

General Terms and Conditions of Purchase of Espera Werke GmbH (as of January 2015)

1. General, scope of application

1.1 These General Terms and Conditions of Purchase ("GTC of Purchase") apply to all contracts for the sale and/or supply of movables and other work or services to be provided by the contractor (e.g. installation by the contractor of materials and components provided by us). These GTC of Purchase apply exclusively. Deviating or conflicting or supplementary general terms and conditions of business of the contractor become part of the contract only if and to the extent that we have explicitly consented to their application in writing. This requirement of consent applies in any case, e.g. also in the case that we accept delivery from the contractor without reservation even though we are aware of the contractor's general terms and conditions of business.

1.2 The GTC of Purchase apply in the respective version valid at the time as a framework agreement also for future contracts concluded with the same contractor with no obligation on our part to make explicit reference to these GTC of Purchase in each individual case; we will inform the contractor of any changes to our GTC of Purchase without undue delay ("unverzüglich").

1.3 In any case, specific arrangements made with the contractor from time to time (including side agreements, supplementary agreements, changes and amendments) have priority over these GTC of Purchase. The content of such an arrangement is stipulated in a written contract resp. our written confirmation.

2. Contract conclusion

Our order is deemed binding no earlier than upon issue of the written order or confirmation. The contractor is obliged to confirm our order in writing within 5 working days or execute the order without reservation especially by dispatch of the ordered goods.

3. Delivery date and delay in delivery

3.1 The delivery date indicated by us in the order is binding. The contractor is obliged to notify us in writing without undue delay ("unverzüglich") but in no case later than within 48 hours in the event that the contractor anticipates that he will presumably be unable to comply with the agreed upon delivery date for any reason whatsoever.

3.2 If the contractor is in default, we can – without prejudice to the statutory rights to which we are entitled – claim payment of a contractual penalty amounting to 1% of the net price for each full calendar week of default but limited to a total of 5% of the net price of the delayed delivery. We are entitled to claim payment of the contractual penalty in addition to proper performance, as a minimum amount of damages which the contractor is obliged to pay under the statutory provisions; this is without prejudice to our right to claim compensation of any further damage incurred. If we accept late delivery, we will claim the contractual penalty upon final payment at the latest.

4. Performance, delivery, passing of risk, default of acceptance

4.1 Delivery is made DDP (INCOTERMS 2010) to the destination indicated in the order; if no destination is indicated therein and unless other-

wise agreed upon, delivery will be made to our corporate domicile in Duisburg.

4.2 A delivery note issued in duplicate containing our order data as well as a supplier's declaration in terms of sec. 11 hereof must be enclosed with the consignment. If the delivery note is missing or incomplete, delayed processing or payment resulting therefrom will not be attributable to us.

5. Prices and terms of payment

5.1 The price indicated in the order is binding. The prices are in euros. Unless otherwise agreed upon from time to time, the price is deemed to include the entire performance, all work and services and all ancillary services of the contractor as well as all ancillary costs (e.g. proper packaging, costs of transport including transport and liability insurance, if any). The contractor is obliged to accept return of the packaging upon our request.

5.2 The agreed upon price is due for payment within 30 calendar days from complete delivery and performance and receipt ("Zugang"¹) of a proper invoice issued in duplicate. If we pay within 14 calendar days, the contractor will give us a 3% discount on the net invoice amount. In the case of bank transfer, payment is deemed in time if our transfer order is received by our bank before the payment period has expired; we cannot be held responsible for any delay caused by the banks involved in the payment process.

5.3 We are not liable to pay interest from the due date ("Fälligkeitszinsen" in terms of German law). Default interest amounts to 5 percentage points above the base interest rate per year. We are deemed to be in default from the time prescribed by the statutory provisions; however - as the case may be, notwithstanding such statutory provisions - the contractor is in any case required to issue a written reminder to us.

5.4 We are entitled to the rights to set off and retain as well as to the defence of non-performance of the contract ("Einrede des nicht erfüllten Vertrages") as is provided for by law. We are in particular entitled to retain due payments as long as we are still entitled to claims against the contractor for incomplete or defective performance or delivery. The contractor is only entitled to set off or retain on the basis of counter-claims which are undisputed by us or which have been established by a final non-appealable court decision (*res judicata*).

6. Securing of property rights, secrecy and processing orders

6.1 We reserve title, property rights and copyrights to any illustrations, plans, drawings, calculations, execution instructions, product specifications and other documents. Such documents must not be used for any purpose other than the performance of the contract and must be returned to us after the contract has been executed or terminated. The documents must be kept secret and must not be disclosed to third parties, even after the contract has been terminated. The obligation of secrecy will only

¹ Note: A declaration is deemed received ("zugegangen") in terms of German law if and as soon as it has come into the recipient's area of control in the way that the recipient can reasonably be expected to take note of it.

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expire if and to the extent that the knowledge or know-how contained in the said documents has become generally known.

6.2 The preceding provision applies *mutatis mutandis* to substances, components and materials (e.g. finished and semi-finished products) as well as to tools, models, artwork, samples and other items provided by us to the contractor for manufacturing purposes ("provisions"). For as long as such items are not processed, they must be stored separately at the contractor's expense, marked and identified as our property and adequately insured against destruction and loss.

6.3 For provisions which the contractor processes, transforms or otherwise works for us on our behalf, the following provisions apply in addition to sections 6.1 and 6.2:

a) Provisions may only be used for the purpose of executing our orders, i.e. for installation by the contractor and subsequent return to us. If the contractor is responsible for a decrease in value or the loss of provisions, the contractor will be liable for compensation.

b) The contractor retains the goods manufactured for us from our provisions without charge, exercising the diligence of a prudent businessman ("Sorgfalt eines ordentlichen Kaufmanns"). When the goods are returned to us, the risk will only pass to us upon our acceptance of the goods, regardless of the INCOTERM applicable according to sec. 4.1.

c) The contractor is only allowed to invoice us for additional work that is due to defective material or deviating dimensions of the provisions after written approval by us. Defects of the provisions delivered by us which are detected in the course of the processing procedure must be promptly reported to us; further processing must be suspended until further instructions are given by us.

d) Where we process or transform the provisions, we are deemed to be the manufacturer in terms of § 950 BGB (German Civil Code) which means that we immediately become the owner of the new or transformed item.

7. Initial sample and modified sample

If the contractor intends to supply us with new or substantially modified goods, the contractor will be obliged to provide us with initial samples resp. modified samples for approval before the new or substantially modified goods are delivered for the first time, which samples must be manufactured under series production conditions. The contractor undertakes not to supply us with new or substantially modified goods without our prior approval, which is deemed to constitute the agreed upon quality in terms of § 434 subs. 1 **clause 1** BGB (German Civil Code).

8. Reservation of title

Reservation of title by the contractor is only deemed validly agreed upon if and to the extent that such reservation pertains to our payment obligation for the respective goods to which the contractor reserves title. In particular, any extended or prolonged reservation of title ("erweiterter/ verlängerte Eigentumsvorbehalt") is impermissible.

9. Defective performance

9.1 Unless agreed otherwise hereinafter, our rights for defects in quality or title of the goods or for any other breach of duty by the contractor are governed by the statutory provisions.

9.2 The obligation under commercial law to inspect the goods and give notice of defect, if any, is subject to the statutory provisions with the following proviso: Our obligation to inspect is limited to defects which become apparent when inspecting the outward appearance of the incoming goods as well as the delivery documents or when taking samples in the context of our quality control system (e.g. damage incurred during transport, wrong delivery/ *aliud* delivery or short delivery). Otherwise, the obligation to inspect depends on whether and to what extent an inspection can reasonably be deemed required in the ordinary course of business with a view to the specific circumstances of the individual case in question. Our obligation to give notice of any defect detected later remains unaffected. In any case, our complaint (notice of defect) is deemed given without undue delay ("unverzüglich") and in due time if it is received by the contractor within 10 working days.

9.3 If the contractor fails to fulfil his obligation to provide subsequent performance ("Nacherfüllung") – at our choice either by remedy of the defect (subsequent remedy – "Nachbesserung") or delivery of a non-defective item (substitute delivery – "Ersatzlieferung") – within a reasonable period fixed by us, we will be entitled to remedy the defect ourselves and claim from the contractor reimbursement of the expenses required for such purpose resp. request an appropriate advance payment. If subsequent performance by the contractor has failed or is reasonably unacceptable for us (e.g. due to particular urgency, endangerment of the operational safety or threatening occurrence of unacceptable damage), the granting of a grace period for subsequent performance is dispensable; we will inform the contractor of any such circumstances without undue delay ("unverzüglich") and, where possible, beforehand.

9.4 The limitation period for warranty claims is deemed suspended from the time of receipt ("Zugang"²) by the contractor of our written notice of defect until the contractor rejects our claims or declares the defect remedied or otherwise refuses to further negotiate on our claims. In the case of substitute delivery and defect remedy, the warranty period starts to run anew for any substituted and remedied parts unless we reasonably had to assume in the light of the contractor's conduct that the contractor did not consider himself under an obligation to perform substitute delivery or remedy but only did so for reasons of good will or similar reasons.

10. Manufacturer's liability ("Produzentenhaftung")

10.1 If a third party asserts claims against us for personal injury or damage to property under the principles of product liability or manufacturer's liability and if such damage was caused within the scope of control and organization of the contractor, the contractor will be obliged to indemnify us from any such claim to the extent that the contractor himself is liable to third parties and, within the limits of his obligation to indemnify, reimburse us for any expenses incurred as a result of or in connection with the assertion of claims by the third party including the costs of a recall, if any, executed by us.

² See foot note 1.

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10.2 The contractor is obliged to take out and maintain product liability insurance with a minimum lump-sum coverage of 1 million euros for each personal injury/ damage to property.

11. Certificate of origin and preferential origin

11.1 Contractors from EU countries are obliged, upon first delivery and upon each first delivery of a new calendar year, to send to us upon request a long-term supplier's declaration according to the respective EU Regulation valid at the time by post within 14 calendar days.

11.2 Contractors from non-EU countries are obliged to send to us upon request a certificate of preferential origin and/or a certificate of origin for the delivery in question by post within 14 calendar days.

12. Limitation

The limitation period for contractual claims based on liability for defects is three years from the passing of risk unless the application of the statutory limitation periods leads to a longer limitation period in the specific individual case in question; in this case, the longer limitation period applies. Otherwise, the mutual claims of the contracting parties are subject to the statutory limitation periods.

13. Choice of law and place of jurisdiction

The place of exclusive – also international – jurisdiction is Duisburg. The contractual relationships are governed by German law with the exception of UN Sales Law (CISG).

14. Severability

If any provision of these GTC of Purchase should be or become invalid in whole or in part, this will be without prejudice to the validity of the remaining provisions hereof. If and to the extent that certain provisions did not become part of the contract or are invalid, the content of the contract will be defined on the basis of the statutory provisions (§ 306 subs. 2 BGB – German Civil Code). Only otherwise and to the extent that no supplementary construction of the contract has priority or is feasible, the parties will agree to replace the void or invalid provision by a valid provision which approximates the economic purpose of the void or invalid provision as closely as possible.