

# General Terms and conditions for purchases

August 2020

## 1. Conclusion of the Contract

- 1.1. These General Terms and Conditions for Purchases shall be valid exclusively. The Contractor's terms of delivery shall only apply if expressly confirmed by the Purchaser in writing.
- 1.2. Orders, agreements and changes are only binding if placed or confirmed by the Purchaser in writing. Orders placed orally or by telephone must be confirmed in writing. All correspondence must take place with the Purchasing Department placing the order. Agreements entered into with other departments, in as far as they entail changes to points specified in the contract must be expressly confirmed in writing by the department placing the order in the form of an amendment to the contract.
- 1.3. Orders shall become invalid, if, upon transmission of an order to the Contractor, confirmation in accordance with section 1.2 is not received within 10 days from the order date (or, if confirmation is required under section 1.2, from the date of such confirmation) at the latest. In this case, our order shall be deemed not to be placed.
- 1.4. Obvious inaccuracies in an order (e.g. recognizable errors in typing or in calculation) do not confer the right of rescission under §§ 119, 120 BGB (German Civil Code). Furthermore, the Purchaser is entitled to claim consent from the Contractor, that the supply contract shall be deemed to be concluded with the content as recognizably intended.
- 1.5. The Contractor shall be obliged, insofar as can be reasonably expected and after agreement on additional or reduced costs as well as on the amendment of agreed delivery dates, to deliver the object concerned in another design and type.
- 1.6. Execution of the order may not be passed on to third parties without the prior written approval of the Purchaser and shall entitle the Purchaser to withdraw from the contract without compensation and / or to claim damages. The Contractor is under obligation to treat the conclusion of the contract confidentially. The Contractor may name the Purchaser as a reference to third parties only with the latter's written approval.

## 2. Prices and Payment

- 2.1. The prices agreed upon are fixed prices, with free delivery to the delivery point indicated by the Purchaser, including statutory sales tax and packaging, whereby the Purchaser is entitled to determine the manner of packaging, the means and form of transportation as well as transportation insurance.
- 2.2. Invoices must be transmitted to the Purchaser's address – Purchasing Department – in duplicate – or in text form. Invoices must not be enclosed with deliveries. Invoices and any correspondence in the course of the business relationship shall indicate the order number, the order date, the material number, the Purchaser's reference and possible further details.
- 2.3. The invoices must show whether the order has been duly performed or which quantities or units are yet outstanding for delivery. Every order shall be invoiced separately.
- 2.4. Invoices shall be paid by the Purchaser either within two weeks from acceptance of goods or services and presentation of a complete invoice less 3% cash discount or within 30 days without further deduction.
- 2.5. Payments effected by the Purchaser do not constitute acceptance of the invoicing.
- 2.6. The Contractor shall not be entitled to assign claims under this contract to third parties or to have such claims collected by third parties without the prior written consent of the Purchaser – which shall not be withheld unreasonably. In the case of the assignment of claims arising from extended retention of title, consent shall be deemed to have been granted subject to the proviso that offsetting of counterclaims acquired after notice of the assignment is permissible.
- 2.7. In case of our acceptance of premature deliveries, the due date as agreed upon shall be decisive. Where the invoiced delivery arrives later than the invoice, the date of receipt of the delivery shall be deemed to be the invoice date.
- 2.8. In case of incorrect or defective deliveries, we are entitled to withhold our payment in the respective amount until due performance. On the other hand, payments made shall not be considered as an acknowledgment of the delivery as in conformity with the agreement.

## 3. Deadlines

- 3.1. All designated delivery dates are binding. Decisive for compliance with the delivery date or the period of delivery shall be the arrival of the delivered objects at the specified delivery point or place of use.
- 3.2. If the Contractor determines that it will not be possible to meet specified deadlines, he must notify the Purchaser immediately, stating the reasons. Claims of the Purchaser arising from delay remain unaffected by this.
- 3.3. In case of any delay in delivery we are entitled to claim a contractual penalty in the amount of 0.5% of the delivery value, however not more than 5% in total. The right to any further legal claims shall be reserved. We are obliged to declare the reservation of a contractual penalty at the latest, upon payment of the invoice.
- 3.4. If an agreed delivery date is not met, we are entitled, after the lapse of a reasonable extension determined by us, to rescind the contract, provided that further legal claims remain unaffected. If the Contractor is responsible for the delay, we are furthermore entitled at our discretion to claim for damages incurred due to the delay or, after lapse of the above-mentioned extension, to claim damages in lieu of performance or reimbursement of futile expenses.
- 3.5. Acts of God, strikes and lockouts or other unforeseeable occurrences beyond the Contractor's control shall discharge the Contractor from liability only for the duration of the disturbance and only within its scope. The Contractor shall be obliged, as far as can reasonably be expected, to provide the required information without delay and to adapt his obligations to the changed circumstances in good faith. If the delivery should no longer be utilizable in our business due to a delay caused by such circumstances – taking into account economic considerations – we shall be discharged in total or partially from our obligation to accept the ordered delivery and shall be entitled to rescind the contract.

## 4. Provision of Materials

- 4.1. Materials provided by the Purchaser remain the property of the Purchaser even if processed. On receipt of such materials, the Contractor will check their quantity, condition and quality. He will report any defects to the Purchaser without delay. The Contractor bears responsibility for any subsequently discovered defects. Such materials must only be used for the Purchaser's orders.
- 4.2. The Contractor must provide replacements in the case of depreciation in value or loss. Any processing or transformation of the material shall be made only for the Purchaser. The Purchaser therefore immediately acquires ownership of the new or transformed goods. If this is not legally possible, for whatever reason, the Purchaser will reach an agreement with the Contractor that the latter will transfer unencumbered ownership of the new product to the Purchaser at this point and will hold it in safekeeping for the Purchaser.
- 4.3. The Contractor will hold the new product on the Purchaser's behalf with due commercial diligence.

## 5. Delivery, Passing of Risk

- 5.1. A bill of delivery stating the precise details of our order as well as a detailed description of the scope of delivery including article, type, quantity, etc will be included with the delivery. If the Contractor fails to comply with the aforementioned obligation, delays in our order processing, for which we cannot be held responsible, are unavoidable.
- 5.2. Installation and operation instructions must be transmitted to us without specific request, separately and with indication of our order number, at the latest on the delivery date. In the case of failure to provide these documents, the Contractor shall be liable for any damage that would not have occurred if such documentation had been available.

- 5.3. We will accept partial deliveries only on explicit agreement. Where partial deliveries have been agreed upon, such quantity as is outstanding for delivery shall be indicated.
- 5.4. The place of passing of the risk shall be the delivery point specified by us.

## 6. Warranty

- 6.1. The Contractor assumes the guarantee for the use of best appropriate material, for correct, proper, appropriate and safe workmanship, design and assembly measures as well as for compliance with the warranted capacity, efficiency, power requirements, etc and normal use. Any object delivered by the Contractor and any services rendered must comply with the technological state of the art, the applicable standard of environmental compatibility, the applicable legal provisions and with all regulations and guidelines of the appropriate authorities, of employers liability insurance associations and of trade associations, in particular with the respective accident prevention regulations as applicable in the Federal Republic of Germany. Insofar as a deviation from such regulations is deemed necessary in individual cases, the Contractor must obtain our prior written.
- 6.2. In the case of delivery of circuitry, control systems and programs, a defect also shall be deemed to be given if the delivered object as such is or works free from defect, but is not or only incompletely suitable to assume the function as designed for and as agreed upon.

## 7. Defects in Quality and Title

- 7.1. We shall only accept deliveries under the reservation of a quantity and quality control. Our duty of inspection extends only to obvious or easily recognizable deviations in quantity and quality. The Contractor must be notified immediately of recognized deviations. The complaint in respect of a defect of goods shall be considered to be made in due time if it is received by the Contractor within a notice period of 8 days from the receipt of delivery or - in the case of hidden defects - from the discovery of the defect.
- 7.2. In case of defects, our claims pursuant to the legal provisions shall be unrestricted, provided that the place of warranty shall be the delivery point specified by us. The right of recourse pursuant to §§ 478, 479 BGB (German Civil Code) shall apply accordingly in the case that the Contractor has delivered only parts for products to be newly manufactured by us.
- 7.3. The Purchaser's right to claim for deviations in the goods from the contractually stipulated condition, e.g. defects, shall expire after 24 months from commissioning, but at the latest 36 months after full delivery and rendering of services to the Purchaser. In the case of a repair or replacement of parts, the limitation period shall start again with the date of repair or replacement.
- 7.4. In case of default of the Contractor with the substitute delivery or with the repair of defects, we shall be entitled to replacement or to the repair of defects by ourselves or by third parties at the expense of the Contractor. The same shall apply in urgent cases if the Contractor cannot be reached or is not able to repair the defects or supply a replacement in due time. This does not restrict the Contractor's obligations.

## 8. Product Liability, Release from Liability, Liability Insurance

- 8.1. Insofar as the Contractor is liable for damage to a product, the Contractor shall be obliged to release us on first request from liability for claims for damages from third parties to such extent, if the cause is found to be in the Contractor's organizational sphere and if the Contractor is himself liable vis-à-vis third parties.
- 8.2. Within the context of the Contractor's liability for damages as defined by section 8.1, the Contractor shall also be obliged to compensate us for expenses pursuant to §§ 683, 670 BGB (German Civil Code) and pursuant to §§ 830, 840, 426 BGB which result from or in connection with a product recall implemented by us.
- 8.3. We will – as far as can reasonably be expected – inform the Contractor of the object and scope of the product recall to be implemented and give the Contractor the opportunity to state his position. Further legal claims shall remain unaffected hereby.
- 8.4. The Contractor shall be obliged to maintain liability insurance with an insurance coverage of € 5 million per personal injury and damage to property; where we are entitled to place further claims for damages, such claims shall remain unaffected.

## 9. Industrial Property Rights

- 9.1. The Contractor guarantees that the delivery and the use of the delivered objects do not violate industrial property rights of any third parties. The Contractor confirms that he is aware that the final products may be distributed worldwide.
- 9.2. The Contractor shall be exempt from liability if the delivered object was manufactured in accordance with drawings, models or similar descriptions or indications provided from our side, and if the Contractor is not aware of or does not need to have knowledge of the violation of industrial property rights in connection with the products developed by him.
- 9.3. The contracting parties are obliged to notify each other immediately on learning of any risk of violation and of alleged violations, and to grant each other the opportunity to ward off corresponding claims by common consent.
- 9.4. The Contractor shall be obliged, upon our request, to inform us of the use of published or unpublished own or licensed industrial property rights with regard to the delivered objects, and of corresponding applications.

## 10. Drawings, Samples and Other Documentation

- 10.1. If an order is placed based on a drawing, only a 2D drawing shall be legally binding. The Contractor undertakes to provide the Purchaser on request with lists of spare parts with corresponding illustrations for the parts to be delivered.
- 10.2. After completion of the work, the Contractor will provide the Purchaser with the Contractor's own drawings, calculations and other technical documentation relating to the performance of the contract, corresponding to the actual design supplied and in the specified quantity and format. The Contractor is under obligation to transfer ownership of such documentation to the Purchaser free of charge. Intellectual property rights to such documents remain unaffected. The Purchaser or third parties are entitled to use them free of charge in order to carry out repairs and modifications and to manufacture spare parts.
- 10.3. The Purchaser's approval of drawings, calculations and other technical documentation does not affect the Contractor's obligations under warranty with regard to the delivery. This also applies to suggestions and recommendations of the Purchaser unless otherwise expressly agreed upon.
- 10.4. Parts which the Contractor has developed in accordance with the specifications of or with substantial assistance from the Purchaser, e.g. in the course of tests, etc. must not be transmitted or made known to third parties without the prior written consent of the Purchaser.
- 10.5. All performance documents, devices, tools, models etc. forwarded to the Contractor remain the property of the Purchaser and may only be used for the purposes stipulated in the contract. They must be returned to the Purchaser cost free after due performance of the order; the Contractor has no right of retention. Such documentation must not be copied or made accessible to third parties not involved in the performance of the contract. It must not be used for any other purposes than for production in accordance with our order. The Purchaser reserves all rights to drawings produced to his specifications.

## 11. Confidentiality

- 11.1. The parties agree that they shall keep confidential any business and technical details of which they should gain knowledge in the course of their business relationship to each other.
- 11.2. Possible sub-contractors or ancillary suppliers shall be obliged accordingly.
- 11.3. The parties agree that they shall not inform any third parties about their business relationship with each other, and that they shall not use such information for the purposes of promotion, without the prior written consent of the other party.

## 12. Spare parts

The Contractor undertakes to supply the Purchaser with parts, spares and adequate technical solutions within reasonable delivery periods and at competitive prices for the duration of 10 years following placement of the order. If the supplier ceases manufacturing of the parts or if discontinuation is foreseeable, but at the latest 6 months prior to discontinuation of production, the supplier shall notify the Purchaser so that the latter can adapt the ordering process accordingly. Upon cessation, the supplier agrees to make the production documents available to the Purchaser.

## 13. Place of Performance, Place of Jurisdiction, Applicable Law

- 13.1. Place of performance for deliveries, services and payment will be Kirchlinteln, unless the delivery is made to another place in accordance with our order.
- 13.2. The exclusive place of jurisdiction is the court of general jurisdiction over the Purchaser's domicile. However, the Purchaser is also entitled to bring an action against the Contractor at the Contractor's place of general jurisdiction.
- 13.3. In addition to the terms of the contract, the contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany applicable to legal relationships between domestic parties, under exclusion of the provisions concerning conflict of laws, of the provisions of the U.N. Convention on Contracts for the International Sale of Goods and of other conventions concerning the purchase of goods.
- 13.4. Should individual clauses of these general Terms and Conditions for Purchases or parts thereof be legally invalid, this remains without effect on the validity of the other provisions. Legally invalid provisions will be replaced by valid provisions which as closely as possible reflect the intended economic purpose of the invalid provisions.
- 13.5. The above terms and conditions are the terms and conditions for purchases of:
  - EMKON automation GmbH, Bahnhofstraße 8a, 27308 Kirchlinteln