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

**§ 1**

**General provisions – Scope of application**

- (1) Our General Terms and Conditions of Purchase shall apply exclusively. We generally do not accept any conditions of the Supplier which contradict to or deviate from our General Terms and Conditions of Purchase. Contradicting or deviating conditions of the Supplier shall only be deemed to have been included in an agreement if we expressly consent to their application in writing. Our General Terms and Conditions of Purchase shall also apply if we unconditionally accept the supply with knowledge of contradictory or deviating conditions of the Supplier.
- (2) All provisions which have been agreed between us and the Supplier for the purpose of execution of an agreement have to be included in such agreement in writing.
- (3) Our General Terms and Conditions of Purchase shall only apply vis-à-vis enterprises according to Section 310 clause 1 of German Civil Code (*BGB*).
- (4) Our General Terms and Conditions shall also apply for all future affairs with the Supplier.

**§ 2**

**Offer Documentation**

- (1) Our order may only be validly accepted within a period of 2 weeks.
- (2) We reserve ownership rights and copyrights to any illustrations, drawings, calculations and any other documents; they may not be made accessible to any third parties without our explicit written consent. They are only allowed to be used within the production due to our order; they have to be returned to us without any further request after performance of the order. They must be kept strictly secret with regard to third parties, in this respect Section 11 clause (4) shall apply additionally.

### **§ 3**

#### **Price – Payment conditions**

- (1) The price as stated in the order shall be binding. In absence of other deviating written agreement, the price shall include free delivery, INCOTERMS 2010 DDP as well as packaging. Any return of the packaging shall be subject to separate agreement.
- (2) The statutory value added tax is not included in the price.
- (3) Invoices can only be processed by us if they show the order number as stated in and in accordance with instructions of our order. The Supplier shall be liable for any and all consequences resulting from a breach of this obligation unless he can prove that he is not responsible for such breach.
- (4) Unless otherwise agreed in writing, we will pay the purchase price upon delivery and upon receipt of the invoice with 2% discount within 14 days or net within 30 days after receipt of an invoice.
- (5) We are entitled to all statutory set-off and retention rights.

### **§ 4**

#### **Time of Delivery**

- (1) The delivery period as indicated in the order shall be binding.
- (2) The Supplier shall be obligated to immediately notify us in writing if circumstances occur or become known to him which indicate that he will not be able to comply with the specified delivery period.
- (3) In case of any delay in delivery we shall be entitled to claim a contractual penalty in the amount of 1% of the delivery value for each commenced week, however not more than 10% of the delivery value. We shall be entitled to claim such contractual penalty in addition to performance. Further claims and rights shall remain reserved.

### **§ 5**

#### **Transfer of risk – Documentation**

- (1) Unless otherwise agreed in writing, the delivery must be effected free of any costs, INCOTERMS 2010 DDP, to the place as set forth in the order. If the contractually agreed performance of the Supplier additionally to the delivery includes installation-, programming-, establishment-, steering- or other activities related to the goods after delivery to the place as set forth in the order, the risk shall be transferred upon completion of such activities.
- (2) The Supplier shall include our exact order number in all delivery documents and delivery notes; if he fails to do so, we shall not be held responsible for any delays in processing.

## § 6

### Quality and scope of delivery

- (1) The delivery shall comply with all agreed specifications and technical standards.
- (2) If the scope of the ordered delivery includes software and unless otherwise agreed in writing, the Supplier shall also grant us a right to use of such software to the extent required in order to allow a use or future use of the ordered product in accordance with the agreement, additionally to the supply of required documentation related hereto.

## § 7

### Inspection for defects – Liability for defects

- (1) We shall be obligated to inspect the goods with respect to any deviations in quality and quantity within an appropriate period; any notice of defect shall be considered as to be given in due time if received by the Supplier within 5 working days after receipt of the goods or, in the event of hidden defects, after discovery. If the contractually agreed performance of the Supplier in addition to the delivery includes installation, programming, establishment, steering or other activities related to the goods after delivery to the place as set forth in the order, Section 7 clause 1 sentence 1 shall apply accordingly, provided that instead of receipt of the goods the completion of the relevant activities shall be the relevant moment for the calculation of the period for notice of defects.
- (2) We are without any restriction entitled to all statutory claims for defects; we shall in any case be entitled to demand from the Supplier a remedy of defects or delivery of replacement goods at our discretion. We expressly retain the right to claim compensation for damage, in particular to claim compensation for damage in lieu of performance.
- (3) We shall be entitled to rectify the defect ourselves at the expense of the Supplier in case of imminent danger or particular urgency.
- (4) The period of limitation shall be 36 months as from the passing of risk.

## § 8

### Product liability – Indemnification – Liability insurance cover

- (1) If a product liability claim under German law or other law is asserted against us, the Supplier shall be obligated to indemnify us upon first request against any and all claims for damages by third parties to the extent the reason of such claims results from his sphere of control and organization and he is himself liable in relation to third parties.
- (2) The Supplier shall be obligated to maintain a product liability insurance with adequate coverage within the period of an agreement, i.e. until expiration of the respective limitation period related to claims for defects. In case we are entitled to any further damage claims such claims shall remain unaffected.

## § 9

### Implementation of activities

- (1) Persons which perform activities on the premises of third parties in order to fulfil contractual obligations on behalf of the Supplier related to agreements concluded with us shall observe the provisions of the respective work regulations or respective instructions of such third party. Our liability for accidents, which such persons suffer shall be excluded as far as such accidents have not been caused by intentional or gross negligent breach of duties by our legal representatives or vicarious agents.
- (2) If persons perform activities on the premises of third parties in order to fulfil contractual obligations on behalf of the Supplier related to agreements concluded with us and hereby intentionally or gross negligently cause damage within such activities to the aforementioned third parties and if claims are asserted against us due to such damage, the Supplier shall indemnify us against the asserted claims upon first demand.
- (3) If we assert that persons in the meaning of Section 9 clause 1 are not adequately qualified or for other reasons inappropriate for an implementation or continuation of the agreed activities, the Supplier shall be obligated to replace such persons upon first demand by adequately qualified and appropriate persons. In case of imminent danger or particular urgency or if the Supplier does not meet our legitimate demand in the meaning of sentence 1, we shall be entitled to require the respective performance by third suppliers; in such case, the Supplier shall be obligated to indemnify us against the costs resulting from commissioning of such third suppliers. Further claims and rights shall be reserved.

## § 10

### Industrial property rights

- (1) The Supplier represents that no rights of any third parties are violated in connection with its goods delivered.
- (2) If a third party for this reason asserts a claim against us, the Supplier shall be obligated to indemnify us against such claims upon first request; we shall not be entitled to enter into any agreements whatsoever with the third party, in particular not to conclude a settlement - without the Supplier's consent.
- (3) The indemnity obligation of the Supplier shall apply to all our expenses which become necessary in conjunction with or related to the claim asserted by the third party.
- (4) The limitation period shall be ten years, starting from the conclusion of the contract.

## § 11

### Reservation of title – Provision of material – Tools

- (1) If we provide items to the Supplier, we reserve title of ownership related thereto. Processing or alterations made by the Supplier shall be made for us. In case our items which are subject to retention of title are processed with other objects which do not belong to us, we obtain co-ownership of the new item in relation to the value of our item (purchase price plus VAT) to the other processed items at the time of processing.
- (2) If the provided item is inseparably intermixed, mingled or combined with other objects which do not belong to us, we obtain co-ownership of the new item in relation to the value of our item (purchase price plus VAT) to the other intermixed, mingled or combined items at the time of intermixing, mingling or combining. If intermixing, mingling or combining is performed in such a manner that the item of the Supplier is to be regarded as the main item (German: Hauptsache), it is deemed agreed that the Supplier proportionally transfers co-ownership to us.
- (3) The Supplier shall deposit items subject to sole ownership or co-ownership for us free of charge.
- (4) We reserve title of ownership to tools; the Supplier shall be obligated to use the tools solely and exclusively to manufacture the goods we have ordered. The Supplier is obligated to insure the tools which belong to us at the reinstatement value against fire, water and theft damage. At the same time, the Supplier hereby already by now assigns all claims for compensation arising from this insurance to us; we hereby accept this assignment. The Supplier shall be obligated to carry out at his own expense any and all servicing and inspection work as well as any and all maintenance and repair work related to our tools in due time. The Supplier must notify us immediately of any malfunctions; if he negligently fails to do so, damage claims shall remain unaffected.
- (5) The Supplier shall not be entitled to mortgage or provide equitable lien (German: Sicherungseigentum) regarding the provisions of material to which we have retained title of ownership. In case of pledge or other third party actions the Supplier 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 the Supplier shall be liable for the loss of reimbursement.
- (6) If the security rights we are entitled to according to clause 1 and/or 2 exceed the value of all our disposed provisions of material by more than 10%, we shall be obligated to release the security rights on request of the Supplier at our own discretion.

## **§ 12**

### **Secrecy**

- (1) The Supplier shall be obligated to maintain strict secrecy with respect to any and all received information (e.g. pictures, drawings, calculations and other documents and information). They may only be disclosed to third parties with our express consent.
- (2) For the sake of confidentiality, the Supplier will restrict the access to the information to such circle of persons who necessarily and reasonably conventionally needs such access to the Information related to their activity for the Supplier. The Supplier will ensure that such persons will observe the secrecy obligations as stated herein.
- (3) The Supplier will take all reasonable measures to ensure that the information is effectively protected against any access by unauthorised third parties. The Supplier 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 this agreement; it shall cease to exist if and to the extent the knowledge of manufacturing included in the information has become part of the public domain.

## **§ 13**

### **Place of jurisdiction – Place of performance**

- (1) If the Supplier is a merchant, the courts at our registered place of business shall have jurisdiction; however, we shall also be entitled to bring legal action against the Supplier at the courts at his place of residence.
- (2) Unless otherwise stipulated in the order, our registered place of business shall be the place of performance.
- (3) The law of the Federal Republic of Germany shall be governing law. The application of the Vienna Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.