

General Terms and Conditions of ECCON GmbH

as of 03 August 2016

These present General Terms and Conditions have primarily been drawn up for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in § 1 (1) Art. 2 of the Austrian Consumer Protection Act, Federal Law Gazette No. 49/1979, they shall only apply to the extent that they do not conflict with the provisions of the first main section of the aforementioned law.

The UN Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1998/96, is expressly excluded.

1 Introduction

- 1.1 Unless the contracting parties have expressly agreed otherwise in writing, the present General Terms and Conditions shall apply.
- 1.2 The contracting parties are hereinafter consistently referred to as Purchaser and Contractor.

2 Making of a Contract

- 2.1 A contract shall be deemed to have been made upon receipt of the statement of acceptance associated with the offer. Assembly is only included if it is explicitly confirmed in the order confirmation.
- 2.2 Any modification and amendment of the contract shall be confirmed in writing in order to become effective. The Contractor reserves the right to replace a part of the goods with an equivalent item at any time during the contract period.

Purchaser's purchase conditions shall only be binding upon Contractor if Contractor has accepted them separately.
- 2.3 Any offer by Contractor shall be without engagement, unless the offer as such indicates differently. Contractor reserves the right to intermediate selling.
- 2.4 In the event that import and/or export licenses or foreign currency permits or other authorizations are required for the performance of the contract, the party responsible for obtaining such documents shall make every reasonable effort in order to obtain the necessary licenses or permits in due time.
- 2.5 The Purchaser may not transfer any rights arising out of the contract to a third party without the prior written approval of the Contractor.

3 Drawings and Documents

- 3.1 The data on weights, measures, content, price, or performance, as contained in catalogues, brochures, circular letters, advertisements, graphic presentations, price lists or alike, shall only be definitive if the contract expressly refers to them. The data is only an approximate indication and therefore non-binding.
- 3.2 Drawings, design drafts, cost estimates and other technical documents, as well as samples, catalogues, brochures, graphic presentations or alike shall remain the intellectual property of Contractor at all times. Any use, copying, reproduction, dissemination and transfer to third parties, as well as any publication and presentation thereof may only be made with the express approval of the owner.
- 3.3 Unless otherwise agreed, the Contractor shall retain possession and ownership of the tools, equipment, molds, auxiliary tools, etc., required or manufactured for the performance of the contract. To the extent such tools or equipment can be specifically used solely for the respective products manufactured for the Purchaser, such tools and equipment shall be solely used within that scope.

4 Packaging

- 4.1 Unless other arrangements have been agreed upon
 - a) the listed prices are without packaging;
 - b) the goods are packaged according to general trade practice in order to avoid, under normal transport conditions, any damage to the goods on their way to the agreed destination. The goods are packaged at Purchaser's expense, and the packaging material will only be taken back if so agreed by the parties.

5 Passage of Risk

- 5.1 Unless otherwise agreed by means of contract, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).¹

¹ "ex works" means that Contractor delivers when making available the goods to Purchaser on the premises of Contractor or at another indicated location (i.e. works, factory site, warehouse, etc.) without the goods having been cleared for export and loaded on to a means of transport for pick-up. The present clause therefore constitutes the minimum obligation of Contractor, with Purchaser having to bear all costs and risks connected to the transport of the goods from the premises of Contractor.

5.2 Furthermore, the INCOTERMS shall apply in the version valid on the date when the contract is signed.

6 Period of Delivery

6.1 In the absence of any other agreement, the period of delivery of goods shall begin at the latest of the following dates:

- a) the date when the contract is signed;
- b) the date on which Purchaser has complied with all technical, commercial and financial preconditions;
- c) the date on which Contractor has received a payment on account that is due prior to the delivery of the goods, or a commercial letter of credit has been issued.

6.2 Contractor shall have the right to make partial or advance deliveries.

6.3 If Purchaser does not accept the goods supplied or the assembly works under the contract in the contractually agreed place or at the contractually agreed time, and if no reason for relief according to Article 15 applies, Contractor may either demand the performance of the contract or withdraw from the contract, granting a respite. In any event the Purchaser is obliged to pay damages in full.

In the event that the goods have been segregated, Contractor may store the goods at Purchaser's cost and risk. Contractor shall also be entitled to claim a refund for any justified expenses that Contractor had to incur in connection with performing the contract and that are not covered by the payments received. This precludes any and all other claims against Purchaser due to Purchaser's delay.

6.4 If Contractor has caused a delay in delivery or the assembly, Purchaser may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite. In case of custom made goods according to the order, it shall be considered, when setting a respite, that Contractor probably might not use these goods for another purpose.

6.5 If a delivery or the assembly is delayed on account of a circumstance on Contractor's part that constitutes a reason for relief according to Article 15, a reasonable extension of the period of delivery or assembly shall be granted, without default being incurred.

6.6 In the event of non-compliance with the delivery or assembly period caused by the Contractor, Contractor shall refund Purchaser for any dunning and collection costs arising as further damage due to the delay.

6.7 Any other claim of Purchaser against Contractor, due to Contractor's delay, than those listed in Article 6 shall be precluded.

6.8 If the Contractor has to withdraw or re-dispatch its assembly operators due to a suspension of the assembly which is not caused by the Contractor, the costs arising thereby have to be borne by the Purchaser.

6.9 In case the Contractor cannot work on full shifts through no fault of itself, invoicing is still effected for all legal working hours.

6.10 If the Purchaser insists that the assembly is performed even though it has unfavourable weather, any liability for a damage arising thereby passes to the Purchaser.

7 Precaution of the Purchaser regarding the assembly

7.1 The Purchaser has to initiate in a timely manner prior to the commencement of the assembly works but also meanwhile, and on its own cost and risk, all preparations and preliminaries with respect to personnel and material which are necessary for the properly start of the assembly works, their failure-free performance and orderly finalization.

7.2 If not stipulated to the contrary, this includes at least the respective constructional provisions of the construction site, the supply with the necessary devices, tools, instruments, locker rooms and sanitary facilities and other gadgets, required auxiliary supplies and working material, unskilled labour, etc. All needed supply provided by the Contractor is invoiced separately.

7.3 Since the Contractor has to provide only the usual hand tools, the use of all other special tools and features, which cannot be provided by the Purchaser and consequently are supplied by the Contractor, are invoiced separately, together with the costs for the transport and backhaul, on the basis of an extra agreement.

8 Obligations regarding insurance and custody of the Purchaser

8.1 The Purchaser has to provide sufficient custody for all materials provided by the Contractor and personal equipment of the assembly personnel, and is liable until complete finalization of the assembly works or the clearance and the transportation of these materials and personal equipment. If a damage, destruction or loss of these materials and personal equipment occurs due to a force majeure event the Purchaser is also liable. Security instructions and other hazard notes are conducted by the Purchaser as well as provisions regarding fire protection.

9 Additional work in case of imminent danger

9.1 In case of imminent danger the approval of the Purchaser is assumed for such services which were necessary for the performance of the order but for which the approval of the Purchaser could not be achieved in due time. The Purchaser has to be informed as soon as possible about the performance of these services which were not part of the order. Since these services of the Contractor were inevitable they have to be accepted and compensated by the Purchaser. The Contractor has to invoice these services separately and disclose them in detail.

10 Acceptance Testing

- 10.1 The Contractor has to inform the Purchaser in writing about the readiness of the goods to be delivered, with the exception of spare parts and service work, or the readiness to accept the performed assembly. Such notification shall be given in good time and include a date of acceptance testing which enables the Purchaser to prepare itself in due course for the testing or to be represented at the testing by a authorized person who shall be notified in advance to the Contractor. The Purchaser undertakes to participate in the acceptance testing during the normal working hours. In the event of inspection by the public authorities, such inspection will be deemed to be equivalent to acceptance by the Purchaser.
- 10.2 An acceptance report on the acceptance test shall be prepared.
- 10.3 In the event of the Purchaser or its authorized representative not attending the acceptance test in spite of having been notified in due time, the Contractor shall prepare the acceptance report by itself and sign it. The Purchaser shall receive a copy of the acceptance report. In such cases, the Purchaser shall not be entitled to object to the accuracy of the acceptance report.
- 10.4 The Purchaser shall bear all costs (personnel costs, costs for equipment, material, auxiliary supplies) incurred in connection with the acceptance test performed.
- 10.5 If only immaterial defects (defects that do not significantly impair the function and/or purpose of the goods delivered or the assembly) are detected during the pre-acceptance test, the goods delivered or the assembly performed will, at all events, be deemed accepted.
- 10.6 If material defects are detected, the Contractor shall remedy such defects without delay. After remedying, the Purchaser shall receive a notice of remedying.
- 10.7 By completion and confirmation of acceptance, the Purchaser declares to have fully and adequately informed itself and its employees about the handling, operating and product-related use of the goods delivered or the assembly performed.

11 Price

- 11.1 Unless otherwise agreed, all prices shall be ex works of Contractor, exclusive of packaging and loading. If the contractual agreement on delivery provides for the actual transport to Purchaser, the prices shall be without unloading or carrying.
- 11.2 Included in the price for the assembly are:
- Salary of the assembly workers during the normal working hours (which correlate to the legal weekly working hours)
 - Travel costs of the assembly workers
 - Arising accommodation allowance and overnight stays
- Not included in the price for assembly are:
- Costs arising due to subsequent amendments with regards to the material but also the time exposure
 - Value added tax
 - Work done besides the normal working hours.
- 11.3 Costs for maintenance, repair, spare parts, lubricants, diesel fuel and other consumables are not included in the price and have to be borne by the Purchaser separately.
- 11.4 For a period of three months, prices shall be based on the costs at the time of quotation, unless otherwise agreed. In the event that costs change after the aforementioned commitment period has expired, these changes shall be for the benefit or to the account of Purchaser.
- 11.5 When a contract is made with the prices being left open, the price shall be calculated on the basis of the sales price valid on the day of delivery or the price valid at assembly.

12 Payment

- 12.1 The payments shall be made in compliance with the agreed conditions of payment. Unless specific conditions of payment have been agreed upon, one third of the price shall be due immediately after entering into the contract, one third after half of the delivery period has lapsed, and the rest upon delivery. Irrespective of the foregoing, the value-added tax included in the invoice shall be paid within 30 days after the invoice date, at the latest, in all events.
- With respect to the assembly the Purchaser is obliged, if the Contractor so requests, to make a sufficient down or partial payment prior to delegation of the manpower or in the course of the assembly works. Invoicing for this down or partial payment will follow later. Payment of the invoice regarding the assembly has to be made in full immediately after receipt of the invoice. If the assembly works continue for more than one month Contractor shall issue every four weeks an interim invoice which shall be paid immediately by the Purchaser.
- 12.2 Purchaser shall not have the right to withhold payments due to warranty claims or any other counter-claims that Contractor has not accepted.
- 12.3 If Purchaser defaults on one of the agreed payments or any other performance, Contractor may either insist on the performance of the contract and
- postpone compliance with Contractor's own obligations until Purchaser has paid the arrears in payment or provided any other performance;

- b) use a reasonable extension of the period of delivery or performance of assembly;
- c) call for the payment of the full remaining price;
- d) pursuant to § 456 of the Austrian Commercial Code (UGB) charge the legal rate of interest in the amount of 9.2 percentage points above the base rate, provided that the base rate applicable on the first calendar day of a six-month period shall be relevant for the respective six-month period; however, if the Purchaser is not responsible for delay, the Purchaser shall only pay interest in the amount of 4 percent p.a. as provided in § 1000 (1) of the Austrian General Civil Code (ABGB);

or announce its withdrawal from the contract, granting a reasonable respite.

- 12.3.1 Moreover, the Contractor shall be entitled to withdraw from the contract:
- a) if delivery and/or commencement or continuation of performance of assembly is delayed for reasons within the control of the Purchaser or continues to be delayed in spite of the Purchaser having been granted an additional period of time;
 - b) if there is any doubt about the solvency of the Purchaser and the Purchaser neither makes advance payments nor furnishes adequate security prior to delivery or performance of assembly in spite of having been requested to do so;
 - c) if the extension of the period of delivery or performance of assembly due to the aforementioned circumstances is in total more than half of the originally agreed period of delivery or performance of assembly;
 - d) if any industrial property rights to which the Contractor is entitled and/or the obligation of secrecy as set forth in Art. 3.2 is/are directly or indirectly infringed by the Purchaser.

Additionally, the Contractor shall be entitled to rescind the contract on the above grounds with respect to any goods not yet delivered or assembly not yet performed.

- 12.3.2 If reorganization proceedings (insolvency proceedings) are instituted against either party to the contract or a petition for insolvency is dismissed for lack of sufficient assets to cover the costs of the proceedings, the other party to the contract shall be entitled to withdraw from the contract without granting an additional period of time.
- 12.3.3 Without prejudice to any claims for damages, the following shall apply in the event of withdrawal from the contract: any performance already effected in whole or in part shall be invoiced and shall become due for payment immediately; this shall also apply to any goods delivered and assembly performed, including any advance performance already effected, but not yet accepted by the Purchaser. However, the Contractor shall also be entitled to demand that products and/or parts thereof already delivered shall be returned.
- 12.4 Contractor shall reserve the ownership in the object sold until Purchaser has met all financial obligations. Purchaser shall comply with all required measures to safeguard the reservation of ownership (especially to insure the object sold on its own costs against all damages including disruption of a machine and theft until the Purchaser has achieved full ownership of the object sold; claims out of the insurance are assigned to the Contractor). Without the prior written approval of the Contractor the Purchaser may not make any alterations to the goods until the Purchaser has met all financial obligations. Contractor is entitled to document Contractor's ownership on the outside of the delivery item. In case of attachment or another form of recourse, Purchaser shall have to claim Contractor's ownership and to inform the latter without delay.
- 12.5 In any event, Purchaser shall refund to Contractor all dunning and collection costs arising as a further damage to Contractor on account of the delay.
- 12.6 Any other claims of Contractor against Purchaser, due to Purchaser's delay, than those listed in Article 12 shall be precluded.

13 Warranty

- 13.1 Contractor shall warrant for any defects in the design, the workmanship and the material provided and fitted by him, which appear within 12 months as of the date at which the operating permit is granted, at the date as of the delivery, in case of agreed assembly by Contractor as of the end of the assembly work. Warranty is due independent as to whether the defect already existed at the time of handed over or not. The rule on presumption in accordance with § 924 of the Austrian General Civil Law Code is precluded.
- 13.2 The warranty obligation does not apply to defects that arise due to non-compliance with applicable operating conditions, service and maintenance conditions, improper treatment, inappropriate maintenance, inappropriate use or normal wear. Warranty does not extend to defects due to force majeure, excessive soiling, fire and other external impact.

The warranty obligation shall cease if a person not expressly authorized by Contractor makes any changes and/or repairs on the delivered or assembled system. If the repair was performed by a qualified person, and Purchaser is able to prove that the repair is not the reason for the subsequent defect, the aforementioned stipulations shall not apply.

- 13.3 If a system is produced according to design data, surveying reports, drawings or other information provided by Purchaser, Contractor shall not be obliged to warrant for the correctness of this information, but only for the workmanship on the basis of this information. Nor shall Contractor be obliged to check instructions by Purchaser, or documents provided by Purchaser, for their correctness. However, Contractor's duty to warn regarding obviously incorrect instructions/documents shall continue to apply.
- 13.4 If Contractor has fitted components provided by Purchaser, Contractor's warranty obligation shall only extend to the fitting work but not to the components/the material. Contractor shall not be obliged to examine the component provided by Purchaser/the material provided by Purchaser for its fitness. However, Contractor's duty to warn regarding obviously unfit components/materials shall continue to apply.
- 13.5 When delivering used components and used systems, Contractor shall not provide any warranty.

- 13.6 Purchaser must inform Contractor immediately and in writing of any defects that have appeared in order to preserve its warranty claim. Defects that appear within the time frames indicated in Art. 13.1 and of which Contractor is informed without delay, may still be claimed in court by Purchaser one year after expiry of the period indicated in Art. 13.1.
- 13.7 If Contractor has to warrant for defects in accordance with the aforementioned provisions, it shall comply with its warranty obligation at its choice by repairing or replacing the defect. Other means of warranty for remediable defects shall be precluded. Cancellation of the contract for non-remediable defects shall be precluded. The replaced components or systems shall become Contractor's property.
- 13.8 If components must be disassembled and assembled for improvements pursuant to Art. 13.7, Purchaser shall bear the costs thereof, if the assembly was not part of the contract.
- 13.9 An improvement pursuant to Art. 13.7 does not extend the warranty period for the entire system. The warranty period for repaired or replaced components or for improvement work shall be six months, in any event, as of the making of the improvement or the replacement, without the foregoing restricting Art. 13.1. The Art. 13.2, 13.4 and 13.5 shall apply in analogy. The rule on presumption according to § 924 of the Austrian General Civil Law Code shall be precluded.

14 Damages

- 14.1 The mere appearance of a defect within the period indicated in Art. 13.1 does not give rise to a breach of contract.
- 14.2 **Defectiveness:**
Contractor shall not have any obligation to damages, in addition to the warranty obligation, for any defects of the deliveries or performances.
- 14.3 **Consequential Damage of Defects:**
- 14.3.1 The Contractor shall not be liable for any damage that was impossible to anticipate as a possible consequence of a breach of contract at the time of entering into the contract.
- 14.3.2 Outside the scope of the Austrian Product Liability Act (Produkthaftungsgesetz), the Contractor is only liable where intention or gross negligence of the Contractor can be proven, and only in accordance with legal provisions.
- 14.3.3 Liability for slight negligence and compensation for consequential damage, damage for purely pecuniary damage, indirect damage, loss of production, financing expenses, cost of replacement energy, loss of energy, data or information, lost profit, savings not made, loss of interest and damage arising from third-party claims against the Purchaser shall be excluded.
- 14.3.4 All claims for damages shall be excluded in the event of any conditions for assembly, commissioning and use (as may be contained, e.g., in operating instructions) or requirements for admission or approval by the authorities not being met.
- 14.3.5 If penalties are stipulated, any claims in excess thereof which are based on the same grounds as such penalties shall be excluded.
- 14.4 The liability of the Contractor is, in principal, limited with twice the contractual amount as agreed between the parties on the date of signing of the contract, however with a maximum amount of Euro 1.000.000 (in words: one million). All possible legal liability claims of the Purchaser are compensated with this monetary cap; the monetary cap is not pledged in addition to the legal liability.
- 14.5 Any and all claims of the Purchaser against the Contractor, on whatever legal grounds and under whatever title, shall be governed by the provisions of Art. 14 with final effect and such provisions shall also apply to all of the Contractor's employees, subcontractors and sub-suppliers.
- 14.6 **Product Liability**
The delivered item provides only the safety that may be expected on the basis of the respectively valid admission regulations, acceptance tests and operating regulations.

15 Reasons for Relief

- 15.1 The following circumstances shall be deemed to be reasons for relief, if they appear after the contract has been made and obstruct contract performance:
labor disputes and all circumstances separate from the parties' will such as, for example, fire, mobilization, confiscation, embargo, prohibition of foreign-currency transfers, riot, absence of means of transport, general dearth of supply goods, restrictions of energy consumption.
- 15.2 Each party shall immediately inform the other party about the existence of such a circumstance in order to prevent the enlarging of any loss.
- 15.3 The consequences of such circumstances regarding the obligations of the parties are determined by Art. 6 and 12.

16 Quality, Safety and Environment

The Purchaser shall provide records or other documents which shall prove that the Purchaser operates according to the quality management system ISO 9001, the safety management system ISO 18001 and the environmental management system ISO 14001, or a similar system.

17 Place of Jurisdiction, Applicable Law, Place of Performance

- 17.1 The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the relevant Austrian court with competences for Contractor's principal place of business. Contractor may, however, also resort to another court with jurisdiction for Purchaser.
- 17.2 The contracting Parties may also agree that an arbitral tribunal has jurisdiction.
- 17.3 Contracts shall be subject to the law applicable to Contractor.
- 17.4 The Convention of the United Nations on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1998/96, shall expressly be precluded.
- 17.5 Contractor's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in a different place.

18 Data Storage

- 18.1 All rights to the data which the Purchaser provides to the Contractor for performance of the contract remain with the Purchaser. The Contractor may use the documents and all related information only to fulfil the contract.
- 18.2 The Purchaser declares its express consent to the storage of all data (e.g. plans, drawings, technical documents, software) relevant to the business relationship and processing of the orders placed and/or to the delivery commitments.
- 18.3 Any personal data transmitted shall be solely stored and used for the purposes of the contractual relationship and, to the extent which is necessary for the performance of the contract, shall also be passed on to any cooperation partners/vicarious agents involved during the course of the performance of the contract. The Purchaser declares its consent thereto. Thus, transfer of personal data shall be on a voluntary basis. The Purchaser has the right to have personal data erased at any time (right to revoke).
- 18.4 The data shall not be made available to any uninvolved third parties.
- 18.5 To the extent that personal data is stored or otherwise processed, such storage or processing shall be performed in compliance with the relevant data protection laws.

19 Final Provisions

- 19.1 There are no oral side agreements. Modifications of or amendments to these General Terms and Conditions and/or to the contract and/or annexes hereto or to the contract shall be effective only if made in writing; this shall also apply to any waiver of this requirement.
- 19.2 If any of the provisions of these General Terms and Conditions is or becomes invalid, the validity of the remaining provisions hereof shall not be affected thereby.
- 19.3 The invalid provision shall be replaced by a valid provision that comes as close as possible to the intended purpose of the invalid provision in economic and commercial terms.
- 19.4 A change of these General Terms and Conditions will not negatively effect an existing pricing which is advantageous for the Purchaser.
- 19.5 In the event of any contracts or the General Terms and Conditions being drawn up by us in German and in a different language, the German version shall prevail

ECCON GmbH, August 2016