

# General purchasing conditions

ENGMATEC GmbH

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## 1. Scope, definition

1.1 These General Purchasing Conditions (“GPC”) apply to all orders for deliveries and services of ENGMATEC GmbH, Radolfzell (“Client”) as well as its affiliated companies in the sense of Sec. 15 AktG (German Joint Stock Corporation Act).

1.2 If terms such as “warranty,” “warranted characteristics” or “guarantee” are used in these GPC, as well as any associated terms or terms derived from these, then these terms should only be understood as referring to “characteristic feature(s)” in the sense of Sec. 633 para. 2 BGB (German Civil Code). The Contractor thereby accepts the guarantee for the quality, appropriateness and completeness of its plans, deliveries, and services, in particular with respect to design, dimensioning, construction, material selection, implementation and assembly, as well as ensures that they are free from defects and fully functional for the contractually intended purpose.

## 2. Granting of contracts, contract confirmation, General Terms and Conditions of the Contractor

2.1 When an order is accepted or a delivery or service is completed, these GPC become a component of the contract. Changes to the order or delivery/service, as well as oral agreements, shall only apply if they are confirmed by the Client in writing. This applies in particular to supplements or additions that (could) influence the scope of deliveries / services, prices and deadlines.

2.2 Individual agreements made in a specific case between the Contractor and Client shall take precedence over these GPC.

2.3 Unless otherwise regulated in the following GPC, the applicable statutory provisions under valid law apply.

2.4 Full or partial disclosure of the contents of orders to third parties by the Contractor shall require the express prior consent of the Client; said consent may not be wrongfully withheld. Upon request, the Contractor shall assign all rights to which it is entitled against its preliminary suppliers to the Client (in particular rights resulting from securities provided, such as suretyships) and shall ensure approval of such an assignment by its preliminary suppliers.

2.5 Acceptance of the order must be confirmed to the Client promptly and in writing. The Client reserves the right to revoke the issued order if the proper order confirmation has not been received by the Client within a reasonable time period; at the latest within one week of the order being granted.

2.6 The GTC of the Contractor shall not be valid unless they have been expressly recognized by the Client in writing. Any reference in the Client’s order to the Contractor’s offer documents shall not be considered a recognition of the Contractor’s GTC; this also applies to other documents and any references they may contain to the Contractor’s GTC.

2.7 The Contractor shall prepare and submit offers at its own cost.

## 3. Contractual fulfillment

3.1 The Contractor shall ensure that it knows all of the significant information, data and circumstances necessary for it to fulfill its contractual obligations, as well as the intended use of its delivery / service in a timely fashion. The Contractor must inform the Client promptly and in writing of concerns of any kind, and must come to an agreement with the Client regarding the continuation of its work.

3.2 If not otherwise agreed in a particular case, deliveries shall be completed DDP (INCOTERMS 2020) to the destination indicated in the order.

3.3 The Client may request changes to the goods, drawings, designs, specifications, quantities or logistics processes from the Contractor within a reasonable framework. The Parties shall mutually agree upon regulations for the effects, in particular additional or reduced costs, and delivery deadlines, according to clause 2.1.

3.4 The delivery deadlines indicated in the order are binding, and the Contractor hereby recognizes that these deadlines are highly significant for fulfillment of the contract. The delivery terms shall begin with the date of the order. The delivery / service must have been received at the delivery address specified by the Client by the agreed delivery deadline.

3.5 If only preliminary documentation is available while the services/deliveries are being performed, the Contractor shall submit the so-called “as built” documentation at the latest within 4 weeks following acceptance.

3.6 If the Contractor determines that the delivery will be delayed, it must inform the Client promptly and describe any measures it is taking to accelerate its performance.

3.7 Unless otherwise agreed, documents, drawings, etc. that require approval from the other respective Contractual Party shall be approved or comments shall be provided within 5 business days (otherwise, they shall be considered accepted after this time).

## 4. Shipping, delivery, transfer of risk, retention of ownership

4.1 In general, delivery and shipping shall be at the cost and risk of the supplier. If the Parties have agreed, in deviation from this, that the Client shall accept the risk of transport (for instance for deliveries ex works), then the Contractor is obligated to safeguard the interests of the Client with the due diligence of a proper merchant, and to assert claims for reimbursement if necessary against the freight forwarder due to loss, damage or reduction in the quantity of goods or similar issues, then to assign these claims to the Client promptly at its request.

4.2 All specifications provided by the Client regarding the type of transportation, freight carrier and shipping specifications must always be observed. Additional costs for accelerated transportation required by the Contractor to comply with the contractual deadlines shall likewise be borne by the Contractor.

4.3 A delivery slip must accompany all shipments, including an exact description of the contents, complete order designations and, if necessary, all required information under export licensing regulations (such as the Export Control Classification Number (ECCN)), the export list number according to the EC Dual Use regulation, or national law (EL no.), HS code and preference (such as movement certificate, origin declaration, country of origin (LKZ), preferential country of origin (PUL). If the delivery is an internal delivery, the Contractor shall furthermore provide the required data for purchasing statistics (Intrastat), in particular the 8-digit ID number, the net weight and the country of origin for each item on the invoice.

4.4 Partial deliveries shall require prior written approval by the Client.

4.5 For deliveries that include assembly and for services, the risk shall be transferred upon acceptance; for deliveries without assembly, the risk shall be transferred upon arrival at the destination. This transfer of risk shall apply regardless of the agreed commerce clause (INCOTERMS).

4.6 The Contractor's conditions shall apply to its rights to retain ownership, with the caveat that ownership of the deliveries/services shall be transferred to the Client proportionally based on its proportion of payment.

## **5. Invoices, payment, assignment, offsetting, securities**

5.1 The Client reserves the right to return invoices that do not conform to its specifications (for instance regarding the order data or VAT regulations) without processing them. In this case, the invoice shall be considered not submitted.

5.2 Invoice payment deadlines shall begin once the contractually agreed-upon deadlines have been reached, the other conditions have been fulfilled and proper original invoices have been received by the Client.

5.3 Unless otherwise agreed, payments shall be made at the discretion of the Client either within 14 days minus a 3% discount, or within 30 days net. Payment shall not be considered recognition that the delivery/service was performed properly, and shall not represent a waiver of the rights to which the Client is entitled by law or contract. The payment shall be considered promptly submitted when the transfer order to the Client's bank is completed, at the latest on the due date. Any banking fees from the receiving bank shall be borne by the Contractor. 5.4 The

Contractor is not entitled to assign or pledge any claims to which the Client is entitled to third parties without the prior written approval of the Client, or to make them the object of a legal transaction. If the Contractor does assign a claim contrary to clause 1 without the approval of the Client, then the assignment shall nevertheless be considered effective. However, the Client can complete performance to either the Contractor or the third party, at its discretion and with the effect of fulfilling its contractual obligations.

5.5 The Contractor shall only be entitled to offset claims if the counter-claims have been established in a court of law or recognized by the Client expressly and in writing.

5.6 The Client's order shall regulate the type, scope and content of any securities to be provided (suretyships).

## **6. Quality assurance**

6.1 Objects delivered by the Contractor must fulfill applicable statutory and official regulations, must be equipped with the specified safety features, and must conform to the safety specifications applicable at the deployment site. The current status of regulations and technical standards (at the time the contract is fulfilled) must be observed in each case. In particular, the applicable EU directives and applicable and valid VDE standards, DIN standards, EU standards (EN) and similar regulations must be observed. Products delivered by the Contractor must bear a CE mark in accordance with EU directives and German laws. Relevant declarations of conformity must be provided with the delivery, with a brief description and with assembly manuals and installation specifications if necessary. Furthermore, the Contractor must promptly inform the Client regarding any changes to materials, production processes and supplied parts, as well as to declarations of conformity.

6.2 The Client reserves the right to request verification of the Contractor's quality assurance system and that of its suppliers, as well as documentation of quality testing; this also entitles the Client to complete an audit of these companies. The Contractor shall reimburse the Client for the cost of the audit if the QM system is found to be deficient, or if insufficient documentation of quality testing is found.

## **7. Delivery deadline, penalties**

7.1 Regardless of the Client's specifications, receipt of the delivery/service at the indicated destination or acceptance shall determine whether deliveries/services are completely promptly.

7.2 However, depending on whether the Contractor is culpable for the delay, but independent of any need to prove actual damages, the Client is entitled to assert a contractual penalty of 1% of the total order value per week or partial week of delay in the delivery/service, and a maximum of 5% of the total order value. The Client reserves the right to assert damage claims for any damages beyond the contractual penalty. If a delivery is delayed, the Client is entitled to withdraw from the agreement after providing a reasonable grace period. This also applies if a late partial delivery had been previously accepted by the Client without reservation.

## **8. Acceptance, defect complaints, defect liability, product liability, intellectual property rights**

8.1 Simple acceptance of deliveries/services, temporary use of such deliveries/services or payments made shall not be considered acceptance nor a waiver of any rights to which the Client is entitled. Delivery receipts in goods acceptance shall not be considered declarations of final acceptance of the delivered goods by the Client. The same applies to preliminary or interim acceptance.

8.2 If parts of the scope of services / delivery do not conform to contractual specifications or to the customary quality based on a random inspection, then the entire delivery/service can be rejected. The Client shall notify the Contractor as quickly as possible if any defects are found. However, there shall be no further obligation to submit complaints.

8.3 The Contractor hereby guarantees that it uses the best new and original materials conforming to the intended

purpose, that work is carried out properly and in accordance with the drawing, and that the design is appropriate and assembly is completed correctly. The Contractor shall provide a guarantee for its deliveries/services of 36 months from the time of acceptance by the Client's customer, and at most for 48 months after they are taken over by the Client. If defects are corrected, this term shall be restarted for affected deliveries / services from this date. The warranty period for concealed defects shall begin when the Client becomes aware of the defect. Written assertion by the Client is sufficient to fulfill the deadline.

8.4 Unless otherwise agreed, the Contractor shall conduct all calibration, testing and measurement work required in conjunction with its scope of services / deliveries.

8.5 If defects are found in its scope of services / deliveries, the Client is obligated to inform the Contractor of this as quickly as possible (after becoming aware of them and checking for the cause of the damages). The Contractor shall be entitled to repair the defects in every case. If it is not able to do so, the Client may request further attempts at repair or assert its contractual and statutory rights, at its discretion. These include, in particular, correcting the defects itself and withdrawing from the contract.

8.6 The Client can decide not to inform the Contractor of the defect and impending damages in particularly urgent instances (for instance if operational safety is endangered, to avoid unusually high damages in relation to the value of the delivery, or to maintain the Client's delivery capabilities to its own customers), and provide the Contractor with a deadline for correcting the issue. In this case, the Client or its customer are entitled to take necessary measures themselves immediately and without prior approval, or commission a third party to do so. Associated costs and risks shall be borne exclusively by the Contractor.

8.7 The Contractor's suppliers are considered its agents.

8.8 If there are any disputes related to the delivery/services arising from patent, copyright, trademark, or registered design law, the Contractor shall indemnify the Client and hold the Client harmless, ensuring unrestricted use of the delivery/services.

8.9 Clause 8.8 shall not apply if the Contractor has manufactured the deliveries/services based on drawings, models or other information provided by the Client, and if it was not aware, or could not have been aware, that these violated third party property rights.

8.10 Regardless of other obligations, the Contractor shall indemnify the Client and hold the Client harmless against all product liability claims of third parties with respect to products delivered by it. In any case, the Contractor is obligated to reimburse the Client for all costs it incurs to defend against a claim or in relation to a replacement delivery. The Contractor hereby undertakes to maintain sufficient insurance against this risk, and to provide proof of insurance at the request of the Client.

8.11 If a legal claim is made against the Client in relation to the above grounds, the Contractor shall take part in the proceedings at its own cost and on behalf of the Client.

8.12 Liability for direct damages shall be limited to the value of the order.

## **9. Suspension, withdrawal due to (impending) inability to perform on the part of the Contractor, force majeure**

9.1 The Client reserves the right to request that further completion of the contract be interrupted at any time. If the contract is suspended for more than 3 months, the Contractor can invoice the Client for the verified costs resulting from a delay lasting longer than 3 months, but cannot charge the Client for lost profits.

9.2 The Client is entitled to withdraw from the agreement in whole or in part without providing compensation, if the Contractor's creditworthiness or ability to complete services/deliveries deteriorates to such an extent that an objective third party would consider it potentially unable to fulfill the contract; or if the Contractor halts its payments, if insolvency proceedings are initiated against its assets, or if there is notification that such proceedings will be initiated.

9.3 The statutory regulations and legal principles apply to cases of force majeure.

## **10. Replacement / wear parts**

10.1 The Contractor is aware that the Client has entered into obligations with its own customers related to replacement and wear parts. The Contractor and its sub-suppliers shall ensure these delivery obligations will be met for a period of 10 years (after acceptance of the deliveries by the Client's customers).

10.2 If production stoppages or similar may make it impossible to continue delivering the above parts, the Contractor must inform the Client of this promptly.

## **11. Supplied materials**

If the Client supplies materials directly to the Contractor, the delivered materials shall remain the property of the Client. They must be stored separately and designated accordingly. The materials may be used only for the Client's orders. If the Contractor or any personnel associated with the Contractor cause any loss of or reduction in the value of materials, then this must be reimbursed by the Contractor. Any right of retention of the Contractor to its supplied materials is excluded.

## **12. Special provisions applicable to software**

12.1 If the Contractor will deliver software and this has not been individually developed for the Client, the Contractor hereby grants a transferable, non-exclusive right of use to said software. This right of use shall be granted for an unlimited time if payment of a fee is agreed for the right. The Contractor shall grant the Client a transferable right of use to software developed specifically for the Client, unlimited in time and scope. Unless otherwise agreed, the current version of the source code for the software must also be delivered. The Contractor shall handle installation of the software. Afterwards, it shall provide the Client with a data storage media readable on the Client's system containing the source and machine code with associated documentation (content and structure of the data storage media, program and data flowcharts, testing processes and programs, error handling, etc.). In addition to this documentation, the Contractor shall provide the Client with complete, written user documentation before acceptance in the language selected by the Client, and in sufficient number.

12.2 The Contractor hereby undertakes to provide the Client with all subsequent versions of the program ("updates") free of charge within its warranty obligations.

### 13. Confidentiality, data protection

13.1 The Contractor hereby undertakes to maintain confidentiality regarding all information provided to it in conjunction with the contract regarding the Client or the object of the order (in any form), if it is not public knowledge or has not become known to it legally in some other manner. A separate non-disclosure agreement to be concluded between the Parties regulates further details.

13.2 The Client is entitled to electronically store and process all data associated with the contractual relationship for the purpose of carrying out the contract in compliance with the German Federal Data Protection Act (BDSG) and the GDPR. The Contractor can object to the storage and processing at any time in writing, if this is not prescribed by law.

### 14. Foreign trade data

14.1 The Contractor is obligated to inform the Client of any relevant for (re-)export of the delivered goods (products, technologies, software) according to European and US export and customs regulations, as well as the export and customs regulations of the country of origin for the goods. For this purpose, the Contractor shall provide the following information for the individual items in its offers and order confirmations:

- (a) the numbers from the EU military goods list and dual use goods list
- (b) for US goods, the ECCN (Export Control Classification Number) according to the US Export Administration Regulation (EAR)
- (c) for US defense goods (so-called ITAR goods) the USML (United States Munitions List) – Category
- (d) information on the non-preferential origin of its goods (products, technologies, software) and their components
- (e) information on goods manufactured based on controlled US technology and/or that contain controlled US components.

14.2 Furthermore, the Contractor is obligated to provide the Client with all further foreign trade-related data at its request, and to inform it promptly of any changes to the above data without requiring a request to do so.

14.3 The legally binding acceptance of re-export restrictions (such as in relation to existing/granted export licenses and re-export restrictions they contain, or based on license exceptions taken under the EAR) is restricted to goods for which an export license is required by the destination country (the current valid version of the EAR applies for the USA), for which this is also marked accordingly in the Contractor's documents, and of which the Contractor expressly makes the Client aware in its offers and order confirmations.

14.4 Contractor's headquartered in the EU are obligated to submit the original copy of the (long-term or) supplier declaration for goods with a preferential origin according to directive (EC) no. 1207/2001 in the current valid version to the Client within one calendar week after being requested to do so. If the Contractor does not fulfill this obligation, or if its declaration does not conform to legal specifications,

then it shall indemnify the Client and hold it harmless for all resulting damages.

### 15. Compliance

The Contractor is obligated to comply with laws and applicable legal ordinances. In particular, it shall not take part in any fraud, any violation of the basic rights of its employees, or any form of child labor, either actively or passively, either directly or indirectly, in any form.

### 16. Place of fulfillment, law, place of jurisdiction, partial invalidity

16.1 The place of fulfillment for deliveries/services is the destination selected by the Client. The place of fulfillment for payments is the headquarters of the Client.

16.2 German law shall apply to this contract, excluding the reference provisions in international private law and the UN Convention on the International Sale of Goods (CISG). The court responsible for the matter in question at the Client's headquarters shall be responsible for any disputes arising from this agreement, including the question of whether it is valid and in force.

16.3 If individual provisions of these GPC are null and void or invalid, a valid provision coming as close as possible to the null and void or invalid provision from an economic standpoint shall be agreed. This shall not affect the validity of the remaining provisions.