

**EFTEC Engineering GmbH**  
**General Terms and Conditions of Sale**  
(Update February 2010)

**§ 1**

**General – Scope of application – Written Form**

- (1) Our General Terms and Conditions of Sale shall apply exclusively – even with respect to future business with the customer. We do not accept any terms and conditions of the customer that would contradict or deviate from our General Terms and Conditions of Sale unless not otherwise explicitly confirmed by us. Our General Terms and Conditions of Sale shall even apply if we have performed delivery to the customer without having expressed any reservation although we had knowledge about customer's terms and conditions that would contradict or deviate from our General Terms and Conditions of Sale.
- (2) Written form is required for all understandings that shall lead to a contract conclusion or that shall become part of a contract or that shall subsequently alter the contract. If the contract refers to projecting and/or delivery of equipment our respective special conditions shall additionally apply. In case that these special conditions would not be attached to the offer, these special conditions will be forwarded upon request.
- (3) In our General Terms and Conditions of Sale, the term "Goods" shall mean any goods, entity of goods and/or installation(s) to be sold by us or our affiliated companies.
- (4) Our General Terms and Conditions of Sale shall apply exclusively towards enterprisers in the meaning of § 310 German Civil Code (*BGB*).

**§ 2**

**Offer - Acceptance**

- (1) Unless not explicitly expressed, our offers shall be without obligation and subject to confirmation.
- (2) Orders shall be deemed accepted only if confirmed by us in writing.
- (3) All documents being part of the offer such as drawings, pictures and weight information shall only be approximate unless not explicitly indicated as binding. The same applies for information regarding performance and consumption. We explicitly reserve our ownership rights and copyrights regarding to cost estimates, drawings and other documents. These documents shall not be disclosed to any third party without our explicit written consent.

**§ 3**

**Prices – Payment Conditions**

- (1) Unless not explicitly otherwise provided in our order confirmation, our prices shall be „ex works“ excluding packaging but including VAT as applicable at invoice date.
- (2) Any cash discount requires separate written agreement.
- (3) Unless not otherwise provided in our order confirmation, the purchase price shall be due for payment within 30 days as of invoice date net (without discount). In case of delayed payment, we shall be entitled to interest in the amount of base rate (German: *Basiszinssatz*) plus 8 % p.a. However, if we can provide evidence of any exceeding damage caused by delay, we shall be entitled to respective compensation. The customer shall have the right to provide evidence that no or substantially lower damage has incurred on our side as consequence of the delayed payment.
- (4) Cheques, bills of exchange or assignment of third party claims shall only be accepted on account of performance (German: *erfüllungshalber*) but not in lieu of performance (German: *an Erfüllungs Statt*). We shall not be obliged to such acceptance. Any acceptance shall not constitute an forbearance (German: *Stundung*) of the original claim. In case of payment via wire transfer or cheque the value day shall be

the date of receipt of payment.

- (5) The customer shall only be entitled to set-off if his counter-claims have become legally binding and are undisputed or if they are accepted by us. Further, the customer shall only be entitled to set-off if his counter-claims originate from the same contractual relation.

#### § 4

##### Delivery Period - Delay

- (1) The time for delivery shall commence as of dispatch of order acceptance, however, not before delivery of documents, permits and clearances by customer if explicitly agreed. Further precondition for the commencement of time for delivery shall be the receipt of the agreed advance payment, if any.
- (2) If we are not be obliged to deliver the Goods to a destination indicated by the customer, the time for delivery shall be deemed met if the Goods have left our site until the date set forth in the order acceptance or elsewhere or if the customer has been informed about readiness for delivery at the afore mentioned dates.
- (3) If we are responsible for delayed delivery then customer shall be entitled to compensation in the amount of 0,5 % of the value of delivery for each completed week of delay. However, the total compensation shall not exceed 5 % of the value of delivery. We shall have the right to provide evidence that the actual damage amounts to less. This limitation of liability shall not apply in case of intent or gross negligence by us.
- (4) If the customer is responsible for delayed delivery then we shall be entitled to compensation – commencing one month after indication of readiness for delivery – for costs of storage at our site, however, at least in the amount of 0,5 % of the invoice amount per month. Customer shall have the right to provide evidence that the actual damage amounts to less.

#### § 5

##### Pass of Risk

- (1) Unless not otherwise provided the delivery shall be made „ex works“ (EXW, Incoterms 2000). The risk shall pass to customer when we have informed him that the good is ready for delivery.
- (2) If we perform the shipment upon request of customer, customer shall bear the risk and costs of such shipment. Way and manner of shipment shall be at our free disposition unless not otherwise explicitly agreed upon in writing.
- (3) If the delivery is freight paid then customer shall bear the additional costs that arise from any request of particular way of delivery. Upon customer's request we will provide transport insurance coverage for the delivery. Customer shall bear the respective costs.

#### § 6

##### Acceptance

- (1) After completion of the installation the customer shall arrange an acceptance test of the scope of performance in our attendance. We shall give notice to the customer in written form about readiness for acceptance. The customer shall be obliged to carry out the acceptance test within 8 working days after having received such notice.
- (2) It shall be subject to sole responsibility of the customer to take care that the acceptance test could be carried out and the agreed test conditions are met. The customer shall bear the costs of any acceptance tests, however excluding our costs related to our representatives and vicarious agents (incl. employees and staff). The customer, amongst others, shall provide at own costs energy, lubricants, water, combustibles, raw materials and all and any other materials which are necessary in order to carry out the acceptance tests, respectively last adaptations within the preparation of the acceptance test. The customer shall also provide all and any work force, auxiliaries as well as equipment- and test objects which are necessary in order to carry out the respective acceptance test.
- (3) The scope of performance shall be deemed accepted if the acceptance test has been carried out successfully. The parties shall be obliged

to confirm the acceptance by an acceptance certificate to be signed by both parties.

- (4) If the acceptance test came to the result that the scope of performance did not meet the requirements of the contract, we shall remedy such defect. § 6 clause (1) shall apply accordingly related to the new subsequent acceptance test. Minor defects which do not affect the performance of the plant do not prevent the success of any test of acceptance.
- (5) If the customer received a notice in the meaning of § 6 clause (1) and if the acceptance test has not been carried out within 8 working days, the scope of performance shall be deemed accepted on 8<sup>th</sup> working day after receipt of such notice by the customer. In such case, we are entitled to solely sign the acceptance certificate, provided that the delay of acceptance test has not been caused by our fault.
- (6) The customer shall not be entitled to use the scope of performance or part of it before acceptance. If it was nonetheless used, the respective scope of performance shall be deemed accepted. Thus the acceptance test shall be deemed carried out if it has not been executed within 3 months after the SOP (start of production) due to reasons beyond our responsibility. Alternatively the acceptance test also shall be deemed carried out if it was not carried out within 18 months after signing the contract due to reasons beyond our responsibility. The execution of an acceptance test in such cases shall not be required any longer and we shall be entitled to solely sign the acceptance certificate.
- (7) Upon acceptance, but notwithstanding other restrictions of liability, our liability in respect of visible defects (German: *erkennbare Mängel*) shall be excluded to the extent the customer has not expressly reserved assertion of claims related to a specific defect. Such reservation shall be made in writing or has to be noted in the signed certificate of acceptance.
- (8) If and to the extent our representatives and vicarious agents nonetheless remain at the place of acceptance after acceptance upon request of the customer, remuneration of such attendance and of possible operations shall be made on basis of our respective valid price list.

## § 7

### Defect Claims

We shall be liable for defects solely as provided in the following. Any further claims shall be excluded except for customer's right to rescind as provided for in these General Terms and Conditions of Sale:

- (1) Customer shall be entitled to claim post-performance (German: *Nacherfüllung*) via remedy of defects (German: *Ausbesserung*) or delivery of a fault free substitute with respect to all parts which show to be unfit or materially impaired for use – in particular because of faulty construction, bad materials and defective completion. We shall have the right to choose the kind of remedy. In case that we would be liable for a defect, we thus shall be entitled to choose whether we would remedy defects or deliver a fault free substitute. We shall be entitled to refuse post-performance if the remedy of defects or delivery of a fault free substitute would only be possible at unreasonable costs.
- (2) The Goods shall be inspected without undue delay upon receipt. Obvious defects shall be notified in writing to us within 5 days upon receipt. Otherwise customer shall not be entitled to any defect claims.
- (3) Regarding third party products our liability shall be limited to the assignment of liability and guarantee claims to which we are entitled towards such third party. We shall be liable in second degree according to this § 7 if the claiming towards the third party is unsuccessful.
- (4) We shall not be liable for damages that have been caused by the following: Improper or unqualified use, faulty assembly respectively start-up by customer or any third party engaged by him, ordinary wear and tear, faulty or careless handling, use of improper equipment or spare parts, insufficient construction works, unqualified chemical or electro-mechanic or electric influences unless we are not responsible for such damages.
- (5) In order to enable us to perform remedy or substitutional delivery as deemed to be necessary according to our fair discretion, customer shall – upon consultation with us – provide sufficient time and opportunity to us as well as man power at our costs. If customer should not obey this obligation then we shall be exempted from our guarantee liability (German: *Gewährleistungspflicht*). Moreover, customer shall only be entitled to remedy defects at our costs if we are in delay with remedy of defects. However, in urgent case of danger of operational safety customer shall be entitled to remedy defects himself or through third parties and claim appropriate reimbursement of costs even if we should not be in delay. For the rest we shall be entitled to refuse the remedy of defects as long as customer has not fulfilled his due ob-

ligations.

- (6) Customer's right to rescind from the contract (German: *zurücktreten*) or to claim decrease (German: *Minderung*) of the purchase price shall be subject to the statutory rules.
- (7) Damage compensation because of defects shall be subject to § 8.
- (8) No guarantee (German: *Gewährleistung*) shall be granted regarding repair works that we have performed without any legal obligation hereto.
- (9) We shall not be responsible that Goods delivered by us will comply with non-German statutory laws unless not otherwise agreed upon in writing.
- (10) In case that a guarantee (German: *Garantie*) was granted in an contract we shall be liable according to the content of such guarantee.

#### § 8

#### Damage Compensation and Limitation Period

- (1) Our liability for damages shall be exclusively subject to the following provisions regardless whether based on contractual or other grounds with the exception of above § 4 (Delay). If according to that provisions damage compensation is limited, such limitation shall also apply in respect of useless expenses.
- (2) In case that we have fraudulently concealed a defect of Goods or in case of a guarantee regarding the character (German: *Beschaffenheit*) of Goods we shall be liable for damage compensation in accordance with the statutory rules.
- (3) Furthermore, if we or any of our representatives or vicarious agents (German: *Erfüllungsgehilfen*) wilfully or negligently causes death, personal injury or damage to health, we shall be liable for damages in accordance with the relevant statutory provisions
- (4) Further, we shall be liable in accordance with the statutory rules if customer claims damages that either arise from intentional or grossly negligent actions by us including our representatives or vicarious agents or that arise because we have culpably violated an "essential contractual obligation" (German: *wesentliche Vertragspflicht*). In case of lack of intentional behaviour on our side or on that of our representatives or vicarious agents, our obligation to compensate damages shall be limited to predictable and typically occurring damages. The term "essential contractual obligation" in this context means an essential obligation, as specifically described in the relevant agreement, the breach of which endangers attainment of the agreement's purpose itself. The "essential contractual obligation" thus concerns a compulsory obligation, which generally must be fulfilled to enable due execution of the agreement, and which the customer may typically and reasonably expect to be observed.
- (5) In case of slightly negligent violation of an essential contractual obligation our obligation to compensate personal and property damages shall be limited to the amount covered by our professional liability and product liability insurance. We are prepared to provide evidence about the amount of insurance coverage upon request of customer. In case that no insurance cover should exist we shall be obliged to compensate damages.
- (6) Moreover, we shall be liable according to mandatory rules of the German Act on Product Liability of 15 December 1989 (German: *Produkthaftungsgesetz*).
- (7) Unless not otherwise provided herein, our liability for damages shall be excluded. Unless not otherwise provided in above paragraphs (2) to (6) we shall therefore not be liable for damages that have not occurred directly on the Goods (e.g. loss of profit or further pure pecuniary losses of customer), as well as for damages because of violation of collateral duties (German: *Nebenpflicht*) that are arising from an obligation or statutory rules (e.g. faulty advise, care or instruction, construction of package and maintenance instruction) as well as for claims arising from non-contractual liability including producer's liability according to § 823 German Civil Code BGB.
- (8) If and to the extent our liability is excluded or limited, this shall also apply with regard to any personal liability of our representatives and

vicarious agents.

## § 9

### Statute of Limitation

- (1) Claims based on defects shall be time-barred after one (1) year as of pass of risk unless customer raises claims based on fraudulently concealed defects or based on other intentional behaviour of us or based on a guarantee granted by us regarding the character (German: *Beschaffenheit*) of Goods for a longer period of time.
- (2) The statute of limitation for other damage claims shall be one (1) year as from their occurrence (German: *Entstehung*). This shall not apply if claims are raised based on intentional damnification, tort, death, personal injury, damage to health or the German Act on Product Liability.

## § 10

### Force Majeure

- (1) Our obligation to performance under this agreement shall be suspended and any time limit for delivery shall be prolonged if and as long as we are not able to fulfil our contractual obligations because of force majeure. We shall be obliged to inform customer without undue delay about the existence of such obstacles. If such obstacle should exist for more than three months then both parties shall be entitled to rescind this agreement. Possible legal rights to rescind from the agreement shall remain unaffected.
- (2) The customer shall not be entitled to damages because of such rescission.
- (3) Force majeure for the purposes of §10 clause (1) are external, unforeseeable and inevitable events, such as e.g. natural disaster, raw material or energy shortness, fire, war and riot or other incidents for which we are not responsible, regardless of whether they occur in our business or in a third party's business, upon which the production or transportation of the Goods essentially depends. Industrial actions which occur in our or in a third party's business shall entitle us to rescind from the agreement if they cause impossibility (German: *Unmöglichkeit*) of due performance. In case of delays caused by industrial actions we shall be entitled to extent the time period for performance and/or other periods.
- (4) The provisions of this § 10 shall also apply if we are already in delay with our performance at the time when force majeure occurs.

## § 11

### Retention of Title

- (1) We retain the title of ownership (German: *Eigentumsvorbehalt*) of the Goods until receipt of all payments under the respective supply agreement. In case of current account the retained title shall function as security for the respective current balance. In case of breach of agreement by customer, in particular delayed payment, we shall be entitled to take back the Goods. The customer shall in such case be obliged to return the Goods. Subsequent to take back of Goods we shall be entitled to realization. The profit of realization minus appropriate costs of realization shall be deducted from customer's account payable.
- (2) Customer shall be entitled to carefully handle the Goods. In particular, he shall be obliged to provide adequate fire-, water- and burglary-replacement value insurance. Customer shall be obliged to provide evidence of such insurance cover. Customer herewith shall assign all claims against the insurance to the extent they are referring to the Goods delivered by us.
- (3) Customer shall not be entitled to mortgage or provide equitable lien (German: *Sicherungseigentum*) regarding the Goods to which we have retained title of ownership. In case of pledge or other third party actions customer shall be obliged to inform us in writing without undue delay in order to enable us to bring an action according to § 771 German Act on Civil Court Procedure ZPO. In case that the third party would not be able to reimburse our legal costs of a legal action in accordance with § 771 German Act on Civil Court Procedure ZPO then customer shall be liable for the loss of reimbursement.
- (4) Any processing or transformation by the customer of the Goods which are subject to our retention of title is always undertaken for our

account. If the Goods are processed together with other goods that are not our property, we shall have co-ownership of the new processed object with a share in proportion to the value of the Goods (invoiced amount including value added tax) against the value of the other processed goods, each at the moment of processing. The customer shall store the processed goods, whether we own them fully or partially, for us free of charge. For all other aspects, the provisions applicable to Goods subject to retention of title shall also apply to the processed object.

- (5) If the Goods are inseparably combined, intermixed or mingled with other goods that are not our property, § 11 clause (4) shall apply mutatis mutandis, provided that it shall be deemed agreed that the customer transfers to us a proportional co-ownership if the respective Goods are combined, intermixed or mingled in such a way that the goods owned by the customer are to be regarded as the principal goods.
- (6) Customer shall be entitled to further sell the goods in the course of ordinary business. However, he shall herewith already now assign to us all his claims in the invoice amount (including VAT) which he gains towards any third party because of such further sale. This shall apply ir-respectively whether such sale has happened without or after any combination. However, customer shall be entitled to collect such claims even after assignment to us. Our right to collect such claim by ourselves shall remain untouched. We shall undertake not to collect such claims as long as the customer is obeying his payment obligations and has not delayed payments and no insolvency procedure has been applied for or cessation of payments has occurred. However, if such cases should occur we shall have the right to claim information from the customer regarding the assigned claims and the respective debtors and the related information. Customer shall in such case also surrender the respective documents and shall inform the respective debtors about such assignment.
- (7) We shall be obliged to release the securities on demand of customer to such extent as the value of securities would exceed the secured claims with more than 10 %. We shall have the right to chose the security to be released.

## § 12

### Secrecy

- (1) The customer is obligated to maintain strict secrecy with respect to any and all information (e.g. pictures, drawings, calculations and other documents and information) which we classified vis-à-vis him as secret and which he received before placement of an order or within agreements, projects or cooperation. They may only be disclosed to third parties with our express consent.
- (2) For the sake of confidentiality, the customer will restrict the access to the information to such circle of persons who need such access to the information within the framework of their activity for the customer. The customer will ensure that such persons will observe the secrecy obligations as stated in these General Terms and Conditions of Sale.
- (3) The customer will take all reasonable measures to ensure that the information is effectively protected against any access by unauthorized third parties. The customer will immediately inform the other Party if it assumes or is aware that unauthorized persons obtain access to the information.
- (4) The confidentiality obligation shall continue to apply after completion of any agreement; it shall cease to exist if and to the extent the knowledge included in the information has become part of the public domain.

## § 13

### Jurisdiction – Place of Performance – Applicable Law

- (1) Exclusive place of jurisdiction regarding all disputes arising out of or in connection with the performance of an order shall be our business domicile. However, we shall have the right to file legal actions also at the relevant court of customer's domicile.
- (2) Place of performance regarding all obligations arising out of this contract shall be our business domicile.
- (3) German law shall apply except for the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## § 14

### Severability

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In case that particular provisions of the agreement or of these General Terms and Conditions of Sale should be invalid then the validity of the remaining agreement provisions shall remain. The lack of provision arising from the invalidity of any provision shall be filled according to good faith rules.