

## **TERMS AND CONDITIONS OF PURCHASE**

### **I.**

#### **Validity**

1. Our terms and conditions apply with respect to any natural person or legal entity and to any partnership with legal capacity that, at the time the contract is concluded, is exercising its commercial or independent professional activity (entrepreneur), as well as to any legal entity or special fund under public law.
2. Unless otherwise agreed in individual cases, all our orders, including future orders of the same type, are subject exclusively to the following terms and conditions. Differing or additional terms and conditions of the supplier shall become a component of the contract only if we have expressly agreed to their validity in writing. Unconditional acceptance of deliveries shall not constitute agreement. Agreements made in individual cases shall take precedence over our terms and conditions if they were made in writing or confirmed by us in writing.
3. Any references to the validity of statutory provisions are made for the sole purpose of clarification. The statutory provisions are therefore valid even without such clarification insofar as they are not directly modified or expressly ruled out in these Terms and Conditions of Purchase.

### **II.**

#### **Conclusion of Contract**

1. Offers submitted to us by the supplier shall be non-binding and free of charge.
2. Orders placed by us in person or by telephone, as well as additions and changes to an order, must be confirmed by us in writing.
3. We shall consider our orders as binding for one week from the order date. Our right to cancel an order within the period up to receipt from the supplier of a written order confirmation, with content identical to that of our order, shall remain unaffected.
4. Significant amendments and additions to a contract require our written confirmation.
5. The requirement for the written form is satisfied by messages via EDI, WebEDI, email and fax.

6. All correspondence concerning offers, orders, contracts and contract amendments must be conducted with our Purchasing department. Agreements with other departments with which contracts are to be concluded or amended must be approved by our Purchasing department in writing to become effective.

### III.

#### **Delivery Item/Quality Requirements**

1. The content, type and scope of the delivery shall be defined exclusively by our written order and, where applicable, by any specifications and production documents provided by us (drawing, sample, etc.) or specifications and production documents provided to us by the supplier and confirmed by us in writing. This shall neither affect the duty of the supplier to check all order documents and other contract documents for completeness, correctness and suitability for purpose, and to notify us immediately in writing of any irregularities/errors, nor shall it affect in any way the sole responsibility of the supplier as regards performance.

Without our written consent, the supplier shall not be entitled to have third parties (such as subcontractors) provide the service for which it is responsible. The supplier shall bear the procurement risk for its services unless the service in question is single-unit production.

The delivery items must be accompanied by complete documentation (e.g., operating instructions, maintenance manual).

If delivery items are manufactured according to our specifications (especially machinery), the services shall be subject to our inspection and approval, even if this has not been agreed explicitly. We shall give our approval once a function test shows that the services are either without any defects or that any defects are insignificant.

To the extent that services are performed on our premises, the supplier shall comply with our applicable regulations (e.g., house rules, safety regulations), which we will provide on request. Storage of materials for services shall be subject to our prior agreement. Workplaces must always be kept in a condition that will not cause accidents and must be left tidy and clean at the end of the working day.

If the delivery item consists entirely or partially of software, the supplier shall grant us a non-exclusive, transferable and irrevocable right to use the software, unlimited with regard to time and place. We shall have the right to copy the software insofar as this is necessary for us to use it under the contract. The supplier shall provide German-language documentation that can be printed out. We shall have the right to require the supplier to enter into a normal support contract with us and to deposit the source code with an external storage provider (e.g., TÜV SÜD) at our expense.

At our request, the supplier shall disclose its sub-suppliers. We shall have the right to reject a supplier's sub-supplier for substantial cause. If this is likely to cause delivery delays or cost changes, we shall agree on these with the supplier.

For a period of at least 10 years after delivery, the supplier shall supply us with replacement and spare parts. Unless otherwise agreed, the market prices shall apply.

2. All delivery items must be manufactured in faultless condition using the material and tools that are best suited; they must conform to the technical specifications provided by us, as well as to the applicable ISO standards, European and German standards, U.S. standards, statutory provisions (especially product safety legislation), industry association guidelines and other similar regulations. These constitute the quality standard for the delivery item, without having to be explicitly agreed.
3. Acceptance of packaged goods does not constitute acceptance as contract fulfillment. We reserve the right in all cases to inspect goods after delivery.
4. We shall have the right to request, within reason, changes to the delivery item in terms of its construction and finishing. Any potential effects on costs and delivery dates resulting from such changes shall be jointly agreed by both parties.
5. The supplier is obligated to monitor and continuously improve the quality of the delivery item. At the supplier's request, we are prepared to discuss the type and scope of testing, as well as the test equipment and methods, and to agree on them in writing while taking the knowledge, experience and best available technology into account. Initial samples shall be presented before the delivery of production items.
6. The quality testing obligation applies equally to material provisions and drop shipments pursuant to Section IX as long as they are in the supplier's possession.
7. If the goods supplier is only an intermediary, it shall nevertheless be obligated – even beyond the scope of its own commercial inspection obligation under law – to inspect the goods for defects prior to handing them over to us.

#### IV. Delivery Time

1. The delivery time (including the specified delivery dates) specified by us in the order is binding. Periods shall commence with our written order. The relevant criterion for compliance with the delivery time shall be the receipt of the delivery item at our premises or at the agreed place of receipt. The supplier must deliver by the delivery date agreed. If delivery periods are agreed, delivery must take place within the delivery period. In the case of on-demand orders, delivery must take place as agreed within one week following the respective order. Compliance with the delivery time is contractually of such importance to us that it determines our interest in receiving the delivery at all.
2. Partial deliveries by the supplier are permissible only with our approval. We reserve the right to return to the supplier, at the expense and risk of the supplier, any deliveries made prior to an agreed delivery date or to store them at the supplier's cost.
3. If the supplier should be in delay, we can take recourse to the statutory claims and rights. In addition, delays in delivery shall entitle us to demand, at our discretion, a contractual penalty of 0.5% of the total order price for each part or full week of the delay, such penalty, however, not to exceed 5% of the total order price. The same shall apply accordingly to delays in partial deliveries, in which case we shall have the right to demand a penalty of 0.5% of the price of the partial delivery, such penalty, however, not to exceed 5% of the price of the partial delivery. Our right to claims for damages shall remain unaffected. Payment of a contractual penalty shall be offset against a claim for damages. If we accept the delayed service, we must assert the contractual penalty at the time of the final payment at the latest.
4. If the supplier realizes that it is unable to deliver on time all or part of the delivery item, it must notify us about this immediately, stating the reasons for and the approximate duration of the delay.
5. In cases of force majeure and other unpredictable circumstances for which neither we nor our legal representatives, executives and agents are responsible, especially operational disruptions, strikes, lock-outs, interventions by authorities, etc., and which prevent us from accepting the delivery item, our acceptance obligation shall be suspended. We shall immediately inform the supplier of such circumstances. In this case, we shall have the right to terminate the contract or to demand its execution at a later date. This shall not form the basis for any claims on the part of the supplier.

## V.

### Shipment/Acceptance

1. Shipment shall be at the expense and risk of the supplier. This shall apply to any potential return shipments as well. The supplier shall be liable for compliance with the shipping instructions provided.
2. Wherever possible, the supplier shall use environmentally friendly packaging. At our request, the supplier shall collect packaging from our factory at no cost to us.
3. When the delivery item is handed over at our premises or at the agreed place of receipt, the risk is transferred to us. In the case of machinery and technical equipment and if a function test/inspection has been agreed, the risk is transferred to us only following our written confirmation that the function test/inspection did not reveal any defects.
4. The supplier shall include a packing slip with each shipment; this slip must contain our order number and the item number, quantity and delivery location, as well as a description of the goods, insofar as these are stated in our order. We shall have the right to refuse delivery in the absence of such a packing slip, which shall not form the basis for any claims on the part of the supplier. Any costs that result shall be borne by the supplier.
5. The statutory provisions apply to the beginning of the acceptance delay. The supplier shall expressly offer us its services even if a specific or definable calendar date has been agreed for an action or assistance by us (such as provision of material). In the event that we are in delay of acceptance, the seller shall be entitled to claim reimbursement for its expenditures pursuant to the statutory provisions (Section 304 of the German Civil Code (BGB)). If the contract concerns non-fungible goods that are to be produced by the supplier (single-unit production), the supplier shall be entitled to further claims only if we are responsible for failing to provide the agreed assistance.

## VI.

### Prices/Invoicing/Payment

1. The prices stated in our order are fixed prices, free to the factory, plus statutory sales tax and including all ancillary costs.
2. If the market situation should change in a manner significant for us, or if it becomes apparent that the market prices of our products are falling significantly, the supplier agrees to negotiate an adjustment of prices with us. If the negotiations fail, we shall have the right to terminate existing contracts (especially framework agreements) with a period of notice that takes into account the interests of both parties. In such a case,

the supplier may charge us only for the costs it actually incurred for materials that cannot be otherwise used. We shall have a similar right of termination if the supplier's prices are above the market level, or at least 3% higher than the prices of a comparable competitor, and if the supplier is unable to offer us competitive prices within one month of our written request.

3. A single copy of invoices shall be submitted to us following receipt of the delivery item and according to the statutory provisions. Invoices must specify the packaging number, number of packages and the quantity of the delivery. Each invoice item must include our item number and the order number if such are stated in our order. If the invoice relates to goods from different orders, it must state which order has been filled with the respective delivery.
4. We pay invoices, at our discretion, as follows: invoices that we receive by the 1st of any month by the 15th of that month and invoices that we receive by the 15th of any month by the 1st of the following month, deducting a 3% discount, otherwise after a further 30 days without discount.
5. We shall have the right to pay either by check or by bank transfer.
6. In all cases, we shall be in default only following a written payment demand.
7. We shall be entitled, within the legal scope, to the rights of offsetting and retention as well as the plea of non-performance of the contract. In particular, we can withhold due payments as long as we are entitled to claims against the supplier due to incomplete or defective deliveries. The supplier shall have a right of offsetting or retention only in the event of legally established or undisputed counterclaims. The supplier may assign claims against us to third parties only with our consent; we in turn may refuse consent only for substantial cause.
8. We refuse to receive electronic invoices. Unlike a paper invoice, an electronic invoice is, according to Section 14 (1) no. 8 of the new version of the German Value Added Tax Act (UStG n.F.), an invoice that is issued and received in an electronic format (transmitted by email, possibly with an image file or text document attached, by De-Mail according to the De-Mail Act of April 28, 2011, German Federal Gazette I (BGBl. I), page 666, by computer fax or fax server, by web download or by EDI). Pursuant to Section 14b of the new version of the German Value Added Tax Act (UStG n.F.) and Section 147 of the Fiscal Code of Germany (AO), electronic invoices must also be retained for a period of ten years. We currently do not possess the technical capabilities to ensure the invoice's authenticity of origin and the intactness and legibility of its content throughout the required retention period. These prerequisites are not met by a paper printout of the electronically received invoice from the data processing system. We therefore refuse to receive electronic invoices. Even if we process or pay electronic invoices, this shall not constitute tacit approval or consent to receive them.

## VII.

### **Inspection, Defects in the Delivery Item**

1. The supplier is obligated to deliver the delivery item free of any material defects or defects of title. In the case of defects, we can take recourse to the statutory claims and rights.
2. We shall carry out random inspections of delivery items within two weeks following receipt, those requiring more time-consuming testing shall be inspected within 4 weeks, and this shall constitute fulfillment of our commercial inspection obligation. If defects discovered during the random inspections require further testing, the supplier shall reimburse us for the resulting costs.
3. If the supplier, without justification, refuses to correct the defect or if there is a delay in the correction of the defect, and this refusal and/or delay threatens to cause significant harm to us or our customers, we shall have the right to correct the defect ourselves or to have it corrected by a third party at the expense of the supplier.
4. The supplier shall bear its own expenses for reviewing and correcting a complaint even if there was no defect, unless we should have recognized that the complaint is unjustified.
5. Our claims for material defects expire 24 months after delivery to or acceptance by us and those for title defects after 48 months. Longer statutes of limitations for claims other than those based on a defect of the delivery item itself shall remain unaffected. The statutory limitation period for material surrender claims (Section 438 (1) no.1 of the German Civil Code (BGB)) and for recourse claims pursuant to Section 479 of the German Civil Code (BGB) shall also remain unaffected.
6. Defective parts of the delivery item shall remain at our disposal until they are substituted. Upon substitution, they become the property of the supplier.

**IX.**

**Security Interests/Material Provisions/Property Rights**

1. The supplier undertakes to release any security interests pledged by us to the extent that their value exceeds the value of the receivable to be secured by more than 10%.
2. Materials provided by us ("material provisions") or delivered directly to the supplier on our account ("drop shipments") remain our property. Without our consent, they may neither be sold, used to create a security interest, pledged or transferred to third parties nor used for third parties or made accessible to third parties. Such materials (material provisions and/or drop shipments) must be insured by the supplier against all the usual risks at its own expense and must be stored as our property and apart from the same or similar items that are the property of third parties or the supplier. The supplier may use such materials only for the manufacture of our order and, on request, must relinquish them to us immediately. The supplier shall also impose this obligation on its agents.
3. The supplier must notify us immediately of the imminent attachment of such materials, of any other impairment of our rights as well as of any loss or damage to material provisions. The supplier must separate any such materials.
4. When such materials are processed, combined or mixed with other items, the supplier shall grant us joint ownership of the newly created item in proportion to the value of our materials relative to the value of the other items; the above obligations shall apply appropriately to the newly created item.
5. If improvements to such materials are made by the supplier in connection with the execution of the order, we shall have a non-exclusive right, free of charge, to use these improvements as well as any intellectual property rights involved.
6. The supplier shall not copy models, samples or other documents that we have provided to it or that it has created on the basis of our specifications unless such copying is necessary to prepare the offer/execute the order. If the supplier intends to provide one of its sub-suppliers with such documents, it must impose the above obligation on its sub-supplier beforehand in writing and present it to us on request.
7. The items manufactured according to our specifications may not be offered or delivered to third parties without our approval; this obligation shall survive the termination of our business relationship. If improvements are made by the supplier that are based on our production documents, we shall have a non-exclusive right, free of charge, to use this improvement for our purposes as well as any intellectual property rights involved.

8. We reject all forms of extended or prolonged reservation of title, so that any agreed reservation of title shall apply only until the goods delivered to us have been paid for and shall apply only to these goods.

## **X.**

### **Confidentiality**

1. The supplier is obligated to treat as industrial secrets all commercial and technical details of which it becomes aware due to its business relationship with us, unless they become public knowledge. The agents of the supplier (including its employees) must be obligated accordingly in writing; these obligations must be presented to us on request.
2. Without our prior written approval, the supplier shall not have the right to mention its business relationship with us for advertising purposes.
3. Publication for the supplier's own advertising purposes of products manufactured for us and according to our specifications requires our prior written approval.

## **XII.**

### **Product Liability**

1. If the supplier is responsible for a product defect, it shall be obligated to indemnify us, at the first request, against third-party claims for damages insofar as the cause of the defect lies within its control and organizational sphere and the supplier is itself liable to third parties.

In this context, the supplier is also obligated to reimburse us for any costs pursuant to Sections 683 and 670 of the German Civil Code (BGB) that result from or in connection with a recall campaign conducted by us or our customer if we or our customer were required, or if it was appropriate, to conduct a recall campaign. Insofar as this is possible and reasonable, we shall inform the supplier of the subject and extent of the recall measures to be carried out and afford it the opportunity to respond.

2. If we are held responsible by third parties within or outside of Germany, irrespective of fault, on the grounds of defective goods from the supplier, the supplier shall be liable to us accordingly. The same burdens of proof that apply to the relationship between us and the third party shall apply to the relationship between us and the supplier.
3. The supplier undertakes to purchase product liability insurance with a flat coverage amount of EUR 5 million for each event of personal injury or property damage. The supplier must present the policies to us on request. Our compensation claims shall remain unaffected.

**XIII.**

**Limitation of Liability**

In cases of simple negligence, the liability of the supplier shall be limited to predictable, typical damage. We assume unlimited liability for intent and gross negligence, as well as for harm caused by us to the supplier in terms of bodily harm or harm to life and health for which we are responsible. We assume no liability for other damage caused by breach of insignificant contractual obligations due to simple negligence. In cases of breach of significant contractual obligations due to simple negligence, our liability shall be limited to predictable, typical damage. Claims on the part of the supplier shall expire one year after the emergence of the claim, unless we are liable for bodily harm or harm to health, or because of intent or gross negligence.

**XIV.**

**Supplier Code of Conduct**

We have issued principles concerning fairness, honesty, sustainability/environmental compatibility, responsibility, working conditions, transparency, trusting cooperation and communication (referred to as the "Code of Conduct" below) for our suppliers to follow in the business relationship. The Code of Conduct is available at <https://www.euchner.com/en-us/about-euchner/compliance/supplier-code-of-conduct/> or will be provided to the supplier on request. The supplier is obligated to comply with this Code of Conduct and to obligate its sub-suppliers to comply with an equivalent code of conduct. Furthermore, the supplier shall obligate its sub-suppliers to forward the aforementioned obligations to any of their sub-suppliers in the supply chain as well. Violation of the provisions in the Code of Conduct and the aforementioned obligations could result in sanctions up to and including immediate, extraordinary termination of the supplier relationship. Other claims on the part of Euchner shall remain unaffected.

**XV.**

**General Provisions/Final Provisions**

1. The place of performance shall be the agreed place of receipt.
2. The agreed place of jurisdiction for our commercial business transactions shall be our registered headquarters. We shall have the right to initiate legal proceedings at the registered headquarters of the supplier as well.
3. This contract is subject to the laws of the Federal Republic of Germany (including the United Nations Convention on Contracts for the International Sale of Goods (CISG)).
4. If one or more of these terms and conditions should be or become invalid, this shall not affect the validity of the remaining terms and conditions. In the case of such invalidity of one or more terms and conditions, the parties undertake to replace such invalid terms and conditions with legally valid terms and conditions that correspond as closely as possible to the legal and economic intent of the invalid terms and conditions.

5. The supplier is hereby notified pursuant to the German Data Protection Act (BDSG) that personal information may be stored, transferred, processed and deleted in the context of business transactions in accordance with the relevant statutory provisions.

EUCHNER GmbH + Co. KG  
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