

## **I. Application of the International Conditions of Sale**

1. These International Conditions of Sale apply to all customers of EGGERSMANN GmbH - hereinafter referred to as EGGERSMANN - if the relevant place of business of the customer is **not in Germany**. For customers whose place of business is in Germany, the General Conditions of Sale (Allgemeine Verkaufsbedingungen) of EGGERSMANN apply, which will be forwarded on request.

2. These International Conditions of Sale apply to all contracts whose preponderant object is the **supply of goods and/or software** to the customer. Additional obligations assumed by EGGERSMANN do not affect the application of these International Conditions of Sale.

3. Conflicting or differing **terms of business of the customer** do not bind EGGERSMANN, even if EGGERSMANN does not object to them or even if EGGERSMANN unconditionally renders performance or accepts the customer's performance. Likewise EGGERSMANN is not bound insofar as the terms of business of the customer, irrespective of the contents of these International Conditions of Sale, deviate from statutory provisions.

## **II. Formation of the Contract**

1. The customer is under an obligation to give **written notice to EGGERSMANN** prior to the formation of a contract if the using planned for the goods to be delivered differs in its intended purpose from that recommended by EGGERSMANN in EGGERSMANN' technical documentation or if the goods are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use or if there is a risk of atypical damages or unusual amounts of loss of which the customer is or ought to have been aware.

2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by EGGERSMANN, the customer will emphasize the differences as such. Illustrations and drawings just like the measures and weight indications featuring in EGGERSMANN's proposals or offers only serve as guidelines.

3. All orders, in particular also those received by employees of EGGERSMANN, will **take effect exclusively if followed by a written acknowledgement** of the order by EGGERSMANN. The actual delivery of the goods ordered, any other conduct of EGGERSMANN or silence on the part of EGGERSMANN does not allow the customer to assume the formation of the contract. EGGERSMANN can dispatch such written acknowledgement of the order up to and including **fourteen (14) calendar days after** the customer's order has been received by EGGERSMANN. Until this time, the customer's order is irrevocable.

4. The written **acknowledgement of the order** by EGGERSMANN shall be **received in time**, if it is received by the customer within fourteen (14) calendar days after its date of issue. The customer will inform EGGERSMANN without delay, if the written

acknowledgement of the order is received with some delay. If, however, EGGERSMANN requests in writing a signature by the customer of the acknowledgement of the order by EGGERSMANN, the contract only comes into effect if EGGERSMANN receives a copy of the acknowledgement of the order legally **signed by the customer**, within fourteen (14) calendar days from the date of the written acknowledgement of the order.

5. The written acknowledgement of the order by EGGERSMANN sets out all the **terms of the contract** and brings the contract into effect even if - except for the price for the goods and the quantity to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Conditions of Sale. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation by EGGERSMANN in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by EGGERSMANN is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by EGGERSMANN within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the customer.

6. Confirmations produced by the customer are of **no effect** without any objection by EGGERSMANN being necessary. In particular, neither the actual delivery of the goods, any other conduct of EGGERSMANN or silence on the part of EGGERSMANN shall give rise to any belief by the customer in the relevance of his confirmation.

7. EGGERSMANN's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by EGGERSMANN or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against EGGERSMANN, is to be determined according to German law.

8. **Amendments** to the concluded contract always require written confirmation by EGGERSMANN.

## **III. Obligations of EGGERSMANN**

1. Subject to an exemption according to section VII.-1. b) EGGERSMANN must **deliver the goods** specified in the written acknowledgement of the order and transfer the property in the goods. EGGERSMANN is **not obliged to perform obligations** not stated in the written acknowledgement of the order by EGGERSMANN or in these International Conditions of Sale, in particular EGGERSMANN is under no obligation if not explicitly agreed upon in writing to furnish information, documents or certificates, or to deliver accessories, to install additional safety devices, to carry out assemblies or to advise the customer.

2. EGGERSMANN's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the formation of

the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to assert any other claim arising from the customer's contract with EGGERSMANN. The customer gives EGGERSMANN an unlimited indemnity against all claims made by third parties against EGGERSMANN out of the contract made with the customer. The customer's responsibility to take delivery continues to exist even if he **assigns rights to third parties**.

3. Taking account of the **tolerances customary** in trade EGGERSMANN undertakes to deliver to the customer goods of the agreed kind and quantity which meet the common standards applicable in Germany. If the goods cannot be delivered in the condition offered at the time of the formation of the contract because technical improvements to goods of series production were made, EGGERSMANN is entitled to deliver the goods with the technical improvements. Performance specifications given by EGGERSMANN are subject to good operational conditions, particularly in view of the materials to be processed and the personnel used, as well as the exclusive use of original spare parts and to appropriate maintenance. EGGERSMANN is entitled to make **part deliveries** and to invoice them separately and ensures that at the time of delivery the goods are free from rights or claims of third parties which could prevent its use within the European Union.

4. If further **specification** is required in relation to the goods to be delivered, EGGERSMANN will carry this out having regard to his own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. EGGERSMANN does not undertake to inform the customer of the specification he has made or to give the customer the option of a differing specification.

5. EGGERSMANN undertakes to place the goods packaged and marked according to EGGERSMANN's standard **at disposal for collection by the customer FCA (Incoterms 2010)** at the place of delivery indicated in the written acknowledgement of the order at the agreed time of delivery. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Under no circumstances, not even when other Incoterms are agreed is EGGERSMANN obliged to inform the customer of the delivery, to examine the goods with respect to their conformity with the contract on the occasion of delivery, to check the operational safety of the means of transport and the transportation safe loading or to furnish proof of the delivery being effected. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.

6. The **organization of the transport** and the insurance of the goods beyond the place of delivery decisive according to section III.-5. is none of EGGERSMANN's obligations, but is incumbent to the customer. If the customer does not give a counter instruction in writing in time, EGGERSMANN is entitled - without the customer asking for it or without existing such a commercial practice - to contract on terms

usual in Germany in the customer's name and at the customer's risk and expense for carriage and/or insurance of the goods to the destination indicated in writing by the customer and - if such a destination is not indicated - to the place of business of the customer.

7. Agreed **delivery time periods** or **delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time and subject to no delay caused by pre-shipment inspections mandated by authorities. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by EGGERSMANN. EGGERSMANN is entitled to deliver earlier than at the agreed delivery time or to select the date of delivery within the agreed period for delivery.

8. Without prejudice to his continuing legal rights, EGGERSMANN is entitled to fulfil his obligations **after the delivery time agreed upon**, if the customer is informed that EGGERSMANN will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, EGGERSMANN is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by EGGERSMANN before commencing late performance. EGGERSMANN will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that EGGERSMANN is liable for this under the provisions laid down in section VII.

9. **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for EGGERSMANN to give notice, pass to the customer with delivery pursuant to section III.-5., albeit irrespective of delivery as soon as the title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.

10. EGGERSMANN is not obliged to clear the goods for export. However, EGGERSMANN will apply for necessary export licences and **customs formalities** necessary for the export after the customer has furnished EGGERSMANN with the data essential for the export in a written notice attending to this purpose exclusively. If the goods are not cleared for export without any fault on the part of EGGERSMANN, EGGERSMANN is entitled to avoid the contract of sale in whole or in part without compensation. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions

laid down in these International Conditions of Sale remain applicable.

11. EGGERSMANN is **not obliged** to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import, or to provide security or customs **clearance**. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.

12. EGGERSMANN is in no case liable to perform duties associated with the making available of the goods on the market **outside Germany**, to bear levies, duties and charges accruing outside Germany, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or to comply with any other legal provisions applicable to the goods outside Germany. The customer will arrange for translations in any language other than German of instructions, safety information, performance declarations or other written materials about the goods required by law or called for otherwise at his risk and expense, unless EGGERSMANN is bound by regulations applicable in Germany to supply instructions in the official language or languages of the Member State of the European Union in which the machine is to be placed on the market and/or put into operation.

13. Without prejudice to his continuing legal rights and without a previous notice to the customer being necessary, EGGERSMANN is entitled to **suspend the performance of his obligations** so long as, in the opinion of EGGERSMANN, there are grounds for concern that the customer will wholly or partly fail to fulfil his obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs his obligations to enable payment to EGGERSMANN or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance EGGERSMANN is entitled at his own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. EGGERSMANN is not required to continue with performance of his obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.

14. Except as provided in section III.-8., EGGERSMANN is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for EGGERSMANN.

#### **IV. Obligations of the Customer**

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the goods** in the currency specified in the written

acknowledgement of the order transferring it without deduction and free of expenses and costs to one of the financial institutions designated by EGGERSMANN. To the extent that a price for the goods has not been agreed, the price which is at the agreed time of delivery EGGERSMANN's usual price for the goods will apply. EGGERSMANN's employees, commercial agents or other sales intermediaries are not authorized to accept payments.

2. Subject to differing declarations in the acknowledgement of the order, the payment to be made by the customer is **due for payment** as follows:

a) If the customer has his place of business in the European Union, thirty (30) per cent of the price become due upon receipt of the acknowledgement of the order, forty (40) per cent upon receipt of the notification that the goods are ready for collection and/or dispatch and the remaining thirty (30) per cent become due for payment on the day of the passing of the risk, at the latest however within fourteen (14) days after the date of readiness for collection and/or dispatch.

b) If the customer has his place of business outside of the European Union, thirty (30) per cent of the price become due upon receipt of the acknowledgement of the order. Seventy (70) per cent of the payment is to be made in form of an irrevocable, confirmed documentary letter of credit in favour of EGGERSMANN issued according to the instructions given by EGGERSMANN by an international commercial bank accepted by EGGERSMANN, payable at a German bank named by EGGERSMANN.

c) Irrespective of the regulations set forth hereinbefore, in case of delivery of second-hand goods, the payment of the price becomes due upon receipt of the notification that the goods are ready for collection and/or dispatch. If any alterations or changes are made to the second-hand goods prior to delivery or any supplementary parts have to be ordered for the integration into the goods and/or their retrofitting, thirty (30) per cent of the price become due upon receipt of the acknowledgement of the order and seventy (70) per cent are payable upon receipt of the notification that the goods are ready for collection and/or dispatch.

d) Irrespective of the regulations set forth hereinbefore, in case of customized goods, sixty (60) percent of the price become due upon receipt of the acknowledgement of the order and forty (40) per cent are payable upon receipt of the notification that the goods are ready for collection and/or dispatch.

e) Irrespective of the regulations set forth hereinbefore, in case of delivery of spare parts, the payment of the price becomes due within fourteen (14) days as of the date of the invoice. However, if such spare parts are customized, section IV.-2. d) applies.

3. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The periods granted for payment will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the

assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards EGGERSMANN or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer for the customer is reduced on grounds for which EGGERSMANN is not responsible.

4. Bills of exchange, promissory notes (*pagarés*) and cheques are only accepted as provisional payment after prior consent and given their eligibility for discount and shall only be considered payment after they have been honoured. Discount and collection charges are at the buyer's expense. A guarantee for the presentation of the bill of exchange, certificate of indebtedness or the cheque in due time as well as the entry of a bill of exchange protest are excluded.

5. The customer warrants that all legal requirements and documentations for the handling regarding **customs laws and value added tax** of the delivery and/or any service will be fulfilled according to the applicable provision in Germany. To the extent that EGGERSMANN has to pay German and/or foreign customs duties and/or value added tax, the customer will indemnify EGGERSMANN in all and every respect without prejudice to any continuing claim by EGGERSMANN. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by EGGERSMANN.

6. Regardless of the currency and of the jurisdiction of any court, EGGERSMANN is entitled at his own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.

7. Any statutory rights of the customer to **set-off** against claims of EGGERSMANN, to **withhold payment** or taking delivery of the goods, to **suspend** the performance of his obligations or to **raise defences or counterclaims** are excluded, except where the corresponding claim of the customer against EGGERSMANN is in the same currency, is founded in the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer EGGERSMANN has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.

8. The customer undertakes to furnish EGGERSMANN with the data to apply for the customs formalities according to section III.-10. reasonable time ahead, **to take delivery** of the goods either by himself or by a person appointed by him to EGGERSMANN at the delivery time without taking any additional period of time and at the place of delivery resulting from section III.-5. and shall fulfil all the duties imposed by the contract, by these International Conditions of Sale, by the rules of the ICC for the use of Incoterms® 2010 and by statutory provisions. The customer is only entitled to refuse to take delivery of the goods if he avoids the contract in accordance with the rules in section VI.-1.

9. Irrespective of any statutory provisions, the customer shall at his own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed **waste-disposal** of the goods delivered by EGGERSMANN to the customer and of the packaging material.

10. The customer will not enter into or perform **any business** with the goods purchased from EGGERSMANN, if such business is **forbidden** under the provisions applicable to EGGERSMANN, including the U.S. export control regulations.

#### **V. Delivery of non-conforming Goods or Goods with Defective Title**

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods do **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Germany. Regardless of the stipulation established in sentence 1, the goods shall be deemed to conform with the contract to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods. Second-hand goods are delivered without any liability for their conformity.

2. To the extent that the written acknowledgement of the order by EGGERSMANN does not contain an explicit statement to the contrary, EGGERSMANN is in particular **not liable** for the goods being fit for a purpose which is not usual in Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal regulations existing outside of Germany, for instance in the customer's country. EGGERSMANN shall also not be liable for any non-conformity with the contract that did not exist at the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of EGGERSMANN in writing, EGGERSMANN will be released from his liability.

3. The customer is obliged vis-à-vis EGGERSMANN to **examine or to have examined** every single delivery comprehensively for any discoverable or typical lack of conformity with the contract and moreover as required by law.

4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered, made public and in legal force in Germany and prevent the usual use of the goods in Germany. Regardless of the stipulation established in sentence 1, title to the goods shall be deemed not to be defective to the extent that the legal

regulations applicable at the place of business of the customer do not prevent the usual use of the goods.

5. The **notice** of any lack of conformity with the contract and any deficiency in title has to be made in writing and directly to EGGERSMANN and to be formulated in such a precise manner as to enable EGGERSMANN to effect remedy measures without need for further inquiries at the customer and to secure claims against EGGERSMANN's suppliers and moreover as required by law, in particular with regard to the time requirements. EGGERSMANN's employees, commercial agents or other sales intermediaries are not authorised to accept notices outside EGGERSMANN's premises or to make any statements concerning lack of conformity with the contract or of title and its consequences.

6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. In the event of **notice not having been properly given**, the customer may only rely on remedies if EGGERSMANN has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by EGGERSMANN as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by EGGERSMANN of the requirement of proper notice.

7. The customer is **not entitled to remedies** for delivery of non-conforming goods or goods with a deficiency in title, insofar as the customer is liable vis-à-vis third parties for conditions of the goods or their fitness for a use which are not subject of the agreement with EGGERSMANN, or if the customer's claim is based on foreign law not in force in Germany.

8. To the extent that the customer in accordance with the terms of these International Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, he is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of substitute goods or repair of EGGERSMANN or to reduce the price for the goods**. The reduction of the price for the goods is limited to the damages suffered by the customer. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, EGGERSMANN is always entitled in accordance with the provision in section III.-8. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving him a credit note of an appropriate amount.

9. In case of newly manufactured machines, the warranty period amounts to either one thousand (1000) operating hours or twelve (12) months, whichever date is reached earlier. The limitation period starts when the machine is put into operation by EGGERSMANN or when EGGERSMANN gives its written consent to the putting into operation. If it is not planned that EGGERSMANN puts the machine into operation or the buyer fails to put the machine into operation without a fault by EGGERSMANN or the buyer is in default of acceptance of the putting into

operation, the warranty period terminates at the latest after thirteen (13) months after the passing of the risk. Delivery of substitute goods or repair does not lead to a re-start of the limitation periods. Replaced parts pass into the property of BACKUS.

10. If the customer buys spare parts or other parts, the warranty period amounts to twelve (12) months as of the passing of the risk.

#### **VI. Avoidance of the Contract**

1. The **customer** is entitled to **declare the contract avoided**, if the respective applicable legal requirements are complied with, after he has threatened EGGERSMANN with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time in writing and to EGGERSMANN directly.

2. Without prejudice to his continuing legal rights, **EGGERSMANN** is entitled to avoid the contract in whole or in part if the customer objects to the application of these International Conditions of Sale, or if insolvency proceedings relating to the assets of the customer are applied for. Likewise EGGERSMANN is entitled to avoid the contract after prior warning if the customer does not furnish EGGERSMANN with the data necessary to apply for customs formalities in due time, if the customer without providing a justifiable reason does not meet fundamental obligations due towards EGGERSMANN or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer is reduced on grounds for which EGGERSMANN is not responsible.

#### **VII. Damages**

1. Without waiving the legal requirements, **EGGERSMANN** is only obliged to **pay damages** due to the violation of obligations resulting from the contract with the customer, the contractual negotiations carried on with the customer or the business relation with the customer in accordance with the following provisions:

a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.

b) **EGGERSMANN is not liable** for the conduct of suppliers, subcontractors, carriers or freight-forwarders or for damages to which the customer has contributed. EGGERSMANN is not liable for any loss which occurs as a consequence of the use of the goods beyond the applications specified by EGGERSMANN or under conditions of use other than those set by EGGERSMANN. Neither is EGGERSMANN liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or

chemical processes or comparable circumstances and which cannot be controlled by EGGERSMANN with reasonable means. Moreover, **EGGERSMANN is only liable** to the extent that the customer proves that the executive bodies or members of staff of EGGERSMANN have deliberately or negligently breached contractual obligations owed to the customer.

c) In the event of liability EGGERSMANN will compensate within the limits of lit. d) the **losses** of the customer to the extent that the customer proves that he has suffered an unavoidable loss caused by the breach of obligations owed to the customer by EGGERSMANN and **foreseeable** to EGGERSMANN, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.

d) EGGERSMANN is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0.5 per cent for each full week of delay, up to a maximum of 5 per cent, and in case of remedies because of delivery of non-conforming goods and/or goods with a deficiency in title limited to the order value or, in case of delivery of various goods, limited to the value of the goods affected. However, this subparagraph does not apply to injury of life, body or health, to fraudulent concealment of the non-conformity or deficiency in title of the goods and to other breaches of contractual obligations due to intentional harm or gross negligence.

e) For breach of contractual, pre-contractual and/or obligations resulting from the business relation owed to the customer, EGGERSMANN is obliged to pay damages exclusively in accordance with the provisions of these International Conditions of Sale. Any recourse to **concurrent bases of claim**, in particular of a non-contractual nature, is excluded. Equally excluded is any recourse against EGGERSMANN's company organs, personnel, representatives and/or those employed by EGGERSMANN in the performance of his obligations on grounds of breach of contractual obligations owed by EGGERSMANN.

f) Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six (6) months** beginning with the rejection of the claim for damages by EGGERSMANN.

2. Irrespective of continuing legal or contractual claims, the **customer** is obliged to pay **damages** to EGGERSMANN as follows:

a) In the event of **delay in payment**, the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as (without evidence being necessary) interest at the rate applicable in 47479 Ibbenbüren/Germany for unsecured short-term loans in the agreed currency, at least however interest at 8 per-cent points over the base rate of the German Federal Bank (Deutsche Bundesbank).

b) In the case of a failure to take delivery of the goods by the customer or of seriously **late taking delivery** of the goods by the customer, EGGERSMANN is entitled

to claim damages without evidence being necessary of up to 15 per cent of the value of the goods to be delivered.

3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in his commercial relationships with his clients obliged to **limit his liability** both in principle and in amount.

#### **VIII. Other Provisions**

1. **Title of the goods** that have been delivered **remains with EGGERSMANN** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-9. is not affected by the reservation of title. The customer shall take any measure necessary according to the applicable law to secure the reservation of title.

2. The customer shall, without any demand being necessary, inform EGGERSMANN in writing if EGGERSMANN has to observe any particular duties of reporting or registration or providing information or prior notification or **retaining documents** or any other **requirements for access to market**, under the provisions in force in the customer's country or in the country where the goods are to be used. Moreover, the customer will **monitor the delivered goods** in the market and inform EGGERSMANN directly and in writing of any concern that the goods might pose a risk to third parties.

3. Without prejudice to EGGERSMANN's continuing claims, the customer will indemnify EGGERSMANN without limit against all claims of third parties which are brought against EGGERSMANN on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer or other third parties without express written consent of EGGERSMANN. In particular, the indemnity also includes the reimbursement for expenses incurred by EGGERSMANN and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.

4. In the case of late payment by the customer, without prejudice to EGGERSMANN's continuing claims, EGGERSMANN is entitled unilaterally to amend the contract by reducing the contractual obligations of the customer and of EGGERSMANN. The object of the **reduction of the contractual obligations** are solely those performances of the customer and of EGGERSMANN not yet effected at the moment of reduction of the contractual obligations and can only be declared with the consequence that the customer as well as EGGERSMANN thereby have complied with their contractual obligations resulting from the contract and no more obligations to perform further exist. The reduction does not affect the performances already effected and any remedies EGGERSMANN may be entitled to.

5. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by EGGERSMANN in a material or electronic form, the latter reserves all

proprietary rights, copyrights, other industrial property rights as well as know-how rights.

6. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

7. The customer has a non-exclusive right to use the **software** delivered with the goods. The use of the software independently of the delivered goods or the passing on of the software to third parties is not permitted.

8. The use of machines delivered by EGGERSMANN is only permissible with EGGERSMANN's **electronic control system** and with the hardware and software components provided by EGGERSMANN. EGGERSMANN takes no responsibility for the consequences of customer interference with the electronic control system or the security devices.

#### **IX. General Basis of Contracts**

1. The **place of delivery** results from section III.-5. of these International Conditions of Sale and applies likewise to the delivery of substitute goods or the repair of delivered goods. The **place of payment and performance** for all the rest of obligations arising from the legal relationship between EGGERSMANN and the customer is 47479 Ibbenbüren/Germany. These provisions also apply if EGGERSMANN assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.

2. The United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version governs the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.

3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the

contractual **rights and obligations of the parties**, also including the liability for death or personal injury caused by the goods to any person and breach of pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Subject to differing provisions in these International Conditions of Sale, the rest of the legal relationship between the parties is governed by the Swiss Code of Obligations.

4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these International Conditions of Sale apply, including their validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship with the customer shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the Swiss Rules of International **Arbitration** (Swiss Rules) in force on the date when the Notice of Arbitration is received in accordance with these Rules. The tribunal shall consist of three (3) arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to € 250.000, there shall be one (1) arbitrator appointed according to the Swiss Rules of International Arbitration. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. The competence of the Arbitral Tribunal excludes especially every statutory competence, which is provided by reason of a personal or substantive relation. If this arbitration clause is ineffective or ceases to be effective, the exclusive local and international jurisdiction of the courts which have jurisdiction for 47479 Ibbenbüren/Germany is agreed for all disputes instead. Instead of bringing an action before the arbitral tribunal and irrespective of any ineffectiveness of the arbitration clause, EGGERSMANN is also entitled to bring an action before the State Court which has jurisdiction for 47479 Ibbenbüren/Germany or the State Court of the customer's place of business, or any national court with jurisdiction according to domestic or foreign law.

5. If provisions of these International Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision