

GENERAL CONDITIONS OF PURCHASE

(edition September 2023)

1. TERMS AND CONDITIONS

Only written orders or changes made by the Buyer on official printed order forms shall be binding on the Buyer. These General Conditions of Purchase shall prevail over any other terms and conditions of the parties involved in the transaction with the Buyer. The Buyer shall not be bound by the Seller's terms and conditions unless the Buyer expressly agrees in writing to parts of such terms and conditions. "Goods" includes all materials, products, semi-finished products, tools, sub-assemblies, equipment, software, designs, systems, and documentation to which this Order relates.

2. QUALITY AND GUARANTEES

The Seller hereby undertakes to deliver the goods:

- manufactured and delivered by the Seller, and not by any third party acting as a subcontractor or otherwise, except with the prior written consent of the Buyer;
- of the agreed quality, in accordance with the intended use, expressly or implicitly made known to the Seller, free from defects in terms of design, materials or workmanship;
- the Seller will use all necessary skills in the workmanship and ensure accuracy and good governance and will carry out all work in accordance with good technical and professional practice;
- in accordance with agreements, technical requirements, standards, quality and reliability requirements;
- without prejudice to the Buyer's other rights and remedies, including but not limited to the warranty against latent defects and lack of safety, the Seller shall, at their expense, remedy any defects which appear on the "goods" and/or workmanship within 24 months of first use or such other period as may be specified in the relevant order and/or standard;
- after the cessation of production of the "goods", the Seller shall, for a period of at least 15 years, provide adequate repair services and supply of spare parts in accordance with the above conditions;
- in accordance with the legal requirements applicable in Austria and other (international) laws and regulations;
- in accordance with EC Regulation 1907/2006 REACH; where applicable, the Seller shall provide proof of compliance with REACH;
- in accordance with Regulation 2002/95/EC (RoHS), which concerns restrictions on the use of hazardous substances such as lead, mercury, cadmium, hexavalent chromium, PPB, PBDEs, and Deca-BDEs. The Supplier shall, where appropriate, provide a statement of compliance with the RoHS Regulation.

If the Contract contains references to technical, safety, quality or other regulations and documents which are not annexed to the Contract, the Seller is deemed to have been informed thereof, unless the Buyer is immediately informed to the contrary in writing.

The Buyer undertakes to provide the Seller with further information on these regulations and documents as soon as possible. Unless otherwise specified in writing, the Seller shall pay for in a timely manner the costs of any necessary permits, approvals or licences required for the performance of the Contract and the fulfilment of the terms of the Contract and obtain them.

3. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

All dies, moulds, tools, templates, samples, materials, drawings, sketches, models, software, and other types of data provided and/or paid for by the Buyer shall remain the property of the Buyer at all times and shall be handed over to the Buyer immediately upon request and shall be used by the Seller solely for the purposes specified/instructed by the Buyer.

If the intellectual property rights relate to the delivery or accompanying documentation, the Buyer is entitled to free legal use under a non-exclusive, worldwide, perpetual licence. All intellectual property rights arising from the performance of the delivery by the Seller, its employees or third parties engaged by the Supplier for the purpose of performance of the Contract shall belong to the Buyer. The Seller must take all necessary steps to obtain or establish those rights in accordance with any existing contract with the Buyer. The Seller warrants that the delivery does not infringe any intellectual property rights of third parties. In this respect, the Seller releases the Buyer from all (alleged) claims by third parties and will indemnify the Buyer of all damage arising therefrom.

4. ORDER PROCESSING

The Buyer reserves the right to cancel any order if the Supplier fails to send written acknowledgement of receipt of the order within two working days. If the order confirmation differs from the original order, the Buyer's order shall always be deemed legally valid, unless the parties expressly agree in writing to the respective deviation. Acceptance of shipments or deliveries by the Buyer and payments in respect thereof shall not constitute an acknowledgement of deviations. "In writing" includes documents sent by facsimile, electronic exchange of PDF files, and e-mail messages and documents sent by other comparable means of communication. Deviations identified during the processing of an order will result in a "TEMPORARY SUSPENSION" of the processing of the document in question until a written agreement has been concluded.

5. INSPECTION AND DISPATCH

The Buyer, the Buyer's customer, and/or the end user, if different from the aforementioned persons, and/or any official body may inspect or test the "goods" or the work performed and thereby expedite the performance of this Order at the Seller's facility or at the facility of the Seller's subcontractors or authorised persons at a reasonable time.

The Seller shall give the Buyer due notice of its works and those of its subcontractor if tests or improvements are to be carried out in the interest of the Buyer or for the purpose of improving the goods, whereby the Buyer must be present. The Seller shall provide the Buyer with such test certificates as the Buyer may request and/or specify.

Such inspection, test and/or presence of the Buyer shall not relieve the Seller of liability and shall not constitute acceptance of the “goods” or works. The Seller shall keep the Buyer informed of any contact with any of the Buyer's customers, end-users and/or any official body in connection with the Buyer's orders and/or the “goods” and/or parts thereof and shall not accept any instructions from them unless confirmed in writing by the Buyer. The Buyer must inform the Seller of the above.

In the event of non-compliance identified during the inspection and dispatch, the Buyer shall notify the Seller accordingly and the Buyer shall be entitled to replace or repair at their discretion or may proceed with the inspection and/or cancel and/or rescind any existing agreements in whole or in part, as applicable. All this does not affect the Buyer's right to compensation. All costs related to additional and repeated inspections shall be borne by the Seller, with the exception of the costs of the inspection staff appointed by the Buyer.

6. DELIVERY

The Buyer's delivery terms will be specified on the purchase order (INCOTERMS 2020). The contractual delivery dates or periods must be fixed and binding and must relate to the entire delivery, including the relevant drawings or other documents relating thereto. In the event of circumstances which result in the agreed delivery date(s) or period(s) not being met as expected, the Seller shall immediately inform the Buyer thereof. If the Seller fails to deliver the goods within the agreed delivery time(s) or period(s), the Buyer may take all necessary measures to protect their obligations towards the end-user, all costs being the responsibility of the Seller, the reimbursement of which shall be claimed from the Seller without limitation. The determination, recovery or payment of this penalty shall not affect the Buyer's right to goods, compensation and termination of the contractual relationship.

7. REJECTION

If the “goods” and/or the work do not conform to the order/technical requirements, the Buyer shall have the right to reject the “goods” and/or the work carried out or any part thereof at any time within 12 months after delivery/performance, whether or not the Buyer should have accepted it beforehand. Without prejudice to any other rights or remedies available to the Buyer, the Buyer may return the rejected “Goods” to the Seller at the Seller's risk and expense. The Seller shall remedy any delay in the performance of the Buyer's obligations in respect of rejected “goods” and/or work and shall use their best endeavours, at their own expense, to protect the Buyer against any claims arising out of the rejection of “goods” and/or work.

8. PACKAGING AND DISPATCHING

Packaging must at all times comply with the Buyer's instructions as reflected in the Buyer's written orders. In the absence of specific instructions, the Seller must ask the Buyer for instructions in advance in order to use the appropriate packaging for each delivery. In view of the above, the Seller will always endeavour to ensure that the packaging is as economical, safe and secure as possible and that during transport the shipment can be handled in accordance with international regulations. The Seller must ensure that the shipment arrives at its destination in good condition. Shipments on pallets must be packed on Euro-pallets unless otherwise agreed in writing in advance. Packaging materials must be reusable or recyclable. Each individual packaging unit must be labelled.

9. SUPPLY AND POSSESSION

The Seller shall bear the risk of delivery until the goods are delivered to the agreed address and accepted in writing by the Buyer or by a person officially authorised to take delivery of the goods, stating their name and placing their signature. Unless otherwise agreed in writing, the possession of the goods delivered shall pass to the Buyer at the time of signing the delivery note for the shipment. Models, stamps, moulds, patterns, dies, gauges, drawings, sketches and similar items purchased or made by the Seller to facilitate delivery shall be deemed to have been provided to the Seller by the Buyer from the time when such "goods" are delivered to the Seller or made by the Seller or its subcontractor. If the Buyer provides, or is deemed to have provided, the products to the Supplier in order to facilitate delivery, the products shall remain or become the property of the Buyer and the Seller shall clearly mark the products as the property of the Buyer and, upon request, shall provide a statement of ownership. The Seller must store, service and protect the Buyer's property in accordance with the principle of good governance. Products made by combining, integrating or otherwise shall become the property of the Buyer at the moment of manufacture. The Seller manufactures the products for the Buyer and retains the new products as the property of the Buyer and prepares a statement of ownership which must be made available to the Buyer at request.

10. PRICES AND CHANGES

The price quoted on the Buyer's order shall be in euros and shall be deemed binding. The Buyer reserves the right to make changes to the order and if any such changes result in a change in the Seller's costs, the Buyer and the Seller shall agree on a price change.

11. INVOICING AND PAYMENT

Invoices issued must show the contract reference number of the order(s) awarded and an itemised list with item numbers and the number of the delivery note or service record. The Buyer may withhold payment until these details are duly stated on the invoice. Duplicate of invoices must be marked as such.

In the event of discrepancies identified by the Buyer's authorised personnel, the processing of the Seller's invoice shall be automatically CANCELLED. The Buyer must inform the Seller of the status of the invoice which is "TEMPORARILY SUSPENDED" and the reasons thereof. Payment shall in no way constitute a waiver of the Buyer's rights to comply with the terms of the Contract. The Buyer may settle the Seller's debts by making a claim against the Seller in the form of a debit note if the Seller has not issued a credit note, even though the Buyer has requested one. The Buyer may require a deposit or a bank guarantee at the Seller's expense before the Seller provides the goods and/or carries out the work or in the case of partial or full prepayment.

12. LIABILITY AND INSURANCE

The Seller shall be liable for any damage suffered by the Buyer as a result of any defect or deficiency in the delivery, malfunction of the equipment or defects in the materials used in the performance of the order or the Contract, or as a result of any act or omission of the Seller, its employees or subcontractors in connection with the delivery. The Seller shall indemnify the Buyer in full against claims by third parties for damages arising out of the above circumstances or damages, claims and costs arising out of the performance and/or execution of the supplies by any third party acting as a subcontractor or otherwise. The Seller shall indemnify and hold the Buyer harmless from any claims relating to delivery in accordance with Slovenian act governing product liability.

13. ALLOCATING AND SUBCONTRACTING THE WORK

The Seller shall not assign, transfer, or subcontract the order/contract in whole or in part without the prior written consent of the Buyer.

14. DEFINITIVE AND TEMPORARY TERMINATION

By written notice, the Buyer may terminate the Contract in whole or in part without further notice of default without prejudice to other rights if:

- the Seller fails to fulfil one or more of its obligations under the Contract;
- the Seller's company goes bankrupt or becomes insolvent, or initiates a winding up procedure due insolvency, or its operation has been transferred to a third party;
- the shipment is rejected after inspection or re-examination.

Without prejudice to any other remedies available to the Buyer, the Buyer may cancel the order(s) immediately by written notice of cancellation and purchase the same or similar goods and/or work from another supplier and recover the additional costs from the Seller. In the event of cancellation, the risk for the goods and/or works already delivered remains with the Seller. The goods and/or work must then be made available to and collected by the Seller. In accordance with the cancelled Contract, the Seller must immediately reimburse the Buyer for all payments made by the Buyer.

15. WARRANTY

If, within 24 months of receipt of a shipment delivered and performed in accordance with a guarantee to the end-user notified in advance, it is established that the shipment does not comply with the provisions of Article 3 of these Conditions, the Seller shall, at their sole discretion and expense, replace, repair, or redeliver the shipment to the Buyer as soon as requested by the Buyer within a period to be determined by the Buyer, without prejudice to the Buyer's other statutory rights. If the Seller continues to fail to meet their warranty obligations, the Buyer may replace, repair, or re-execute the order at the Seller's expense with or without the assistance of third parties. The Buyer must notify the Seller of exercising this right in advance, if possible. The warranty as described above also applies to replaced, repaired, or re-manufactured parts of the delivery.

16. DATA PROTECTION AND ASSOCIATED OBLIGATIONS

The Seller must provide the Buyer with any information relating to the delivery which may be relevant to the Buyer. The Seller shall not disclose confidential information to its employees who are not involved in the delivery or to third parties unless the Buyer has given its prior written consent. The Seller shall not use the name and/or logo of the Buyer in advertisements and other commercial publications without the prior written consent of the Buyer.

17. CODE OF CONDUCT

If the Seller offers and/or gives a gift or other contribution to an employee of the Buyer that is deemed inappropriate according to the default standards of conduct, without the Buyer's prior written consent, the Buyer may withdraw from the contract or order without any obligation or liability.

18. LEGISLATION

Any possible disputes lie within the jurisdiction of the Court in Klagenfurt, Austria.

19. PUBLICATION

You can download a copy of these General Terms and Conditions from the Buyer's website (www.eukom.at).