

# European Technical Center for Engineering & Distribution GmbH

## Terms and Conditions of Purchase (TCP)

### 1. Scope

1.1 The present TCP of ETC-Distribution GmbH ("Customer") shall only apply to contracts between Customer and entrepreneurs.

1.2 These TCP shall apply to supplies and services ("Supplies") of the contracting partner of Customer ("Supplier") to Customer on the basis of the contract ("Contract") concluded between Customer and Supplier ("Parties").

### 2. Offer, Order and Order Confirmation

2.1 The Customer may cancel its order if the Supplier has not confirmed acceptance of the order ("Order Confirmation") in writing within two weeks of receipt.

2.2 If the Order Confirmation varies from the order, the Customer shall only be bound thereby if it agrees to such variation in writing.

2.3 The TCP of Customer shall apply exclusively. Other General Conditions – insofar as such are not provided for in Customer's order as a whole – shall be excluded. Neither acceptance of Supplies nor payment shall constitute approval of Customer to the General Conditions of Supplier.

### 3. Right of Use

3.1 The Supplier hereby grants Customer the non-exclusive, transferable, perpetual and world-wide right

- to use or allow others to use ("Right of Use") software and the related documentation ("Software");
- to sublicense the Right of Use to affiliates as defined by § 271 Commercial Code ("Affiliated Companies"), distributors and end customers, insofar as such relates to individual software;
- to grant a license to Affiliated Companies and distributors to sublicense the Right of Use to end-customers;
- to copy the Software for installation in hardware or to have such copied by Affiliated Companies or other distributors.

3.2 In addition to its Right of Use the Customer, the Affiliated Companies and other distributors shall be entitled to allow end-customers to transfer Software licenses.

3.3 Any and all sublicenses granted by the Customer shall provide adequate protection for the intellectual property rights of the Supplier in the Software so that the same contractual provisions shall apply as the Customer itself uses to protect its own intellectual property rights.

### 4. Delivery Time, Penalty

4.1 For calculating the timeliness of deliveries or re-performances the relevant point in time is the date of receipt by Customer at the designated place of receipt and for the calculation of timeliness of deliveries with installation or commissioning as well as services de relevant point in time shall be that of acceptance.

4.2 If any delay in delivery respectively re-performance can be anticipated, the Customer shall be notified immediately in order to determine its decision.

4.3 In the event that any agreed upon delivery date is not met for reasons the Supplier is responsible for, the Customer may – without prejudice to its other rights – claim a penalty for each commenced working day of delay amounting to 0.5%, but not exceeding a total of 10 % of the order value. This shall be without prejudice to any further or other claims including amounts of damages exceeding the penalty. In the event that a claim is made for damages exceeding the penalty, the penalty already paid shall be deducted therefrom. The Supplier can produce evidence that the Customer has sustained lower damages or no damages at all.

4.4 In the event that the respective reservation of the penalty right is not given at the time of acceptance of deliveries or re-performances, the penalty may still be claimed up to the date of the final payment.

4.5 The Supplier shall only be entitled to partial deliveries upon prior consent of Customer.

### 5. Transfer of Risk and Dispatch

5.1 For deliveries with setting-up or installation and for services transfer of risk shall occur upon acceptance, in cases of deliveries without setting up or installation transfer of risk shall occur upon receipt by the Customer at the designated place of receipt.

5.2 For pricing Ex Works or Ex Warehouse of the Supplier transport shall be at the lowest cost insofar as the Customer has not requested a particular method of transport. Any extra costs resulting from non-compliance with transport or packaging requirements shall be borne by the Supplier. If the prices are quoted free to receipt, the Supplier shall bear the shipping and packaging cost. Additional

costs for a more expeditious method of transport in order to observe a delivery date shall be borne by the Supplier.

5.3 The Supplier shall include in its deliveries a packing slip, delivery notes, analysis, certificate of origin and inspection certificates and shall provide notice of such dispatch immediately to the Customer with the same information.

5.4 Ownership in the deliveries shall pass to Customer upon full payment of the agreed upon prices.

5.5 Deliveries that have been paid for by Customer in full or that are its property shall be clearly labelled by the Supplier as Customer's property and shall be stored separately from other goods. On Customer's first demand the Supplier shall immediately dispatch the deliveries to the Supplier.

### 6. Payments

6.1 Unless otherwise agreed, payment shall be due

- within 14 days at a 3% discount
- or within 30 days net

6.2 The time limit for payment shall commence as soon as any of the supplies is completed and Customer receives the appropriate invoice. In case delivery occurs after the invoice, the time limit for payment shall commence with receipt of delivery, under no circumstances, however, before the agreed date of delivery. Completeness of delivery requires receipt of material tests, inspection records, quality documents or other documents to be submitted by Supplier. Discount applies even if the Customer sets off or withholds appropriate sums due to faults or defects; in this case the time limit for payment shall commence upon complete removal of the defects.

6.3 The Customer shall only be in default of payment if it does not pay after receipt of a reminder, which shall be sent by the Supplier after the due date for payment, has expired.

6.4 Payments shall not constitute recognition that Supplies are in accordance with the Contract.

### 7. Quality Assurance

The Supplier shall maintain a quality assurance that meets the requirements of current norms and standards. The Supplier shall document its results, which shall be made available to Customer for inspection.

### 8. Incoming Inspection

8.1 The Customer shall immediately upon receipt of any delivery check whether there is any externally recognisable transport damage or any other externally recognisable defect.

8.2 If the Customer detects any defects in the course of the above mentioned inspection it shall notify the Supplier. If the Customer detects any defect later it shall also notify such defect to the Supplier.

8.3 Complaints may be made within one month (1.) of receipt of delivery or (2.) insofar as the defect was first noticed upon commissioning or processing or first use, within one month from the detection.

8.4 In relation to the Supplier the Customer shall have no other duties in this regard other than the fore mentioned duties of inspection and notification.

### 9. Liability for Defects of Material

9.1 Claims for defects in material shall be subject to a limitation period of three years unless applicable law prescribes longer limitation periods. The limitation period shall commence upon transfer of risk (5.1). For deliveries to customers of Customer it shall begin upon acceptance of Customer's customer but in no case later than one year after transfer of risk.

9.2 Technical Specifications of Supplier, if any, shall not constitute conclusive specification agreements e.g. within the context of § 434 para. 1 sentence 1 BGB ("German Civil Code") or § 633 para. 2 sentence 2 German Civil Code.

9.3 In the event the defect is detected prior to or at the time of transfer of risk and during the limitation period, the Supplier shall at its own cost and at Customer's discretion either rectify the defect or provide a substitute delivery or performance. This shall also apply to any deliveries that were subject to limited inspection by sample tests. The discretion of the Customer shall be exercised fairly and reasonably.

9.4 Insofar as a defect has been rectified by repair or substitute performance, the limitation period as per 9.1 shall recommence.

9.5 In case rectification of a defect or a substitute delivery fails, the Customer shall be entitled to

- withdraw from the Contract in whole or in part without compensation, or
- demand a reduction of price, or
- rectify by itself or substitute the delivery by itself or arrange for rectification or substitute delivery by a third party at Supplier's cost, and claim damages instead of performance.

§281 para. 2 and § 323 para. 2 German Civil Code shall remain unaffected.

9.6 The same shall apply if the Supplier states that it is unable to carry out the rectification of the defect or replace the defective delivery within a reasonable period of time.

9.7 If the Customer claims damage instead of performance, it shall maintain its right to the delivery until the Supplier has provided damages in full.

9.8 Any rectifications may take place without a further deadline being set and at the cost of the Supplier if delivery is after the original time of delivery.

9.9 In the event that defective deliveries are not taken back by Supplier in spite of Customer's request to do so, such deliveries can be disposed of at the Supplier's cost or returned "freight collect" on the Supplier's account. The Supplier shall bear the risk of returning the defective delivery

9.10 The aforementioned claims shall expire one year after notification of the defect but in no case prior to the expiry of the limitation period stated in 9.1.

9.11 Any further claims of Customer, in particular claims relating to recourse to a company according to § 478 German Civil Code and for replacement of frustrated handling or processing costs incurred shall remain unaffected

#### **10. Liability for Infringement of Industrial and Intellectual Property Rights.**

The Supplier guarantees that the Supplies do not conflict with any proprietary rights or applications for proprietary rights (Proprietary Rights) of third parties.

#### **11. Recourse by Customer against Supplier**

11.1 If a product manufactured by Customer using the Supplier's deliveries and sold to end user contains a defect caused by a fault in the Supplier's deliveries, Customer can demand reimbursement of the expenses, which Customer has to bear in proportion to the end user pursuant to § 439 para. 2 German Civil Code.

11.2 In the event that Customer has to take back the product due to a defect or if the end user has reduced the price, Customer shall be entitled to

- withdraw from the Contract with Supplier in whole or in part without compensation, or
- demand a reduction of price and
- claim damages instead of performance or replacement of frustrated expenditures.

11.3 The claims arising under 11.1 and 11.2 shall be subject to a limitation period of three years from transfer of risk (5.1), unless applicable law requires longer limitation periods. The limitation period, however, shall expire at the very earliest two months after Customer has fulfilled the end user's claims. The suspension of expiration of the limitation period shall terminate at the latest five years after transfer of risk (5.1).

11.4 The regulations provided in 11.1 to 11.3 shall apply accordingly, if within the context of a supply chain (§ 478 German Civil Code) an end customer makes a claim against the Customer due to a defect in a product which has been newly manufactured by Customer using the Supplier's deliveries, to the extent that the defect has been caused by a fault in Supplier's deliveries.

11.5 §§ 478 and 479 German Civil Code shall remain unaffected.

#### **12. Product Liability**

In the event that a third party makes a claim against the Customer due to defects in a delivery from the Supplier, the Supplier shall immediately hold Customer harmless from such claims.

#### **13. Subcontracting to Third Parties**

Subcontracting to third parties shall not take place without the prior written consent of the Customer, and, in the event that such takes place, the Customer may cancel the Contract in whole or in part and claim damages.

#### **14. Material Provided by Customer**

14.1 Any material or item provided by the Customer as support shall remain the property of Customer, and is to be stored, labelled

and administered separately. The use of such material shall be limited to the orders of the Customer. In the event of any reduction in value or loss the Supplier shall provide a replacement. This shall also apply to the non-gratuitous material provided to the Supplier.

14.2 Any processing or transformation of the material shall be for the Customer. The Customer shall become the immediate owner of the new or any transformed object. In the event such is not possible for legal reasons, the Customer and Supplier agree that the Customer shall be the co-owner of the new goods at all times during any processing or transformation in proportion to the value of the material supplied by Customer. The Supplier shall keep the new object safe for the Customer at no extra cost and exercise the duty of care of a prudent businessman.

#### **15. Models, Tools, Forms, Samples**

15.1 All models, tools, forms and samples that are property of Customer shall be placed at the Supplier's disposal on loan-basis. The Supplier shall ensure that the products are clearly marked as Customer's property. The Supplier shall waive all rights, in particular rights of retention of title, to the models, tools, forms and samples, which could hinder any request by Customer for their return. Models, tools, forms and samples may not be disposed of or sold without prior written consent of Customer.

15.2 All models, tools, forms and samples shall be treated by Supplier with the utmost care and shall be insured for an amount equivalent to the replacement cost, in particular, against risks such as fire, lightning, explosion, damage from water, damage from electronics, breakage and theft. Any modifications and repairs shall only be permitted subject to prior written consent of the Customer. The Supplier needs to keep in good order repair models, tools, forms and samples.

#### **16. Confidentiality**

16.1 The Parties shall not pass the rendered tools, forms, samples, models, profiles, drawings, norm data, printing patterns, and other technical documentation, irrespective of the data medium (documents) including knowledge information and subsequently manufactured products to third parties without the written consent of the other Party nor shall it use them for purposes other than for the execution of an order. The documents are to be safeguarded against unauthorized use. In the event that either Party is in breach of its obligations, the other Party can demand immediate return of the documents.

16.2 The obligation according to 16.1 shall begin upon receipt of the Documents, knowledge and information and shall expire 36 months after the termination of the business relationship.

16.3 The obligation according to 16.1 shall not apply to Documents and knowledge which at the time of receipt are publicly known, or are established by the receiving Party to have been known by it without being subject to a duty of confidentiality, are received from a third party without similar restrictions, or if independently developed by the receiving Party without breach of these Terms and Conditions of Purchase.

#### **17. Special Right of Termination**

In the event that the Supplier ceases to make Supplies or If an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, the Customer may cancel the Contract in part or in whole. In case of cancellation, the Customer may use the existing facilities or Supplies of the Supplier already performed and provide reasonable payment for such.

#### **18. Applicable Law**

The substantive law of the Federal Republic of Germany shall apply. The United Convention on Contracts for the International Sale of Goods of 11. April 1980 shall be excluded.

#### **19. Place of Jurisdiction**

The exclusive place of Jurisdiction shall be Fuerth