

## **General Sales Terms of EFTEC AG**

### **1. Conclusion of contract and scope of application**

The goods to be supplied will be exclusively defined and agreed in the contract. A contract is only concluded following confirmation of purchaser's order by EFTEC AG (the "**Supplier**") in writing. With the order, purchaser recognizes these General Sales Terms. In connection with any contract providing for supply of goods to a purchaser only these General Sales Terms apply. No conflicting purchaser specific requirements or other terms and/or conditions, especially purchaser's general terms and conditions, form any part of the contract, unless their applicability is expressly agreed to in writing. Subsequent amendments or supplements are only valid with Supplier's express written agreement. Samples constitute a non-committal average form of the goods. All offers of the Supplier are non-binding.

### **2. Prices**

Unless otherwise agreed in writing, prices shall be understood to be in Swiss francs, exclusive of packing, Ex Works Romanshorn, Switzerland, as per Incoterms 2020. Prices shall be based on the applicable factors/rates at the time of conclusion of the contract (foreign currency exchange rate, material price, wage, freight, customs' duty and other rates). Should any factors/rates change by any appreciable amount to Supplier's disadvantage, for example as the result of official measures, production shortages or rising material or service prices, Supplier shall be entitled to adapt its prices.

The prices shall be understood to be exclusive of any taxes or other charges to be levied on the prices – in compliance with the law and regulations – by any tax authorities or other government agencies in Supplier's or purchaser's country.

### **3. Retention of title**

The goods delivered remain the property of Supplier and may be claimed back from purchaser at purchaser's costs at any time until the purchase price has been fully paid. Purchaser agrees to execute all documentation and perform all actions required under applicable law to protect the rights of Supplier under this section. If in purchaser's country the property may not remain with Supplier until the purchase price has been fully paid, purchaser will provide other equivalent security on Supplier's request.

### **4. Delivery**

Delivery dates and/or periods shall, unless otherwise expressly agreed in writing, not be binding. In case of delay, only purchaser's written notice asking for performance within appropriate time shall place Supplier in default. No liability shall result for Supplier from delay in performance or poor/non-performance caused by circumstances which are beyond its exclusive control, such as, but not limited to, natural disasters, epidemics, pandemics, strikes, lock-outs, shortages of energy or materials or services, production breakdowns or shortages, disruption of transport, delays of sub-suppliers, degradation in electronic communications systems, or official measures or recommendations, embargos or blockages, warlike events or mobilisations, terrorist acts, geopolitical unrest, acts of God as well as by any circumstances rendering performance uneconomic for the foreseeable future. Such circumstances shall release Supplier from its obligation to supply for the duration of such circumstances including its after-effects without any obligation to deliver at a later date. Such circumstances shall entitle Supplier to terminate the contract wholly or partially and shall not provide purchaser with grounds for claiming damages.

## **5. Warranty**

Supplier warrants to purchaser that the goods supplied hereunder will be delivered in accordance with the product description, whereby it is understood that such warranty shall cover only first grade goods but not lower grade or special offer goods for which Supplier does not give any warranty at all. The warranty period will be 8 (eight) weeks from the date of delivery (hereinafter "**Warranty Period**"), provided that the goods in question have been stored and used in accordance with ordinary industry practices and conditions. Purchaser must inspect the goods upon delivery. Purchaser shall notify Supplier in writing within 8 (eight) days upon delivery of any defect which can be detected in the course of a customary examination of any of the goods delivered by Supplier to purchaser hereunder; otherwise the goods are deemed accepted. Any other defects must be notified within 8 (eight) days upon detection of the defect and in any case within the Warranty Period. The sole and exclusive liability of Supplier shall be to make up for shortages of the agreed quantity of the goods in question and moreover, at the sole discretion of Supplier, either take back or replace the goods or grant purchaser an adjustment of the purchase price, provided that the defect is not due to purchaser's fault (in such case Supplier shall have no liability at all). In any case, purchaser may not return any goods without Supplier's approval. If purchaser fails to notify within 8 (eight) days upon delivery or, as far as hidden defects are concerned, within 8 (eight) days upon detection and in any case within the Warranty Period, the goods shall be deemed to have been accepted by purchaser. In case the goods are replaced, the absolute warranty period shall be no longer than 16 (sixteen) weeks from the date of initial delivery.

The foregoing express warranties are not transferable and are in lieu of any other warranty by Supplier with respect to goods furnished hereunder, which are hereby expressly excluded. Supplier gives no other warranty, neither express nor implied. In any event, goods are deemed to conform to the contract despite minor discrepancies in appearance and characteristics due to conditions of raw materials and manufacture.

## **6. Term of Delivery**

Unless otherwise agreed in writing, delivery shall be Ex Works Romanshorn, Switzerland, as per Incoterms 2020. Should dispatch be delayed or prevented without Supplier's fault, the goods will be kept in storage at the cost and risk of purchaser.

## **7. Quantities and weights**

All quantities and weights agreed shall be accepted with a tolerance of +/- 10%. Unless an official weighing of the goods is expressly required, the weight as determined by Supplier shall serve as basis for calculating the price.

## **8. Purchaser's delay**

Payment has to be effected within 30 days after date of on invoice. Should purchaser fall into arrears in fulfilling its obligations, Supplier shall be entitled to charge interest on any outstanding balances at a rate of 5% over the key interest rate of the European Central Bank or on such other for Supplier more favourable terms as may be applicable by local law (this rate applying both after and before any court order or judgement in Supplier's favour in respect of outstanding balances), to suspend further deliveries – including those in transit – and to cancel any periods of grace granted in respect of payment for past deliveries.

Where any doubt exists with respect to the solvency of purchaser, especially in the event of arrears in payment, Supplier may require that further deliveries be made only against prepayments, deposits or bank guarantees satisfactory to Supplier.

Should purchaser fall into arrears, Supplier shall further be entitled to terminate the contract with immediate effect and without further notification and further obligations whatsoever.

## **9. Supplier's advice to purchaser**

Supplier may advise purchaser to the best of its knowledge on the basis of research work and experience. However, any data and information that Supplier so provides with respect to the suitability and application of the goods is without warranty of any kind, non-binding and shall not release purchaser from conducting its own tests and trials.

Purchaser shall be responsible for complying with laws and regulations when using Supplier's goods.

## **10. Liability**

Notwithstanding anything to the contrary in the contract/General Sales Terms and to the fullest extent permitted by law, Supplier shall only be liable to purchaser for loss incurred in connection with the contract upon proof of Supplier's gross negligence or intent and total liability shall be limited to the purchase price under the contract and there shall be no liability for any special, indirect or consequential damages or losses such as, but not limited to, loss of revenue, loss of profits, loss of use, loss of capital, loss of production or costs connected with interruption of operation. Invoices for goods delivered can only be set off against claims in respect of complaints that are uncontested by Supplier.

## **11. Data protection**

The parties may share personal data for the purpose of entering into and performing the contract. This data concerns contact details (such as name, position, location, telephone number, e-mail-address or other communication data) of individuals involved on behalf of Supplier, purchaser or a third party in connection with the contract. Each party is a data controller.

The purchaser undertakes to transmit and process personal data in accordance with the applicable data protection laws (in particular Swiss data protection law and the EU General Data Protection Regulation) and with due expertise, care and diligence.

The purchaser accepts our privacy statement, which can be found on the following website: <https://www.ems-group.com/en/bottomnavigation/privacy-statement/>.

**12. Partial invalidity**

If any provision of the contract, or the application thereof to any person or circumstances, to any extent, be invalid or unenforceable, the remainder of the contract and the application of such provision to persons or circumstances other than those held invalid or unenforceable, shall not be affected. The parties shall replace any invalid or unenforceable provision with an applicable and legally valid provision, which achieves the same purpose as the original purpose of the provision being replaced.

**13. Place of performance, jurisdiction and applicable law**

All disputes arising out of or in connection with the contract or these General Sales Terms shall exclusively be submitted to the competent courts at the registered office of Supplier.

The contract and these General Sales Terms are governed by and construed in accordance with substantive Swiss law, excluding the principles of conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).