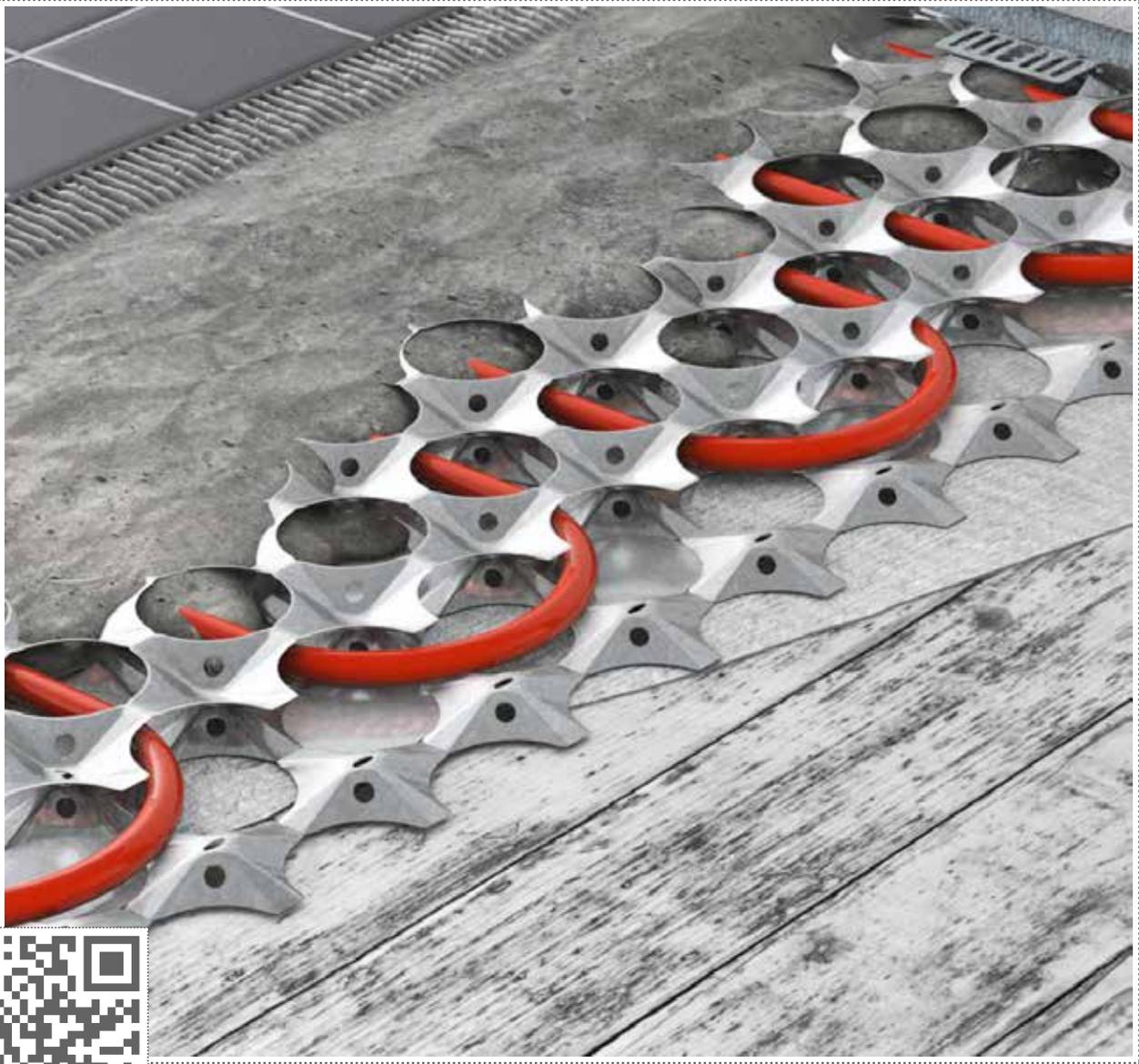




# GENERAL TERMS AND CONDITIONS OF BUSINESS **GTC**



## 1. SCOPE

- 1.1. These Terms and Conditions of Business apply to all deliveries, services and offers of Effidur GmbH ("Effidur") for entrepreneurs within the meaning of Section 14, BGB (German Civil Code), legal persons under public law or special public assets. They are an integral part of all contracts that Effidur enters into with its contracting parties on the offered deliveries and services. They also apply to all future deliveries, services or offers for the Principal, including if they are not been separately agreed upon again.
- 1.2. The terms and conditions of business of the Principal or third parties shall not apply, including if Effidur does not object to their validity separately in an individual case. Even if Effidur cites a letter of the Principal stating the terms and conditions of business of the Principal or a third party, or refers to such a conditions, this shall not constitute any kind of consent to the validity of such terms and conditions of business.

## 2. OFFER, OFFER DOCUMENTS

- 2.1. All offers of Effidur are subject to change without notice and are non-binding provided they are not expressly stated as binding or are not subject to a certain acceptance period.
- 2.2. The documents that are part of an offer such as diagrams, drawings and weight details only approximately describe a performance insofar as they are not expressly described as having binding force. The same applies to performance and consumption details. This is not associated with provision of a warranty. They do not constitute any warranted characteristics but rather are delivery or service descriptions or identifications. Variations that are customary in the trade and variations that apply as a result of legal requirements or illustrate technical improvements, as well as the replacement of components with equivalent parts are permitted provided they do not have a detrimental effect on the use as proposed in the contract.
- 2.3. Effidur reserves ownership of and copyrights to cost estimates, drawings, diagrams, leaflets, catalogues, models, tools and other documents or aids. At the request of Effidur, the Principal is to return in full to Effidur these items, and copies of them that may have been made, if the Principal no longer requires them during the course of its normal business activities or if negotiations do not result in a contract being brought about. The Principal may neither make these items available to third parties as such nor in terms of their content, disclose them or use them or arrange for third parties to use them without express approval by Effidur.

## 3. 3. ORDERS, ENTERING INTO A CONTRACT

- 3.1. Effidur can accept orders or assignments within 14 days following receipt. An order shall only be deemed accepted if it has been confirmed in writing by Effidur.
- 3.2. Solely the contract entered into in writing is authoritative in respect of the legal relations between Effidur and the Principal, including these General Terms and Conditions of Business. This contract reflects in full all agreements and incidental agreements between the contracting parties with regard to the subject matter of contract. Verbal assurances on the part of Effidur prior to entering into this contract are legally invalid, and verbal agreements of the contracting parties shall be replaced by the written contract provided they do not expressly state that they are to continue to apply with binding force.

- 3.3. Supplementary information regarding and amendments to the agreements that have been entered into, including these General Terms and Conditions of Business, are subject to the written form in order to be deemed valid. Forwarding via telecommunications, in particular by fax or e-mail, are sufficient to safeguard the written form provided the copy of the signed statement is forwarded.
- 3.4. Contracts may also be entered into, supplemented and/or amended by way of electronic data transmission, in particular by e-mail (hereinafter referred to as electronic contracts). The criteria set out in 3.1 and 3.2 apply to electronic contracts on condition that in the place
  - » of the written confirmation, confirmation in the form of forwarding via telecommunications (e.g. e-mail) applies,
  - » of the written contract, the electronic contract applies,
  - » of the written form, any form of forwarding via telecommunications and e-mail applies.

## 4. PRICES AND PAYMENT

- 4.1. The prices apply to the service and delivery scope stated in the order confirmation. Additional and special services shall be charged separately. In the absence of agreements to the contrary, the prices apply ex works (EXW) plus the cost of packaging, transport and the respective, valid, statutory value added tax and in the case of export deliveries plus customs duties, charges and other public levies. In the case of services up to a net goods value of EUR 75.00, Effidur shall charge an additional minimum quantity surcharge of EUR 30.00. The prices apply for four weeks from the time of entering into the contract.
- 4.2. The list prices of Effidur valid at the time of delivery shall apply insofar as the agreed prices are based on list prices and the delivery is scheduled for more than three months after entering into the contract. If list prices have not been agreed, Effidur shall be entitled to appropriately increase the list prices if, after entering into the contract, cost increases have occurred, which are not the responsibility of Effidur (in particular but not, however, exclusively, as a result of wage settlements, material price increases, energy price increases or price increases by suppliers and the like).
- 4.3. As a matter of principle, goods may only be returned following written consent by Effidur. As a matter of principle, custom-made products may not be returned. Freight costs; packaging, testing and reworking costs, incurred by Effidur are to be borne by the Principal insofar as performance on the part of Effidur is not faulty and/or goods have been returned by the Principal without consent by Effidur. In such a case, the Principal is to pay an amount in the sum of 25 % of the net goods value, at least, however, EUR 50.00. The Principal is permitted to furnish proof of lower expenses on the part of Effidur.
- 4.4. Expenses for special consignment forms (e.g. express deliveries, night deliveries, transport insurance or the delivery of valuables etc.) shall only be assumed by Effidur in the event of returns at the request of and / or faulty performance on the part of Effidur and insofar as this is absolutely necessary to safeguard the Principal's interests.

- 4.5. In the absence of agreements to the contrary, invoice amounts fall due for payment upon receipt of an invoice by the Principal. Receipt of payment by Effidur is authoritative for making payments in good time. Payments made to persons without a written authorisation to collect do not have a performance effect. If the Principal fails to pay on the due date, the outstanding amounts shall accrue 5 % interest from the due date. This does not affect asserting higher interest rates and claims for greater damage in the event of default.
- 4.6. Setting off using the Principal's counter-claims or the retention of payments regarding such claims shall only be permitted insofar as the counterclaims are undisputed or have become *res judicata*.
- 4.7. Effidur is entitled to perform or render outstanding deliveries or services only subject to advance payment or provision of security insofar as knowledge is gained of circumstances that give reason to believe payment of the claims of Effidur resulting from the respective contractual relationship is jeopardised. The failure, in part or in full, on the part of the Principal to honour due payment obligations shall entitle Effidur, after setting a reasonable period usually of 14 days, to withdraw from the contract and claim for damages regarding non-performance. The amount of damages shall be a flat rate amount of 20 % of the net goods value provided Effidur does not furnish proof of greater damage. The Principal reserves the right to furnish proof of lesser damage. These regulations do not affect the right on the part of Effidur to demand the surrender of supplied reserved goods at the Principal's cost.

## 5. DEFAULT

If the Principal defaults in acceptance of the deliveries or services, Effidur may set a reasonable additional period usually of 14 days for the acceptance. Following expiry of the additional period, Effidur shall be entitled to withdraw from the contract and claim for damages regarding non-performance. Insofar, the provisions of sub-section 4.7 apply accordingly.

## 6. DELIVERY, DELIVERY TIME

- 6.1. Deliveries shall be made *ex works* (EXW).
- 6.2. The periods and dates for deliveries and services for which Effidur holds out prospects apply, at all times, on an approximate basis unless a fixed period or a fixed date has been assured or agreed upon on a fixed basis. Insofar as shipping has been agreed upon, the delivery periods and delivery dates refer to the time of the hand over to the forwarding agent, carrier or other third parties entrusted with the transport.
- 6.3. The delivery or performance time commences upon the forwarding of the confirmation of order but not, however, prior to receipt of the documents, licenses and releases to be obtained by the Customer and not prior to receipt by Effidur of the agreed advance payment.
- 6.4. Irrespective of its rights resulting from default on the part of the Principal, Effidur may request that the Principal extend or postpone delivery and service periods by the period in which the Principal fails to honour its contractual obligations to Effidur.
- 6.5. Effidur shall not be liable for the impossibility of the delivery or performance or for delivery and performance delays insofar as these have been caused by force majeure or other events that were unforeseeable at the time of entering into the contract (e.g. any kind of operational disruptions; difficulties in respect

of material or energy procurement; transport delays; strikes; lawful lockouts; workforce, energy or raw material shortages; difficulties in procuring the necessary official licenses; administrative measures or the lacking, incorrect or untimely delivery by suppliers), which are not the responsibility of Effidur. Insofar as such events significantly hamper or render impossible the delivery or service by Effidur, and the hindrance is not merely of a temporary nature, Effidur shall be entitled to withdraw from the contract insofar as a contractual amendment is not to be considered or not possible. In the case of temporary hindrances, the delivery or service periods shall be extended or the delivery and service dates shall be postponed by the hindrance period plus a reasonable start-up period. Insofar as acceptance of the delivery or service is unacceptable to the Principal as a result of the delay, the Principal may set an additional period of at least 14 days and following expiry of such an additional period withdraw from the contract.

- 6.6. Effidur shall be entitled to provide partial deliveries if
- » The Principal can use the partial delivery as part of the purpose intended in the contract;
  - » Delivery of the remaining ordered goods is guaranteed, and
  - » As a result the Principal does not incur considerable additional expenses or additional costs (unless Effidur states that it is willing to assume such costs).
- 6.7. If Effidur defaults in performance or service, or if Effidur is unable to provide a delivery or render a service for whichever reasons, liability on the part of Effidur shall be limited in accordance with Section 10 of these General Terms and Conditions of Business.

## 7. PASSING OF RISK, ACCEPTANCE, STORAGE COSTS

- 7.1. Risk shall pass to the Principal at the latest upon the hand-over of the delivery item (whereby the start of the loading procedure is authoritative) to the forwarding agent, carrier or other third party determined to send the consignment. This also applies if partial deliveries are made or Effidur has assumed other services (shipping or installation). If the shipping or the hand over is delayed as a result of a circumstance the cause of which is the Principal's responsibility, risk shall pass to the Principal from the day on which the delivery item is ready for dispatch and Effidur has notified the Principal in that respect.
- 7.2. Delivered items are to be accepted by the Principal, including if they contain insignificant defects. Insofar acceptance is to be conducted, the item shall be deemed accepted if
- » The delivery and, insofar as Effidur is required to perform the installation, the installation has been completed,
  - » Effidur has notified the Principal of this by way of drawing attention to the acceptance fiction in accordance with this Section 7.2, and has requested that the Principal accept,
  - » 12 workdays have lapsed since the delivery or installation or the Principal has started to use the item and in this case 6 workdays have lapsed since the delivery or installation, and
  - » The Principal has failed to accept the delivery or installation within this period for a reason other than a defect for which Effidur has been notified that renders using the delivery item impossible or considerably hampers such use.

7.3. Storage costs following the passing of risk shall be borne by the Principal. In the case of storage by Effidur, the storage cost of each metre of loading space (Euro pallet) that is used, or part thereof, regarding the items to be stored shall be EUR 3.50 for each calendar day of such storage. The right is reserved to assert a claim and furnish proof of higher or lower storage costs.

## 8. ASSEMBLY AND CUSTOMER SERVICE WORK

8.1. Assembly work is to be remunerated separately. The costs comprise, in particular, material and travelling costs as well as wages.

8.2. Agreed flat rates for assembly work do not include surcharges for overtime, work performed at night, on Sundays and public holidays if such work is commissioned by the Principal or is necessary for reasons that are the Principal's responsibility. These shall be charged separately.

8.3. Assembly and commissioning work shall be completed by Effidur when it successfully puts the items into operation on a trial basis, and is ready for acceptance. Insofar as delays occur during the assembly or commissioning, which are not the responsibility of Effidur, risk shall pass to the Principal from such a time.

8.4. The above applies accordingly to customer service work.

## 9. WARRANTY

9.1. The warranty period is one year from delivery or, provided acceptance is required, from acceptance. This does not apply to the manufacture and delivery of structures, items that are normally indented for use in a structure as well as planning or monitoring services that apply to a structure.

9.2. The delivered items are to be inspected with due care without delay following delivery to the Principal or the third parties determined by the Principal. They shall be deemed approved if Effidur has not received notification of defects within 7 work-days in text form regarding obvious defects or other defects that were identifiable in the case of a careful inspection performed without delay once such a defect has been identified or the time in which the defect could be identified by the Principal in the case of normal use of the delivery item without a detailed inspection. At the request of Effidur, the delivery item for which notification of a defect has been provided is to be returned freight-free to Effidur. In the case of justified notification of defects, Effidur shall reimburse the cost of the most cost-effective shipping route. This shall not apply provided the costs increase because the delivery item is at a location other than the location of the use as per agreement.

9.3. In the case of material defects regarding the supplied items, Effidur undertakes, and is entitled, to initially provide subsequent improvement or replacement at its discretion within a reasonable period. In the event of failure, i.e. the impossibility, unacceptability, refusal or inappropriate delay of the subsequent improvement or replacement, the Principal may withdraw from the contract or appropriately reduce the price.

9.4. If the defect is attributable to culpability on the part of Effidur, the Principal may claim for damages in accordance with the certain preconditions set out in sub-section 10.

9.5. In the case of defects in components of a manufacturer specified the Principal, which Effidur cannot rectify due to licensing law or actual reasons, Effidur shall, at its discretion, assert its guarantee claims against the manufacturers and suppliers on the account of the Principal or assign these to the Principal. Warranty claims against Effidur shall only apply in the case of such defects in accordance with the other preconditions and in accordance with these General Terms and Conditions of Business if asserting the aforementioned claims against the manufacturer and suppliers is unsuccessful in court or, for example, has no prospects of success as a result of insolvency. The period of limitations of the affected warranty claims of the Principal against Effidur shall be suspended during the period of the legal dispute.

9.6. The warranty shall be inapplicable if the Principal alters the delivery item or makes arrangements for third parties to alter it without approval by Effidur and rectifying the defect is impossible or is hampered to an unacceptable extent as a result of such alteration. In any case, the Principal shall carry the additional cost of rectifying the defect caused by such an alteration.

9.7. Delivery of used items agreed upon with the Principal in an individual case shall apply by way of exclusion of any warranty.

## 10. LIABILITY FOR DAMAGES DUE TO CULPABILITY

10.1. Liability on the part of Effidur for claims for damages, irrespective on whichever legal grounds these are based, in particular due to impossibility, default, inadequate or wrong delivery, breach of contract, violation of obligations in the case of contractual negotiations and unlawful acts, is restricted in accordance with this sub-section 10 provided culpability is relevant in that respect.

10.2. Effidur shall not be liable in the event of minor negligence on the part of its executive bodies, legal representatives, white-collar workers or other vicarious agents provided the matter does not involve the violation of key contractual obligations. Obligations that are key to the contract include the obligation to provide timely delivery and installation of the delivery item, the fact that it is free of faults that have more than just an insignificant detrimental effect on its functionality and suitability for use, as well as consulting, protection and care obligations that should enable the Principal to use the delivery item as per agreement or are aimed at protecting the life of and preventing danger to the personnel of the Principal or protection of their property from considerable damage.

10.3. Insofar as Effidur is liable for damages in accordance with sub-section 10.2 on merit, such liability shall be limited to damage that Effidur had foreseen upon entering into the contract as a possible consequence of a breach of contract or which it should have foreseen with consideration given to the circumstances of which it was aware, or of which it should have been aware. In addition, indirect and consequential damage as a result of defects in the delivery item shall only be subject to compensation provided such damage is typically to be expected in the case of using the delivery item as per agreement.

10.4. In the event of liability for minor negligence, the obligation to provide compensation on the part of Effidur for material or personal damage shall be limited to an amount of EUR 3.0 million for each case of damage, including if key contractual obligations are violated.

- 10.5. The above liability exclusions and restrictions apply to the same extent in favour of the executive bodies, legal representatives, white-collar workers and other vicarious agents of Effidur.
- 10.6. Insofar as Effidur makes available technical information or renders consulting services, and such information or consulting are not part of the scope of services it is to render as per agreement, such services shall be rendered gratuitously and by way of exclusion of any kind of liability.
- 10.7. The restrictions in this sub-section 10 do not apply to liability on the part of Effidur regarding intentional acts, warranted characteristics, loss of life, physical injury or detrimental effects on health or liability in accordance with the German Product Liability Act.

## 11. LIABILITY FOR DEFECTS

- 11.1. Liability on the part of Effidur is restricted to its delivery or service, and does not apply to the overall system. It is furthermore conditional on the fact that the Principal has honoured its contractual obligations in full.
- 11.2. The liability for defects does not apply to customary wear-and-tear and not to damage that has occurred following the passing of risk as a result of faulty or negligent handling or excessive use etc. This also applies to the alterations to the delivery items on the part of the Principal or third parties as well as faulty assembly by the Principal or third parties.

## 12. RESERVATION OF TITLE

- 12.1. The reservation of title agreed below is aimed at securing all respective existing current and future claims of Effidur against the Principal. Effidur reserves the right to ownership of the delivery items up until payment in full (including potential costs). The goods, as well as the goods taking their place in accordance with this clause, which are subject to the reservation of title are hereinafter referred to as the "Reserved Goods."
- 12.2. The Principal shall gratuitously store such Reserved Goods on behalf of Effidur.
- 12.3. The Principal is entitled to process and sell the Reserved Goods up until occurrence of a utilisation case (12.8) in the ordinary course of business. Pledges and transfers of ownership by way of security are not permitted.
- 12.4. If the Reserved Goods are processed by the Principal, it is agreed that the processing shall apply in the name and on account of Effidur in the capacity of manufacturer, and Effidur shall directly acquire ownership or joint ownership (fractional ownership) - if the processing applies on the basis of substances of several owners or the value of the processed item is higher than the value of the Reserved Goods - of the newly created item in the proportion of the value of the Reserved Goods (net invoice value) to the value of the newly created item. In the event that Effidur should not acquire such ownership, the Principal assigns to Effidur at this point in time as security its future ownership or, in the aforementioned proportion, joint ownership of the newly created item. If the Reserved Goods are inked or inseparably mixed with a uniform item, and if the other item is to be regarded as the principal item, the Principal shall assign to Effidur, provided the Principal owns the principal item, proportionate ownership of the uniform item in the proportion stated in sentence 1.

- 12.5. In the event of resale of the Reserved Goods, the Principal assigns at this point in time to Effidur as security the resulting claim against the Buyer – in the case of co-ownership on the part of Effidur of the Reserved goods on a pro rata basis in line with the co-ownership share. The same applies to other claims that take the place of the Reserved Goods or otherwise occur regarding the Reserved Goods such as insurance claims or claims resulting from unlawful acts in the case of loss or destruction. Effidur authorises the Principal, which may be withdrawn, to collect the claims assigned to Effidur in its own name and on its own account. Effidur may only object to such an authorisation to collect in the event of utilisation (12.8.).
- 12.6. If third parties intervene in the Reserved Goods, in particular by way of pledging, the Principal shall refer to ownership on the part of Effidur without delay and inform Effidur in that respect to enable it to assert its ownership rights. Insofar as the third party is not in a position to reimburse Effidur for the court or out-of-court costs that arise in this respect, the Principal shall be liable in that respect to Effidur.
- 12.7. On request, Effidur shall release the Reserved Goods, and the items and claims that take the place of the Reserved Goods, at its discretion provided their value exceeds the amount of the secured claims by 50 %.
- 12.8. If Effidur withdraws from the contract in the case of conduct in breach of contract on the part of the Principal, in particular default in payment (utilisation case), it shall be entitled to demand that the Reserved Goods are returned.

## 13. EXPORT CONTROL PROVISIONS

The delivery items may be subject to export control provisions of the Federal Republic of Germany. In the event of a subsequent export of the delivery items abroad, the Buyer shall be responsible for complying with the statutory provisions.

## 14. PLACE OF PERFORMANCE, PLACE OF JURISDICTION AND APPLICABLE LAW

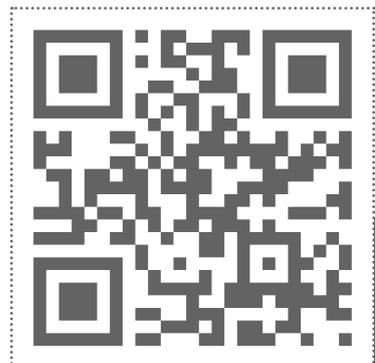
- 14.1. In the absence of provisions to the contrary, Chemnitz is deemed the place of performance for all obligations resulting from the contractual relationship with the Principal. If Effidur is also required to render assembly services, the place at which the assembly is to occur shall be deemed the place of performance. Chemnitz is deemed the place of jurisdiction.
- 14.2. The legal relations between Effidur and the Principal are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

Note: The Principal takes note of the fact that Effidur saves data from the contractual relationship in accordance with Section 28 of the German Federal Data Protection Act for the purpose of data processing, and reserves the right to forward the data to third parties (e.g. insurance companies) where necessary to execute the contract.



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BESUCHEN SIE UNSERE WEBSITE



effidur GmbH  
Verwaltung  
Kurze Straße 10  
D-09117 Chemnitz

Werk Rottluff  
Weideweg 17  
D-09116 Chemnitz

Telefon » +49 (0) 371 2399-200  
Telefax » +49 (0) 371 2399-229

Mail » [info@effidur.de](mailto:info@effidur.de)  
Web » [effidur.de](http://effidur.de)