

# GENERAL SALES, SERVICE, INSTALLATION AND REPAIR CONDITIONS



## 1. SCOPE OF APPLICATION

(1) These General Conditions of Sale, Service, Assembly and Repair (hereafter referred to as: GTC) apply to all contracts with the customers of the company eepos GmbH - hereafter referred to as eepos - except in the case that the customer is a consumer within the meaning of § 13 German Civil Code.

(2) Conflicting or deviating terms and conditions of the customer will not become part of the contract. This also applies if eepos does not expressly contradict or if eepos unconditionally provides or accepts the services despite existing conflicting or deviating terms and conditions of the customer.

(3) These GTC are subordinate and supplementary to different or additional, individually agreed, deviating conditions. These terms and conditions also apply to additional and supplementary orders as well as to all future transactions with eepos, insofar as these are legal transactions of the same or similar kind.

(4) The underlying montages, dismantling, conversions, extensions, servicing, repairs or acceptance operations to be undertaken by eepos, regarding cranes or components, are hereinafter collectively referred to as assembly services or repair work.

## 2. PROCEDURAL REQUIREMENTS/ CONCLUSION OF CONTRACT

(1) Orders and commissions from the customer as well as the orders confirmation made by eepos shall be made in writing. This is valid also for changes to current agreements. Verbal agreements are ineffective.

(2) In order to preserve the written form, the transmission by fax or e-mail is sufficient without the need for a personal name signature or an electronic signature.

(3) All offers from eepos are subject to confirmation and non-binding, unless they are expressly marked as binding or contain an acceptance period. If the customer's order differs from a previous offer from eepos, the customer must particularly indicate the deviations.

(4) Decisive for the scope of the entire content of the contract is the written order confirmation from eepos, as well as these conditions. This also applies if this order confirmation does not contain all the points to which the customer wanted to make an agreement, or if it otherwise deviates from the customer's declarations, e.g. due to deviating general terms and conditions of the customer. Excepting when the customer has submitted objections to the order confirmation.

(5) The eepos company can hand in the written order confirmation in the case of exclusively spare parts orders, generally no longer than 2 weeks or, otherwise, within 4 weeks after the customer's order has been received by eepos. A later order confirmation is considered a new offer.

(6) Guarantees always require a separate guarantee declaration, signed by all contract partners. On behalf of eepos, this must be signed by the managing director or an authorised representative of eepos, at the time the contract is concluded. Employees, agents or other distributors of eepos are not authorised to declare warranties or representations or to provide information on special usability or economic viability of the goods. In particular, catchwords, reference to generally accepted standards, the use of trademarks or quality marks, or the submission of quality marks or samples do not give rise, by themselves, to the assumption of a guarantee or an assurance.

## 3. CUSTOMER DUTIES

(1) In the following cases, the customer is obliged to make an explicit reference to eepos before concluding the contract:

- if the ordered goods are not intended to be exclusively suitable for normal use, or if the goods are used under conditions requiring increased use;
- if the customer requires assembly instructions;
- if the security, material or personnel prerequisites for

the execution of the assembly services or repair work by eepos are not unequivocally secured on the part of the customer, or

- if the goods are used under unusual or special health, safety or environmental risk-related conditions;
- if there are special risks or there is the possibility that atypical damage may occur, or damage of an unusual amount may occur.

(2) The customer must examine every single delivery at the time of delivery, immediately, and in all respects to all identifiable marks as well as typical deviations of qualitative nature, quantitative nature and other kinds, and notify the deviations immediately in writing with an exact description of the type and extent, directly, to eepos; otherwise, the delivery is considered fully accepted. The same applies to installation services or repair work. The employees, as well as the commercial agents or other sales agents of eepos, are not entitled to accept notices of defects or to make statements regarding the guarantee.

(3) The customer shall assist the eepos personnel in carrying out installation services or repair work at its own expense, informing them of existing safety regulations, taking the measures required to protect persons and property, and providing them with comprehensive technical and material assistance.

(4) Without eepos renouncement for any further claims, the Customer shall indemnify eepos without limitation from any third party claims made against eepos under any product liability or similar provisions, to the extent that such liability is based on circumstances such as: the presentation of the product has been made by the customer or other third parties without the express written consent of eepos. The indemnity also includes, in particular, the reimbursement of eepos incurred expenses and is promised by the customer under waiving any further conditions or other objections, in particular waiving the observance of monitoring and recall obligations and waiving the objection of limitation.

(5) Regardless of any further legal or contractual claims of eepos, the customer is obliged to pay eepos the following damages:

- In the case of late payment, the customer will reimburse the legal costs of legal and extrajudicial prosecution and interest in the amount of 9 percentage points above the base rate of the European Central Bank.

- Subject to proof of the customer that damage was not incurred or was incurred only to a significantly lesser extent, eepos is entitled to demand, in case of default of acceptance or in case of agreed, but missing call off of the delivery by the customer, after a reasonable grace period or in the event of termination requested by the customer according to § 648a German Civil Code, compensation for damages amounting to 15% of the respective performance value, without proof.

- If waiting times, times exceeding the assembly or repair time or additional travel times occur during the execution of assembly services or repair work due to circumstances arising from the risk sphere of the customer, the customer must pay eepos the compensatory costs and expenses for damage caused to eepos. For the evaluation of the times, the eepos visible billing rates according to no. 4.2 are valid and applicable.

## 4. PRICES AND PAYMENT

(1) The agreed price for delivered goods shall be the price stated in the written order confirmation. If this information is missing in the order confirmation, the usual price at eepos at the time of delivery applies, alternatively a customer and appropriate price applies.

(2) Assembly services and repair work are calculated based on the time sheets of the employees of eepos at the respective valid billing rates, as stored at <https://www.eepos.de/eeeworld/>. Upon request of this link, the customer will receive on request a link, free of costs, and thus access to eeeworld and knowledge of the billing rates.

(3) eepos may reasonably increase the agreed price with regard to intermediate increases in material, labour or

energy costs if the eepos service is to be provided later than four months after the conclusion of the contract.

(4) Discount agreements require the agreement in each individual case in the written order confirmation and are valid only under the condition of timely and complete payment of all claims of eepos against the customer.

(5) Payments must be made in euros without deductions and free of charge to the bank account specified by eepos. For the timeliness of the payment, unconditional credit on the bank account is decisive. The employees as well as the commercial agents or other sales agents of eepos are not entitled to accept payments.

(6) The eepos company may, in its sole discretion, offset incoming payments against claims existing at the time of payment against the customer by virtue of its own or assigned rights.

(7) The customer can only set off claims of eepos if the counterclaim is legally established or due and undisputed or has been recognised in writing by eepos.

(8) The customer is only entitled to a right of retention of payment or other objections if eepos significantly violated duties and due obligations arising from the same contractual relationship, despite a written warning.

(9) Without waiving any further statutory rights, eepos is particularly entitled to the plea of uncertainty according to § 321 German Civil Code if the customer inadequately satisfies or pays late the obligations to eepos or third parties, or if the limit set by a credit insurer has been or becomes exceeded with the forthcoming delivery. Instead of the objection, eepos can make future, also already confirmed deliveries, dependent on the performance of prepayment. The eepos company is not obligated to continue the services as long as services provided by the customer do not provide an adequate security or avert such objection or could be challenged.

## 5. MATURITIES AND TIME LIMITS

(1) The eepos company may, in individual cases, be entitled to deliver before the agreed delivery date, if this is reasonable for the customer, in particular if the previous delivery does not entail any additional costs.

(2) The eepos company is entitled to pay after the stipulated date if the customer

- does not provide timely delivery of documents, permits or releases by the agreed delivery date;
- the obligations according to 3.1 of these Terms and Conditions are not timely fulfilled, or the measures for the protection of persons and things according to 3.3. are not met on time;
- does not pay the agreed down payments on time;
- other obligations incumbent upon it, which are required for timely delivery, are not met on time.

(3) The eepos company is entitled to pay after the stipulated date if the customer is informed of the deadline and if he is notified of a period for supplementary performance.

(4) The purchase price for delivered goods is due on the date specified in the written order agreement. The price for installation services or repair work is generally due upon invoicing.

(5) Outstanding claims and payment terms are due for payment immediately:

- if the opening of insolvency proceedings is requested over the assets of the customer;
- if the customer has not provided accurate information about his creditworthiness;
- if the customer fails to comply with material obligations due to eepos or to third parties, without being able to demonstrate any justification.

(6) In order for a delay to be considered to exist, without the waiving of any more extensive legal requirements and also in the case of a specified of a delivery timeframe, it shall require a special written request which is submitted to

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eepos immediately when the delivery becomes due, to undertake the contractual performance within an appropriate timeframe.

(7) Agreed periods begin with the date of the written order confirmation from eepos.

## 6. SCOPE OF PERFORMANCE

(1) The eepos company delivers goods taking into account customary tolerances in terms of type, quantity, quality and packaging. If the goods to be delivered cannot be delivered in the condition offered at the time of conclusion of the contract and technical improvements have been made, eepos is entitled to deliver the improved version insofar as this is not unreasonable for the customer.

(2) If the services to be provided by eepos require further specification, eepos shall make the specification taking into account the customer's own interests and those who are deemed to eepos as identifiable and justified.

(3) Performance services carried out by eepos require good operating conditions, especially in terms of personnel and proper maintenance. Warranty periods are subject to a one-shift operation (8 hours).

(4) The eepos company is entitled to make partial deliveries if this is not unreasonable for the customer.

(5) Unless otherwise agreed in the contract, eepos is not obliged to provide, in particular, the following services:

- Provision of planning services,
- Delivery of non-listed accessories,
- Installation of additional protection devices,
- Arranging assembly instructions,
- Assembly of goods not delivered by eepos,
- Establishing compatibility with services or products of other manufacturers,
- Return of packaging material (transport, sales and other packaging), even if the packaging material was separately invoiced.

(6) Third parties not involved in the conclusion of the contract, in particular subcustomers of the customer, are not entitled to demand performance. The receiving responsibility of the customer remains even if he assigns claims to third parties.

## 7. TRANSFER OF RISKS

(1) The risk of goods delivered by eepos, irrespective of whether the goods are transported by eepos, by the customer or by third parties, is also transferred to the customer if the goods are not clearly identified as soon as the loading is started or if the customer does not comply with the obligation to accept the goods. The loading of the goods is one of the duties of the customer. Clauses such as „delivery free at ...“ or clauses of a similar nature only result in a different regulation of the transport costs, but do not change the above rule of risk.

(2) If assembly services or repair work are interrupted or cancelled due to circumstances from the area of risk of the customer or if the customer is in default of acceptance, the risk for the services already provided shall pass to the customer. The same applies, to the extent that assembly services or repair work are lost or deteriorate or become unworkable, as a result of a circumstance which is attributable to the area of risk of the customer.

## 8. COMMISSIONING

(1) The customer is obligated to accept the installation services or repair work of eepos without restriction of the legal regulations, as soon as the assembly achievements and repair work are finished, and the customer has been informed of its termination.

(2) The customer is also obliged to accept eepos installation services or repair work if these are interrupted or become interrupted for reasons that originate in the customer's risk sphere.

(3) The acceptance of the assembly services or repair work is valid at the latest as follows:

- one week after the customer has used the services provided by eepos, or

- two weeks after notification of completion by eepos  
This does not apply if the customer refuses acceptance in advance, citing essential defects.

## 9. WARRANTY

(1) Unless otherwise stipulated by law, eepos' goods and/or assembly services or repair work are defective if they deviate significantly from the type, quantity or quality agreed upon in the written order confirmation. If no condition has been agreed, there is a material defect if the performance deviates considerably from the usual quality or if it is obviously not suitable for normal use.

(2) There is no material defect in the case of model, design or material changes that correspond to recent technical findings.

(3) In particular, eepos is not responsible for the fact that eepos' goods and/or installation work or repair work are suitable for a purpose other than the ordinary use or that it fulfils further expectations of the customer. Anything else applies only insofar as a deviating agreement is expressly made in the written order confirmation.

(4) The warranty is excluded for any deterioration of the goods which occurs after the date of transfer of risk.

(5) The eepos company shall be released from the obligation to provide warranty insofar as the customer, without the consent of eepos itself or third parties, undertakes attempts to remedy the material defects and these are not carried out properly. Likewise, there is no warranty for parts subject to wear, if the defect occurs at the respective part typically before the expiration of the statutory warranty period. In this case, there is no damage.

(6) The delivery of used goods is made under exclusion of any warranty.

## 10. SUBSEQUENT PERFORMANCE

(1) In the case of legitimate complaints, the customer may require, within a reasonable period after notification of a defect attributable to eepos, supplementary performance in accordance with the legal provisions in force.

(2) The eepos company shall bear the expenses necessary for the purpose of supplementary performance, insofar as these do not increase as a result of a change of location or if eepos does not have liability for damages according to the provisions of these GTC.

(3) In the event of supplementary performance, eepos shall reimburse the customer any additional expenses demonstrably incurred as a result of exceeding the deadline, insofar as eepos is liable for damages in accordance with the provisions of these GTC or applicable mandatory legal provisions.

(4) The eepos company is also entitled to several supplementary performance attempts, unless the subsequent performance is unreasonable for the customer.

(5) If the subsequent performance fails definitively, if this is not possible or is not carried out within a reasonable time, the customer is entitled to reduce the price or to withdraw from the contract within a limitation period of four weeks after the expiry of the deadline according to legal provisions.

## 11. WITHDRAWAL FROM CONTRACT

(1) The customer is entitled without limitation of the legal right of termination according to § 648a German Civil Code, under consideration of the relevant legal regulations, to the resignation, if:

- the services due by eepos have become impossible;
- eepos is in default with the fulfilment of contractual obligations and, despite setting a deadline, does not provide the services or
- eepos has otherwise materially breached his obligations based on this contract in such a way that adhering to the contract becomes unreasonable for the customer.

(2) Without giving up further legal rights, eepos is entitled to withdraw from the contract without replacement if:

- the customer objects to the validity of these General Conditions of Sale;
- the special provisions of the sale of consumer goods (§§ 474 ff. German Civil Code) are applied;
- when the opening of insolvency proceedings is requested over the assets of the customer;
- the customer fails to comply with essential obligations that are due to eepos or third parties, without any justification;
- the customer has not provided accurate information about his creditworthiness;
- eepos has not delivered correctly or on time, even if without own fault;
- eepos can no longer ensure the fulfilment of their performance obligations for various reasons, with an amount of funds that is reasonable considering its own justified interests apparent at the time the contract was entered, as well as the agreed return service.

## 12. RIGHT TO COMPENSATION FOR DAMAGES AND DEFECTS

(1) The eepos company is obliged to pay damages only in the context of the contract concluded with the customer as well as non-contractual, without waiving the legal prerequisites, according to the following provisions. These also apply in the case of warranty and default. The following provisions do not apply to liability under the Product Liability Act or for damages resulting from culpable injury to life, limb or health as well as intentional conduct and gross negligent breach of duty.

(2) Compensation for delivery of defective goods and/or faulty installation services or repair work is excluded if the defect is not significant and the resulting damage leads considerably to the breach of duty.

(3) The customer is first and foremost obliged to demand supplementary performance and can only claim damage compensation only owing to any remaining detriment. The customer may demand compensation instead of performance, regardless of compliance with the statutory legal provisions and the provisions of these General Conditions only after he refuses, within a reasonable period after maturity, to award eepos the secondary performance and in the event of a non-performance even after setting a reasonable secondary performance deadline to eepos.

(4) In the case of liability, eepos replaces the proven damage of the customer to the extent that the occurrence of damage and the amount of damage for eepos is foreseeable at the conclusion of the contract as a result of the breach of duty and not preventable by the customer. The customer must notify eepos in writing of any special risks, atypical damage possibilities and unusual amounts of damage before concluding the contract.

(5) The amount of damages for late or non-existent delivery is limited to 0.5% for each full week of delay, up to a maximum of 5%.

(6) If the customer carries out the installation work or repair work himself or let it be carried out by a third party commissioned by him, the operating instructions, assembly instructions and other safety-related information and instructions provided by eepos must be observed. The eepos company is not liable for damages resulting from improper assembly or repair carried out by the customer himself or by third parties commissioned by him.

(7) The above provisions on the liability of eepos also apply to claims of the customer for compensation of expenses as well as for the personal liability of the employees, collaborators, subcontractors, representatives and agents of eepos.

## 13. RETENTION OF OWNERSHIP TITLE

(1) Until the full settlement of all Main and secondary demands of eepos against the customer, incurred for whatever legal reason, including those due in the future, the delivered goods remain the property of eepos. In the event that ongoing billing is made, the extended reservation of

ownership shall apply to the respective balance amount.

(2) The customer is obligated to insure the goods subject to retention of title against theft, damage and destruction and to take all measures necessary to ensure comprehensive retention of ownership title. The customer shall hereby now assign all claims against the insurance carriers to eePOS, for security purposes, in full amount and irrevocably; eePOS shall accept such assignment.

(3) At the request of eePOS, the customer must separately store the goods at their own expense and demarcate them appropriately and mark them as the property of eePOS. During the existence of the retention of ownership title, the customer must grant eePOS employees' access to the goods subject to the retention of title at any time during normal business hours.

(4) If a third party acquires rights to the goods subject to the retention of ownership title during the existence of the retention of title, all claims of the customer against the third party existing at that time with all rights are hereby irrevocably assigned to eePOS as security; eePOS shall accept the assignment. The customer will promptly notify eePOS during the existence of the retention of ownership title if a third-party asserts claims for or rights to the goods which are subject to retention of title or the claims are assigned to eePOS under the provisions on the retention of title. The customer will support eePOS, free of charge, in the legal defense of its interests.

(5) The customer is only entitled to sell the goods subject to the retention of ownership title within the framework of proper business management. He is not entitled to other dispositions, especially by way of transfer of security or pledging. The customer is only authorised to resell if he is not in default of payment.

(6) The customer's claims against buyers to which the customer is entitled as a result of the disposal of the goods which are subject to the retention of title, including all ancillary rights, are hereby assigned, irrevocably and in the full amount, to eePOS, as a security. If the customer accepts the claims arising from a sale in a current account relationship existing with his customers, he hereby assigns to eePOS the current account claims arising after the netting as a precaution, in full and irrevocably. The eePOS company accepts the assignments. However, the customer remains authorised to collect the claims assigned to eePOS in trust for eePOS. This only applies as long as he is not in default of payment.

(7) The customer is not entitled to assign the claims to third parties, unless it is an assignment in the context of a genuine factoring contract. The assignment must be reported to eePOS in writing, immediately, in order to be effective. At the time of the due date of the customer's claim against the factorer, the claim of eePOS against the customer shall also be due for payment. The customer has to keep incoming payments separately and forward them to eePOS without delay until the secured claims of eePOS are fully settled. If the payment is made by bank transfer to the customer's bank, the customer hereby irrevocably assigns to eePOS the claims he is entitled to against his credit institution. If the customer receives bills of exchange for settling the claims against third parties, he hereby irrevocably assigns to eePOS the claims due to him in the case of discounting of the bill of exchange by the bank.

(8) A combination of the goods with soil and land is only temporary. The treatment and processing of the goods takes place for eePOS as a manufacturer in the sense of § 950 German Civil Code, and eePOS acquires the property directly, without eePOS thereby incurring liabilities. If the value of the new item is higher than the value of the item, eePOS acquires the co-ownership of the new item in proportion of the value of the item to the value of the new item.

(9) If the delivered goods are mixed, blended or combined with other objects in such a way that the property of eePOS expires by law, the customer already transfers his property or his coownership of the new object in the above-mentioned relationship, to the eePOS.

(10) eePOS is not obliged to quantify the scope of retention of ownership title for payments unless this is requested.

(11) At the request of the customer, eePOS will release the goods subject to retention of ownership title insofar as the invoice value of the goods exceeds the sum of the outstanding claims by more than 20% and no preferential rights on the goods exist to the benefit of eePOS. The same applies in the event of claims against third parties have taken the place of the goods covered by the retention of ownership title and these are claimed by eePOS in their own name. Incidentally, eePOS will release securities as far as the market price of the securities exceeds the sum of the secured claims by more than 50% plus the value added tax which is applicable during such utilisation, and the customer demands the release.

(12) If insolvency proceedings are instituted for the customer's assets or if the customer fails to meet his obligations due to eePOS actions, without providing a justifiable reason, eePOS may reclaim the goods which are subject to retention of the ownership title without thereby withdrawing from the contract. This does not apply if the insolvency administrator decides to fulfill the contract and the purchase price has been paid.

(13) eePOS is entitled to dispose of the goods subject to the retention of the ownership title, freely, elsewhere, and to satisfy itself of the proceeds if eePOS or the customer has withdrawn from the contract. The customer shall reimburse the expenses for the conclusion of the contract, of the previous contract execution and of the termination of the contract as well as the cost of retrieving the goods and to pay a usage fee of 1% of the value of the goods when used in one-shift operation and in Amount of 2% of the value of the goods when used in multi-shift operation, for each commenced month since the transfer of risk.

#### 14. PERIOD OF DELAY / EXCLUSION PERIOD

(1) Any claims of the customer due to delivery of defective goods and/or inadequate installation performance or repair work by eePOS become statute-barred two years after the beginning of the statutory limitation period. Claims for damages due to intent are unaffected

(2) Measures of subsequent performance do not lead to an extension of the deadline set out in 14 (1) and do not include a new beginning of limitation. A new beginning of the limitation of claims of the customer requires in each case an explicit, written confirmation from eePOS.

(3) Non-contractual claims of the customer against eePOS, which compete with contractual claims, lapse, similarly as the contractual claims, two years after the beginning of the statutory limitation period.

(4) Statutory limitation ends, regardless of further legal regulations, even if the inhibiting negotiations are not conducted consistently. As a rule, it can not be assumed that there will be a continuous negotiation if the negotiations are not continued over four weeks.

#### 15. INTELLECTUAL PROPERTY RIGHTS

(1) The eePOS company reserves all the proprietary rights, copyrights, other industrial property rights and rights of know-how to illustrations, drawings, calculations and other documents provided by eePOS in physical or electronic form, as well as integrated into software. They shall be kept secret from third parties and may only be used to carry out the respective order. Upon completion of the order, they shall be returned to eePOS in full, without any right of retention, without the entitlement to retain any copies or derived works.

(2) The customer has a non-exclusive and non-transferable right to use the software delivered with the goods. The use of the software without connection to the delivered goods as well as the transfer of the software to third parties are not permitted.

#### 16. OTHER PROVISIONS

(1) The place of service, payment and performance for all obligations arising from the legal relations of eePOS with

the customer is Wiehl. Place of performance for assembly services or repair work is the location of the respective action. These regulations also apply if eePOS carries out other services for the customer at another location or in the case of restitution of performances already rendered. Agreements on the cost carry-over do not contain any changes to the above compliance rule.

(2) All legal relationships between eePOS and the customer are governed exclusively by German law and the relevant usage in force in Germany.

(3) Jurisdiction is Gummersbach.

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