



As of December 2022

## **ENGMATEC GmbH**

### **General Terms and Conditions for the Delivery of Products, Projects and Services**

#### **I. Scope of Application**

**1.**

These General Terms and Conditions for the Delivery of Products, Projects and Services ("GTC") apply to all business relations between ENGMATEC GmbH, Fritz-Reichle-Ring 5, 78315 Radolfzell ("ENGMATEC") and its customers ("Customer").

**2.**

The GTC do not apply if the Customer is a consumer within the meaning of Section 13 of the German Civil Code (BGB).

**3.**

General terms and conditions of the Customer shall not apply, and are hereby expressly objected to. This applies even if reference is made to the Customer's general terms and conditions in the context of an order or in other documents of the Customer if ENGMATEC does not expressly object to them in such a case.

The general terms and conditions of the Customer are only applicable if these are expressly acknowledged. The acknowledgement must be made in writing.

**4.**

Modifications, deviations and additions to these GTC require a written confirmation by ENGMATEC.

#### **II. General Provisions**

**1.**

In particular, but without this list being exhaustive, ENGMATEC supplies both customized as well as standardized production solutions and system components in the field of testing and assembly technology. The portfolio includes test plugs, PCB handling systems, contacting adapters, single workstations, as well as semi- and fully automated

complete solutions. The portfolio also includes parts and associated servicing as well as spare parts.

To the extent that the subject matter of the contract is the sale and/or delivery of movable, standardized items, these shall hereinafter be referred to as "Products". Unless otherwise agreed by the parties or in these General Terms and Conditions, German sales law as set forth in Sections 433 et seqq. of the German Civil Code shall apply.

To the extent that the subject matter of the contract includes an individually agreed work, such work shall hereinafter be referred to as a "Project". Unless otherwise agreed by the parties or in these GTC, Projects shall be governed by the law on contracts for work and services pursuant to Sections 631 et seqq. of the German Civil Code.

"Services" shall mean all activities of ENGMATEC in the categories project development, assembly, commissioning as well as maintenance.

"Project Development" shall refer to planning activities such as the conceptual planning of solutions, project planning and the mechanical, electrical or control-engineering construction/design and development.

"Assembly" shall refer to activities related to the assembly and installation of Products and Projects.

"Commissioning" shall refer to all activities related to the commissioning, installation, implementation and roll-out of the Products or Projects, as well as the supervision of such services, when performed by the Customer or a third party.

"Maintenance" shall refer to all activities related to the maintenance and repair of a Product or Project.

The Projects, Products and Services subject to this contract are hereinafter referred to as the "Contractual Object" or "Contractual Objects".

## **2.**

ENGMATEC reserves the property rights and copyrights to all samples, cost estimates, (technical) drawings and other information whether physical or non-physical, also in electronic form, which have been created in whole or in part by ENGMATEC. These may neither be reproduced nor made accessible to third parties without the express prior written consent of ENGMATEC. Unless otherwise expressly agreed in writing, ENGMATEC does not grant the Customer any licenses or other rights to patents, know-how, trade secrets or other industrial property rights belonging to ENGMATEC. Likewise, there shall be no entitlement to the granting of such licenses or rights.

## **3.**

Unless otherwise agreed in writing, ENGMATEC shall deliver in accordance with the technical standards, laws and regulations applicable in Germany.

4.

ENGMATEC is not obliged to insure the Contractual Objects, irrespective of whether they are Products or Projects, and does not assume any guarantees of any kind.

### **III. Conclusion of the Contract**

1.

Unless otherwise expressly stated in the offer, the following shall apply:

ENGMATEC shall prepare an offer upon the Customer's request.

The Customer may confirm such an offer within two weeks or, as the case may be, within the commitment period or offer period specified in the offer after sending by ENGMATEC. If the Customer confirms the offer, a binding contract is concluded upon receipt of the confirmation by ENGMATEC, unless otherwise provided for in the offer or in the confirmation. If the Customer deviates from ENGMATEC's offer in the confirmation, this is considered a new offer and a contract is only concluded if ENGMATEC (re)confirms this confirmation in writing to the Customer. The same applies if the Customer accepts the offer after expiration of the period of two weeks or the commitment period or offer period specified in the offer in each individual case. If there is no reconfirmation, no contract is concluded.

Any correspondence entered into by the Customer after the conclusion of the contract, in particular subsequent order confirmations, do not change the content of the contract already concluded, unless ENGMATEC expressly confirms such changes in writing.

2.

The Contractual Objects are exhaustively described in the offer and in any existing additions thereto. Reasonable technical modifications or improvements of the Contractual Object by ENGMATEC are permissible without the consent of the Customer.

3.

Bills of quantities, statements of work, specifications, equipment/resources specifications, plans, preliminary remarks and descriptions do not become part of the contract, unless the parties so agree expressly and in writing.

### **IV. Prices**

1.

All prices are net prices in euros. Value-added tax (if applicable) shall be added at the respective statutory rate.

**2.**

Unless otherwise expressly agreed for the remuneration of the Services, ENGMATEC shall receive a time-based remuneration for Services according to the hourly rates of ENGMATEC applicable at the time of the provision of the Services plus statutory value-added tax. The hourly rates result from ENGMATEC's price list valid at the time of the conclusion of the contract.

**3.**

The data and information contained in general product documentation documents and price lists are only binding insofar as the contract expressly refers to them in writing.

**4.**

All additional costs not expressly included in the price according to the express written agreement of the parties, such as Assembly, transport, customs, insurance, permits regarding export, transit, import, and other permits as well as certifications, shall be borne by the Customer. Furthermore, any supporting services, as well as travel and accommodation expenses of staff, are not included in the price. These will be charged at the rates customary at ENGMATEC. The same applies to the costs of Commissioning and Maintenance.

**5.**

In case a software is provided in connection with or embedded in Products or Projects of ENGMATEC, the price does not include modifications, adaptations or changes of the software, nor does it include work that is necessary to connect the software with the Customer's machines, software and/or other Products or Projects or operating systems, unless expressly agreed otherwise in writing.

## **V. Conditions of Payment**

**1.**

Payment must be made without any deduction by bank transfer to a bank account of ENGMATEC held in euros. Bills of exchange and checks are accepted only after express written agreement and only on account of payment.

**2.**

Payment shall be deemed to have been made when the entire amount due has been credited to a bank account of ENGMATEC free of charge and is at ENGMATEC's free disposal.

**3.**

In the case of Projects, unless another payment term is expressly agreed in writing, forty percent of the agreed price is due and payable upon conclusion of the contract and fifty percent after ENGMATEC has declared to the Customer that the Contractual Object or essential parts of the Contractual Object are ready for delivery. The remaining ten percent of the agreed price is payable upon acceptance and submission of the final invoice.

**4.**

In the case of Products or if no acceptance is agreed upon in the offer as well as for Services, the agreed remuneration shall become due upon conclusion of the contract and submission of the invoice.

**5.**

Insofar as the parties have agreed on a different payment date, the Customer is in default if the payment has not been received in an account of ENGMATEC by the dates stated in V.3. and V.4 respectively.

**6.**

The dates for payment must also be observed if transport, delivery, Assembly, Commissioning or acceptance of the deliveries or Service is delayed or made impossible for reasons for which ENGMATEC is not responsible, or if non-essential parts are missing or if reworking turns out to be necessary which does not make the use of the delivery or Service impossible.

**7.**

If the Customer is in arrears with a payment for any reason, or if ENGMATEC must seriously fear not to receive the Customer's payments in full or in time due to a circumstance occurring after conclusion of the contract, ENGMATEC is entitled, without waiving its further rights, to withhold or stop the delivery or Service until receipt of securities or advance payments.

**8.**

Payment in installments is only possible if this has been expressly agreed in writing.

**9.**

The Customer can only set off against payment claims of ENGMATEC such claims which are undisputed or legally binding.

**10.**

The Customer may only assert a right of retention against payment claims of ENGMATEC if the claim on which the right of retention is based is undisputed or legally binding.

**11.**

In case of default of payment, ENGMATEC is entitled to charge the Customer interest and fees according to the bank rates for short-term credits valid at the time, but at least a damage in the amount of nine percentage points above the base interest rate (according to Section 288 of the German Civil Code).

**VI. Delivery, delivery time, delay in delivery, acceptance, transfer of risk**

**1.**

Unless otherwise expressly agreed in writing or otherwise regulated in these terms and conditions, FCA (Incoterms 2020) shall apply to all deliveries of Projects. Place of delivery and performance for Projects is the registered office of ENGMATEC (Fritz-Reichle-Ring 5, 78315 Radolfzell).

Unless otherwise expressly agreed in writing or otherwise regulated in these terms and conditions, FCA (Incoterms 2020) shall apply to all deliveries of Products. The place of delivery and performance for Products is the registered office of ENGMATEC (Fritz-Reichle-Ring 5, 78315 Radolfzell).

**2.**

The delivery dates for the Products, Projects and the time for the provision of Services will be specified in the contract between ENGMATEC and the Customer. Unless otherwise expressly agreed, all delivery dates are non-binding.

**3.**

The observance of any (binding or non-binding) delivery dates by ENGMATEC requires that all commercial and technical questions between the contracting parties have been clarified and that the Customer has fulfilled all its obligations to cooperate with ENGMATEC, in particular that it has provided all necessary specifications, official certificates or approvals, which are required for the fulfillment of the contract in due time, but also that it has made the down-payments and other payments without undue delay. If this is not the case, any delivery dates shall be extended accordingly.

**4.**

Furthermore, the delivery time shall be extended appropriately if

- a) the Customer subsequently requests changes or additions; or

- b) obstacles occur which ENGMATEC cannot avert despite exercising due diligence, irrespective of whether they arise at ENGMATEC, at the Customer or at a third party (force majeure). Such obstacles are for example: export and import restrictions, boycott orders of governmental or supranational organizations, measures or omissions by public authorities; labor disputes and other operational disruptions for which ENGMATEC is not responsible, epidemics, pandemics (in particular also effects of the Covid-19 pandemic), events caused by nature, hacker attacks and terrorist activities. In case of occurrence of such obstacles, ENGMATEC will inform the Customer immediately about the extent and background and keep the Customer updated.

For proof of force majeure, it is sufficient if ENGMATEC proves that a relevant event has occurred or is occurring and that this event has an impact on ENGMATEC's operations. It is not necessary that ENGMATEC proves that the event has specifically affected the work on the Contractual Objects.

However, the Customer shall have the right to prove that the work on the Contractual Objects was not affected by the event.

ENGMATEC shall inform the Customer as soon as possible about the beginning and the end of such an event. ENGMATEC is not liable for delays caused by force majeure, even if such disruption occurs at a time when ENGMATEC is already (culpably) in default. If the Customer wishes ENGMATEC to mitigate the negative effects of the interruption of operations for which ENGMATEC is not responsible, the Customer and ENGMATEC shall agree on such measures and the Customer shall bear the additional costs incurred by such measures.

## 5.

All (binding and non-binding) delivery dates are subject to reasonable and timely delivery by ENGMATEC's sub-suppliers and suppliers. ENGMATEC will inform the Customer as soon as possible about any delays. Delivery dates are extended accordingly and ENGMATEC is not liable for delays caused by its sub-suppliers or suppliers.

## 6.

No exemption from the obligation to meet a binding delivery date is granted if the Customer proves that ENGMATEC itself is culpably responsible for the non-delivery.

## 7.

If the delivery or acceptance is delayed for reasons for which the Customer is responsible, the Customer shall compensate ENGMATEC for the costs and damages incurred by the delay (in particular additional working hours, loss of profit and costs for an appropriate storage of the Contractual Objects in the amount of at least 0.5% of the outstanding price). ENGMATEC may dispose of the Contractual Objects after setting a reasonable deadline.

**8.**

If ENGMATEC is culpably in default and if the Customer suffers a damage as a result, the Customer is entitled to claim damages under the conditions stated in clause XI.

**9.**

For Projects, the risk shall pass to the Customer in accordance with the provisions made in these terms and conditions FCA (Incoterms 2020). If shipment is delayed or does not take place due to circumstances for which ENGMATEC is not responsible, the risk shall pass to the Customer from the day of notification of readiness for shipment. ENGMATEC undertakes to take out, at the request and expense of the Customer, such insurances as the Customer may request.

For Products, the risk passes to the Customer in accordance with the provisions made in these terms and conditions FCA (Incoterms 2020).

**10.**

In the case of a Project or if an acceptance has been agreed in the offer, the testing of the Contractual Object shall be carried out in a multi-stage procedure, unless the parties expressly agree otherwise in writing. First of all, a test run shall be carried out at ENGMATEC after successful production. The Customer shall provide ENGMATEC with the starting materials required for the test run timely and free of charge. In all cases, the test run shall be deemed to have been duly performed 10 working days after the respective date, unless ENGMATEC is responsible for the delay (for clarification, rescheduling shall not be deemed to be a delay for which ENGMATEC is responsible).

ENGMATEC will inform the Customer about the date of the test run with a notice period of at least 3 business days in advance, so that the Customer can participate in the test run. If significant defects occur during the test run, ENGMATEC is entitled to demand two additional dates for re-runs of the tests within a reasonable period of time after the aforementioned date.

After the test run has been completed without any significant defects, ENGMATEC will notify the Customer of the readiness for delivery. After delivery, the acceptance of the Project takes place on site at the Customer's premises. Consequently, the place of acceptance is the Customer's place of business.

The acceptance is to be carried out on the agreed acceptance date, alternatively immediately after the successful installation at the Customer's site.

After the arrival of the delivered Contractual Object at the Customer's premises, the Customer shall store the Project separately and keep it in safe custody for ENGMATEC until the acceptance.

Obviously existing damages to the Contractual Object are to be reported to ENGMATEC without undue delay after arrival. If damages are detected at a later point in time, the Customer is obliged to prove that it has fulfilled its obligations according to the preceding sentence.



The Customer shall not be entitled to refuse acceptance in the event of an insignificant/non-significant defect. If substantial defects occur during the acceptance, ENGMATEC is entitled to demand that a total of two further acceptance dates are carried out within a reasonable period of time after the aforementioned acceptance date.

If the Customer refuses to carry out the acceptance on the original date or any subsequent dates, the Contractual Object shall be deemed to have been accepted one week after notification of readiness for acceptance. If the Customer refuses acceptance without justification (and also if the Customer neither accepts nor complains about the Contractual Objects), the Contractual Objects shall be deemed to have been accepted one week after delivery. Commercial use of the Project by the Customer shall be deemed to constitute acceptance.

#### **11.**

Partial deliveries are permissible, provided they are reasonable.

### **VII. Lack of financial capability**

If it becomes apparent after the conclusion of the contract that ENGMATEC's claim to the contract price is endangered by the Customer's lack of financial capability (e.g. if an application is filed for the opening of insolvency proceedings over the Customer's assets or comparable proceedings at the Customer's place of business or if the Customer does not meet agreed payment dates), ENGMATEC is entitled to interrupt the work and/or withhold the Contractual Objects (without this constituting a default) until full payment has been made or until the Customer has provided sufficient securities.

Furthermore, ENGMATEC is entitled to withdraw from the contract and to demand the immediate return of the Contractual Object or the Contractual Objects, as the case may be.

### **VIII. Retention of title**

#### **1.**

ENGMATEC reserves its right of ownership to Contractual Objects until receipt of full payment of the contractual price and, if applicable, of other ancillary costs arising from the contract and until all claims of ENGMATEC arising from any other business relationship with the Customer or with affiliated companies of the Customer have been satisfied.

#### **2.**

If the Customer processes or redesigns the Contractual Objects (hereinafter referred to as "Processed Object"), this is always carried out on behalf of ENGMATEC. In this case, the Customer's expectant right to the Processed Object remains in force. If ENGMATEC's (co-)ownership ceases to exist, the Customer's ownership of the Processed Object shall pass to ENGMATEC in the proportion of the value of

ENGMATEC's total claim pursuant to Clause VIII. 1 relative to the value of the Processed Object. The Customer shall store the property of ENGMATEC free of charge.

If the object that is subject to a reservation of title is inseparably combined or mixed with other objects not belonging to ENGMATEC, ENGMATEC shall acquire co-ownership of the new object in proportion of the value of the reserved good (final invoice amount including value-added tax) to the other combined or mixed objects at the time of combination or mixing. If the object that is subject to a reservation of title is combined or mixed in such a way that the Customer's object is to be regarded as the main object, the Customer and ENGMATEC agree that the Customer shall transfer to ENGMATEC a proportionate co-ownership of such object. ENGMATEC accepts such transfer.

### 3.

The Customer is not entitled to sell, pledge or assign by way of security the Contractual Object(s) until title has passed to the Customer.

In the event that the parties have agreed on an extended retention of title, such retention of title shall apply subject to the following conditions:

- a) The Customer shall be entitled to sell the Contractual Objects only in the ordinary course of business and only if the Customer is not in default of payment.
- b) The Customer hereby assigns to ENGMATEC all claims arising from the resale of the Contractual Objects up to the outstanding amount (including value-added tax). This assignment applies regardless of whether the Contractual Object has been resold without or after processing.
- c) The Customer is revocably authorized to collect the claim for ENGMATEC. The right of ENGMATEC to collect the claim remains unaffected. However, ENGMATEC shall not collect the claim as long as the Customer complies with its payment obligations, in particular if it is not in default of payment and no application for the opening of insolvency proceedings (or comparable proceedings at the place of business of the Customer) has been filed.

### 4.

If the retention of title is not permissible under the law of the country in which the Contractual Object is located, ENGMATEC shall be entitled to any equivalent right of the respective country to secure its title to the Contractual Objects. The Customer shall support ENGMATEC in taking all necessary measures to secure its property or equivalent rights (such as liens).

### 5.

Upon request of the Customer, ENGMATEC is obliged to release securities to the extent that their value exceeds the value of ENGMATEC's outstanding claims against the Customer by more than 10%, with the choice as to which securities are to be released rests with ENGMATEC.

## 6.

Until the ownership has passed to the Customer, the Customer is obliged to handle the Contractual Objects with due care. ENGMATEC is entitled to insure the Contractual Object(s) against theft, breakage, fire, water and other damages at the expense of the Customer, unless the Customer provides evidence that it has insured the Contractual Object accordingly. If Maintenance and inspection work has to be carried out, the Customer shall carry out such work in due time at its own expense. In case of seizure, confiscations or other dispositions or interventions of third parties, the Customer has to inform ENGMATEC without undue delay in writing and by email. The Customer shall indemnify ENGMATEC from all costs arising from such seizure or intervention, in particular from costs arising from a claim pursuant to Section 771 of the German Code of Civil Procedure (ZPO) or an equivalent claim under the law of the country in which the seizure or intervention took place.

## 7.

In case of breach of contract by the Customer, in particular in case of violation of this clause VIII., or in case of default of payment, ENGMATEC is entitled to take back the Contractual Object(s) after a reminder, and the Customer is obliged to surrender the Contractual Object(s). Any shipping costs (including packaging and insurance) are to be borne by the Customer.

## IX. Warranty claims

ENGMATEC is liable in accordance with the statutory provisions to the extent that liability under the statutory provisions is not limited as set forth in the following clauses.

### 1.

ENGMATEC cannot be held liable for Services that were not rendered by ENGMATEC. If it turns out that an Contractual Object does not function properly, or if there are problems in connection with the Assembly or Commissioning of a Contractual Object, the Customer must prove that such malfunction was caused by a Service rendered by ENGMATEC in order for ENGMATEC to be held liable.

### 2.

For defects of quality and title (including wrong and short delivery as well as improper Assembly or installation or faulty instructions) ENGMATEC is liable – taking into account the regulations in clause XI. – only according to the legal regulations and considering the following principles:

#### Quality defects

- a) All parts which prove to be defective due to a circumstance prior to the passing of risk shall –at ENGMATEC's option– be repaired free of charge or replaced free of defects, if ENGMATEC has delivered these parts. The discovery of such defects must be reported to ENGMATEC without undue delay in writing. Replaced parts become the property of ENGMATEC.

If the chosen type of supplementary performance is unreasonable for the Customer, the Customer may reject it.

- b) The cure does not include the disassembly, removal or deinstallation of the defective object, nor the fitting, affixing or installation of an object free of defects if ENGMATEC was not originally obligated to perform such work; the Customer's legal claims for reimbursement of the corresponding costs ("disassembly and installation costs") shall remain unaffected.
- c) The Customer shall, after consulting with ENGMATEC, give ENGMATEC the necessary time and opportunity to carry out all repairs and replacement deliveries that ENGMATEC deems necessary; otherwise ENGMATEC shall be released from liability for all consequences arising therefrom.
- d) ENGMATEC shall bear or reimburse the expenses necessary for the purpose of inspection and cure, in particular transport, travel, labor and material costs as well as, if applicable, disassembly and installation costs, in accordance with the statutory provisions and these GTC, if a defect is actually present. Otherwise, ENGMATEC can demand reimbursement from the Customer for the costs arising from the unjustified request to remedy the defect.
- e) ENGMATEC is entitled to make the owed cure dependent on the Customer paying the due purchase price. However, the Customer is entitled to retain a part of the purchase price which is appropriate relative to the defect.
- f) ENGMATEC reserves the right to carry out at least two attempts at a cure. If the cure fails, the Customer is entitled to withdraw from the contract or to reduce the price. Withdrawal is not permitted in the case of a minor defect.
- g) The Customer neither has the right to remedy the defect itself or to have it remedied by a third party, nor to demand reimbursement of corresponding costs from ENGMATEC, unless otherwise provided by law.

ENGMATEC is not liable for damages caused by the fact that the Customer attempts to remedy the defect itself or to have it remedied by a third party. In particular, ENGMATEC is not liable for improper repair measures or replacement deliveries by the Customer or a third party.

The Customer may also not demand reimbursement and, in addition, repair or replacement measures from ENGMATEC for the same defects if the Contractual Object still does not function properly after the measures carried out by the Customer or a third party.

- h) The Customer has a right to withdraw from the contract within the bounds of the statutory provisions, if ENGMATEC – taking into account the statutory exceptions – in the case of a material defect allows to expire without success a reasonable period of time set to ENGMATEC for the repair or replacement delivery due to a material defect. In the case of insignificant defects, the Customer shall only have the right to reduce the contractual price.

Defects of title

- a) If the use of the Contractual object leads to an infringement of industrial property rights or copyrights in Germany and if such use is therefore impaired or prohibited by a legally binding court decision, ENGMATEC will in principle procure the right to further use for the Customer at ENGMATEC's expense or modify the Contractual Object in a manner that is reasonable for the Customer in such a way that the infringement of industrial property rights is eliminated. If this is not possible at economically reasonable terms or within a reasonable period of time, the Customer and ENGMATEC are entitled to withdraw from the contract. In addition, ENGMATEC shall indemnify the Customer against undisputed or legally established claims of the owners of the rights concerned.
- b) Without prejudice to clause XI., the rights and obligations listed in clause IX. 2. f) shall be deemed to be conclusive in case of infringement of property rights or copyrights. However, such rights and obligations shall only exist if:
- (1) the Customer informs ENGMATEC without undue delay about asserted infringements of property rights or copyrights; the information must be in writing;
  - (2) the Customer does not acknowledge alleged infringements;
  - (3) the Customer supports ENGMATEC in a reasonable manner in the defense against asserted claims or enables ENGMATEC to carry out modification measures;
  - (4) the Customer does not enter into legal proceedings, settlements and the like on its own – all defense measures, including out-of-court settlements, are reserved to ENGMATEC;
  - (5) the Customer suspends the use of the Contractual Objects for reasons of damage minimization or other serious reasons without informing the third party that the suspension of use does not imply an acknowledgement of the infringement of the property right;
  - (6) the defect of title is not attributable to an instruction of the Customer and
  - (7) the infringement was not caused by the fact that the Customer or a third party modified the Contractual Object(s) without authorization and/or that the Customer used the Contractual Object(s) in a manner not in conformity with the contract.

## **X. Notice of defects by the Customer**

### **1.**

If a Product is concerned or if no acceptance has been agreed in the offer, the Customer shall be obliged to carefully inspect the Contractual Object(s) without undue delay upon receipt in order to preserve any claims for defects. This also applies to all other

Contractual Objects (i.e. in particular also in the case of Projects or if the Contractual Object is subject to acceptance) if defects occur after acceptance. If a defect becomes apparent during the inspection or at a later point in time, ENGMATEC must be notified without undue delay in writing. A notice of defect shall be deemed to have been given without undue delay if it is given within a period of one week upon discovery.

**2.**

Irrespective of these obligations to inspect and give notice of defects, the Customer shall notify ENGMATEC in writing of obvious defects (including wrong and short delivery) within one week upon delivery in case of a Product or if no acceptance has been agreed in the offer.

**3.**

If the Customer fails to notify ENGMATEC in due time and form, ENGMATEC's liability for the defect not notified or not notified in due time or not duly notified shall be excluded in accordance with the statutory provisions. In the case of goods intended for incorporation, affixing or installation, this shall also apply if the defect became apparent as a result of the breach of one of these obligations only after the relevant processing; in this case, there shall in particular be no claims of the Customer for reimbursement of corresponding costs ("disassembly and installation costs").

Incomplete or too general reports shall not be accepted insofar as any claims for defects shall expire if ENGMATEC does not have complete documentation at the expiry of the reporting deadline. The timeliness of the notification is subject to receipt by ENGMATEC.

## **XI. Liability of ENGMATEC, exclusion of liability**

**1.**

In the following cases, which are not exhaustive, no liability shall be assumed by ENGMATEC:

- a) unsuitable or improper use, faulty Assembly or Commissioning by the Customer or third parties, natural wear and tear, faulty or negligent handling, improper Maintenance, unsuitable equipment, unsuitable foundation/underground, chemical, electrochemical or electrical influences – unless they are due to a fault of ENGMATEC.
- b) Problems or difficulties with the connection or the integration of a Contractual Object into the Customer's plant or operations, in particular with regard to the interface of the operating systems / software, unless a customer-specific solution is expressly included in the contract or in the contract price.
- c) The Customer shall be responsible for compliance with all regulations regarding import, transport, storage and use of the goods. No liability shall be assumed if such regulations are not complied with, in particular if and to the extent that the Contractual Object cannot be imported into or operated in the country of destination due to statutory or official regulations. Without

prejudice to the exclusion of ENGMATEC's liability, all relevant documents and information as well as any necessary permits shall be made available to ENGMATEC in due time.

- d) If the Customer or a third party carries out improper rectification of a defect, ENGMATEC shall not be liable for the consequences resulting therefrom. The same applies to changes made to the Contractual Object(s) without the prior written consent of ENGMATEC.
- e) For defects which are known to the Customer or which are not known to the Customer at the time of conclusion of the contract due to gross negligence.

## 2.

The Customer is not entitled to terminate the contract pursuant to Section 648 of the German Civil Code.

## 3.

Without prejudice to clause XI.1 and unless otherwise stipulated in these GTC, ENGMATEC is liable for damages only as follows (clauses XI.4 to XI.7):

## 4.

ENGMATEC is liable for any damages - regardless of the legal reason - in case of intent and gross negligence.

## 5.

In case of slight negligence, ENGMATEC is only liable for:

- a) damages resulting from injury to life, body or health;
- b) damages from the violation of an essential contractual obligation (an obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely). In this case, however, liability shall be limited to compensation for the foreseeable, typically occurring damage.

## 6.

The limitations of liability do not apply if ENGMATEC has fraudulently concealed a defect. The same applies to claims of the Customer under the German Product Liability Act (Produkthaftungsgesetz).

## 7.

The principles laid down in XI. 4.–6. apply in particular also to consequential damages, e.g. for loss of production or loss of profit.

## **XII. Warranty Period**

### **1.**

The warranty period for claims arising from material defects and defects of title shall be twelve months.

In the case of Products, the warranty period shall commence upon delivery. If delivery is delayed for reasons for which ENGMATEC is not responsible, the warranty period ends at the latest 18 months after notification of readiness for delivery.

In case of Projects or if the Contractual Object is subject to acceptance, the warranty period shall commence with the acceptance. If acceptance is delayed for reasons for which ENGMATEC is not responsible, the warranty period ends at the latest 18 months after notification of readiness for acceptance.

### **2.**

As far as the law prescribes mandatory longer periods in accordance with Section 438 (1) No. 2 of the German Civil Code (buildings and objects for buildings), Section 445 b of the German Civil Code (right of recourse) and Section 634a (1) of the German Civil Code (construction defects), the periods specified therein shall apply. The special statutory provision for the case of fraudulent intent shall remain unaffected.

### **3.**

Deviating from the above clauses XII. 1. and 2. the legal warranty period applies as far as ENGMATEC is liable pursuant to clauses XI. 3.–7.

### **4.**

The warranty period is not renewed or extended when ENGMATEC remedies a defect. In the event that ENGMATEC remedies a defect using spare parts, claims for defects for spare parts shall lapse twelve months after the transfer of risk for such spare parts.

## **XIII. Software**

### **1.**

The Customer is granted a non-exclusive, non-transferable right to use the delivered software including the related documentation. The software is provided exclusively for use in the specific Contractual Object(s). The use of the software in more than one system is not permitted.

### **2.**

The Customer may only transfer the right to use the software if there is a legitimate interest, in particular if the Customer resells the respective Contractual Object to a third



party. The consent to the transfer of the right of use shall in each case be subject to compliance with the provisions of this Section XIII. The Customer undertakes not to remove any data of ENGMATEC – in particular copyright notices – or to change them without the express prior consent of ENGMATEC.

**3.**

All other rights to the software and the related documentation, including copies, remain with ENGMATEC or the software supplier. The granting of sublicenses is not permitted.

**4.**

ENGMATEC is not liable for damages resulting from the Customer's failure to update the software.

#### **XIV. Confidentiality**

**1.**

The contracting parties undertake to keep confidential information of the other contracting party secret.

**2.**

Confidential information is information that is either expressly marked as such or where the circumstances indicate that it is confidential information.

**3.**

ENGMATEC may disclose confidential information to third parties to the extent necessary in connection with the performance of the contract. In this case, ENGMATEC will oblige the third party to maintain confidentiality under the terms of its own confidentiality obligation.

**4.**

Neither party shall make the received confidential information the subject of patent applications or use it against an application for industrial property rights by the other party.

**5.**

The confidentiality obligation shall not apply to such information that is generally known, was demonstrably previously known to the receiving party, was demonstrably independently developed by or lawfully acquired by the other party, became publicly available without a breach of either party's confidentiality obligation, or is required to be disclosed by order of a court or other competent authority or by a statutory duty of disclosure.

**6.**

Any obligation to maintain confidentiality shall expire three years after the conclusion of the contract, unless otherwise agreed between the parties.

## **XV. Compliance**

The Customer shall take all necessary and reasonable measures to ensure compliance with all applicable laws, rules and regulations, in particular all laws and regulations relating to the protection of children and the fight against corruption. The Customer, its board members, employees and/or agents have not and will not engage, directly or indirectly, in any prohibited activities in connection with any agreements between ENGMATEC and the Customer. Prohibited activities include, but are not limited to:

- a) the granting of gratuities, advantages or benefits to ENGMATEC, its board members, employees and/or representatives (e.g. money, gifts, invitations of a predominantly non-business nature, such as sporting events, concerts, cultural events); and
- b) the receipt of such gratuities, advantages or benefits.

Any violation of this clause XV. entitles ENGMATEC to terminate or cancel the contract without notice.

## **XVI. Applicable Law, place of jurisdiction**

**1.**

Contracts between ENGMATEC and the Customers are governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods.

**2.**

The place of jurisdiction for all disputes arising from the contractual relationship of the parties is the registered office of ENGMATEC in 78315 Radolfzell.

## **XVII. Severability Clause**

Should any provision of these GTC be or become invalid in whole or in part, such invalidity shall not affect the validity and enforceability of the remaining provisions.