



EFB-Elektronik GmbH

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General Terms and Conditions

- A. Scope of the General Terms and Conditions of Business of **EFB**
- B. Terms and conditions of purchase and ordering
- C. General terms and conditions of service

A. Scope of the General Terms and Conditions of Business of EFB

These Terms and Conditions of Business shall always and exclusively apply to the contractual relationship between **EFB** and its business partners.

They shall also apply to all subsequent business transactions, even if not specifically referred to in individual cases.

Terms and conditions of business of **EFB's** business partners shall not apply; this provision shall apply without the need for express opposition in individual cases.

The place of jurisdiction and performance shall be Bielefeld. German law exclusively applies under exclusion of UN Purchase Law and any other unified standard laws.

B. Terms and conditions of purchase and ordering

B.1.

The following terms shall apply in addition to the statutory provisions to all orders placed by **EFB** with a supplier.

B.2.01

Contracts with suppliers, including their rescission, amendment and termination, as well as call-offs, must be in writing or at least in text form to be effective. Corresponding oral declarations of intent must be confirmed in this form to become effective.

B.2.02

Cost estimates and planning in the period before a contract shall be binding.

B.2.03

Cost estimates and planning made in the period before a contract shall be free of charge.

B.3

Solely the order of **EFB** shall be decisive for the specification of the goods.

B.4.01

The Supplier shall be obliged also to supply all accessory parts, instructions and data sheets required for the proper use of the goods.

B.4.02

The Supplier shall be obliged also to supply operating instructions, warning information and documentation of the goods in all the languages of the EU.

B.4.03

Working plans and design drawings must also be supplied.

B.4.04

The Supplier shall be obliged also to supply a certificate of origin for all goods items that complies with the valid preference regime regulations of the EU at the time of delivery.

B.4.05

The Supplier shall guarantee that the goods comply with the provisions applicable in the EU, especially also REACH, and possess all certificates required in the EU, such as CE and all certificates common in the EU, such as TÜV/GS, EMC, VDE, LMBG.

The supplier only undertakes to supply products that meet the REACH Regulation (EC) No. 1907/2006. If delivered products contain SVHC substances the supplier shall inform the buyer without delay under Article 33 (1). With the publication of the first list of candidates on 28 October 2008 and the subsequent updates, the information obligation applies immediately.

Please refer always to ECHA website:

http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp

The information obligation arises as soon as the limit of 0.1% per - product has been exceeded. If SVHC above 0.1 wt% - in products delivered the supplier shall provide the following details without delay:

- names of the substances,
- the associated EINECS and CAS number(s)
- the specification of a typical concentration in wt.% Or concentration range of the product and part of the whole product.
- Information for safe use

The supplier is obliged to observe the substance restrictions listed in Annex XVII of the REACH Regulation. If new restrictions are adopted, supplier shall inform without delay about the substances in delivered products and thus the marketing ability are limited.

The supplier informed **EFB** immediately if changes take effect:

Changes may relate to the substances

- are included in an expanded list of candidates
- when materials were not unsuccessful or registered to the intended date
- be exchanged and thus the registration status, SVHC - change content, and impurity profiles
- if an application for authorization has been granted or denied, must by law the information to the customer - are thus given to us- (also to all customers who were 12 months previously supplied (Article 31 (9), Article 32 (3)).

B.4.06

If the contractual destination country of the goods is outside of the EU, the goods must comply with the regulations of the destination country.

B.4.07

The Supplier shall provide **EFB** or – on the request of **EFB** a third party named by **EFB** – with a sufficient number of samples of the goods for test purposes before the first contractually due delivery. The Supplier shall bear the costs, including freight, etc. The samples shall become the property of **EFB** upon delivery.

The obligations of the Supplier pursuant to sections B.4.01 to B.4.06 shall also apply to the samples.

B.4.08

The following shall apply to the samples released by **EFB**: the Supplier shall guarantee that the corresponding goods correspond to the released sample.

B.4.09

The following shall apply to samples not released by **EFB**: pursuant to B.4.07, the Supplier must provide new samples.

B.4.10

The packaging used by the Supplier must be environmentally friendly and comply with the requirements for safe transport taking the specific circumstances into account.

B.4.11

In the event of a breach of the provisions pursuant to B.4.04 to B.4.06, the Supplier shall owe lump sum damages of € 5,000.00 for each individual case. In addition, the Supplier shall owe compensation for any test costs, fines and such like incurred on account of the breach and compensation for each additional loss.

B.4.12

The Supplier shall ensure, through labelling of the goods or other suitable measures, that batch tracing is possible and inform **EFB** upon enquiry of the nature and use of the labels.

B.4.13

The Supplier must obtain any export and import permits at its own expense and on its own responsibility and other permits and carry out the customs clearance of the goods.

B.5.01

The price mentioned in the order of EFB, which always includes packaging and excludes VAT shall alone be decisive and binding.

B.5.02

The price shall always be DDP destination ICC Incoterms® 2010.

B.5.03

Should payment of the packaging by **EFB** have been agreed, this shall only be due if the packaging price is shown separately in the invoice. Moreover, the agreed packaging price due shall always only be the cost price of the Supplier

B.5.04

Should EFB owe payment of the packaging pursuant to section B.5.03, EFB shall be entitled to return the packaging to the Supplier against reimbursement of two-thirds of packaging price shown in the invoice. In this regard EXW destination of the goods delivery ICC Incoterms® 2010 shall apply.

B.6.01

The Supplier must issue its invoice after arrival of the consignment at the destination, including statement of the EFB order number and in harmony with the order and these terms and conditions of purchase.

B.6.02

The following must be included with each invoice: certificate of delivery or bill of lading, a certificate of completeness and an inspection report confirming the proper condition of the goods corresponding to the requirements of **EFB** pursuant to the quality assurance guidelines of **EFB**.

B.6.03

Invoices shall not be deemed payable unless the conditions pursuant to B.6.01 and B.6.02 have been met.

B.6.04

Where the other party's goods are delivered earlier than agreed, the invoice value date shall be deemed the delivery date contractually agreed with **EFB**. The value date shall be regarded in this case as the effective date of invoice receipt.

B.6.05.

Where goods or services are defective or the other party supplies part-deliveries not agreed by contract, the invoice value date shall be deemed the date on which goods become free of defects/the date of complete delivery. The value date shall be regarded in this case as the effective date of invoice receipt.

B.6.06

EFB shall pay invoices up to the last day of the month following the month in which the invoice falls due taking advantage of 3% discount or net within 90 days of the due date.

B.6.07

All payments shall be made subject to invoice auditing and reclamation.

B.7.01

The delivery deadlines and –periods mentioned in the order shall be binding. Delivery periods shall run from the order date.

B.7.02

Partial deliveries shall require the approval of EFB at least in text form.

B.7.03

Complete performance of the service at the destination shall be decisive for compliance with the delivery period.

B.7.04

The Supplier must inform EFB immediately in text form of circumstances threatening compliance with the delivery period including an estimate of the imminent delay and the probability of its occurrence. The Supplier shall be obliged to notify EFB in corresponding form immediately of any change in the circumstances mentioned above.

B.7.05

Unconditional acceptance of belated performance by **EFB** shall not constitute any waiver of claims on account of delayed performance.

B.7.06

The Supplier shall owe EFB in the event of delayed delivery flat rate default damages amounting to 0.8 % of the order value per working day, however, not more than 10 % of the order value. **EFB** shall reserve the right to additional legal claims. The Supplier shall retain the right to demonstrate that lower or no default losses occurred.

B.8.01

Transition of risk before acceptance of the goods by **EFB** shall be ruled out unless **EFB** is in default with acceptance.

B.8.02

In place of an incoming goods inspection by EFB there shall be an outgoing goods inspection by the Supplier.

B.8.03

EFB must lodge a complaint regarding defects in the goods delivered within seven days. A complaint period of seven days from discovery of the particular defect shall apply to concealed defects.

B.8.04

An entire batch of the goods delivered shall be regarded as defective if the number of individual items complained of as defective exceeds 1% of the particular batch (so-called widespread defects or epidemic failure).

B.9.01

The Supplier discharges EFB from all third party claims, resulting from product liability, breach of industrial and intellectual property rights or any other cause in law.

B.9.02

The Supplier shall owe EFB compensation for all costs arising for EFB from claims pursuant to B.9.01 and from defending itself against such claims. In this regard it shall be immaterial whether the Supplier knew or should have known the rights of the third parties or whether it knew or should have known the regulations applicable in the destination country.

B.9.03

The Supplier shall also be liable for the costs of warning or recall actions on account of defects delivered by the Supplier

B.9.04

The Supplier shall have a right of retention only if it has claims against EFB, which have been acknowledged by EFB or have been determined to be legally binding.

B.10.01

The supplier shall provide warranty and damages to the statutory extent and for the statutory duration.

B.10.02

In the event of material defects, EFB shall be entitled to choose whether the Supplier provides a substitute or eliminates the defect.

B.10.03

If the Supplier does not acknowledge the defects after being called on to do so by EFB within an appropriate period and provide a guarantee, EFB shall be entitled to mitigation of its loss, to eliminate the defects itself at the expense of the Supplier or procure a substitute for the defective goods.

B.10.04

EFB shall be entitled to off-setting and retention on account of its own claims against the Supplier without restrictions.

B.11.01

The Supplier is obliged to keep secret all information it has received from EFB during the business relationship and not to release such information to any third party without the express permission of EFB. The Supplier will also oblige its own suppliers, employees, fulfilment staff and assistants to uphold the same secrecy.

B.11.02

Products manufactured according to documents designed by EFB, such as drawings, models and such like, or according to information from EFB or with tools from EFB or copied tools, may neither be used by the Supplier itself, nor offered to third parties or otherwise distributed. This shall apply analogously to printing jobs of **EFB**.

B.12.

EFB may terminate any framework agreement with the Supplier if there has been a deterioration in its financial circumstances in the meaning of § 321 BGB or the Supplier does not meet its obligations despite being warned for more than 21 days.

C. General terms and conditions of service

C.1. Order confirmation / Minimum order

C.1.01

The written order confirmation by **EFB**, where applicable in combination with the specifications sheet drawn up by **EFB**, shall determine the content of an individual contract. Oral agreements in the context of contract conclusions made with **EFB** employees who do not have authority to represent shall require written confirmation by **EFB** in order to be valid.

C.1.02

Statements on characteristics concerning the products and services of **EFB** shall only be attributed to **EFB** if these statements

- were issued by or made at the express instruction of **EFB**, or
- are expressly authorised by **EFB**, or
- are public statements and **EFB** was aware or had a duty to be aware of the statements for a period of four weeks and did not dissociate itself from them.

Assistants of **EFB** in terms of Art. 434 (1) of the German Civil Code (*BGB*) shall not include authorised dealers and customers of **EFB** who act as resellers. Adequate correction of statements on characteristics in terms of Art. 434 (1) *BGB* may in all cases be issued on the **EFB** website at www.EFB-elektronik.de.

C.1.03

Statements on characteristics attributable to **EFB** which contain measurable values shall be subject to an allowance of $\pm 3\%$.

Exceeding the margin of $\pm 3\%$ shall not automatically lead to assumption of a defect.

C.1.04

Due to the significant handling costs associated with each individual order, **EFB** charges an additional charge for small quantities of € 15.00 (net) for all orders under € 80.00 (net).

C.2. Retention of rights / Copyright

C.2.01

The drafts, models, layout plans, general arrangement and other drawings, text templates etc. created by **EFB** shall remain the intellectual property of **EFB**, including where the client has paid for the work.

The right to exploit these items and the intellectual achievements embodied by them is exclusively reserved to **EFB**.

C.2.02

EFB may attach its own company and brand labels. The client is not permitted to remove such labels attached by **EFB**.

C.2.03

The client shall be responsible to **EFB** for ensuring that the templates, drafts, plans, texts, trademarks etc. provided by him may be lawfully used and exploited.

C.2.04

Where **EFB** holds the sole copyright in control and other software delivered with equipment, the client shall merely be granted a non-exclusive licence to the software, specifically a licence to use the software exclusively for the purpose of operating the individual piece of equipment specified by contract.

C.2.05

The client is not permitted to duplicate the software or to use it in any other way.

C.2.06

The software may not be decompiled. To the extent that the client requires interface information, **EFB** will disclose the software interfaces upon request. The client shall only be permitted to decompile the software for interface analysis if **EFB** does not meet this request within a reasonable period of time; only the software parts necessary for this purpose shall be decompiled. A period of two weeks is deemed reasonable.

C.3. Shipping / Bearing of risk

C.3.01

The method of shipping shall be at **EFB's** discretion, unless a particular method is expressly specified.

C.3.02

Where the goods leave the **EFB** plant or warehouse, the client shall assume all risk. The shipment shall only be insured if expressly requested by the client, and if so shall be insured at the client's cost.

C.3.03

The risk shall transfer to the client upon handover of the goods to the shipping company, notification of readiness to dispatch, or making available by the agreed delivery date.

C.4. Delivery time / Permits / Time limits for repairs and similar

C.4.01

Any agreed delivery terms apply ex works, unless expressly agreed otherwise.

Such delivery terms shall commence at the time specified in the order confirmation, at the earliest, however, once the documents, permits, release orders and delivery addresses to be provided by the client have been received, all details concerning the order have been clarified and the client has provided the agreed advance payments and/or securities.

Where a delivery **term** has been agreed, this shall be extended as appropriate if the client is in arrears with providing the documents, permits, delivery address notifications, advance payments or securities due.

Where a delivery **date** has been agreed, this shall be deferred as appropriate if the client is in arrears with providing the documents, permits, delivery address notifications, advance payments or securities due.

Delivery dates shall also be deferred and delivery terms be extended accordingly where the preconditions for the services to be rendered by **EFB**, to be created by the client himself or by a third party, are not given in due time.

C.4.02

Where permissions to be provided by **EFB**, which are a precondition for a lawful delivery, are delayed or fail to be granted at all for reasons for which **EFB** does not bear responsibility, **EFB** shall not be liable in this respect.

C.4.03

Where the client requests amendments to the order after order confirmation, the delivery term shall only commence upon confirmation of the amendment by **EFB**. Any agreed delivery dates shall be deferred accordingly.

C.4.04

The deadline for performance shall be extended as appropriate where unforeseen obstacles occur which **EFB**, despite all reasonable care, is unable to prevent due to the circumstances of the case, e.g. a complete or partial loss of subcontractors for which **EFB** is not responsible.

C.4.05

In cases where standard components cannot be used for repairs, warranty work, subsequent delivery or similar because the equipment in question is, as per agreement, a custom-made item, or because special components were installed, the period of performance to be granted to **EFB** shall be extended by the time necessary to procure the components in question, assuming timely ordering.

C.4.06

All claims for damages in place of delivery or for damages for delay shall be excluded in the cases described in Section **C.4.04** if **EFB** has informed the client without delay of the obstacles to performance.

C.4.07

The same shall apply to transactions for delivery by a fixed date.

C.4.08

Any liability of **EFB** to pay damages due to default shall be limited to damage caused by at least gross negligence and to foreseeable damage typical of the type of contract.

C.5. Part-deliveries / Additional and reduced quantities

C.5.01

EFB shall be entitled to deliver up to 10% additional or reduced quantity of uncountable goods without this constituting a breach of duty. Part-deliveries shall also be permitted to an extent which may reasonably be expected to be acceptable to the client.

C.5.02

Where **EFB** makes use of the right to supply part-deliveries or additional or reduced quantities, payments by the client may not be withheld for this reason.

C.6. Prices

C.6.01

Unless otherwise agreed, prices are quoted ex works or ex warehouse, **exclusive** of packaging.

C.6.02

Where packaging is necessary, **EFB** shall pack in accordance with the existing laws and proceed in accordance with Art. 4 of the German Regulation on Packaging (*VerpackV*).

C.6.03

Prices are quoted exclusive of the applicable VAT; the same applies to costs.

C.6.04

Where cost factors change after order confirmation, in particular the prices of raw and auxiliary materials and wage and transport costs, **EFB** may adjust prices accordingly if there is a period of over four months between order confirmation and delivery.

C.6.05

Where an installation, launch, maintenance operation, repair or other service is delayed for reasons which are not within the sphere of influence of **EFB** the client shall carry all resulting costs, in particular waiting costs and any additional travel costs and expenses incurred through the delay by employees and subcontractors engaged by **EFB**.

C.6.06

The legal consequences mentioned in **Section C.6.05** shall also apply where the client is responsible for the reasons for the delay.

C.7. Payment terms

C.7.01

The provisions of the German Turnover Tax Law (*Umsatzsteuergesetz*) shall apply to advance payments.

C.7.02

Unless otherwise agreed, payments are due immediately.

C.7.03

At the latest, payments to be made to **EFB** are due 10 days from invoice date. Failure to pay by this date shall render the liable party in default of payment.

C.7.04

In cases of the client's default, **EFB** may charge default interest at 10 percentage points above base rate. The right to prove and claim additional damages shall be unaffected.

C.7.05

Place of performance for payments is the registered seat of **EFB**.

C.7.06

The client shall only be entitled to offset against claims which are undisputed or have been finally determined by a court of law.

C.7.07

Excepting cases pursuant to **C.7.06**, the client shall have no right of retention.

Moreover, the rights pursuant to Art. 320 *BGB* are retained for as long as and to the extent that **EFB** has not fulfilled its warranty duties.

C.7.08

Where **EFB** accepts payment in cheques this shall always be on account of performance.

C.7.09

Payment by bill of exchange is excluded; **EFB** does not accept bills of exchange as payment. Where **EFB** accepts bills of exchange due to a special agreement to the contrary this shall always be on account of performance.

C.7.10

Where, after contract conclusion – or, in cases where a declaration of intent by the client is still required for contract conclusion, after the last declaration of intent by **EFB** with regard to the contract conclusion – the client experiences a significant deterioration in his financial situation, e.g. where bills of exchange or cheques are disputed, **EFB** may, at its discretion, request advance payment or securities for all outstanding services and deliveries from contracts under the same legal relationship (Art. 273 *BGB*). Where the client does not comply with the request, **EFB** may rescind said contracts or, after setting a period of grace, claim damages in lieu of performance, specifically 25% of the non-executed order sum without the need for special proof, unless the client proves a lesser extent of damage.

EFB may request payment of damages exceeding the flat-fee amount only in individual cases where there is, exceptionally, an unusually high amount of damages.

C.8. Duty to inspect and notify

C.8.01

Deliveries by **EFB**, including drawings, implementation plans, planning suggestions etc. must be checked by the client for usability and compliance immediately upon handover.

C.8.02

Obvious defects must be notified to **EFB** immediately in writing, but at the latest within six days of arrival at the place of destination, stating exact details of the specific complaints.

C.8.03

Where goods are delivered directly to third parties the period of notification shall be extended to 14 days.

C.8.04

The client must notify hidden defects in writing immediately after detection, but at the latest within 30 days of receipt of the goods.

C.8.05

Where the client fails to observe the duties under Sections C.8.01 to C.8.04 all warranty claims shall be excluded. This shall not apply to cases of damages arising from death or injury to body or health due to an intentional or negligent breach of duty by **EFB** or a statutory representative or vicarious agent of **EFB**. Likewise, the exclusion does not apply to any other damage arising from intent or gross negligence.

C.9. Warranty

C.9.01

The warranty period is **12 months**.

C.9.02

All liability and warranty is excluded in cases of insignificant defects and insignificant breaches of duty. In cases where the client may claim a right to subsequent performance **EFB** shall decide whether to render subsequent performance by rectifying the defect or delivering an object free from defects.

C.9.03

Work on the goods supplied by **EFB** or other services rendered by **EFB** shall only be deemed work to remove or rectify defects

- **if** the existence of the defects has been expressly acknowledged by **EFB**
- **or if** notifications of defects have been proven
- **and if** these proven notifications of defects are justified.

In the absence of these conditions, such work shall be regarded as additional services.

C.9.04

In all other regards also, remedial work or substitute deliveries by **EFB** shall be performed as additional services unless they are performed under express acknowledgment of a legal duty.

C.9.05

Where the warranty period is impeded or interrupted by work or substitute deliveries by **EFB** this impediment or interruption shall only extend to the functional unit affected by the substitute delivery or remedial work.

C.9.06

The client shall grant **EFB** the necessary time and opportunity to carry out the remedial work and substitute deliveries due under the warranty. The client shall only have the right to rectify a defect himself or through third parties and claim compensation for the required costs from **EFB** where **EFB** is in arrears with regard to rectification of a defect, and in urgent cases of risk to operational safety and to prevent disproportionately high damages, in which case **EFB** must be notified immediately.

C.9.07

Where subsequent performance to be carried out at **EFB's** discretion does not lead to a rectification of the defect after a reasonable number of attempts, with reasonableness to be assessed according to the individual case, the client shall be entitled to rescind the contract. At least three attempts at subsequent performance shall be deemed reasonable. The number of reasonable attempts at subsequent performance after which the client shall have a right to rescind shall depend on the particular functional unit of the object under the contract. Regardless of whether it is the same functional unit of the contractual object which is affected, the client shall have a right to rescind if the number of individual defects renders adherence to the contract unacceptable to the client.

C.9.08

Where **EFB** has rejected subsequent performance despite the client's right to subsequent performance in the case in question, the client shall have an immediate right to rescind.

C.9.09

The same shall apply where **EFB** does not carry out a subsequent performance to which the client is entitled within a reasonable period to be set by the client.

C.9.10

The client's right to reduce the price (reduction) is subject to **EFB's** consent.

C.9.11

EFB do not accept liability for damages for which **EFB** is not responsible. This includes, for example, damage incurred for the following reasons: Unsuitable or inappropriate use, incorrect installation or commissioning by the client or a third party, natural wear-and-tear, incorrect or negligent treatment, unsuitable operating materials or substitute materials, defective building work, unsuitable foundation, chemical, electromagnetic, electrochemical or electrical impacts, unless attributable to a fault on the part of **EFB**.

C.9.12

EFB does not provide any warranty for components provided by the client.

The client alone shall be responsible for the suitability and quality of such components, unless expressly agreed otherwise.

C.9.13

The client's failure to observe the operating and maintenance instructions shall, where they cause damage, lead to **EFB's** release from all warranty obligations and liability.

C.9.14

Where the client fails to observe the operating and maintenance instructions it shall be assumed that any damage incurred is due to this omission. In this case, the burden of establishing the facts and the burden of proof of the contrary shall be on the client.

C.9.15

Where equipment supplied by **EFB** is installed or operated outside the client's principal place of business, despite the relevant contract having been concluded with a branch or head office of the client located in Germany, the client shall bear the additional costs incurred as a result of any warranty measures to be performed by **EFB** involving transport costs, travel expenses and other costs of working outside the German borders.

C.10. Damages

The limitations of liability set down in these Terms and Conditions shall not apply to damages arising from death or injury to body or health, nor to damages caused with intent or by gross negligence by **EFB**, a statutory representative or vicarious agent.

Furthermore, the limitations of liability set down in these Terms and Conditions shall not apply to so-called cardinal obligations; they shall only apply to violations of those duties that are not designed to enable the very implementation of the contract in proper form and on which the client does and may not rely for this reason.

C.10.01

Should **EFB** be liable to pay damages in other cases, **EFB** shall be liable only for direct damage to the supplied object itself, in accordance with the following provisions.

C.10.02

Liability for consequential damage arising from a breach of duty, including as part of a duty to render subsequent performance, is excluded.

C.10.03

The same shall apply to damages arising from tortious acts.

C.10.04

Extending the provisions above, **EFB** shall only be liable for damages exceeding the damage incurred by the supplied object itself in cases of intent or gross negligence and within the scope of the German Product Liability Law (*Produkthaftungsgesetz*), and in cases of absence of expressly assured properties if the very aim of the assurance in question was to protect the client from damages which were not incurred by the supplied object itself.

C.10.05

EFB shall only be liable for reasonably foreseeable damage typical of the type of contract, except in cases of intent or gross negligence.

C.11. Make-and-hold orders

C.11.01

Where make-and-hold orders are not claimed within four weeks of expiry of the agreed claiming period, **EFB** shall be entitled to request payment.

C.11.02

The same shall apply to make-and-hold orders without a specially agreed claiming period if the order has not been claimed four months after receipt of the notification of readiness for dispatch by **EFB**.

C.12. Storage/Delay in acceptance

C.12.01

Where, exceptionally, temporary storage at **EFB** of ready goods has been expressly agreed, or storage becomes necessary due to a delay in acceptance, **EFB** shall not be liable for damages incurred despite reasonable care having been taken.

C.12.02

EFB shall not be obliged to insure the stored goods.

C.12.03

In cases of delay in acceptance, **EFB** may store the goods in a commercial warehouse at the client's risk and expense.

C.12.04

EFB may invoice storage at **EFB** at 0.5% of the invoice amount per month; at least, however, at € 30 and an additional € 25 upwards of every other full cubic metre of goods per month.

C.12.05

The two items above shall also apply where, at the client's request, dispatch is delayed more than two weeks beyond the notified readiness for dispatch.

C.12.06

If the client does not accept the ordered goods despite a time limit having been set, **EFB** shall, irrespective of proof of actual damage, be entitled to claim 25% of the agreed price as a flat fee, unless the client proves that the actual amount of damage was less.

C.13. Retention of title

C.13.01

All deliveries by **EFB** shall be subject to retention of title.

C.13.02

This retention of title and its extension below shall apply until all claims from the commercial relationship with the client are settled and until complete release from all contingent liabilities which **EFB** has entered into in the interest of the client and which are associated with the delivery has taken place.

C.13.03

Supplied objects may not be pledged.

C.13.04

EFB may request surrender of its reserved goods for good cause, in particular in case of delayed payment, against crediting of the proceeds of sale. This request to surrender shall not constitute a revocation of contract.

C.13.05

If and to the extent that the returned goods may be sold by **EFB** as new in the ordinary course of business the client shall, without further proof, be liable to pay 10% of the goods' invoice value as return costs. Where sale as new is not possible in the ordinary course of business the client shall, without further proof, be liable to pay a further 30% of the goods' invoice value to compensate for loss of value. The client shall in each case have the right to prove a lower percentage.

C.13.06

EFB reserves the right to claim for other damage exceeding the above.

C.13.07

Handling and processing of the goods supplied by **EFB** are always carried out on behalf of **EFB**, so that the goods remain the property of **EFB** in all handled and processed conditions, including as the finished product, to the exclusion of the consequences of Art. 950 *BGB*. Where reserved goods are processed with other objects also supplied subject to the exclusion of the legal consequences pursuant to Art. 950 *BGB*, **EFB** shall at least acquire co-ownership of the new thing proportionate to the invoice value of the **EFB** goods to the invoice value of the other processed objects.

C.13.08

The client herewith assigns in advance all claims from the resale (including claims to be assigned/acquired in the course of factoring), processing, installation and any other use of our goods to **EFB**. Where the products sold, processed or installed by the client include items which are not the property of the client and which are also subject to an agreement of retention of title with a disposal clause and advance assignment with other suppliers, that amount of co-ownership of **EFB** which is equivalent to the fraction of the claim shall be assigned; otherwise the full amount shall be assigned.

C.13.09

The direct debit authorisation remaining for the client despite the assignment shall be cancelled by revocation, permissible at any time.

C.13.10

Where the value of the securities to which **EFB** is entitled exceeds **EFB's** claim against the client by 50% in case of supply of goods and by 20% in case of any other services **EFB** shall be obliged, at the client's request, to release the securities to the appropriate extent, chosen at **EFB's** discretion.

C.14. Place of performance

C.14.01

Place of performance for services to be rendered by **EFB** is always the **EFB** plant.

C.14.02

Place of performance for deliveries is the plant or the warehouse of **EFB**, including, in particular, where **EFB** undertakes transport itself.

C.15. Definitions

C.15.01

All titles in the Terms and Conditions of Business of **EFB** merely serve to enhance readability and shall have no impact on the meaning and interpretation of the individual provisions.

C.15.02

All declarations made in text form (e.g. by fax or email) shall be deemed written declarations of intent and knowledge within the meaning of the **EFB** Terms and Conditions of Business.

C.15.03

Delivery **dates** designate a point in time, be it a particular day, a calendar week or similar, on or in which the delivery is due.

Delivery **terms** designate a period within which the delivery is due.

Delivery **times** is the generic term for delivery dates and delivery terms.