

General Terms and Conditions of Sales and Delivery

of the Company Eschmann Textures International GmbH Dieringhauser Straße 159 51645 Gummersbach

I. Contract Conclusion / Scope of Application

1. These General Terms and Conditions of Sales and Delivery shall be applied for all current and future deliveries and services of the company Eschmann Textures International GmbH.
2. Any deviating customer's Conditions of Purchase or any other Terms and Conditions of Business will not be binding for Eschmann Textures International GmbH, unless expressly confirmed in writing by Eschmann Textures International GmbH.
3. Offers submitted by Eschmann Textures International GmbH are without engagement. Contracts or any other agreements will be binding upon written confirmation by Eschmann Textures International GmbH.

II. Prices

1. The prices mentioned by Eschmann Textures International GmbH are quoted in EURO, net, without VAT and without any possible customs duties on imports or exports. These duties will be invoiced separately in their respective amount.
2. If a period of more than 4 months elapses between the contract conclusion and the agreed delivery date, Eschmann Textures International GmbH shall be entitled to reasonably increase the price provided that the production costs have increased since the contract's conclusion due to a rise in wages, material prices or any other costs in connection with the contract's execution.
3. If no exact price has been stipulated between the customer and Eschmann Textures International GmbH, invoicing by Firma Eschmann Textures International GmbH shall be made on a time and material basis. This invoicing based on time and costs is hereby understood as agreed. This shall apply, in particular, to possible service extensions and/or additional orders ordered by the customer within the scope of an already existing contractual relationship.
4. All prices are ex works or warehouse, packing excluded. Packing shall be invoiced at most favourable conditions. Eschmann Textures International GmbH does not take back any packaging materials. The respective price agreement is based upon normal dispatching conditions as well as normal and unhampered transport conditions.
5. The invoice amount shall be paid within 30 days upon delivery, without deducting any discounts. From the 31st day upon delivery, the customer is defaulting in pursuance of the German Civil Code (BGB) section 286 et seqq. and no other reminder shall be required. From this point in time, default interest of at least 8 per cent above the ECB base rate is due and payable by the customer. Either party can prove any higher or lower damage amount caused by a delay.

III. Delivery and Service Deadlines

1. Delivery dates and deadlines shall be in writing to be legally binding.
 2. The delivery deadlines start with the date of the Order Confirmation by Eschmann Textures International GmbH, but not before all details of the order have been clarified and not before any possibly required domestic or foreign official permits or authorizations have been presented, in particular, not before the customer has presented the necessary moulds, rolls, plates, documents, etc. he has to provide. Delivery deadlines and delivery dates refer to the time of dispatch ex works or warehouse of Eschmann Textures International GmbH. They shall be considered to be kept upon advice of readiness for dispatch, if the goods cannot be dispatched in due time without any fault on the side of Eschmann Textures International GmbH. Without limiting any rights resulting from a customer's default, the delivery deadlines shall be extended accordingly by the period in time corresponding to that period in time the customer is in default of his obligations. This shall also apply to firmly agreed delivery dates.
 3. The afore-mentioned terms and conditions shall also apply, if delivery deadlines or dates have been expressly stipulated in the contract in writing as firmly agreed upon.
 4. If Eschmann Textures International GmbH is in default, the customer shall have the right to withdraw from the contract upon expiration of a reasonable grace period granted by the customer, if the goods have not been advised as ready for being dispatched before the expiration of the grace period. If, due to the default of Eschmann Textures International GmbH, the entire contractual relationship is of no interest and of no use for the customer, a cancellation and termination of the contract shall remain possible.
 5. Any event of force majeure, unforeseeable for and independent of the will of Eschmann Textures International GmbH, impeding, delaying or making impossible the compliance of delivery, shall allow Eschmann Textures International GmbH to extend the delivery or partial delivery by the period during which such unforeseeable events persist, or to withdraw completely or partly from the contract.
- Pursuant to the afore-mentioned, such events and circumstances without the sphere of influence of Eschmann Textures International GmbH include interference and prohibitions by the authorities, industrial disputes and shutdowns, interruptions of work due to political or economic conditions, armed conflicts or mobilization. This shall also apply to any delays in transport and non-performance by any supplier of Eschmann Textures International GmbH caused by these unforeseeable events or circumstances. In the afore-mentioned cases any claims for compensation based on a delay in delivery are excluded.

IV. Passing of the Risk

1. The risk of incidental deterioration and accidental loss of the goods shall pass to the customer upon handover of the subject matter of the contract to the forwarding agent, carrier or to any other person or institution charged with the dispatch.
2. The afore-mentioned passing of the risk shall be applied accordingly, if the customer delays the acceptance.
3. Transport insurances shall be borne by the customer and shall only be effected by Eschmann Textures International GmbH upon explicit written demand of the customer. Eschmann Textures International GmbH shall only be obliged to effect such insurance, if Eschmann Textures International GmbH has reconfirmed the customer's explicit request in writing before the dispatch of the goods.
4. In case of damage during transport, the customer has to ensure that the facts are immediately ascertained by the authorities. The customer has to inspect the goods for any possible transport damage directly upon their delivery and to immediately raise any complaints against the forwarding agent.

V. Acceptance

1. If an acceptance is agreed upon by the contracting parties, this acceptance shall take place at the supplier immediately upon advice that the goods are ready for being accepted. The customer shall bear the costs for this acceptance. Non-personnel costs of the acceptance shall be invoiced based upon the price list of the supplier or Eschmann Textures International GmbH being valid at the time of acceptance.
2. If the acceptance does not take place in due time or completely, Eschmann Textures International GmbH shall be entitled to dispatch the goods without acceptance or to store the goods at customer's risk and expense.

VI. Warranty

1. In case of defects of the goods supplied by Eschmann Textures International GmbH, the latter warrants, at its discretion, to remedy the defect or to provide a gratuitous replacement.
2. If this subsequent fulfilment fails, the customer, at his discretion shall be entitled to reduce the price (reduction) or to withdraw from the contract (withdrawal). However, in case of a minor infringement of the contract, in particular in case of slight defects, the customer shall not have the right to withdraw from the contract.
3. Complaints about defective material and manufacturing defects can only be asserted, if the latter have already existed upon passing of the risk and if they exclude or considerably reduce the capability for the contractual use. In cases where Eschmann Textures International GmbH has stipulated in the contract the specifications for the moulds to be processed or treated with regard to consistence and material, thus made known to the customer, the customer shall be responsible for the adherence to these specifications and for the material properties provided for the processing or treatment of the moulds. Where required, the customer has to confirm the existence of such material properties or, in case of need, to prove them by means of manufacturers' or suppliers' certificates.

Should any defects be caused on the processed or treated object due to missing property features, warranty claims and rights are excluded.

- Eschmann Textures International GmbH does not warrant any defects caused by unsuitable or improper use, faulty assembly or start-up and faulty use by the customer or by a third party. This shall also apply to the consequences of normal wearing, a faulty or negligent operation and maintenance, in particular excessive stress, improper operating agents, insufficient or improper cleaning and maintenance as well as all other chemical or atmospheric influences beyond the risk sphere of Eschmann Textures International GmbH.
4. The customer is obliged to supply mould parts that will be etched completely disassembled. If the customer supplies mould parts to be etched incompletely disassembled, Eschmann Textures International GmbH shall not be responsible for any damage caused during disassembly before etching and/or reassembly after etching. Etching of moulds can result in changes of dimensions or weights of the moulded products, compared to a non-etched condition. Any liability for such changes is excluded.
 5. Complaints regarding obvious defects shall be made in writing within two weeks upon receipt of the goods. Otherwise, all warranty claims are excluded.
- The customer is the sole responsible for providing evidence that his claim is justified, in particular for the defect itself, for the time of defect statement and the punctual sending of the letter of complaint.
- The customer has to inspect the supplied goods for defects immediately upon their receipt.
6. If the customer selects his right to withdraw from the contract upon a failed subsequent fulfilment of a defect of title or a defect as to quality, he shall not be entitled to any further claims for compensation resulting from the defect. If the customer selects his right for compensation upon a failed subsequent fulfilment, the goods will remain at the customer, if reasonable.
- This shall not be applied, if Eschmann Textures International GmbH is accused of fraudulent intent.
7. The warranty period lasts for one year and starts with the delivery of the goods.
 8. Principally, as properties of the goods only the product description of the manufacturer or of Eschmann Textures International GmbH in its details shall be deemed as agreed upon. In contrast to this, public statements, targeting or publicity shall not be considered as contractual properties of the goods.
 9. Eschmann Textures International GmbH does not grant any guarantees in the legal sense. Manufacturer warranties shall remain unaffected hereby.

VII. Retention of Ownership

1. All services under a contract for the performance of works rendered by Eschmann Textures International GmbH are subject to the German Civil Code (BGB) section 948 et seqq. Eschmann Textures International GmbH retains the ownership of the processed or treated object until complete payment of compensation. By processing or treating the object, Eschmann Textures International GmbH shall acquire a co-ownership on the processed or treated object up to the value of the rendered services in pursuance of the German Civil Code (BGB) section 950.
2. This retention of ownership shall exist until the customer has paid in full all open claims out of the ongoing business relationships. The customer shall be obliged to immediately inform Eschmann Textures International GmbH about any access of third parties to the goods, in case of pledge or levy of execution as well as about any possible damage or the loss of the object. The customer shall immediately inform Eschmann Textures International GmbH about any change in his ownership structure and his place of business.
3. Should the object be further processed or joint with other parts not belonging to Eschmann Textures International GmbH, Eschmann Textures International GmbH shall also acquire the co-ownership in this newly created object in proportion to the value of the object supplied or the services rendered by themselves compared to the other processed objects. This shall also apply, if the supplied object is mixed with other objects not belonging to Eschmann Textures International GmbH.
4. In case the supplied object should be damaged or harmed in any way, the customer shall assign already now in advance his claim for indemnification towards the author of damage or a possible insurance company to Eschmann Textures International GmbH. Eschmann Textures International GmbH accepts this assignment.
5. The customer shall not acquire any rights on these tools by payment of portions of costs for tools, films, drafts, etc. These tools remain property of Eschmann Textures International GmbH.

VIII. Liability

1. Claims for damages of the customer based on any breach of duty, particularly following the conventional rules in case of a default in performance of contract, and based on any breach of duty during contract negotiations as well as claims in tort are excluded, unless Eschmann Textures International GmbH can be accused of having committed a grossly negligent or deliberate breach of duty. This shall also apply to the liability for the behaviour of legal representatives or vicarious agents. Accordingly, the same contractual limitation of liability shall apply to the customer.
2. Eschmann Textures International GmbH shall be exempted from any duty to review or check objects supplied by the customer for further processing or treatment, if Eschmann Textures International GmbH has already demanded exact data or specifications resp. within the scope of the contract's conclusion. Eschmann Textures International GmbH shall only be liable, if Eschmann Textures International GmbH does not recognise deliberately or grossly negligently any obvious infeasibility or defect and do not give any further information to the customer.

IX. Industrial Property Rights

If any subject matter of the contract is manufactured based upon customer's specifications (templates, samples, drafts, or similar), the customer shall fully indemnify Eschmann Textures International GmbH from any possible claims of third parties asserted based upon any industrial property rights or any other rights. Eschmann Textures International GmbH shall be entitled to offer such subject matter of the contract to third purchasers. Eschmann Textures International GmbH shall not be liable for the freedom of industrial proprietary rights or any other rights of third parties regarding any other subject matter of the contract.

X. Intellectual Property

Drawings, drafts, sculptures, samples, and other documents belong to the intellectual property of Eschmann Textures International GmbH. They shall not be disclosed to third parties. Any drawings, samples, drafts or other documents attached to offers have to be returned to Eschmann Textures International GmbH.

XI. Supplements/Amendments

Any amendments and supplements must be confirmed in writing by Eschmann Textures International GmbH in order to be valid. This also applies to this requirement of written form itself.

XII. Applicable Law and Place of Fulfilment

1. Place of fulfilment for the obligations of either party shall be the place of business of Eschmann Textures International GmbH where the contract has been concluded.
2. Place of arbitration of either contractual parties shall Gummersbach, Germany, within the legally allowed scope. This shall also apply to any actions regarding exchange and cheque rights. In accordance to this, lawsuits shall be negotiated by the Local Court in Gummersbach or the Regional Court of first instance in Cologne, depending on the amount in dispute.
3. The contractual relationship between the parties shall be governed by German law exclusively.

XIII. Severability Clause

Should any provision of these General Terms and Conditions be declared invalid, such decision shall not affect the validity of any of the other provisions of these General Terms and Conditions. In place of the invalid provision a new provision shall be valid and enforced, which comes as close as possible to the invalid provision from the economic point of view, or, alternatively, to the fullest extent permitted by law.