ESYLUX

## WE SELL AND SHIP

exclusively under the following terms and conditions and exclusively to businesses. These also apply for all business relations with our customers unless otherwise provided for in writing; these also apply to verbal sales contracts. The purchaser acknowledges these terms and conditions as binding not only for this contract at hand but also for all future transactions and abandons the assertion of his own purchasing terms and conditions. The purchaser's own terms and conditions are not contractually applicable in the event of our silence or our delivery but must be confirmed in writing, as in the case of any other deviating agreements, for each individual transaction.

## 1. PRICES

The prices in our price lists are not binding; they do not constitute an offer. Agreed prices are not binding for repeat orders. They are based on the wage levels and deployment costs at the time of contract. If there should be changes prior to the delivery date we shall be entitled to adjust our prices accordingly if there is a period exceeding four months between the conclusion of a contract and delivery. If the price increase should amount to more than ten percent of the agreed price, the purchaser shall be entitled to withdraw from the contract. All prices shall be ex works or depot and subject to the respective statutory value added tax. Deliveries to the purchaser shall be subject to the billing of shipping and packaging costs unless self pick-up has been agreed. Special shipping options (express consignment, express freight, air freight) shall only be used at the request of the purchaser and shall also be invoiced separately.

## 2. CONDITIONS OF PAYMENT

Unless agreed otherwise, all invoices must be paid in advance before dispatch. Cash discounts are not applicable to such an amount as there are claims at the time of payment for which the payment term has been exceeded. With any default of payment, the customer shall pay interest on the outstanding amount equalling 8 % above the base interest rate. We do, however, reserve the right to claim damages caused by delayed payment and to assert same against the customer. Cheques and bills of exchange, the latter only by prior agreement, are only accepted on condition of payment of the discount and bank expenses. A guarantee for timely collection or timely objection shall not be assumed. Circumstances which adversely affect the purchaser's credit standing or represent a substantial depreciation of his financial circumstances (for example cheques or bills of exchange not cashed and non-payment of due demands for goods already delivered) shall entitle to call in all invoices for goods already delivered and only to perform outstanding shipments individually against payment. We shall be further entitled to revoke the right to resale for the goods delivered under a reservation of title and that to the collection of debts. A purchaser's right of retention shall be excluded provided that it is not based on the same legal relationship. A setoff by the purchaser shall only be admissible if the counterclaim has been determined undisputed and in a legally binding manner.

## 3. RESERVATION OF TITLE

The delivered goods shall remain our property until full payment of all claims arising from the business relationship. The purchaser is authorised to resell the conditional commodities in the course of ordinary business transactions for cash payments or by reservation of title; he is not authorised to dispose of them in any other way, in particular transfer by way of security or pledge agreements. At the moment of resale, the purchaser assigns his claims arising from the resale of the conditional commodities – including the corresponding claims from bills of exchange – together with all ancillary rights to us. We accept this assignment of claims. In the event that the conditional commodities should be sold at one total price by the purchaser together with other goods which do not originate from us, the assignment of claims shall only take place to the amount that we have billed for the conditional commodities that have been included in the sale. In the event that the purchaser's claims arising from the resale are included with an account current, the purchaser herewith also assigns his claims from the account current against the customer to us. The assignment of claims shall take place to the amount that we have billed for the resold conditional commodities. With the purchaser being in default of payment or in the event of depreciation of the financial status or credit standing according to item 2, we shall be, notwithstanding the exercise of further rights, entitled to demand the return of the conditional commodities for the purpose of indemnity; this shall not constitute a withdrawal from the sales contract. The purchaser must grant the vendor access to the conditional commodities which are still in his possession. For the purpose of return, the purchaser must store the conditional commodities separately from his other goods and label them as being reserved in title by us. We shall be authorised to directly sell the goods after previously having set a payment period. Crediting of the conditional commodities shall be carried out at the proceeds received less the costs of realisation. If the value of collateral exceeds the amount of our claims by 20 percent or more, we shall release the collateral exceeding our demands at the request of the purchaser. The purchaser must inform us of any third party access to the conditional commodities or the claims assigned to us, in particular due to measures in the course of execution proceedings, and support us in any way at his own expense during intervention.

## 4. DELIVERY PERIOD

Delivery periods mentioned in quotations are not binding. The delivery period mentioned in the order confirmation shall commence on the day of full order clearance. We do not guarantee compliance with a delivery period unless same has been expressly marked in writing as a „fixed date". An agreed delivery period shall be appropriately extended in cases of force majeure and other unforeseeable events such as, for example, insurrection, war, blockade, strike or default in delivery to the vendor and interruption of operations. Any claims for damages by the purchaser based on default or non-performance can only be asserted if gross negligence or intent can be proven to us.

## 5. TRANSFER OF RISK

The risk shall pass to the purchaser as soon as the goods have left the warehouse (this also applies if prepaid freight has been agreed) or, in case of pick-up, as soon as the goods have been reported as ready for shipment or collection by us. The same shall apply if the place of shipment is not the place of performance. All shipments as well as any returns shall be made at the purchaser's risk.

## 6. MATERIAL DEFECTS/CLAIMS BASED ON DEFECTS

**6.1** The quality and way of use that can be expected are laid down in supplemental sheets (user manual/installation guide and data sheet). These sheets (user manual/installation guide and data sheet) can be downloaded from our homepage. Additionally we provide them to our customers on request. The way of use as well as the quality/appearance of our products do not exceed the descriptions in the supplemental sheets (user manual/installation guide and data sheet). In the event of defective delivery, we shall, by our choice, first carry out a subsequent specific performance, i.e. repair or substitute delivery.

**6.2** If and to the extent we are obliged on the basis of legal provisions to pay a compensation for the rea-sonable expenses for removing the defective product and installing the repaired or newly delivered defect-free product, we reserve the right to prove in each individual case, if the removement and the installation can be done by ourselves in a more cost-effective way. If so, we are authorized to perform ourselves. Without prejudice to the above we reserve the right to refuse compensation, if the removement of the defective and the installa-tion of the repaired or newly delivered product leads to disproportional costs.

**6.3** If the subsequent specific performance should be unsatisfactory, the purchaser generally has a choice to demand a reduction in payment or rescission of the contract. The purchaser shall not have a right to rescind in case of marginal non-conformity with the contract, in particular with marginal defects. The failure to carry out a subsequent specific performance or substitute delivery shall be equal to the refusal of subsequent specific performance by us/the contractor due to disproportionality of the subsequent specific performance as well as unconscionability for the purchaser/customer.

**6.4** The purchaser must check the goods within a period of three days from receipt of the goods. Defects that become apparent during proper examination must be notified within 8 days of delivery and unobvious defects or defects not apparent during proper examination must be notified within 8 days of discovery otherwise the delivered goods shall be deemed to be approved as agreed and the assertion of defect claims shall be excluded. Timely shipping constitutes an observance of this deadline.

**6.5** The purchaser shall bear the full burden of proof for all claim prerequisites, in par-ticular the defect itself, the time of determination of the defect and the timely notification of defects. Any defect claims for used items shall be excluded. If the purchaser should opt for damages after failed subsequent specific performance, the goods shall remain with the purchaser if same can be reasonably expected. The damages shall be limited to the balance between the purchase price and the value of the defect item. This shall not apply if we intentionally, grossly negligently or fraudulently caused the breach of contract. Other claims for damages depend on item 7 of these terms of business below. The limitation period for any claims by the purchaser for an existing defect shall be one year from delivery of the goods. This shall not apply if mandatory law prescribes longer periods in accordance with Sec. 438 par. 1 No. 2 German Civil Code (buildings and material for buildings), Sec. 445 b par. 1 German Civil Code (regress claims) and Sec. 634 a par. 1 No. 2 (defect in construction) or in case longer periods apply mandatory according to the German Act on Product Liability, in cases of a willful or grossly negligent breach of duty by the Supplier, if a defect is fraudulently concealed and in cases of injury of life, body or health. Any of the entrepreneur's rights of recourse shall also remain unaffected. Rescission and reduc-tion shall be excluded after expiration of the limitation period. Where extra-contractual claims for the delivery of a defective item should compete with defect claims, the afore-mentioned limitation periods shall also apply to such extra-contractual claims.

## 7. LIABILITY

**7.1** The liability disclaimer and liability limitations set out below also apply for actions in tort, insofar as these compete with contractual claims.

Claims for damages and reimbursement of expenses by the purchaser, for whatever legal reason, in particular on account of breach of duties arising from a contractual relationship and from tort, are excluded.

**7.2** This exclusion does not apply

- regarding any damage caused intentionally or grossly negligently by us;
- if and to the extent we gave a warranty as to quality or durability and damage from the breach of the warranty occurred;
- if and to the extent that we are obliged to reimburse all reasonable costs of the Buyer for removing the defective product and installing the repaired or newly delivered defect-free product due to mandatory legal provisions;
- in cases of slight negligence regarding any damage, resulting from a violation caused by injuries to life, body or health, as well as to any damage resulting from our violation of a material contractual obligation – subject to the following provisions. Material obligations are those which performance facilitates the execution of the contract and those the customer regularly relies and may rely upon. In cases of a slightly negligently violation of a material obligation our liability – except for damage to life, body or health – is limited to the damage typical and at the time of the formation of the contract or the violation of the obligation foreseeable to us.

**7.3** If the purchaser is a merchant or an entrepreneur, claims for damages in case of our slight negligence are barred if they are not asserted in legal proceedings within 3 months – after the claims have been rejected by us or our insurance company – with a respective information to us or our insurance company. We or our insurance company will point this out to the purchaser in connection with the rejection of the claims.

**7.4** These exclusions and limitations also apply to our liability for our bodies, employees and agents as well as our bodies', employees' and agents' personal liability. Our liability is limited to an amount of EUR 100.000,- in case of a damage caused by gross negligence of our agents, who are not legal representatives or managing staff.

**7.5** These exclusions and limitations do not apply insofar as the risk is covered by a liability insurance. Additionally, they do not apply insofar as the claims are based on the German Product Liability Code (Produkthaftungsgesetz), if we are liable for personal or property damage due to mandatory provisions of the German Product Liability Code.

## 8. RETURNS

The return of goods delivered under the contract shall be excluded unless otherwise provided for in writing. We shall be entitled to make the take-back subject to the payment of a handling charge.

## 9. MISCELLANEOUS

The laws of the Federal Republic of Germany shall be applicable. If the purchaser is a merchant, a legal person under public law or a public separate estate, the exclusive jurisdiction for all legal disputes arising from this contract, also including bills of exchange and cheque procedures, shall be Hamburg, Germany. The same shall apply if the purchaser does not have a competent court in Germany or if place of residence or customary place of abode at the time of commencement of action are not known. We shall, however, also be entitled to bring proceedings at a court with jurisdiction over the purchaser. If the customer is a merchant, legal entity of public law or of a special fund under public law, the place of performance for delivery, payment and defect claims shall be Ahrensburg, Germany. Any amendments or supplements to this agreement must be made in writing to be effective. The same shall apply to a repeal of this clause. If individual provisions of these terms and conditions of sale and payment should be ineffective or incomplete, this shall not affect the validity of the remaining provisions or the contract entered into with the customer. The ineffective or incomplete provisions shall rather be replaced or supplemented by such provisions that are closest to the purpose of the ineffective or incomplete provisions.

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**ESYLUX GmbH & Co. KG**

An der Strusbek 40
22926 Ahrensburg | Germany
Postfach 1834
22908 Ahrensburg | Germany
t: +49 (0)4102 88880-0
sales@esylux.com
www.esylux.com