

General Terms and conditions

Ernst Pennekamp GmbH & Co. OHG, Industrial Furnace, Apparatus and Mechanical Engineering, Königsfelder Str. 38-42, 58256 Ennepetal (as of 01.12.2025)

1. Scope of application of the terms and conditions

These terms and conditions of sale and delivery shall apply exclusively to our deliveries and services. Terms and conditions of the customer which we do not expressly accept in writing shall not become part of the business relationship, even if we do not object to them in individual cases.

2. Conclusion of contract, content of contract, documents

2.1 Our offers are subject to change.

2.2 The content of the delivery contract shall be determined solely by our order confirmation. Any offers or sketches, drawings or descriptions attached to the order confirmation shall not be binding for the execution of the order.

2.3 Cost estimates, sketches, drawings or descriptions and similar documents shall remain our property and may be reclaimed at any time. Unauthorized duplications, making them available to competing companies or similar improper uses by the customer are prohibited.

2.4 We reserve the right to deviate from the order confirmation for technical reasons even without the customer's express consent.

3. Delivery; Storage Charges

3.1 Delivery periods and dates shall always be approximate unless they are expressly designated as binding in the order confirmation. However, delivery shall be made at the latest within four weeks of the scheduled delivery period or delivery date. In the event of events that are not within our sphere of responsibility, such as disruptions due to force majeure, strikes, lockouts or other lawful industrial action, operational disruptions, disruptions in our own supply, the delivery date shall be postponed by the duration of the disruption plus a start-up period appropriate to the circumstances. The same shall apply if performance is delayed for reasons within the customer's control.

3.2 The Customer's rights in the event that delivery periods or dates are exceeded shall be subject to the provisions of Sections 9 and 10.

3.3 Mode of shipment and packaging are subject to our discretion. The goods shall only be insured against transport damage and other risks at the express request and expense of the customer.

3.4 If shipment or delivery is delayed for reasons within the customer's responsibility, the customer may be charged storage fees in the amount of 0.5% of the price of the goods for each month or part thereof, but not more than a total of 5%. The assertion of a higher and the proof of a lower damage remain unaffected.

4. Transfer of risk

The goods are shipped at the risk of the customer. The risk shall pass to the customer, even if carriage paid delivery has been agreed, when the goods are handed over to the forwarding agent or carrier or to the other transport person at the beginning of the loading process, but at the latest when the goods leave our works. If the shipment is delayed for reasons attributable to the customer, the risk shall pass upon notification of readiness for shipment. Storage costs after transfer of risk shall be borne by the customer.

5. Services of the customer for installation and assembly

5.1 The customer shall undertake and provide in due time and at its own expense:

5.1.1 Excavation work and construction of foundations, service pits, platforms and covers, smoke ducts and the supply of all materials required for this purpose. The foundations shall be appropriately strong and watertight, especially if the groundwater level is high. Testing and responsibility for this is the responsibility of the purchaser. Working plans for the foundations will be supplied by us on request without guarantee.

5.1.2 Removal of the remaining earth masses not required for backfilling the foundations;

5.1.3 Supply of water, oil, air, gas, steam, electricity, heating and lighting, including the necessary supply and drainage lines;

5.1.4 Provision of scaffolding and shuttering timbers, lifting gear and construction equipment, provision of lockable and dry rooms for our people and materials, and of assistants during assembly.

6. Prices; Terms of Payment

6.1 Our prices are net ex works plus the respective statutory value added tax without freight and packaging. Unless specific prices have been expressly agreed, we shall deliver at the list prices applicable on the date of delivery. If, after conclusion of the delivery contract, our cost factors, e.g. the costs of raw materials, energy, wages or freight, increase, we shall be entitled to adjust the delivery price to a reasonable extent, even if specific prices have been expressly agreed. If, as a result, the price increases by more than 10 %, the customer may withdraw from the contract by means of an immediate written declaration. If the price adjustment concerns only a part of the delivery, the withdrawal shall only be permissible with regard to this part.

6.2 Even if we have undertaken the installation and assembly of the goods, the customer shall bear the ancillary costs incurred in this connection, e.g. travel expenses, costs for the transport of the goods and the tools, unless expressly agreed otherwise.

6.3 Invoices shall be paid immediately upon receipt without any deduction. Bills of exchange or checks shall only be accepted for payment on account of performance. Discount and collection costs shall be borne by the customer.

7. Withholding of payments; prohibition of set-off

The customer shall only have the right to withhold payments or to offset them against counterclaims to the extent that his counterclaims are undisputed or have been legally established. The exercise of a right of retention by the customer is also excluded to the extent that the counterclaims are not based on the same contractual relationship.

8. Retention of title

- 8.1** The Supplier shall retain title to the delivery item until receipt of all payments arising from the business relationship. If a current account relationship exists within the scope of the business relationship, the Supplier shall retain title to the delivery item until receipt of all payments from recognized balances.
- 8.2** In the event of a breach of contract by the Purchaser, in particular in the event of default in payment, the Supplier shall be entitled to take back the delivery item delivered under retention of title („Retained Goods“). In the event of default in payment, a prior setting of a deadline shall not be required. For the purpose of taking back the Retained Goods, the Supplier may enter the Purchaser's business premises during normal business hours. Further claims of the Supplier shall remain unaffected.
- 8.3** The supplier informs the customer that an activation code must be entered in order to operate the delivery item without restrictions after delivery. The supplier reserves the right to withhold the transmission of the activation code until full payment has been made in accordance with 8.1. Failure to enter the activation code may result in restrictions on the performance of the delivery item or restrictions on the input options for the delivery item. Further claims by the supplier remain unaffected by this.
- 8.4** After taking back the Retained Goods, the Supplier shall be entitled to make reasonable use of them after having given prior warning; the proceeds of such use shall be set off against the liabilities of the Purchaser, less reasonable costs of realization.
- 8.5** Instead of taking back the Retained Goods immediately, the Supplier may initially technically immobilize the Retained Goods until all payments have been received in accordance with Section 7. In all other respects clause 8.2 shall apply. The right to take back the reserved goods in the event of continuing default in payment shall remain unaffected.

9. Duty to examine; claims for defects

- 9.1** The customer shall immediately inspect the goods delivered by us, even if samples have been sent, in accordance with § 377 of the German Commercial Code (HGB). Notification of defects shall be made by the customer in writing within 7 days after arrival of the goods at the place of destination in the case of defects that are obvious or recognizable upon proper inspection, and within 7 days after discovery of the defect in the case of defects that are not recognizable. If the notice of defects is not received by us within the aforementioned periods, the goods shall be deemed to have been approved.
- 9.2** We shall be liable for defects (material defects and defects of title) of the delivered goods exclusively in such a way that, at our discretion, subsequent performance shall be effected by removal of the defect or by delivery of goods free of defects. These Terms and Conditions of Sale and Delivery shall apply to such subsequent performance. If this subsequent performance fails twice, the customer may, at his option, withdraw from the contract or reduce the purchase price.

10. Liability

- 10.1** Any liability on our part for damages - irrespective of the legal grounds - for damages resulting from injury to life, body or health, in particular due to or in connection with defects of the delivered goods, impossibility, delay, tort (in particular producer's liability) shall be excluded, unless the damage results from a breach of material contractual obligations by us or our vicarious agents, from negligent conduct on our part, from intent or grossly negligent conduct of our bodies, legal representatives and executive employees.
- 10.2** Any liability on our part for damages - irrespective of the legal grounds - for other damages, in particular due to or in connection with defects of the delivered goods, impossibility, delay, tort (in particular producer's liability) shall be excluded, unless the damage results from a breach of material contractual obligations by us or our vicarious agents, from grossly negligent conduct on our part, from intent or gross negligence on the part of our organs, legal representatives and executive employees.
- 10.3** Except in the case of intentional fault or breach of a material contractual obligation, our liability shall in any case be limited to compensation for typical and foreseeable damage.
- 10.4** Claims under the Product Liability Act shall remain unaffected.
- 10.5** The exclusion of liability according to clauses 10.1 - 10.3 shall also extend to claims against our organs, legal representatives, executive and non-executive employees and other vicarious agents.

11. Limitation

- 11.1** Claims against us shall become statute-barred after one year, unless the claims are based on intentional action on our part. The limitation period for warranty and defect claims pursuant to Section 9.2 shall commence upon delivery of the goods. Otherwise, the limitation period shall commence at the end of the year in which the claim arose.
- 11.2** § 478 BGB remains unaffected.

12. Written Form; Final Provisions

- 12.1** All declarations to be made under the delivery contract or under these terms and conditions, in particular notifications, agreements, collateral agreements or amendments to the contract, must be in writing.
- 12.2** The place of performance for all rights and obligations arising from transactions with us shall be the place of our registered office (Ennepetal) for both contracting parties.
- 12.3** The place of jurisdiction for all disputes arising from any transaction between us and the Customer shall be, at our option, the place of our registered office (Ennepetal) or the place of the Customer's registered office. For actions brought by the Customer, the place of our registered office shall determine the place of jurisdiction.
- 12.4** The relations between us and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.