

General terms and conditions of business, delivery and sale for Eurotramp Trampoline - Kurt Hack GmbH from 01.04.2002

0. Preliminary remark

- a) If the Buyer is a businessman, public-law corporation or public law special fund, the regulations made in Appendix A of the appendix for businessmen 1a) 1j) and 2a) 2e) shall apply instead of the regulations 4i) 4k) and 4a) 4h)
- b) Provisions agreed for individual contracts as part of the contractual relationship shall take precedence over the general terms and conditions of business.

1. General matters, sphere of application

The terms of business, delivery, and sale below shall be expressly recognised when an order is placed with us. This shall also apply if the Orderor sends over or has sent over other terms and conditions of purchase. Other terms and conditions of business shall only be accepted in so far as they conform to our general terms and conditions of business or put into writing by us in a specific case and expressly form the basis of the respective contract or performance.

2. Terms and conditions of delivery

- a) The delivery period shall be calculated as the period of time from order confirmation to dispatch from the factory. We shall deliver within the specified time on the assumption that deliveries to us from our sub-suppliers are delivered properly and on time, as well as the fact that we are not prevented from carrying out production as a result of force majeure (official measures, labour disputes, confiscation, shutdowns of our factory for which we are not to blame, unreasonable shortages in raw materials and similar). In this case we shall inform the Orderor immediately and notify him as to when he can reckon on receiving the delivery. If the Orderor does not object to the new delivery date within 8 days, it shall be regarded as having been agreed. If however the delivery date were to be drawn out for a disproportionate period of time, we too shall as a result be entitled to withdraw from the contract having given notification to this effect. Claims for compensation asserted in the above-named cases shall be ruled out.
- b) If it becomes known following the conclusion of the contract of sale that the financial situation of the other party to the contract has deteriorated, we shall consequently be entitled first of all to refuse performance and then to demand that securities are furnished as a counter-performance within a period of 14 days. If, in the latter case a security is not furnished or provided, or the other party to the contract refuses to render performance subject to the concurrent condition of counter-performance, we shall be entitled to withdraw from the contract.
- c) If it becomes necessary to dispatch goods, they shall be dispatched from the principal place of business of Eurotramp for the account and risk of the Buyer. In the absence of separate agreements, Eurotramp shall be at liberty to choose the transport company as well as the type of transport. In these cases too the risk shall pass over to the Buyer when the goods are dispatched from Eurotramp's principal place of business, if it has been agreed that the consignment is to be delivered freight-free.
- d) The goods delivered by us shall be insured until they are received and a corresponding mark-up shall be charged for this, unless the customer expressly rules this out.
- e) If dispatch is ruled out as a result of circumstances for which the Buyer is to blame, the risk shall pass over to the Buyer as early as the point in time at which the goods are ready for dispatch. The costs incurred as a result of the delay (in particular storage fees) shall be borne by the Buyer. If delivered goods are returned to us for reasons which we are not to blame the Buyer shall bear the risk until we take receive the goods.

3. Prices, when payment is due, terms and conditions of payment, delay in payment right to withdrawal

- a) Our prices shall be understood to be ex Works exclusive of turnover tax. Our prices are not binding in so far as significant changes occur in the prices of raw materials, the cost of power, and wages after this price list is issued which mean that the basis on which the calculations were made no longer applies.
- b) For orders of less than 50.00 Euro we invoice a small order surcharge of 8.00 Euro. The packaging for large trampolines we invoice 26 EUR, for packaging for double mini-tramps we invoice 23.00 EUR.
- c) If our invoices are paid within 10 days we allow a prompt payment discount of 3% (on orders worth 105 Euro and upwards). Otherwise payment is to be made straight net cash within 30 days of the date of invoice. We shall only allow a prompt payment discount if all the preceding invoices have been paid. We shall not be obliged to deliver more consignments before outstanding invoices have been paid in full.
- d) If the Buyer fails to settle our invoices within the period allowed for payment and a payment reminder has been sent out, we shall invoice default interest amounting to 5% above the base rate charged at that time by the Deutsche Bundesbank, no less however than 7.5% on the outstanding sum.
- e) If the Buyer is in default with payment, we shall, if necessary, be entitled to invoice default damages in addition to default interest. The Buyer shall be at liberty to prove that we have not incurred default damages or not for the sum we claim.
- f) With the exception of uncontested accounts or counter claims which have been declared final and absolute in court, the Buyer shall not be allowed to withhold payment or to offset on account of any counter claims which may possibly exist.
- g) All the Supplier's claims against the customer, regardless of whatever legal relationship, will be due for payment immediately if the facts and circumstances occur entitling Eurotramp to withdraw from the contract in accordance with the statutory provisions or contractual provisions.
- h) If it becomes known after the purchase contract is signed that there has been a deterioration in the financial standing of the other party to the contract, we shall consequently initially be entitled to refuse performance and then to render our performance concurrently with counter performance or the provision of securities within a period of 14 days. If in the latter case a security is not furnished or performance conditional upon counter performance is rejected, we shall consequently be entitled to withdraw from the contract.
- i) Eurotramp shall in every case be entitled to withdraw from the contract - if, contrary to the assumption existing before the contract is signed, it turns out that the Buyer is not creditworthy. Lack of creditworthiness can be assumed without more ado in the event that a draft or cheque is protested, the Buyer stops making payments, or if an attempt at enforcement measures on the Buyer are unsuccessful, or if it turns out that the Buyer has made incorrect assumptions on his creditworthiness and that these statements are of considerable significance or if the goods under Eurotramp's retention of title are sold by the Buyer other than by means of a normal business transaction, in particular as a result of a transfer of ownership by way of security or pledging.

4. Reporting damage, warranty, liability for breach of duty, compensation for damages

- a) The Buyer shall be obliged to inspect the delivered goods immediately after they have been delivered for manifest defects and completeness and to notify Eurotramp in writing of these defects of short deliveries without delay, no longer than within a period of two weeks from delivery at the latest. Damage which can be seen from the outside or losses which can be seen in transit must be certified on the waybill with a note to that effect prior to the acceptance of the goods. In addition to this a factual record of the loss or accident is to be demanded from the railways if the goods are transported by rail.
- b) Manifest defects which are notified late, that is, contrary to the above duty shall no longer be accepted by Eurotramp and shall not be covered by the warranty. Defects which are not manifest and which only become apparent over the course of time are to be notified by the Buyer to Eurotramp without delay.
- c) Goods may only be returned to Eurotramp in the event that this becomes necessary should there be a defect, with Eurotramp's consent. Returns sent in without the prior consent of Eurotramp do not have to be accepted by Eurotramp. In this case the Buyer shall bear the costs of returning the goods.

- d) In the event that as a result of a justified notified defect, subsequent fulfilment will be rendered by means of the delivery of a new part, the provisions for the delivery period shall apply accordingly. Eurotramp is to be allowed a period of at least 3 weeks is to be allowed to rectify a defect by means of subsequent improvement.
- e) If there is a defect the Buyer shall have the following rights. In the event that there is a defect, the Buyer shall first of all be entitled to demand subsequent fulfilment from Eurotramp. Eurotramp shall make the decision at its own discretion as whether to deliver a new part or rectify the defect. Above and beyond this, in the event that an attempt at subsequent fulfilment goes wrong, Eurotramp shall be entitled to carry out subsequent fulfilment again within a reasonable period; once more it shall decide the manner in which this subsequent fulfilment is to be carried out. Only if the repeated attempts to remedy a defect fail shall the Buyer be entitled to withdraw from the contract or to reduce the purchase price.
- f) Only in cases of gross negligence or intentional breach of the duty to supply fault-free goods, can the buyer demand compensation for damages or making good expenditure spent in vain. He has to prove the reason for, and the amount of, the damage caused. The same shall also apply to the expenditure spent in vain.
- g) Eurotramp may take back or exchange goods, e.g. those ordered incorrectly, following consultation. The costs incurred for this, (fee for putting goods into storage, freight costs etc.) shall be offset against the credit note. Goods on which the brand mark of the Buyer or the brand mark of another company have been affixed at the request of the Buyer shall not be taken back or exchanged. This shall also apply for special productions. Eurotramp reserves the right to change designs or shape contrary to any descriptions or diagrams there may be in the catalogue as well as to change the scope of the delivery during the delivery period, provided that the object to be purchased is not changed significantly and the changes are reasonable for the Buyer.
- h) The warranty obligation for new things amounts to two years from delivery, and one year from delivery for used things. Once six months from delivery have expired, the Buyer shall have to prove that the defect already existed when the goods were delivered. Warranty obligations shall be excluded if Eurotramp was not informed and asked in time to carry out a subsequent improvement. Natural wear and tear for parts typically suffering from wear and tear (e.g. springs, safety sheets, pillows etc and similar) as well as improper handling of the goods as well if damage is caused intentionally by intent or gross negligence.
- i) Irrespective of the warranty provisions, as well as of other special arrangements made in these provisions, the following shall apply in the event of a breach of duty by Eurotramp: the Buyer shall have to grant Eurotramp a reasonable period of time to rectify the breach of duty which must not be less than 3 weeks. Only once the period allowed for subsequent fulfilment has expired unsuccessfully can the Buyer withdraw from the contract and / or demand compensation for damages.
- j) In so far as there is nothing to the contrary below, the Buyer's claims regardless of whatever legal reason to compensation for damages shall be excluded. In particular we shall not be liable for lost profit, which the Buyer has insured, or other financial loss by the Buyer. Compensation for damages can only be asserted by the Buyer in cases in which Eurotramp has been guilty of gross negligence or intentional breach of duty. In each case the compensation for damages shall be limited to the amount of the purchase price. Moreover, compensation for damages shall not be excluded if the Buyer asserts a claim for compensation for damages on account of non-fulfilment on account of a lack of a warranted quality or if we breach significant contractual duties. Likewise liability under the (German) Product Liability Act and other claims based on the manufacturer's liability shall not be affected.
- k) If the Buyer is solely or mostly responsible for the circumstances which would entitle him to withdraw from the contract or if the circumstance of delay in acceptance by the Buyer has occurred, entitling him to withdraw from the contract, withdrawal from the contract shall be ruled out.

5. Right of retention

The Buyer shall not be entitled to a right of retention other than for goods and services purchased under this contract.

6. Reservation of title

- a) The goods supplied by us shall remain our property until the purchase price including any ancillary costs there may be has been paid in full and all our other claims on the Orderor from delivering the goods have been settled.
- b) The Orderor shall, in the course of proper management, be entitled to resell the goods which are still owned by us. In this case he shall assign to us here and now the account receivable from the sale from the buyer to him.
- c) In so far as we do not reserve the right to collect the accounts receivable from the buyer ourselves, the Orderor shall be entitled to collect the account receivable on trust. The Orderor shall have to keep the sums collected or the incoming sums from the account receivable in safe custody in a separate account and transfer them to us as soon as each payment is received until our accounts receivable have been settled in full. If payment is made by the buyer by means of a bank transfer to a financial institution at which the Orderor holds an account, the Orderor shall assign the account receivable to which he is entitled from his financial institution to us here and now. Should the Orderor have declared or declare to his customers that there is a general assignment of his accounts receivable to a third party, the accounts receivable assigned or to be assigned to us in accordance with the terms and conditions above shall consequently be excluded from this general assignment - and the Orderor shall expressly promise and confirm this. In the event of the seizure of property owned by us or the accounts receivable to which we are entitled, meaning in particular a levy of execution by third parties, the Orderor shall have to notify us without delay and lend us support with all means to safeguard our rights. Should the Orderor stop making payments, he must forward us a list immediately of all the goods subject to our retention of title still available and forward list of the accounts receivable assigned to us to third party debtors together with copies of the invoices.
- d) The buyer shall not acquire title to the new product in accordance with Paragraph 950 of the (German) Civil Code as a result of processing the goods subject to retention of title. Processing shall be undertaken by the Buyer for us without this giving rise to liabilities for us. If the goods subject to retention of title are (re) processed we shall acquire co-ownership of the new goods in proportion to the amount of the invoiced value of the goods subject to retention of title to the new goods. In the event that the goods are resold, the Buyer shall assign the account receivable from the resale to us, and to be more precise for the sum of our co-ownership ratio.

7. Place of fulfilment, place of legal jurisdiction, choice-of-law clause, data protection

- a) The place of fulfilment for delivery and payment shall be Weilheim/Teck, Germany. The place of jurisdiction for both parties to the contract, and also for the payment reminder system shall be the courts which have jurisdiction for Weilheim/Teck, Germany.
- b) This contract shall be governed only by German law, in particular even if consignments are delivered across German borders. The operation of the UN- Law on Sales shall be expressly ruled out.
- c) Eurotramp shall be entitled to process and save personal data relating to customers by computer in compliance with the regulations of the (German) Federal Data Protection Act.

8. Partial validity clause

Should one of the above-named provisions of these terms and conditions of business be void, ineffective, or impractical for any reason, the validity of the remaining provisions of the underlying contract shall not be affected. In such a case the parties shall be obliged to replace the defaulting provision with an agreement which comes closest to the replaced provision.

Appendix A for Buyer as businessman, public-law corporation, or public law special fund

0. Preliminary remarks

If the Buyer is a businessman, public law corporation or public law special fund the regulations in Appendix A 1a) 1j) shall apply notwithstanding the regulations 4i) 4k) and 4a) 4h) notwithstanding the general terms and conditions of business drafted in the first section. Provisions agreed for the individual contracts within the contractual relationship shall take precedence over the general terms and conditions of business. The Buyer's general terms and conditions of business shall only be agreed to the extent that Eurotramp has been informed of them in good time and provided that they do not contradict the provisions in individual contracts as well as the following provisions.

1. Liability for defects

- a) The Buyer shall be obliged to examine the delivered goods straight away once they have been delivered with respect to manifest defects and to notify Eurotramp of these defects in writing straight away, no later however than by the next but one working day following delivery. Defects notified late, that is contrary to the above duty, shall not be taken into consideration by Eurotramp and are excluded from the warranty. Notified defects shall only be recognised as such by the supplier in those cases in which they have been notified in writing. Defects notified to field staff, or carriers or other third parties shall not constitute properly notified defects which have been notified on time.
- b) The return shipment of goods to Eurotramp necessary in the event of a defect may only be sent back to Eurotramp with the consent of Eurotramp. Return shipments returned without the prior consent of Eurotramp do not have to be accepted by Eurotramp. In this case the buyer shall bear the costs for the return shipment.
- c) In the event that a defect is remedied or a spare part is delivered as the result of a justified defect being notified, the provisions for the delivery period shall apply accordingly.
- d) The presence of a defect noted as such and justified defect as a result of effective notification having been made shall not establish any rights for the Buyer.
- e) In the event that there is a defect the Buyer first of all has the right to demand that Eurotramp remedies the defect. The right to choose whether to deliver a new part or to rectify the defect shall be made by Eurotramp at its own discretion.
- f) Above and beyond that, Eurotramp shall be entitled if an attempt to remedy the defect fails, to make another attempt to remedy the defect, once more Eurotramp may choose whether to do so or to supply a new part. Only after the repeated attempt to rectify the defect has failed shall the Buyer be entitled to withdraw from the contract or to reduce the purchase price.
- g) Only in cases of gross negligence or intentional breach of the duty to supply fault-free things can the Buyer demand compensation for damages or the reimbursement of expenditure spent in vain. He shall have to prove the cause and amount of the damages. The same shall apply to the expenditure made in vain.
- h) The warranty obligation for new things amounts to two years and for used things one year from delivery. In any case the Buyer shall have to prove that the defect already existed when the goods were delivered.

2. Liability in the event that Eurotramp is in breach of its duties

- a) Irrespective of the provisions on the warranties as well as other special arrangements made in these provisions the following shall apply in the event of a breach of duty by Eurotramp.
- b) The Buyer shall have to allow Eurotramp a reasonable period of time for subsequent fulfilment to rectify the breach of duty. The period must not be less than 3 weeks. Only after this period has expired without success can the Buyer withdraw from the contract and / or demand compensation for damages.
- c) The Buyer can only assert a claim for compensation for damages in cases of gross negligence or intentional breach of duty by Eurotramp.
- d) The claim for compensation for damages instead of performance (in the event of non-fulfilment shall be limited to § 280 III in connection with § 281 BGB) as well as default damages (§ 280 II in connection with § 286 BGB) shall be limited to the negative interest. Compensation for damages on account of performance not rendered or not rendered as owed (§ 282 BGB) shall be limited to the amount of the purchase price. Compensation for damages instead of performance and in cases in which the duty to render performance (impossibility) is ruled out.
- e) If the Buyer is solely or predominantly responsible for the circumstances which would entitle him to withdraw from the contract, or if the circumstance entitling the Buyer to withdraw from the contract is his delay in acceptance, the Buyer shall not be allowed to withdraw from the contract.