

General Terms and Conditions of European Aerosols GmbH

Updated in November 2021

1. Area of Application

1.1.

All deliveries and services of European Aerosols GmbH are rendered exclusively on the basis of these general terms and conditions. These terms and conditions apply, if the buyer is entrepreneur in the sense of § 14 BGB, a legal entity under public law or a fund under public law.

1.2.

The application of deviating conditions is refused. These terms and conditions are valid for all contracts made in the future.

2. Offers

Offers made by European Aerosols GmbH are not binding. They are to be understood as a request to the Client, to submit European Aerosols GmbH an offer to buy.

3. Pricing

3.1.

All prices are to be understood except packaging and without VAT. VAT will be charged separately according to the applicable tax laws.

3.2.

If the pricing of the delivery has been agreed upon on the basis of a price list, then the price list at the moment of the dispatch is to be understood as agreed. If this leads to an increase of the price, the Client is entitled to cancel the contract by giving notice to European Aerosols GmbH within 14 days after notification of the price increase.

3.3.

European Aerosols GmbH is entitled to increase the prices adequately if after the conclusion of the contract rising costs particularly due to wage increases or increases in the prices of raw materials occur. In this case the buyer is entitled to cancel the contract within 14 days after notification of the price increase.

4. Delivery

4.1.

Delivery dates or deadlines specified by European Aerosols GmbH are at all times estimates and non-binding. A fixed time for delivery can only be agreed upon explicitly.

4.2.

European Aerosols GmbH is entitled to partial delivery or partial service within the stipulated delivery period, if such delivery is not unreasonable for the customer.

4.3.

If the Client falls behind the scheduled call off order or the scheduled take-over of the delivery, European Aerosols GmbH is entitled, to store the goods at the costs of the Client.

5. Shipment

5.1.

Shipment is rendered, if no explicit agreement with the Client is made, ex works.

5.2.

If the delivery of the goods is effected in or on returnable units, for instance on pallets, hobbocks, cans etc., the Client is responsible for the return of the returnable unit. The liability is limited to the cost price from European Aerosols GmbH to replace the returnable unit. The Client is liable only for the return of suitable returnable units. The price for the return is enclosed in the price for the goods agreed upon.

6. Retention of Title

6.1.

Title to the goods delivered shall not pass to Client before the purchase price has been paid in full.

6.2.

In case the Client has paid the purchase price for the goods delivered but not yet completely fulfilled other debts arising out of his business relationship with European Aerosols GmbH, European Aerosols GmbH retains, in addition, title to the goods delivered until all such outstanding debts have been completely paid.

6.3.

In the event Client processes the goods delivered by European Aerosols GmbH, European Aerosols GmbH shall be considered as manufacturer and shall directly acquire title to the newly produced goods. If the processing involves other materials, European Aerosols GmbH shall directly acquire joint title to the newly produced goods in the proportion of the invoice value of the goods delivered by European Aerosols GmbH to the invoice value of the other materials.

6.4.

If the goods delivered by European Aerosols GmbH are combined or blended with material owned by Client, which has to be considered as main material, it is deemed to be agreed that the Client transfers to European Aerosols GmbH the joint title to such main material in the proportion of the invoice value of the goods delivered by European Aerosols GmbH to the invoice value, or, if the invoice value cannot be determined, to the market value of the main material.

6.5.

The Client may dispose in the ordinary course of business of the goods owned by European Aerosols GmbH, provided that Client meets its obligations in respect of European Aerosols GmbH in due time. Client already assigns to European Aerosols GmbH all claims in connection with the sale of goods to which European Aerosols GmbH reserves the right of retention of title when concluding the sales agreement with European Aerosols GmbH. As far as European Aerosols GmbH has acquired a joint title in the case of processing, combining or blending, such assignment to European Aerosols GmbH takes place in the proportion of the value of the goods delivered by European Aerosols GmbH with retention of title to the value of the goods of third parties with retention of title.

6.6.

At the request of European Aerosols GmbH Client shall provide all necessary information on the inventory of goods owned by European Aerosols GmbH and on claims assigned to European Aerosols GmbH. Furthermore, at the request of European Aerosols GmbH, Client shall identify on the packaging European Aerosols GmbH as holder of the title to the goods.

6.7.

In the event of late payment by Client, European Aerosols GmbH is entitled to demand temporary surrender of the goods owned by European Aerosols GmbH at Buyers expense and to revoke the permission of Client to dispose of the goods in the ordinary course of business.

7. Force Majeure

To the extent any incident or circumstance beyond the control of European Aerosols GmbH reduces the availability of goods from plants, from which European Aerosols GmbH receives the goods, such that European Aerosols GmbH cannot fulfill its obligations under a contract made, taking into account on the pro rata basis other supply obligations, European Aerosols GmbH shall be relieved from its obligations under the contract to the extent European Aerosols GmbH is prevented from performing such obligations and shall have no obligation to procure goods from other sources.

This is also valid if and to the extent such incident or circumstance renders the contractual performance commercially useless to European Aerosols GmbH over a long period or occurs in the business of suppliers of European Aerosols GmbH. In such case European Aerosols GmbH has a claim to adapt the commercial basis of the contract.

8. Liability

8.1.

If European Aerosols GmbH violates fundamental contractual obligations, i. e. obligations which are of crucial nature for the performance of the contract and the observance of which the contractual partner regularly relies and may rely on, by simple negligence, European Aerosols GmbHs liability shall be limited to the compensation of typical, foreseeable losses. The violation of non-fundamental contractual obligations by simple negligence renders European Aerosols GmbH not liable.

8.2.

The limitations of liability according to section 8.1. shall not apply

- a) to damages due to injuries of life, body or health, caused by negligence on the part of European Aerosols GmbH or willfull misconduct or negligence of a legal representative or a vicarious agent of European Aerosols GmbH;
- b) in cases of malicious behavior on the part of European Aerosols GmbH;
- c) if European Aerosols GmbH has guaranteed the quality of a product;
- d) to claims of the Client which fall under the law on product liability.

9. Statute of Limitation

9.1.

The limitation period for claims due to material and legal defects shall be one year from the receipt of the goods, or, if an acceptance has been agreed upon, from the time of the acceptance of the goods.

9.2.

The limitation period for damage claims based on contract and / or tort shall be one year starting from the statutory begin of the limitation period.

9.3.

Contrary to sections 9.1. and 9.2. the statutory limitation period shall apply in the following basis:

- a) Claims in relation to a building or in relation to a product that has been used for a building and has caused the defect of the building;
- b) if the defect consists in a real right of a third party or a right registered in the land register;
- c) in cases of special legal provisions of the limitation period;
- d) in cases of willful misconduct and gross negligence;
- e) in cases listed in section 8.2. lit. a) – d).

10. Set off, Right of Retention

10.1.

The Client may only set off against the claims of European Aerosols GmbH or exercise a right of retention if the claims of the Client are undisputed or have been legally adjudicated upon by a court.

10.2.

If the Client is in default of payment, European Aerosols GmbH may revoke agreed credit periods and may demand for further deliveries the provision of a sufficient security.

11. Venue, applicable law

11.1.

Venue for all disputes arising out or in connection to the legal relationship between European Aerosols GmbH and the Client is the competent court at the seat of European Aerosols GmbH. European Aerosols GmbH may sue the Client at its seat or its principal place of business.

11.2.

The contractual relationship shall be governed by the laws of Germany. The application of the rules of international conflicts of laws of Germany and the provisions of the United Nations Convention on Contracts for the International Sale of Goods from April, 11th 1980 (CISG) is excluded.