

General Terms and Conditions of Sale and Delivery

of EAS Technischer Brandschutz GmbH - effective 05/2020 - Technischer Brandschutz GmbH

§ 1 General / Scope

1. These conditions of sale apply exclusively; conditions of the contractual partner that conflict with or deviate from these conditions of sale do not apply. Deviating conditions of the contractual partner do not apply even if they are contained in a confirmation letter from the contractual partner following our order confirmation and we do not contradict this; our silence is in any case considered a rejection. These terms of sale also apply if we fulfill our contractual obligations in the knowledge of terms of the contractual partner that conflict with or differ from our terms of sale. In the event of contradictions in the previous mutual contractual declarations or letters of confirmation, the contract is concluded by making the delivery or other performance of the contractual partner in any case on our terms of sale.
2. Individual contractual agreements take precedence over these terms and conditions.
3. Unless otherwise stated in the contract or these general terms and conditions of sale, declarations of intent must be made in text form within the meaning of § 126b BGB.
4. These conditions of sale apply exclusively to companies, legal entities under public law or a special fund under public law.
5. Our terms of sale also apply to all future business with the contractual partner.

§ 2 Documents from EAS Technischer Brandschutz GmbH / Confidentiality

1. We reserve the property rights and / or copyrights to illustrations, drawings, calculations, cost estimates and other documents (hereinafter referred to as documents) that we have handed over to the contractual partner.
2. The contractual partner must keep all documents as well as information and facts that we have received from us strictly secret and not make them accessible to third parties insofar as these are neither public nor generally accessible or we have given our consent in writing. There is also no obligation to maintain confidentiality if and to the extent that there are statutory disclosure requirements. In case of doubt, the contractual partner is obliged to maintain confidentiality.
3. All documents according to paragraph 1 may only be used in the context of contract initiation and for the implementation of the respective contractual relationship. If a contractual relationship does not materialize or ends, the documents must be returned to us without being asked.
4. The contractual partner has no right of retention on the documents provided to him under paragraph 1.
5. The obligation to maintain confidentiality continues, even if no contract is concluded or the contractual relationship ends. It ends accordingly under the conditions specified in paragraph 2.

§ 3 Offer from EAS Technischer Brandschutz GmbH - Conclusion of Contract

1. We are bound to an offer made by us to the contractual partner 90 days after the offer date, unless the offer contains a different acceptance period.
2. All offers and cost estimates are non-binding with regard to price and scope of delivery, unless otherwise stated.
3. The offer and order basis for our engineering services are the specifications in our QMF801 specification guide for DIN EN 61439-1-2.
4. If the contractual partner does not accept our offer in writing in due time (§ 126b BGB), it is void. The receipt of the acceptance is crucial for the timely acceptance.
5. In cases in which we have not submitted an offer, contracts are only concluded when we have accepted an order that we have received (= offer from the contractual partner). If the order does not include an acceptance period, we can accept the offer at least 4 weeks after receipt of the order. The contract is concluded with the content of our order confirmation.
6. Our silence on offers, orders, requests or other declarations by the contractual partner is only considered as consent if this has been agreed in writing beforehand.

§ 4 Technical Reservation, DIN EN 61439-1 / -2

1. The subject of the contract is manufactured in accordance with the relevant German or European standards (DIN / EN). We generally perform our services in accordance with DIN EN 61439-1 / -2. The use of other standards (e.g. US standards) requires an express written agreement. If our customer provides engineering services of any kind wholly or partly, we create - also in the case of plan changes - according to DIN EN 61439-1 / -2 only the piece certificate. When placing the order, the customer gives the instruction to carry out any plan changes (e.g. red entries) and already confirms the release and transfer to his plans. The customer remains responsible for the design verification even in the event of changes to the plan. In addition, we create the design verification according to DIN EN 61439-1 / -2 if possible, if the customer provides us with all the necessary technical information in good time. We grant inspection of the test documentation in our company as far as possible.
2. A single wire end marking in the switchgear and controlgear assembly is not included in the offer.
3. Components are labeled with yellow stickers on the mounting plate and on the respective component.

§ 5 Switchgear and Controlgear Assembly as Part of a Machine / System

1. Carrying out a risk analysis and documentation within the meaning of the Machinery Directive 2006/42 / EC for the machine or system by EAS is not part of the contract, but must be provided by the contract partner, insofar as this is necessary for the execution of the contract.
2. If it is necessary for the contractual partner to pass on information / documents as part of the engineering services to be provided by us (e.g. risk analyzes for a machine / system, technical specifications), the contractual partner is obliged to provide them to us free of charge.

§ 6 CE mark / Certifications

1. EAS Technischer Brandschutz GmbH will, as far as legally permissible, provide the contractual items with a CE mark.
2. We would like to point out that we are not considered a manufacturer within the framework of the statutory provisions if the engineering services are provided by the contractual partner (eg circuit diagrams). For this reason, we cannot carry out a CE marking in this case. In this case, we will issue a declaration of conformity for the contractual objects at the request of the contractual partner if the relevant harmonized standards have been complied with in the context of the contractual partner's engineering services.
3. Any other labels and certifications (e.g. EAC, GOST or China Compulsory Certificate (CCC)) of the subject matter of the contract require an express written agreement. If the destination country is a member of the customs union (Russia, Kazakhstan, Belarus), the EAC conformity procedure and the "permission to use" are not part of our scope of services. We can only affix an EAC mark if the customer provides us with the certificate of conformity in the original and a German translation before delivery.
4. Obstacles to delivery / delays due to a lack of proof of conformity do not constitute grounds for claims against EAS.

§ 7 Language

1. Any documents etc. are created in German, other languages require an express agreement.
2. The contract language is German.

§ 8 Provisions

1. We are not responsible for the sales tax exemption for additional goods.
2. Contributions must be delivered to DDP Grünsfeld with our project number. The contractual partner must transmit all information and documents (e.g. dual-use goods (AL, ECCN), HS code, country of origin) for items provided by him to EAS in good time, which are required for export / transfer / import.
3. Active refinement of the supplied goods is not the subject of the contract. We reject the temporary use of additional material.

§ 9 Export

1. The contractual partner has to transmit all information and documents (e.g. dual-use goods (AL, ECCN), HS code, country of origin) for items provided by him to EAS in good time, which are necessary for export / transfer / import are needed. Delays due to export inspections or approval procedures override deadlines and delivery times.
2. The deliveries and services (performance of the contract) are subject to the condition that there are no obstacles to the performance of the contract due to national or international regulations, in particular export control regulations as well as embargoes or other sanctions. In this case, the contractual

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- partner cannot request the delivery of goods from EAS in accordance with their respective national law. The contractual partner is not entitled to a claim for damages.
3. If obstacles arise due to national or international regulations during the execution of the contract, EAS is entitled to invoice the services already rendered to the contractual partner.
 4. If our contractual partner is based in Germany, only our contractual partner is responsible for exporting the contractual item to a third country. In particular, he must fully observe all national and international export regulations. Furthermore, he is obliged to obtain any necessary permits at his own expense.
 5. Additional certificates and declarations of conformity, e.g. SASO, for special country requirements are not part of our performance obligation.

§ 10 Order Changes

1. Order changes or cancellations are only possible with our written consent. In these cases we are entitled to charge cancellation costs of 30% of the net order value for standard systems and 90% for non-standard systems. The contractual partner is entitled to prove that we have incurred no or less damage. Our further claims remain unaffected.
2. Changes to our scope of delivery / services require a written agreement. Any additional costs incurred in this regard are to be borne entirely by the contractual partner. If delivery dates agreed upon are delayed, we are not responsible for this. The delivery times are extended in accordance with the work to be carried out due to the contract change.

§ 11 Exemptions from Contractual Partners

1. Contractual partner will not change our products, in particular he will not change or remove existing warnings about dangers due to improper use of the products. If this obligation is violated, the contractual partner releases us internally from third party product liability claims, unless the contractual partner is not responsible for the error causing the liability.
2. If we are prompted for a product recall or a product warning due to a product defect in the products, or if we consider this to be expedient, the contractual partner will do our best to assist in the measures and support us in this, in particular in determining the required customer data.
3. The contractual partner will immediately inform us in writing about risks that have become known to him when using our products and possible product defects.

§ 12 Prices - Terms of Payment - Offsetting - Right of Retention

1. Unless otherwise contractually agreed, all prices are in EURO. All payments must be made in euros. If payments are not made in euros, all costs and fees incurred for the exchange in euros are to be borne by the contractual partner.
2. All prices are to be paid plus statutory VAT. A possible tax-free delivery does not exist if we do not deliver directly to our contractual partner, but to a third party, so-called serial business. In this case, the client must indicate who is commissioning the transport / dispatch.
3. The offer prices apply to the quantities listed in the offer. We reserve the right to adjust prices if the quantity is changed.
4. As far as possible, the contractual items are loaded onto a truck using the workshop's own hoists. If, due to the dimensions, a separate crane vehicle is required for loading, this will be billed separately.
5. The storage of objects in a container is not an object of the contract and is therefore not included in the price.
6. Our offer price does not include any unloading costs (eg forklift, crane, etc.) at the unloading point. Any costs incurred will be charged.
7. The costs for customs clearance in Germany as well as the related documentation and the certificates of origin and other certified certificates are not included in the offer price. After use, these costs are billed according to documents and actual effort.
8. Also not included are all travel costs such as flight tickets, transfers, taxes, visa fees, overtime and other costs / fees that arise in connection with the trip. After use, these costs are billed according to documents and actual effort.
9. We are entitled to offset and retention rights within the framework of the statutory provisions.
10. The contractual partner is only entitled to set-off rights if his counterclaims have been legally established, are undisputed, have been recognized by us or are based on undisputed defects. A right of retention of the contract partner due to any claims against us is excluded, unless the counterclaim is based on the same contractual relationship or the counterclaim has been legally established, ready for decision or undisputed.

§ 13 Correspondence - Necessary Information

1. The contractual partner must fully indicate our project number on all documents (shipping documents, delivery notes, faxes, e-mail, etc.) which relate to the subject of the contract.
2. If the contract partner does not provide the project number, we are not at fault for delayed processing.

§ 14 Delivery Date - Delivery

1. Delivery dates and delivery periods are only binding if they have been expressly agreed as binding.
2. If delivery dates and delivery periods are not bindingly agreed, the contractual partner is entitled to request that we deliver within a reasonable period of time at the earliest four weeks after a non-binding delivery date or a non-binding delivery period has been exceeded.
3. The beginning of a delivery date / deadline requires clarification of all technical, economic and export law issues.
4. Compliance with our delivery obligation presupposes the timely and proper fulfillment of all obligations of the contractual partner. The exception of the unfulfilled contract remains reserved.
5. Delays in delivery and performance due to force majeure and events that make delivery much more difficult or impossible - e.g. B. strike, lockout, official orders u. a. - Even if they occur at our suppliers, we are not responsible. They entitle us to postpone the delivery or service for the duration of the impediment plus a reasonable start-up time or to withdraw from the contract in whole or in part because of the part not yet fulfilled. If the hindrance lasts longer than three months, the contractual partner is entitled to withdraw from the contract with regard to the unfulfilled part after a reasonable grace period, which must be at least 2 weeks. We will inform the contractual partner of the circumstances mentioned in sentence 1.
6. In the event of a delay in acceptance by the contractual partner, we are entitled to the statutory claims without restrictions. If an action by the contracting partner is required in the production of a work, we can demand appropriate compensation if the contracting party defaults on the failure to do so.
7. The delivery takes place EXW Grünsfeld, Industriestraße 2 (Incoterms 2010). The packaging takes place in foil on an untreated wooden pallet.
8. If we are in arrears with our performance, the contractual partner can demand compensation for each completed week of default of 0.5% of the respective order value of the delayed partial service, but in total no more than 5% of the respective order value of the delayed services if he proves that the delayed performance caused him damage.
9. We are entitled to make partial or early deliveries.
10. The return of the packaging requires a special agreement, insofar as there are deviations from the legal regulations.

§ 15 Contracting Parties' Duty to Provide Information - Right of Termination / Withdrawal

1. We can refuse the performance incumbent upon us if it becomes apparent after the conclusion of the contract that our entitlement to the consideration is endangered by the contractual partner's inefficiency. The right to refuse performance does not apply if the consideration is effected or security is provided for it.
2. We are entitled to determine a reasonable period within which the contractual partner has to effect the consideration in return or to provide security against the performance of his choice. After the unsuccessful expiry of the period, we can withdraw from the contract.
3. There is no need to set a deadline in accordance with Paragraph 2 if the contractual partner has taken an affidavit or the insolvency proceedings have been opened against his assets or an insolvency proceeding have been rejected due to lack of assets.
4. The contractual partner is obliged to inform us immediately if he has given the affidavit or an application has been made to open insolvency proceedings against his assets.
5. Notices of terminations of the contract must be in writing.

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6. If the contractual partner exercises his right of termination in accordance with a contract for work. § 649 BGB, without which we are responsible for, we are entitled to a lump-sum claim (§ 649 S. 2 BGB) in the amount of at least 10% of the net order amount, unless the contractual partner proves that the claim did not arise or less. We reserve the right to claim further damages.

§ 16 Installation and Assembly

Unless otherwise agreed in writing, the following provisions apply to installation and assembly:

1. The contractual partner must take over at his own expense and provide in good time:
 - all earthworks, construction work and other non-branch work, including the necessary specialist and auxiliary staff, building materials and tools,
 - the items and materials required for assembly and commissioning, such as scaffolding, hoists and other devices, fuels and lubricants,
 - energy and water at the point of use including connections, heating and lighting,
 - at the assembly site for storing the contractual objects, equipment, materials, tools, etc., sufficiently large, suitable, dry and lockable rooms and suitable working and recreation rooms for the assembly staff, including the circumstances of adequate sanitary facilities; In addition, the contractual partner has to take the measures to protect our property and the assembly personnel on site, which he would take to protect his own property.
 - protective clothing and protective devices that are required due to special circumstances at the installation site.
2. Before the start of the work, the contract partner must provide the necessary information about the location of concealed electricity, gas, water pipes or similar systems as well as the required static information without being asked.
3. Before the start of the installation or assembly, the supplies and objects required for starting the work must be at the installation or assembly site and all preparatory work before the start of the assembly must have progressed to such an extent that the installation or assembly begins as agreed and is carried out without interruption can. Approaches and the installation or assembly site must be leveled and cleared.
4. If the installation, assembly or commissioning are delayed due to circumstances for which we are not responsible, the contractual partner shall bear the costs for the waiting time and any additional travel required from us or the assembly personnel to an appropriate extent.
5. The contractual partner must immediately certify to us the duration of the assembly staff's working hours and the completion of installation, assembly or commissioning.

§ 17 Defects - Inspection of Defects - Acceptance - Liability for Defects

1. Insofar as quality agreements have been made between the contracting parties, deviations based on the relevant technical standards (e.g. ISO or DIN standards) are permitted and therefore do not constitute defects. Claims for defects do not exist if there is only an insignificant deviation from the agreed quality, if only insignificant impairment of usability, natural wear and tear, or damage that occurs after the transfer of risk due to incorrect or negligent handling, transport damage, excessive use, unsuitable equipment, defective construction work, unsuitable building ground or due to special external influences that are not required by the contract, as well as in the case of non-reproducible software errors. If the purchaser or third parties improperly carry out changes or repair work, there are also no claims for defects for these and the resulting consequences.
2. In the context of a purchase contract, it is a prerequisite for claims for defects that the inspection and notification obligations of § 377 HGB have been properly complied with.
3. The notification of defects must be made in writing.
4. The contractual partner may not refuse to accept deliveries due to minor defects.
5. If there is a contract for work, an acceptance must be carried out. If we request acceptance of the delivery after completion, the contractual partner must carry it out within two weeks. Acceptance is the same if the contractual partner lets the two-week period pass or if the delivery has been put into use - if necessary after the completion of an agreed test phase. If there are any deficiencies during acceptance, we must restore the defect-free condition within a reasonable period of time and to request renewed acceptance. In the event of insignificant defects, the acceptance cannot be refused by the contractual partner; we have to remedy the defect identified within a reasonable period.
6. If the contractual partner claims a defect, we have the right to check whether a defect actually exists. If there is no defect and the contract partner could have recognized this, the contract partner is obliged to reimburse us for the costs incurred in connection with his claim for a defect (e.g. transport, labor, travel expenses).
7. If there is a defect, we are entitled to choose whether to remedy the defect or to deliver / manufacture a new defect-free item.
8. The place of performance for supplementary performance is our registered office.
9. If the supplementary performance fails, the contractual partner is entitled to choose to request withdrawal or a reduction.
10. If the contractual partner has the right to withdraw from the warranty and if he exercises it, the claim for damages instead of the service is excluded.
11. The limitation period for the contractual partner's claims for defects is 1 year. If the defective products have been used for a building in accordance with their normal use and have caused its deficiency or if the building is defective, the limitation period is 5 years. This limitation period also applies to tort claims based on product defects. The limitation period begins with the delivery of the products or with the handing over to the transport person, whereby the earlier point in time is decisive. To avoid misunderstandings, it is clarified that the limitation period does not apply to our unlimited liability for damage from breach of a guarantee or from injury to life, body or health, for intent and gross negligence and for product defects or insofar as we have assumed a procurement risk. Our statement on a defect claim asserted by the contractual partner is not to be regarded as entering into negotiations about the claim or the circumstances justifying the claim, provided that we fully reject the defect claim.
12. Any assurances given by us only represent guarantee promises if they have been expressly designated as such. If this is not the case, these constitute a quality agreement.
13. Transport damage must be reported immediately in writing with the assistance of the freight forwarder commissioned with the delivery.
14. If the customer has transported or had the object of the contract transported, we are not obliged to restore the defect in transport damage and / or subsequent defects, unless the defect is not due to the transport.
15. Contracting party must describe the defects in writing when notifying us.
16. Claims for defects on the part of the contractual partner further presuppose that, in the planning, construction, assembly, completion, connection, installation, commissioning, operation and maintenance of the products, the specifications, notes in the proof of usability, guidelines and operations in the technical information, assembly and operation -, operating instructions and other documents for the individual products are observed, in particular maintenance is properly carried out and proven and recommended components are used.

§ 18 Liability and Claims for Damages

1. Unless otherwise agreed, we, our legal representatives or vicarious agents are liable for damages - especially in the event of negligence in contract negotiations, due to other breaches of duty or due to tortious claims for compensation for property damage in accordance with Section 823 of the German Civil Code (BGB) and indirect or consequential damage, including loss of profit - only limited to the amounts of cover stated in our offer.
2. In the event of a slightly negligent breach of essential contractual obligations, the fulfillment of which enables the proper execution of the contract in the first place and compliance with which the contractual partner can regularly rely on (so-called cardinal obligations), our liability for further claims is limited to the replacement of the foreseeable, contract-typical damage.
3. Apart from intent and gross negligence, we are otherwise not liable for indirect damage or consequential damage, especially for lost profit.
4. The aforementioned limitations of liability do not apply in the event of intent and gross negligence on our part, on the part of a legal representative or one of our vicarious agents; Likewise, the aforementioned limitations of liability do not apply to our liability in accordance with the provisions of the Product Liability Act, in the event of culpable injury to life, limb or health, or in the event of a breach of a guarantee by us, our legal representatives or vicarious agents.

§ 19 Property Rights

1. Unless otherwise agreed, we are obliged to provide the delivery only in the country of the place of delivery free of industrial property rights and copyrights of third parties (hereinafter: property rights). If a third party raises legitimate claims against the contracting party due to the violation of property rights by deliveries we have made and used in accordance with the contract, we shall be liable to the contracting party within the period specified in section 17 (12) as follows:

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2. At our discretion, we will either obtain a right of use for the deliveries in question, change them so that the property right is not violated, or exchange them. If this is not possible for us under reasonable conditions, the contractual partner is entitled to the statutory rights of withdrawal or reduction. Our obligation to pay damages is based on § 18. The above obligations only exist if the contractual partner immediately informs us in writing of the claims asserted by the third party, does not acknowledge an infringement and we reserve all defense measures and settlement negotiations. If the contractual partner ceases to use the delivery for damage reduction or other important reasons, he is obliged to point out to the third party that the cessation of use does not involve acknowledgment of an infringement of property rights.
3. All claims of the contractual partner are excluded insofar as he is responsible for the violation of property rights.
4. Claims of the contractual partner are also excluded insofar as the infringement of property rights is caused by special requirements of the contractual partner, by an application that we could not foresee or by the fact that the delivery is changed by the contractual partner or used together with products not supplied by us.

§ 20 Retention of Title - Provision - Tools from EAS Technischer Brandschutz GmbH

1. The sold and / or delivered goods remain the property of EAS until all claims arising from our business relationship have been fulfilled ("reserved goods"). If reserved goods are processed or processed by the contractual partner, our retention of title extends to the entire new item. In the event of processing, connection or mixing with foreign objects by the contracting partner or by third parties on behalf of the contracting partner, we acquire joint ownership at a fraction which corresponds to the ratio of the invoice value of the reserved goods to the other items used by the contracting partner at the time of processing, connection or mixing corresponds.
2. If the goods subject to retention of title are combined or mixed with a main item of the contracting party or third parties, the contracting party also transfers its rights to the new item to us, whereby we hereby already accept this transfer. If the contracting party combines or mixes the reserved goods with a main item of a third party, he hereby assigns his remuneration claims against the third party to us. We also accept this assignment.
3. The contractual partner is entitled to resell goods subject to retention of title in the ordinary course of business. If the contractual partner sells his goods without receiving the full purchase price in advance or step by step against handing over the corresponding purchase item, he must also agree a retention of title with his customer in accordance with the conditions in this agreement. The contractual partner hereby assigns to us its claims from this resale and the rights from the retention of title agreed by him. We also accept this assignment. At our request, the contractual partner is obliged to notify the customer of the assignment and to provide us with the information and documents necessary to assert the rights of the contractual partner against the customer. The contractual partner is only authorized to collect the claim from the resale despite the assignment as long as he properly fulfills his obligations towards us.
4. If the total value of the security provided to us exceeds our claim by more than 10 percent, we are obliged to release the security of our choice at the request of the contractual partner.
5. The contractual partner is obliged to insure the reserved goods against the usual risks. As a precaution, he already assigns his corresponding claims against the insurance company to us. We accept the assignment.
6. In the event of attachment or any other impairment of the goods subject to retention of title, the contractual partner is obliged to notify us immediately in writing. The contractual partner is liable for costs incurred by us.

§ 21 Prohibition of Assignment

The contractual partner is not entitled to assign claims against us to third parties without our written consent.

§ 22 Reservation Clause

The fulfillment of the contract is subject to the condition that there are no obstacles due to national or international regulations of foreign trade law as well as no embargoes and / or other sanctions and / or necessary letter of invitation are provided by the customer, necessary visas and / or If necessary, work permits and / or necessary permits (e.g. contractors license etc.) are issued and there is no acute danger to life, health or kidnapping for our employees. In this case, the contractual partner cannot request the delivery of goods or fulfillment of the contract from EAS in accordance with their respective national law. The contractual partner is not entitled to a claim for damages.

Any costs incurred for the fulfillment of the contract for visa, letter of invitation, contractors license etc. are billed at cost.

§ 23 Confidentiality

1. The contractual partner is obliged to provide all information that becomes accessible to him, including technical drawings, documents, files or software, knowledge and experience, which are designated as confidential or which, according to other circumstances, are recognizable as business or company secrets, during the term of the contract and for another Keep secret for a period of 5 years from delivery and, unless required for the business relationship or due to mandatory legal provisions, neither to record nor to pass on or exploit.
2. This obligation to maintain secrecy does not apply if the information provided by the contracting party was demonstrably known before the contractual relationship was started, or was generally known or generally accessible before the contractual relationship was started, or if the contractual partner became generally known or became accessible through no fault of the contractual partner. The contractual partner bears the burden of proof for the absence of the confidentiality obligation.
3. The contractual partner will ensure by means of suitable contractual agreements with the employees working for him, freelancers and other agents, including service providers, subcontractors, etc., that these, too, are subject to this confidentiality obligation identical to the contractual partner.

§ 24 Place of Jurisdiction - Place of Performance - Applicable Law

1. The exclusive place of jurisdiction is our registered office in 97947 Grünsfeld, Germany, for all claims arising from or in connection with this contract. However, we are also entitled to sue the contractual partner at his registered office.
2. Arbitration agreements require our express written consent to be effective.
3. The place of performance is our registered office in Grünsfeld.
4. German law applies exclusively to the legal relationships of the parties, excluding international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).