

General Terms and Conditions of Purchase

Art. 1 General remarks and area of application

- (1) These General Terms and Conditions of Purchase shall apply to all business relations between Enka Tecnica GmbH and its business partners, in particular suppliers and service providers (hereinafter referred to as "Contractual Partner"). The General Terms and Conditions of Purchase shall apply in particular to contracts for the sale and delivery of movable items (also to be manufactured or to be produced), irrespective of whether the Goods are produced by the Contractual Partner itself or by third parties, as well as for contracts for work and services and contracts for services.
- (2) The General Terms and Conditions of Purchase shall apply in their respective applicable version applying also to future contracts or to quotations for goods and services with the same Contractual Partner, without this having to be pointed out in each individual case.
- (3) Purchase orders shall be placed exclusively with the application of these General Terms and Conditions of Purchase. Terms and Conditions of business worded differently, in particular opposed, deviating or supplementary terms and conditions of business shall be effective only if these have been expressly confirmed by us in writing. That shall also apply in the case of acceptance of a quotation without reservations with awareness of the general terms and conditions of business of the respective Contractual Partner.
- (4) Individual agreements which are made with the Contractual Partner in the individual case (including ancillary agreements, additions and amendments) shall always prevail over these General Terms and Conditions of Purchase. Decisive for the contents of such an agreement shall be a written agreement or our written confirmation. Unilateral declarations and advices (for example reminders, setting of time limits, and statements of rescission) of the Contractual Partner shall require to be in writing in order to be effective.
- (5) References to the application of statutory provisions shall merely have a clarifying significance. Even without any clarification of the application of statutory regulations these statutory regulations shall apply unless these General Terms and Conditions of Purchase contain direct amendments or exclusions.

Art. 2 Conclusion of contract

- (1) Our quotations shall only be binding if they are submitted in writing or – in the case of verbal quotations and also those submitted by telephone – have been confirmed by us in writing. Up to acceptance we shall reserve the right to revoke our quotations.
- (2) To the extent that our quotations do not include any other express time limit for acceptance and nothing else has been agreed upon, the Contractual Partner can accept them only within a period of five (5) working days from receipt by means of confirmation in writing.
- (3) Late acceptance or acceptance with extensions, restrictions or any other alterations shall be deemed to be a new offer which in turn can be accepted by us within a period of five (5) working days from receipt.
- (4) Later amendments of contracts, purchase orders or call-offs must be confirmed in writing by us in order to be effective.

Art. 3 Prices

- (1) The price shown in the purchase order shall be binding as a fixed price in euros and shall apply free destination address which – unless stated otherwise – shall be our registered head office in Gröbzig.
- (2) The prices shall apply including statutory turnover tax (VAT) unless this is expressly stated otherwise and has been confirmed in writing by us.
- (3) With the price, all supplies and services (e.g. assembly, fitting) as well as performance of additional services (e.g. transport, unloading) as well as all costs (e.g. packaging costs, insurance, taxes, customs duties) shall be covered. Packaging costs shall be paid for separately if this has been agreed upon; they are to be credited to us in the event of return of the packaging carriage paid.

Art. 4 Delivery time, contractual penalty

- (1) The delivery or performance dates or times shall be binding and firmly defined and are to be understood as arriving at the destination address. The Contractual Partner must inform us of any delivery and/or performance delays recognizable for it without undue delay. The Contractual Partner shall, without prior written consent, not be authorised to carry out the performance owed before the delivery/performance date stated to us. The Contractual Partner shall bear the procurement risk for its services, unless a custom-made item is not involved.

- (2) If the Contractual Partner defaults on the delivery and/or the performance of the service, we shall be entitled for every completed calendar day of the delay to demand a contractual penalty in the amount of 0.25%, but in total not more than 5% of the net price of the late delivery/service. The contractual penalty shall take its place alongside performance and can be demanded as a minimum amount of damages owed by the Contractual Partner in accordance with the statutory regulations; the making of a claim for further damage/loss shall remain unaffected. However, the contractual penalty shall in any case be credited. If the late performance is accepted the contractual penalty must be claimed at the latest with the final payment.

Art. 5 Supply and service, passing of risk, default in taking delivery

- (1) The Contractual Partner must include with all deliveries a packing slip or a delivery note and send advices of dispatch or delivery to the destination address on the day of delivery. The shipping documents must, giving the date (issue and dispatch) contain, besides the article designation (article number and quantity), the order numbers, the purchase order date, the quantities and weights as well as the type of packaging. If the packing slip or the delivery note is missing or if it is incomplete we shall not be held responsible for any resultant delays in processing and payment for the respective delivery.
- (2) The Contractual Partner shall not be entitled to have the service performed by third parties (e.g. sub-contractors).
- (3) The passing of the risk of loss, accidental loss, or of damage shall be based on the statutory regulations.
- (4) The statutory regulations shall apply to default in taking delivery. However, also then an express quotation for the service shall be required if for an act or cooperation on our part (for example procuring of material) a defined or definable calendar time has been agreed upon. In the case of default in taking delivery the Contractual Partner can demand, in accordance with the statutory regulations, refund of the additional expense. If the contract concerns unwarrantable items (custom-made items) to be manufactured by the Contractual Partner, it shall be entitled to further rights only if we have undertaken to cooperate and are responsible for the non-occurrence of the cooperation.

Art. 6 Property and retention of title, copyright, secrecy

- (1) Retentions of title of the Contractual Partner shall apply only as far as they refer to our obligation to pay for the respective deliveries to which the Contractual Partner retains the title. All arrangements of enlarged and extended retention of title shall be excluded; retention of title effectively declared by the Contractual Partner shall apply only to the goods delivered to us and up to payment for them.
- (2) Drawings, designs, samples, illustrations, plans, calculations, instructions for execution, product descriptions or similar which we have placed at the disposal of the Contractual Partner for the submission of a quotation or for the performance of the contract, shall remain our property and must not be used for other purposes, duplicated or made available to third parties; we shall reserve all copyright to such. Such documents are to be completely returned to us after the performance of the contract.
- (3) The acceptance or approval of drawings and samples or similar documents submitted to us is not to be interpreted as a waiver of claims for defects under a warranty.
- (4) In relation to third parties the documents handed over and all of the information they contain as well as all other information in connection with the respective contract and its existence from the conclusion of the contract and up to five years after delivery and/or acceptance are to be kept secret by both sides. In individual cases longer secrecy periods can be agreed upon. The obligation to maintain secrecy shall only apply as long as the documents or information are not already generally known.
- (5) We shall retain title to substances and materials as well as to tools and other items which we make available to the Contractual Partner for the performance of the services. Processing, mixing or combining of substances, materials or items made available by the Contractual Partner shall be carried out for us.

If in the case of processing, mixing or combining with items of third parties their property title continues, we shall acquire co-ownership of the new item in the ratio of the value of the items provided by us to the other items.

Art. 7 Defective delivery and other breaches of duty

- (1) Unless defined otherwise below, the statutory regulations shall apply to our rights in the case of material defects and defects of title of the goods

supplied and/or of the work performances (including short deliveries and incorrect deliveries as well as improper assembly, defective assembly instructions, operating instructions or instructions for use) as well as with regard to other breaches of duty by the Contractual Partner.

- (2) According to the statutory regulations, the Contractual Partner shall accept responsibility in particular for ensuring that the goods have the agreed condition at the time of the passing of risk. To be considered an agreement on the condition shall in any case be those product descriptions which – in particular by designation or reference in our purchase order – are the subject matter of the particular contract or were included in the contract in the same way as these General Terms and Conditions of Purchase. In this case it does not make any difference whether the product description originates from us, from the Contract Partner or from the manufacturer.
- (3) Deviating from Art. 442, paragraph 1, page 2 of the German Civil Code (BGB) claims for defects shall not already be excluded if the defect, due to gross negligence, remained unknown to us at the time of the conclusion of the contract.
- (4) The statutory regulations shall apply to the commercial duty to examine and the requirement to make a complaint in respect of a defect immediately upon receipt of the goods provided that the obligation to examine the goods is restricted to defects which upon dispatch of the goods when inspected externally and within the scope of quality control with spot checks are clearly evident. If an acceptance inspection has been agreed upon or is provided for by law there shall be no duty to examine. Otherwise it shall depend on the circumstances of the individual case and the ordinary course of business.
- (5) Our requirement to make a complaint in respect of a defect immediately upon receipt of the goods shall remain unaffected by the above paragraph (3). Unless agreed otherwise, complaints regarding deviations of quality and quantity shall, in any case, be considered to be on time if they reach the Contractual Partner within five (5) working days – in the case of hidden defects which are therefore only discovered later within ten (10) working days – from the discovery of the deviation.
- (6) The costs which the Contractual Partner has incurred for the checking and reworking shall be borne by the latter even if there was actually no defect. Any possible claims for damages in the case of unjustified demands for the elimination of defects shall remain unaffected by this; to this extent we shall, however, only be liable for intent and gross negligence.
- (7) If the Contractual Partner does not meet its obligation to eliminate defects or to carry out subsequent performance within the reasonable period of time set by us, we can eliminate the defect by way of performing ourselves and demand compensation and/or an advance payment of costs for the necessary expense. If subsequent performance by the Contractual Partner has already failed, the setting of a time limit shall not be necessary; the same shall apply in cases of particular urgency, endangering of operational safety or the impending occurrence of disproportionate damage/loss/injury, if because of the urgency it is no longer possible to inform the Contractual Partner about the defect and the impending damage/loss/injury and to set it a reasonable time for rectifying the defect itself. The Contractual Party shall in any case have to be informed without undue delay.
- (8) Deviating from Art. 438, paragraph 1, No. 3 of the German Civil Code (BGB), claims for defects shall to that extent be subject to the statute of limitations within three years after the passing of risk. The three-year limitation period shall apply also to claims for defects of title, the statutory limitation period for third-party restitution in rem claims (Art. 438, paragraph 1, No. 1 of the German Civil Code (BGB)) remaining unaffected; claims for defects of title shall not at all events be subject to the statute of limitations beyond that as long as the third party can still claim a right against us – for example because the limitation period has not yet ended.

Art. 8 Industrial property rights

- (1) The Contractual Party shall guarantee that in connection with its supply and/or service no industrial property rights of third parties in the Federal Republic of Germany or in other countries of which we have expressly notified the Contractual Party beforehand are infringed; to that extent claims for damages shall only arise in the case of fault.
- (2) The Contractual Partner shall – on condition that there is fault involved – be obliged to indemnify us from all claims which third parties make against us because of infringements of industrial property rights within the meaning of the above paragraph (1) of this Art. 8 and to reimburse us for all of the necessary expense in connection with this recourse.

Art. 9 Spare parts and maintenance

- (1) If in the individual case no deviating time limit has been agreed upon, the Contractual Partner shall be obliged to keep spare parts and other items and materials required for the use of the items supplied to us available for a period of at least five (5) years from delivery and/or acceptance and to supply them to us on reasonable terms. To the extent that maintenance work is necessary, the Contractual Partner shall give an assurance for the above mentioned period to the effect that it is willing and able to carry out the maintenance and repairs.

- (2) If the Contractual Partner intends to discontinue the production of spare parts for the items supplied to us, it shall inform us of this fact without undue delay as soon as the decision concerning discontinuation is foreseeable.

Art. 10 Responsibility, product liability, insurance

- (1) The Contractual Partner shall be responsible for the selection, checking and supervision of its staff. This shall also apply to work on our company premises unless for legal or factual reasons the authority for the issuing of instructions must lie with the responsible persons in our company.
- (2) The Contractual Partner shall be obliged to take out at its own expense an employer's liability insurance and – insofar as under the particular contract moveable items are supplied – a public liability and product liability insurance with a reasonable sum insured at the latest at the time of delivery of the item or at the start of the performance of services or work performances and to maintain them for the entire warranty period of the respective contract. The insurance must – as far as possible – cover all of the damage to property, personal injury and financial losses to the extent that they were caused by the Contractual Partner or its sub-contractors or they have to be answerable for the damage/injury/losses irrespective of fault. The insurance must cover damage to the environment, unless this is excluded from the outset according to the reasonable assessment of the particular type of contract and of the particular subject matter of the contract and of the other circumstances of the individual case. The insurance documents can be requested as copies by us at any time during the performance of the contract.

Art. 11 Payment, invoice structure, default, offsetting and retention

- (1) Payments shall be made subject to later invoice checking within 14 days with a discount for early payment of 3 % or within 60 days net.
- (2) The above times for payment shall begin only after the deliveries have been completely received by us and/or the services have been completely performed – or accepted as far as agreed or provided for by law – and also all collateral obligations including proper invoicing have been fulfilled by the Contractual Partner.
- (3) Invoices and requests for payment must include, besides the details required according to statutory regulations, our purchase order date and our purchase order number. If available, counter-signed delivery notes are to be enclosed. Invoices which do not meet these requirements or are received by us already prior to delivery/service performance shall be returned. Payments shall only be made against complete invoices.
- (4) We shall not owe any contractual interest. The Contractual Partner's entitlement to default interest shall remain unaffected. The statutory regulations shall apply to the occurrence of default; a reminder shall in any case be required.
- (5) We shall be entitled to the full extent to rights of offsetting and retention as well as the defence of non-performance of the contract. Payments due for payment can in particular be retained if there are any claims on the grounds of incomplete or defective performances.
- (6) The Contractual Partner shall have a right of offsetting or retention only on the basis of counter-claims which have been recognised by declaratory judgement or are undisputed.

Art. 12 Place of performance

The place of performance for the supplies and services shall be the destination address stated by us.

Art. 13 Assignment

Without our written consent the Contractual Partner cannot transfer the rights and obligations under the contract to third parties. This shall not apply to money claims.

Art. 14 Effectiveness

Should individual provisions of the above Terms and Conditions be ineffective or unfeasible, the remaining provisions shall remain unaffected by this. The parties to the contract shall undertake for this case to reach a new agreement which comes closest economically to the purpose pursued with the deleted or unfeasible provision.

Art. 15 Place of jurisdiction, applicable law

- (1) The place of jurisdiction for all disputes – with the exception of disputes with Buyers who are not businessmen within the meaning of the German Commercial Code (HGB) – shall be at our discretion Gröbzig or (if deviating) the court at the place of performance. This shall also apply to the international place of jurisdiction.
- (2) The law of the Federal Republic of Germany shall apply to every purchase order and/or to every contract – with the exclusion of the United Nations Convention on Contract for the International Sale of Goods. The prerequisites and the effects of a retention of title shall be subject to the law at the place of storage of the respective item, to the extent that according to it the choice of law in favour of German law is inadmissible or ineffective.