

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

1. Validity of the Terms

- 1.1. The present General Terms and Conditions of Sale shall apply to any deliveries, services and offers including any future deals EXCELLA GmbH & Co. KG (abbr. EXCELLA), Nuernberger Strasse 12, 90537 Feucht, Germany, concludes and/or will conclude with any enterprise or legal entity under public law.
- 1.2. Unless otherwise agreed in written form in a separate agreement, the following terms and conditions shall apply, exclusively. The validity of any contrasting terms and conditions of the customer shall be excluded notwithstanding EXCELLA explicitly objecting in an individual case or not.

2. Offer, Contract Conclusion, Conditions

- 2.1. The order of the customer shall be considered as binding offer. EXCELLA shall be entitled to accept such offer within two weeks after its submission. Acceptance shall be effected by written order confirmation, presentation of invoice or delivery of the goods ordered.
- 2.2. Any offer on part of EXCELLA shall be considered without engagement unless otherwise declared in writing.
- 2.3. In case that between contract conclusion and delivery the production costs of EXCELLA increase, EXCELLA shall have the right adequately to adjust the price notifying the customer accordingly in writing without delay. The customer shall then be entitled to withdraw from the order within 5 working days after having received the written notice. EXCELLA reserves the right to carry out delivery at the agreed price within another 5 working days following the cancellation.

- 2.4. All prices are net prices, V.A.T., customs, transportation and packing fees excluded, unless otherwise agreed. The weight and/or number of pieces determined at EXCELLA shall be relevant for invoicing unless otherwise explicitly agreed. The customer has to obtain any import licenses requested at its own expense.
- 2.5. Should it be agreed that EXCELLA shall bear the freight charges and should the freight charges increase after contract conclusion, the customer shall reimburse EXCELLA the difference. This shall also apply to any additional costs arising on account of a delay in delivery due to strike or lock-out.
- 2.6. Unless otherwise agreed, the Incoterms on the basis of the written acceptance of EXCELLA shall apply.

3. Period of Delivery and Performance, Delay, Part Delivery

- 3.1. Any dates and periods of time given by EXCELLA shall be considered without engagement unless otherwise explicitly agreed in written form. If EXCELLA disregards such unbinding date of delivery, the customer may ask EXCELLA in writing to deliver within an adequate period; receiving such request EXCELLA shall be in delay.
- 3.2. The correct and timely obtaining of supplies on part of EXCELLA shall remain reserved. EXCELLA will inform the customer without delay on any non-availability of the delivery item and, in case the customer withdraws from the contract, will immediately reimburse to the customer the appropriate counter-performance to the extent already provided.

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

3.3. Any delay in delivery and performance caused by Force Majeure, as e.g. mobilization, pandemic, war, riots, strike, lock-out or any other event EXCELLA is not accountable for, shall adequately extend agreed delivery periods. EXCELLA will inform the customer on such occurrence without delay (see No. 7.2).

3.4. If EXCELLA is in delay, the customer - provided that the customer proves to suffer from a loss from it – may request a compensation of 0.5 % for any complete week of delay, however a total of 5 %, at most, for that part of the delivery the delay of which has caused the loss.

3.5. Any claims for damages on part of the customer on the basis of a delay in delivery as well as any claims for damages substituting the performance exceeding the limits mentioned under No. 3.4 above shall be excluded for any case of delayed delivery.
This shall not apply when due to intention, gross negligence or due to the injury of life, limb or health binding liability becomes effective.

3.6. The customer may only withdraw from the contract under the statutory provisions if EXCELLA is responsible for the delay in delivery. A change of the burden of proof to the disadvantage of the customer shall not be implied in the above provision.

3.7. Upon the request of EXCELLA and within an appropriate period of time the customer shall decide on either withdrawing from the contract because of the delay or on insisting on the delivery.

3.8. Part deliveries shall be admissible to the extent that they are reasonable for the customer.

4. Passage of Risk

6.1. The risk shall pass to the customer in accordance with the Incoterms provisions agreed to by the parties.

5. Warranty and Defects

5.1. Any warrant rights and claims based on defects shall become statute-barred after 12 months. This shall not refer to an injury of life, limb or health, to a grossly negligent or deliberate breach of duty or to a malicious non-disclosure of a defect. The statutory provisions as respects the limitation period for claims for indemnification (§ 479 German Civil Code), expiry suspension, suspension and restart of the terms shall remain unaffected.

5.2. The consideration of objections against the invoice or complaints on defects apparent at the time of delivery shall be subject to being asserted against EXCELLA in writing immediately after receipt of the shipment, however not later than 14 days after arrival of the shipment at the place of delivery named by the customer. Complaints on defects not apparent at the time of delivery have to be made immediately after their detection.

5.3. In case of a deficiency claim the customer shall have the right to retain payment to an extent reasonable in regard of the defects occurred. The customer may retain payment provided that there is no doubt on the correctness of the deficiency claim, exclusively. In case that a deficiency claim is unjustified EXCELLA shall be entitled to request compensation of the expenses accrued.

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

5.4. The delivery of goods of medium kind and quality shall be owed unless otherwise agreed in writing. EXCELLA may overrun or underrun the agreed delivery quantity by 10 %.

Any descriptions and agreements with respect to the quality of the goods are not to be regarded as a guarantee unless otherwise explicitly agreed. This shall imply that if an order is placed on the basis of a previously supplied sample, the quality of the sample shall not be deemed guaranteed. Samples merely show the presumable kind and quality of the products. The parties agree that the description „as previously delivered“ shall mean “comparable to the goods previously delivered“.

Any guarantee promise shall be made on the understanding that in case of an event bringing guarantee into operation the legal consequences as described under No. 5 herein shall finally apply.

5.5. In the event of a defect EXCELLA shall have the choice to remedy the defect or to make a redelivery. Any exceeding warranty rights of supplementary performance, price reduction, withdrawal or claim for damages shall be excluded, unless supplementary performance has not been made despite adequately extending the original term, has failed, has been seriously and finally refused by EXCELLA, is not reasonable for the customer or unless a case of § 281 sub-paragraph 3, § 323 subparagraph 2 German Civil Code is on hand. Claims for damages shall be ruled by No. 8 below.

5.6. A change of the burden of proof to the disadvantage of the customer shall not be implied in the above provisions.

6. Industrial Property Rights, Deficiencies in Title

6.1. Unless otherwise agreed, the obligation of EXCELLA to provide delivery free of the industrial property rights and copyrights of third parties (abbr.: proprietary rights) shall be limited to the country of the place of delivery. To the extent that any third party asserts justified claims against the customer for the infringement of proprietary rights on the basis of deliveries made by EXCELLA and used according to contract, EXCELLA shall be liable to the customer within the period fixed under No. 5.1 above as follows:

- (1) EXCELLA, at its choice and at its expense, will obtain a right of use for the shipments concerned or modify them in a way that the proprietary right is not infringed. If EXCELLA fails to do so under reasonable conditions, the customer shall be entitled to take recourse to the statutory warranty rights.
- (2) The aforesaid obligations on part of EXCELLA shall be subject to the customer giving written notice of the claims asserted by the third party without delay, the customer not acknowledging an infringement and reserving any defensive actions and settlement negotiations for EXCELLA. If the customer suspends the use of the shipment for reasons of minimizing loss or for other important reasons, the customer undertakes to point out to the third party that the suspension of use does not imply the acknowledgement of an infringement of a proprietary right.

6.2. Any claims of the customer shall be excluded to the extent that the customer is responsible for the infringement of the proprietary right.

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

- 6.3. In addition, any claims of the customer shall be excluded to the extent that the infringement of the proprietary right is caused by specifications of the customer, by a way of use not to be predicted by EXCELLA or by the fact that the shipment has been modified by the customer and is used together with goods not supplied by EXCELLA.
- 6.4. Besides, the provisions of No. 5.3 and 5.5 shall apply accordingly for the claims of the customer settled under No. 6.1 (1) in case of infringements of proprietary rights.
- 6.5. As respects other defects in title, the provisions of No. 5 shall apply accordingly.
- 6.6. Any claims of the customer against EXCELLA and its assistants and vicarious agents beyond or other than those settled under this number on account of a deficiency in title shall be excluded.
- 6.7. A change of the burden of proof to the disadvantage of the customer shall not be implied in the above provisions.

7. Impossibility and Force Majeure

- 7.1. To the extent that delivery is not possible, the customer shall be entitled to claim damages unless EXCELLA is not responsible for the impossibility. Claims for damages of the customer, however, shall be limited to 10 % of the value of that part of the shipment that cannot be delivered on account of the impossibility. This limitation shall not refer to cases where due to intention, gross negligence or due to the injury of life, limb or health binding liability becomes effective. A change of the burden of proof to the disadvantage of the customer shall not be implied in the above provision.

The right of the customer to withdraw from the contract shall remain unaffected.

- 7.2. In the event that Force Majeure or other unpredictable events EXCELLA is not responsible for considerably change the economic relevance or the contents of the delivery or considerably influence the activities of EXCELLA, the contract shall be reasonably adjusted observing good faith. (cf. No. 3.3). To the extent that this is not justifiable under economical aspects, EXCELLA shall have the right to withdraw from the contract. If EXCELLA decides on taking recourse to this right, EXCELLA has to inform the customer immediately after realizing the consequences of the event notwithstanding any extension of the delivery period previously agreed with the customer (cf. No. 3.3).

8. Liability and Damages

Unless another liability provision has been implemented in another passage of the present provisions, EXCELLA shall be obliged to compensate a loss that arises for the customer directly or indirectly on account of a delay on part of EXCELLA, on account of defective delivery or on account of any other legal reason to be attributed to EXCELLA, exclusively, as follows:

- 8.1. The obligation to pay damages shall be subject to EXCELLA being responsible for the damage caused by it or to EXCELLA being responsible for a breach of duty.
- 8.2. Any claims for damages on account of damages other than the injury of life, limb or health shall only exist (notwithstanding No. 8.3) if EXCELLA can be blamed for gross negligent or deliberate violation of duty.

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

- 8.3. In the event of the breach of an essential contractual duty EXCELLA, in addition, shall be liable for slight negligence. Essential contractual duty shall include the principal obligation to perform or any other duty the fulfilment of which is required for the proper completion of the contract and on the adherence of which the customer regularly relies and may rely or the breach of which endangers obtaining the purpose of the contract. In this case damages that are typical for the contract and reasonably predictable shall be made up for, exclusively, excluding damages that are uncommonly resulting or remote as, in particular, profit lost and/or any other financial loss of the customer.
- 8.4. Should claims be asserted against the customer on account of liability without fault towards third parties under indispensable law, EXCELLA shall indemnify the customer to the same extent as if directly liable. Compensation of the loss between EXCELLA and the customer shall be subject to the principles of § 254 German Civil Code. The same shall apply with respect to claims directly asserted against EXCELLA.
- 8.5. Any claims of the customer shall be excluded to the extent that the loss results from violations of duty the customer is accountable for. EXCELLA shall indemnify the customer for any damage averting measures to the extent regulated by law.
- 8.6. If the customer wants to make claims against EXCELLA under the above provisions, the customer will immediately and extensively inform and consult EXCELLA. The customer shall enable EXCELLA to investigate the damage. The contractual parties will agree on the steps to be taken, in particular as respects settlement negotiations with third parties.
- 8.7. Fixing the amount of damages the economic situation of EXCELLA in good faith, extent and duration of the business relationship as well as the value of the goods delivered shall be taken into account in favour of EXCELLA.
- 8.8. The liability of the legal representatives as well as of the assistants and vicarious agents of EXCELLA shall be limited to the same extent as the liability of EXCELLA in accordance with the above provisions.
- 8.9. A change of the burden of proof to the disadvantage of the customer shall not be implied in the above provisions. Moreover, liability under unalienable law shall remain unaffected.
- 9. Reservation of Title**
- Until the payment of any outstanding accounts (including balances) due from the customer and/or its group companies for any legal reason now or in future, EXCELLA shall have the following rights:
- 9.1. EXCELLA holds title of ownership of the goods (hereinafter: conditional commodity). The customer shall store the conditional commodity free of charge.
- 9.2. Pledging or assigning as security shall not be admissible. The customer, by way of security, shall already now assign any receivables resulting from the resale or another legal ground with respect to the conditional commodity to EXCELLA to the full extent. EXCELLA accepts this assignment. EXCELLA revocably authorizes the customer to collect the receivables assigned to EXCELLA to the account of EXCELLA. Notwithstanding the right to revoke of EXCELLA, the collection order shall become ineffective in

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

case that after maturity one of the debt claims EXCELLA has against the customer has not been fulfilled.

- 9.3. If creditors of the customer or third parties without authority take hold of the conditional commodity, the customer will point out the title of ownership of EXCELLA and will inform EXCELLA without delay.
- 9.4. To the extent that the value of any security interests EXCELLA is entitled to exceeds the amount of any secured claims by more than 20 %, EXCELLA, upon request of the customer, shall release an adequate part of the security interests at the choice of EXCELLA.
- 9.5. In the event of violations of duties on part of the customer, in particular in the event of delay in payment, EXCELLA shall be entitled to withdraw from the contract after ineffective expiration of an adequate period fixed for the customer to perform. The statutory provisions on the dispensability of fixing a time-limit shall remain unaffected. The customer is obliged to surrender the goods. After withdrawing EXCELLA may also request the assignment of rights to recover possession the customer may have against third parties.

10. Payments

- 10.1. Any debt claims have to be paid after receipt of invoice within the period mentioned in the invoice and are due upon its expiration. The date of invoice and the date the money is received on the account of EXCELLA shall be relevant for observing the payment term.
- 10.2. EXCELLA shall be entitled to credit any payments of the customer against prior debts of the customer first, unless the customer pleads reasonably for fulfilling other payment obligations.
- 10.3. If a currency other than Euro has been agreed, the risk of exchange rate devaluation shall be borne by the customer. EXCELLA shall have the right to withdraw from the contract if the exchange rate of the currency involved fluctuates by at least 3 % to the disadvantage of EXCELLA between the date of contract conclusion and the agreed date of delivery.
- 10.4. Provided that the customer is in delay and the customer is an entrepreneur, EXCELLA shall have the right to charge an interest at a rate of 8 percentage points above the basic interest rate according to § 247 German Civil Code.
- 10.5. In the event that a debt due to EXCELLA is not settled after a letter of demand, any debts due to EXCELLA from the business contact shall become due for payment immediately. In this regard, EXCELLA, regardless of the maturity, shall be entitled to make further deliveries against cash in advance or adequate provision of security, exclusively.
- 10.6. In the event that after contract conclusion circumstances make obvious that the claim for payment of EXCELLA is endangered by lack of efficiency on part of the customer or economic or political tendencies, EXCELLA shall be entitled to request payment in advance or provision of security of the customer. If the customer fails to do so, EXCELLA shall be entitled to withdraw from the contract observing § 321 German Civil Code and to request damages.

GENERAL TERMS AND CONDITIONS OF SALE OF EXCELLA GMBH & CO. KG

Version: July 2021

In particular, this shall apply in case that a petition in insolvency is filed on the assets of the customer, insolvency proceedings are opened or opening is denied due to lack of sufficient assets.

10.7. The customer may only credit against claims of EXCELLA provided that the claims of the customer are undisputed and have been ascertained in a legally binding way. The customer shall have no right of retention against EXCELLA.

11. Applicable Law, Place of Jurisdiction, Severability

11.1. The present terms and conditions as well as the entity of the legal relations between EXCELLA and the customer shall be subject to the substantive law of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods.

11.2. Unless otherwise agreed, place of performance shall be Nuernberger Strasse 12, 90537 Feucht, Germany, exclusively.

11.3. If the customer is a businessman or the registered offices of the customer are outside the Federal Republic of Germany, Nuremberg shall be the exclusive place of jurisdiction. EXCELLA, however, reserves the right to sue the customer at any other legal venue. Exclusive legal venues shall remain unaffected by this provision.

11.4. If one of the provisions of the present General Terms and Conditions of Sale or a provision under any other agreement between the contracting parties is or becomes ineffective, this shall not affect the effectiveness of the remaining provisions or agreements.

EXCELLA GmbH & Co. KG

Version: July 2021