes must be notified to E&E in writing without delay.
4. If any provision of this contract is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties are obliged to replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision. The same applies to any loopholes in the contract.