

Delivery & Terms and Conditions (GTC) of EASY Kaltasphalt S.L.

§ 1 scope

1) The basis of a lasting and fruitful business relationship is open communication, cooperation and mutual trust and not primarily delivery and payment conditions. For legal reasons, we cannot avoid regulating a few points in our delivery and terms and conditions for all business and services with and for our customers, in addition to or in addition to the statutory provisions.

2) Our terms and conditions apply exclusively. We do not recognize conditions of the customer that conflict with or deviate from our General Terms and Conditions, unless we have expressly agreed to their validity in writing. Our terms and conditions also apply if we carry out the delivery without reservation in the knowledge of the customer's conflicting or deviating terms and conditions.

3) Our terms and conditions apply to both consumers and companies, unless a differentiation is made in the respective clause. § 2 offer / contract / offer documents

1) Before goods are delivered to a customer on a delivery note, a customer account is set up with us by the customer or his representative filling out the set-up form for the customer account completely and correctly.

2) A customer's order represents a binding offer, which we can accept within one week by sending an order confirmation or by delivering the goods. Offers submitted by us are non-binding.

§ 3 prices / terms of payment

1) The confirmed purchase price is binding. Any special order by the customer requires acceptance of the entire order quantity. The statutory sales tax is not included in our prices. It will be shown separately on the invoice at the statutory rate on the day of invoicing.

3) Price changes to a consumer as a customer are only permitted if there are more than three months between the conclusion of the contract and the agreed delivery dates. Insofar as wages and / or material costs change after delivery, we are entitled to change the price appropriately in accordance with the cost increases or the cost reductions. We will prove the cost increase on request. If the increase is more than 5% of the agreed purchase price, the customer has the right to cancel.

4) If the customer is an entrepreneur, the agreed price applies. If the price increased at the time the service was provided due to a change in the market price or an increase in the customary market fees charged by third parties involved in the service provision, the higher price applies. If this is 15% or more than the agreed price, the customer has the right to withdraw from the contract. This right must be exercised immediately after we have been informed of the increased price. This right is not available to the customer if he is able to pass on the increased prices.

5) The total remuneration is due upon receipt of the goods or delivery without discount deduction. The granting of a term of payment requires the previous written agreement. Payments are always offset against the oldest claim. If the customer takes part in the direct debit procedure, the customer hereby expressly agrees to the direct debit order procedure and the separate agreement in the matter of SEPA B2B Direct Debit. Debits from EASY Kaltasphalt S.L. are deemed to be approved if they are not objected to within four weeks of the debit. In the event of late payment, we calculate the statutory default interest and / or the statutory lump sum. We reserve the right to claim higher than the statutory interest damage, as far as we can prove it. We charge expenses of € 12.00 for each reminder due to late payment.

6) We will not bring back transport and outer packaging. Packaging materials such as big bags, one-way pallets, wood, foils, etc. become the property of the customer, who must dispose of them at his own expense. Big bags are disposable packaging that cannot be returned.

7) Material take-back is excluded.

8) Packaging and freight costs are included in the sales price and are therefore not calculated separately.

9) The customer only has set-off rights if his counterclaims have been legally established, are undisputed and have been recognized by us. If the customer is an entrepreneur, he is only authorized to exercise a right of retention if his counterclaim is based on the same contractual relationship and has been legally established, undisputed and recognized by us. It is based on the individual purchase and not on a possible summary in its invoice.

§ 4 Time of performance / transfer of risk

1) If delivery times have been specified by us and made the basis for placing the order, such periods will be extended in the event of strikes and acts of God, and for the duration of the delay. The same applies to circumstances for which we are not responsible. The same applies if the customer does not fulfill any cooperation obligations.

2) A continuous and permanent hindrance from circumstances for which we are not responsible, in particular due to strikes and acts of God, entitles us to withdraw from the contract.

3) If the customer is an entrepreneur, the delivery "free construction site / warehouse" or "free destination" is regularly agreed - unless there is no other agreement in the order confirmation. For this purpose, EASY-Kaltasphalt S.L. the transport medium is ready for unloading by the recipient at the destination.

4) Insofar as a delivery "free construction site / warehouse" or "free destination" has been agreed, the customer must ensure that it is possible to arrive via accessible access roads with a loaded truck. The delivery takes place without unloading. Unloading will only take place if this has been agreed beforehand and has been specified in writing in the order confirmation. We reserve the right to subsequently invoice the costs for these extra expenses. In this case the vehicle is unloaded. Unloading by the customer must be carried out immediately and properly by the customer. We reserve the right to adequately calculate waiting times and unloading by the customer.

§ 5 liability for defects

1) If the customer is a consumer, we are liable if there is a defect in accordance with the statutory provisions.

2) If the customer is a consumer, the limitation period for claims for defects is two years for the delivery of new items, and one year for the delivery of used items. The period begins with the transfer of risk. This does not apply insofar as there are claims for damages due to defects. § 6 applies to claims for damages due to a defect.

3) If the customer is an entrepreneur, we reserve the right to choose the type of supplementary performance if there is a defect.

4) If the customer is an entrepreneur, the warranty period is one year. The limitation period in the event of a delivery recourse according to §§ 478, 479 BGB remains unaffected. This does not apply insofar as there are claims for damages due to defects. § 6 applies to claims for damages due to a defect.

5) If the customer is an entrepreneur, § 377 HGB and / or a relevant commercial practice apply to the obligation to give notice of defects. Unless there is a shorter inspection and complaint period, the customer must notify us of an obvious defect within 8 days of receipt of the goods at the latest. Otherwise the legal consequences of § 377 HGB apply. Receipt of the goods is deemed to be the decisive point in time for the start of the inspection and complaint period even when goods are delivered on pallets.

6) The customer does not receive guarantees from us in the legal sense.

7) We only assume liability for consulting services, particularly with regard to the processing and processing of the asphalt mixture, if it can be demonstrated that this has been carried out in accordance with our application description.

8) Insofar as the customer has identified a defect, he may not edit, process, sell or change the object of the purchase insofar as this makes it impossible to secure evidence. As far as possible, evidence should be taken with the seller, judicial evidence proceedings should be carried out, or a mutually agreed arrangement should be made with the seller.

§ 6 liability for damage

1) Our liability for contractual breaches of duty, as well as for tort, is limited to intent and gross negligence. This does not apply in the event of injury to life, limb and health of the customer, claims for breach of essential contractual obligations and compensation for damage caused by delay (§ 286 BGB). In this respect, we are liable for every degree of fault. Essential contractual obligations are those the fulfillment of which enables the proper execution of the contract and on the observance of which the contractual partner trusts and may also rely.

2) The aforementioned limitation of liability also applies to slightly negligent breaches of duty by our vicarious agents.

3) Insofar as liability for damage that is not based on injury to life, limb or health of the customer and slight negligence is not excluded, such claims become time-barred within one year from the origin of the claim or in the case of damage claims due to a defect from delivery the thing.

4) Insofar as the liability for damages against us is excluded or limited, this also applies with regard to the personal liability for damage of our employees, workers, employees, representatives and vicarious agents.

5) Our liability for damages is limited to the foreseeable, typically occurring damage, insofar as the breach of duty is not intentional.

6) Claims for damages according to the mandatory provisions of the Product Liability Act remain unaffected. Our liability is excluded in the event that the customer / buyer is notified of the manufacturer or sub-supplier in writing within four weeks of the goods causing the damage being reported.

§ 7 retention of title

1) We reserve ownership of the object of purchase in contracts with consumers until full payment of the purchase price.

2) If the customer is an entrepreneur, we reserve ownership of the goods until all purchase price claims already arising from the business relationship and the additional purchase price claims (default interest, default damage, etc.) arising in connection with the delivered goods have been repaid. In this case, the goods remain the property of the seller as reserved goods. Apart from that, the retention of title customary in the industry and trade applies within the meaning of § 346 HGB. In real terms, we only transfer the goods by postponement, due to the purchase price payment. The inclusion of individual claims in a current invoice or balance drawing and their recognition do not lift the retention of title. If the customer defaults on payment, we are entitled to take back the goods subject to retention of title, provided we have threatened the customer with this step in good time; the customer expressly consents to us taking possession of the reserved goods.

3) The customer has to inform us immediately about the enforcement measures of third parties in the goods subject to retention of title or in the assigned claims by handing over the documents necessary for an intervention. This also applies to impairments of any other kind. The customer must always inform third parties in advance of the existing rights to the goods. If the customer is an entrepreneur, he has to bear our costs of an intervention if the third party is unable to reimburse them.

4) If goods subject to retention of title are processed by the buyer into a new movable item, the processing takes place for the seller without this being obliged. The new thing becomes the property of the seller. If processed together with goods not belonging to the seller, the seller acquires co-ownership of the new item, based on the ratio of the value of the reserved goods to the other goods at the time of processing. If goods subject to retention of title are used in accordance with §§ 947, 948 BGB connected, mixed or blended, the seller becomes co-owner in accordance with the statutory provisions. If the buyer acquires sole ownership through connection, mixing or blending, he is already transferring joint ownership to the seller based on the ratio of the value of the reserved goods to the other goods at the time of the connection, mixing or blending. The seller accepts the transfer of ownership. In these cases, the buyer must keep the property owned or co-owned by the seller, which is also considered to be reserved goods, free of charge.

5) If the customer is an entrepreneur, he shall assign us to us in the event of the resale of the goods subject to retention of title, up to the fulfillment of all our claims, from the resale in the amount of the value of the goods subject to retention of title with all ancillary rights. We accept the assignment. If the resold goods subject to retention of title are in the co-ownership of the seller, the assignment of the claims extends to the amount that corresponds to the customer's share in the co-ownership. Section 7 number 2) sentence 4) applies accordingly to the extended retention of title.

The advance assignment act. Section 7 number 5) also extends to the balance claim. The value of the goods subject to retention of title means our invoice amount plus a security surcharge of up to 20%, which, however, remains unrecognized insofar as it conflicts with the rights of third parties.

6) Ist der Kunde Unternehmer und wird die Vorbehaltsware vom Kunden als wesentlicher Bestandteil in das Grundstück eines Dritten eingebaut, so tritt der Kunde schon jetzt die gegen den Dritten oder gegen den, den es angeht, entstehenden Forderungen auf Vergütung in Höhe des Wertes der Vorbehaltsware mit allen Nebenrechten, einschließlich eines solchen auf Einräumung einer Sicherungshypothek ab. Wir nehmen diese Abtretung hiermit an. § 7 Ziffer 5) Satz 1) und Satz 6) gelten entsprechend.

7) If the customer is an entrepreneur and the reserved goods are built into the customer's property as an integral part of the customer's property, then the customer already enters the claims resulting from the commercial sale of the property or property rights in the amount of the value of the reserved goods. with all ancillary rights. We accept this assignment. Section 7 number 5) sentence 1) and sentence 6) apply accordingly.

8) If the customer is an entrepreneur, he is only entitled and authorized to resell, use or install the reserved goods in the normal, normal course of business and only with the proviso that the claims within the meaning of Section 7 Number 5), 6) and 7) actually pass on to us. The customer is not entitled to dispose of the goods subject to retention of title, in particular pledging or transfer by way of security.

9) If the customer is an entrepreneur, we authorize the customer to withdraw the gem. § 7 paragraph 5), 6) and 7) assigned claims. The revocation can only be made for an important reason, e.g. in the event of breach of contract by the customer. We will not make use of our own direct debit authorization as long as the customer fulfills his payment obligations, also towards third parties. At our request, the customer must name the debtors of the assigned claims and notify them of the assignment. The customer authorizes us to notify the debtors of the assignment himself.

10) With the cessation of payment, application for or opening of insolvency proceedings or the implementation of an out-of-court

settlement procedure with the creditors over the debt settlement (§ 305 I point 1 InsO), the right to resale, to use or to install the reserved goods and the authorization to collect the assigned ones shall expire. Claims: In the case of a check or bill protest, the direct debit authorization also expires.

11) If the realizable value of the collateral granted exceeds the receivables to be secured from delivery transactions by more than 38% (10% deduction due to possible loss of income, 4% § 171 I InsO, 5% § 171 II InsO and sales tax in the statutory amount - currently 19 %), the seller is obliged to retransfer or release at the request of the buyer. With the settlement of all claims of the seller from delivery transactions, ownership of the reserved goods and the assigned claims are transferred to the buyer.

§ 8 Form of declarations

Legally relevant declarations and notifications that the customer has to submit to us or a third party must be in writing.

§ 9 Place of performance / choice of law / place of jurisdiction

1) The place of fulfillment and payment is our place of business, unless otherwise stated in the contract.

2) Spanish law applies to this contract. The UN sales law is excluded.

3) In the case of contracts with business people, legal entities under public law or special funds under public law, the exclusive place of jurisdiction is the court responsible for our place of business. Despite the fact that Easy Kaltasphalt S.L. existing strict quality control, there may still be slight fluctuations in the color of the asphalt mixture.

The customer and in particular the processor is himself responsible for compliance with the relevant current DIN standards, during processing or use.

Undersize, oversize and foreign particles are possible with all bulk goods, which cannot be avoided from a production point of view. For this purpose, EASY Kaltasphalt S.L. BR has no warranty or guarantee.

A CE marking and a declaration of performance or assessment of the constancy of performance for the cold asphalt to be supplied by us is not the subject of the contract. If this is desired, an expressly written agreement with EASY Kaltasphalt S.L. is required.

Errors, intermediate sales and price changes are reserved!

The customer, insofar as he resells the cold asphalt to an end customer or processes it for him, is obliged to point this out to our special supplementary information on the cold asphalt. EASY Kaltasphalt S.L. is responsible for incorrect advice to the processor in relation to the end user. No warranty or guarantee. Verbal declarations by our employees regarding the quality, quality, properties, durability or processing of EASY cold asphalt require our review and subsequent written confirmation or approval in order to be legally effective.

Bétera , April 2020