

EDEN≡DESIGN

EXCLUSIVE METAL SURFACES

General Conditions for the supply of products and services Eden Design GmbH

§ 1 General

The scope of products and/or services (hereinafter referred to as “Products” or “Supplies”) shall be determined by these written declarations (hereinafter referred to as “general terms”) to both parties. Eden Design (hereinafter also referred to as “Supplier”) explicitly contradicts the application of the Purchaser’s General terms and conditions. These shall apply only if and when expressly accepted by Eden Design in writing. These general terms shall be applicable also for future contracts between Eden Design and the Purchaser even if their application is not declared again in each case.

§ 2 Blueprints

- (1) If the Purchaser provides us with blueprints, design examples or tools, drawings or models (hereinafter referred to as “*material*”) all of these items have to be sent to Eden Design at the expense of the Purchaser. The material will be stored at Eden Design during the order processing to the exclusion of any liability. If Eden Design does not need the material for the order processing, they will be sent back to the Purchaser at his expenses resp. Eden Design will notice readiness for collection. If the Purchaser does not collect the material within one year after notice of readiness for collection, Eden Design is no longer obliged to store the material and is entitled to send it back to the Purchaser at his expenses.
- (2) If the Purchaser provides drawings or any other data for *material* that shall be produced or supplied by Eden Design and that is needed for the order processing, the Purchaser is liable for the correctness of his data. If material has to be re-produced or re-supplied because of incorrect data, the reproducing or replacement will be at the expense of the Purchaser.
- (3) If, in the course of the order processing, Eden Design produces and/or supplies *material*, Eden Design owns the *material* unless otherwise provided. Property rights also remain at Eden Design if the Purchaser is charged with the producing or supplying costs.

§ 3 Offers, delivery, delivery time

- (1) An order corresponding to Sec. 145 German Civil Law Code (BGB) (“offer”) can be accepted by Eden Design within four weeks. The contract is concluded with the confirmation by Eden Design.
- (2) Partial supplies shall be allowed, unless they are unreasonable to accept for the Purchaser.
- (3) Times set for supplies are not binding. It does not begin before all documents to be supplied by the Purchaser, necessary permits and releases, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply if Eden Design is responsible for the delay.
- (4) Delivery is on time by giving notice of readiness of dispatch or when the Supplies leave Eden Design on time. Delivery is to be on time if the dispatch remains undone on

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reasons Eden Design is not responsible for.

- (5) If dispatch or collection is delayed at the Purchaser's request or at his default by more than one month after notice of readiness of dispatch was given, the Purchaser may be charged with, for every month commenced, storage costs of 0,5 % of the price of the items of the supply, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.
- (6) Corresponding to the provisions in Sec. 280 ff. German Civil Law Code Eden Design may claim further damages for delay.
- (7) Should Eden Design be in delay with deliveries, any claims for damage for delay are limited to the typical, foreseeable damage. In particular, the Purchaser is not entitled to claim a loss of profit. If, at that time, Eden Design had not yet begun to execute the order, the Purchaser may resign from the contract after setting an adequate time limit to Eden Design.

§ 4 Standing order

If the parties agree about a standing order, the Purchaser shall define the monthly quantity to be delivered by Eden Design for each month in advance. If the Purchaser fails to release the monthly delivery or if he does not specify the products and the quantity in advance, Eden Design shall be entitled to deliver at its own discretion or to claim the damage for the Purchaser's delay according to the provisions in Sec. 280 ff. German Civil Law Code or to resign from the remaining part of the contract.

§ 5 Weight, dimensions, quantity

- (1) Weights and dimensions in our drawings and documents are non-binding and subject to modifications. Short-weights or surplus-weights shall not entitle the Purchaser to claim or to reduce the price as long as the deviations are customary.
- (2) Quantity-modifications at small parts up to 2 % more or less than ordered shall be allowed.
- (3) Invoices are made out on the basis of our weight, dimension and quantity data.
- (4) Bending works are subject to a tolerance of 1 mm +/- per side.

§ 6 Delivery, acceptance, transfer of risk

- (1) The risk shall be transferred at the time of delivery/with acceptance at the site of Eden Design, Iserlohn.
- (2) The parties may agree that Eden Design delivers the products by freight. The means of transportation are at Edens Design's discretion.
- (3) In the case of para. 2 of this article, the risk shall pass when handing over the products to the carrier, however at least when the products leave Eden Design.
- (4) The parties may agree that if the Purchaser accepts a design-blueprint on the components (drawing true to scale or coating before etching and/or further processing),

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this shall be the partly-/design-acceptance and shall be a final acceptance so far. The design is to be considered as accepted if the Purchaser does not accept after notice of readiness of partly-/design-acceptance by Eden Design.

§ 7 Wagerworks

Eden Design is not obliged to indemnify compensation for waste while executing Commissioned work. This shall not apply if Eden Design does not handle the provided material adequately.

§ 8 Packing, safety device

- (1) Eden Design shall pack the supplies at its discretion suitable to the means of transportation. At our request packing material is to be sent back free of charge. If the packing material is re-usable, Eden Design will give credit advice to the amount of 2/3 of the charged price.
- (2) If our supplies are covered with a protective foil, this foil has to be removed latest 6 weeks after delivery.

§ 9 Prices, terms of payment

- (1) Prices shall be ex works, DDU (delivery duty unpaid) and exclude packaging; value added tax shall be added at the then applicable rate. If a price is not agreed, Eden Design will charge prices valid at the delivery date.
- (2) The Purchaser shall make all payments for products within thirty (30) days from the date of invoice. In case of delay in payment by the Purchaser, Eden Design shall have the right to charge an interest of (5 - FIVE) percent per year on each delayed payment.
- (3) If there is a considerable cost-increase during the time from the order to delivery, Eden Design shall be entitled to claim an appropriate adjustment of the price for the supplies. This is the case if the cost-increase (for material, salary etc.) causes a price difference of 10 % or more in comparison to the agreed price. If the parties disagree about the adjustment, both parties may resign from the contract. The adjustment may also lead to a price reduction if there is a considerable lowering of costs.
- (4) If payment is made by letter of credit (LC), Eden Design provides the formalities of the LC. The Purchaser is charged with the costs for the LC. If the delivery is delayed without responsibility of Eden Design the Purchaser shall prolong the LC. Time of prolongation is to be defined by Eden Design. Additional expenses shall be paid by the Purchaser.
- (5) If, after ordering, Eden Design notes that the Purchaser has no more or bad economic capacity or in case of delayed payments, Eden Design shall be entitled to retain supplies until the Purchaser has made full payment or has given a deposit.
- (6) The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.

§ 10 Warranty

- (1) The Purchaser shall notify defects to Eden Design in writing and without undue delay

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(according to Sec. 377 German Code of Commerce (HGB)). If the defects are apparently, the Purchaser shall give the notice without undue delay, latest 10 days after receiving the supplies. If the defects are latent, the notice shall be given without undue delay but latest 10 days after discovery. Any work or processing with the defect item has to be stopped immediately. Otherwise the Purchaser will lose any warranty right.

- (2) Claims based on defects are subject to a limitation period of 6 months. This provision shall not apply where longer periods are provided by law according to Sec. 438 para. 1 No. 2, Sec. 479 para. 1 and Sec. 634 a German Civil Law Code (BGB).
- (3) All supplies where a defect becomes apparent within the limitation period shall, at the discretion of Eden Design, be repaired or replaced at Eden Design's expense. In advance, Eden Design shall be given opportunity to investigate the claimed defect to ascertain that it is a defect subject to warranty. Eden Design shall then be given appropriate opportunity and reasonable time for repairing or replacing the defect item. Should Eden Design refuse or fail to fulfil his warranty obligation as specified in para.3 above, or if fulfilment of this warranty obligation would be unreasonable, the Purchaser shall be entitled to reduce the price or to resign from the contract.
- (4) The purchaser may not claim any damages in the following cases:
 - Changing in the material because of the typical material property concerning non-ferrous heavy metal
 - If the Purchaser orders the application of material and/or metal against our requirements
 - Common abrasion
 - Improper treatment of the products by the Purchaser
 - Inadequate overstraining
- (5) For varnish works and varnish sealing works we give warranty to the scope of the directives of the varnish producers.
- (6) If the Purchaser fails to handle the products according to our usage and maintenance requirements, he shall be not entitled to claim any warranty rights.

§ 11 Claims for damage, liquidated damage.

- (1) Any claims for damage and reimbursement of expenses the Purchaser may have (hereinafter referred to as "claims of damage"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
- (2) The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act (Produkthaftungsgesetz), in the case of intent, gross negligence, injury of life, body or health, or breach of a fundamental duty of the contract ("material breach of contract"). However, claims of damage arising from a breach of fundamental duty of the contract shall be limited to the foreseeable damage which is intrinsic to the contract.
- (3) In no case the Purchaser is entitled to liquidated damages.

§ 12 Force majeure

If non-observance of the times set is due to force majeure such as mobilization, war,

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rebellion, strike, lockout, defile of material supply or similar events, such time shall be extended accordingly, however no longer than 2 months after the agreed delivery time plus an adequate start-up phase for Eden Design. After this time span both parties shall be entitled to resign from the contract to the exclusion of any claims of damage.

§ 13 Retention of Title

- (1) Products shall remain the property of Eden Design (Retained Goods) until any claim Eden Design has against the Purchaser on account of the business connection has been fulfilled (current account retention). If the combined value of the Supplier's security interest exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser.
- (2) The Purchaser may not pledge the Retained Goods or use them as a security. If the Purchaser resells the Retained Goods to a third party, he assigns his claims against this party to Eden Design in advance according to the value of the Retained Goods.
- (3) If the Purchaser converts or remodels the Retained Goods, Eden Design shall be the producer according to Sec. 950 of the German Civil Law Code (BGB).
- (4) If the Purchaser converts or remodels the Retained Goods together with other items to a "new item" according to Sec. 947, 948 German Civil Law Code, Eden Design shall own the "new item" according to the value of the Retained Goods (joint ownership). This shall also apply if the Purchaser acquires 100 % property by converting or remodelling the Retained Goods according to Sec. 947, 948 German Civil Law Code.
- (5) Should the Purchaser resell the "new item" to a third party, para. 2 of this article shall apply.

§ 14 Intellectual property rights

- (1) All intellectual property rights of our drawings, blueprints, design-examples or models (hereinafter referred to as "blueprints and material") shall in every case remain the exclusive property of Eden Design. Without our prior written consent the Purchaser shall not have the right to provide the blueprints and/or material to any third party. These conditions shall also apply to the Purchaser's blueprints and material to the exclusion that Eden Design may provide the Purchaser's blueprints and material to authorized third parties (sub-suppliers). In case of no conclusion of contract all blueprints and material shall be given back to Eden Design without undue delay.
- (2) The Purchaser may only claim an infringement of intellectual property rights against Eden Design if he announces existing intellectual property rights of blueprints and material in advance.
- (3) It is also an infringement of our intellectual property rights of our blueprints and material if the Purchaser uses the blueprints and/or material with other basic material than Eden Design had proposed in the blueprints and material. The same shall apply if the Purchaser instructs a third party to do these works.

§ 15 Venue and applicable law

If the Purchaser is a businessperson sole venue for all disputes arising directly or indirectly

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out of the contract shall be Eden Design`s place of business, Iserlohn.

Legal relations existing in connection with the contract shall be governed by German substantive law, to the exclusion of the United Nation Convention on Contracts for the International Sale of Goods (CISG).

§ 16 Severability clause

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions.

Eden Design,

February 2010