

# **General Terms and Conditions of Purchase of EFD Elektrotechnische Fabrik Düsseldorf GmbH**

## **Content**

§ 1	Scope.....	2
§ 2	Contract conclusion .....	2
§ 3	Contractual object.....	3
§ 4	Models, tools, drawings, sketches, logos.....	5
§ 5	Payment conditions .....	6
§ 6	Prices, shipment, packaging, delivery .....	7
§ 7	Delivery and performance period.....	7
§ 8	Warranty for defects, limitation, liability.....	8
§ 9	Right of withdrawal in case of force majeure.....	11
§ 10	Inspection and approval .....	11
§ 11	Property rights .....	11
§ 12	CE declaration of conformity/ manufacturer's declaration/ certificates .....	12
§ 13	Final provisions: Place of performance, place of jurisdiction, applicable law, data processing, contractual language, severability clause .....	12

## **§ 1 Scope**

1. Our General Terms and Conditions of Purchase are effective for our complete purchase of goods and services in all our fields of activity. So these General Terms and Conditions of Purchase apply to the purchasing of goods, the contracting of the performance of work as well as the contracting of services.
2. Our General Terms and Conditions of Purchase are also effective for all future business as well as for all business-related contacting of the supplier, such as for example the opening of contract negotiations or the initiation of a contract, even if they are not explicitly agreed upon again or even if they have not been explicitly pointed out again.
3. We do not accept any terms and conditions of the supplier which are deviating from or in contrast to our Terms and Conditions of Purchase. We explicitly disagree with the effectiveness of the general terms and conditions of the supplier.
4. Previously concluded agreements and earlier versions of our Terms and Conditions of Purchase are made void by these Terms and Conditions of Purchase.
5. The performance of the ordered delivery/ service as well as the invoicing based on the agreed remuneration are deemed as acceptance of the effectiveness of these Terms and Conditions of Purchase.

## **§ 2 Contract conclusion**

1. We place our orders, order modifications and delivery schedules in writing, by remote data transmission, by fax or by e-mail. In case of doubt, the content of oral agreements or those by phone (meetings) is only binding once it is confirmed in writing. Each order, order modification and delivery schedule has to be immediately confirmed by the supplier in writing. If this confirmation is not forwarded within six work days after the reception of our order or order modification, or if our order is not accepted within a deadline of six work days, we will no longer be bound by the order.

2. Order documents, in particular drawings or sketches, remain our property. For all written communication, the supplier is obliged to indicate the company identification code specified by us in our non-binding enquiry or our written order. What has to be indicated in any case is our order number, our article number, should we already have assigned one, as well as the name of the contact in our company.
3. Any reference to business relations with us in any promotional material or reference documents or the utilization of brands and signs which we are entitled to, require our prior written consent.
4. The offers or quotes forwarded by the supplier to us are binding. They have to be prepared free of charge by the supplier.

### **§ 3 Contractual object**

1. The supplier is obliged to deliver and/ or provide the delivery/ service ordered by us according to the contractual agreements. Deviations are only allowed with our written consent. The supplier is responsible to ensure that the delivery/ service is provided by using suitable material and by applying the recognized rules of engineering, the security regulations laid down by law and public authorities and the environmental stipulations, which represent applicable law or which have already been approved with a transitional period and will certainly be enacted.
2. When we order parts which the supplier produces according to a drawing, sketch or a model specified by us, then, upon our request, he has to submit a test report together with the delivery of the contractual object, which lists product features such as dimensions, etc.
3. In case the supplier carries out any changes regarding the composition of the processed material or the technical design of his products or services compared to deliveries or services of the same kind which he previously supplied to us, he is obliged to immediately inform us about this. Changes principally require our consent.
4. The supplier has to carry out the orders assigned to him at his own company. The subcontracting of orders to third parties requires our written consent. In case our

contract with the supplier includes consulting or other deliveries and services which, due to their content and based on the contract, require the rendering of these services by a particular person, then the supplier is obliged to provide these deliveries and services personally by the relevant person.

- 5.** In case we contracted the supplier to perform non-physical services such as for example technical design, consulting or programming services, then we obtain the exclusive right of use to the provided goods or services without any restriction on location and time upon the handing over and/ or rendering of the contractual obligation. We have to be notified about inventions in connection with the provision of the goods or services, the exclusive rights to these inventions have to be transferred to us. The inventor's personal rights remain unaffected.
- 6.** In case we contract the supplier to provide goods or services which are protected by copyright, the supplier grants us the exclusive, global, transferrable right of use for this good or service without any restriction on time or content. The right of use includes the right to physically copy, distribute, display the work and transfer it to image and audio carriers as well as to reproduce the work in non-physical form and make it accessible to the public. The granting of the right of use includes in particular the right
  - 6.1** to copy and distribute the work in print media (e.g. promotional brochures, business cards, company leaflets, business letters, newspapers, magazines, brochures, books, on posters and signs);
  - 6.2** to save, copy and distribute the work on audio or data carriers (e.g. magnetic, optical, magneto-optical and electronic carrier media such as CD-ROMs, CD-i and other CD derivatives, DVDs, disks, hard drives, main storages, microfilm, video cassettes), independent of the transmission, carrier and storage technologies;
  - 6.3** of making items publicly accessible to users by wired or wireless connection in the framework of the digital or analogue electronic distribution, independent of the technology applied, via telecommunication and data networks of all kinds (e.g. online services, internet, intranet, cable systems, satellite systems via mobile services such as mobile phones, WAP services, teletext or navigation systems), including the right of permitting users to download items;

- 6.4 to publicly reproduce the work, in particular to publicly exhibit it;
- 6.5 to individually or completely transfer all rights of use to third parties or to grant third parties right of use regarding the work. The supplier already now consents to the transfer of the rights of use to third parties.

#### **§ 4 Models, tools, drawings, sketches, logos**

1. If we let to the supplier any models, samples, production devices, tools, measurement equipment, drawings, standard specification sheets, print templates or other material to be provided, then this remains our property. The supplier will store it free of charge and separate from other items belonging to him with the diligence of a prudent business person, it will be identified as our property and be used by the supplier in order to fulfill our delivery/ service. Models and tools made available to the supplier have to be insured by him at his own costs against disasters such as fire, water, theft and loss.
2. The supplier is herewith informed that drawings or sketches could be protected by copyright and our logos by trademark rights. Therefore the supplier commits to not forward without our prior written consent to any third parties our logos, the drawings or sketches and data as well as the tools and models which were produced thereof or to not use them outside the framework of the contract. In each case of a culpable breach of any copyrights for use or trademarks which we are entitled to, we have the right to claim lump sum damages amounting to EUR 10,000.00 (in words: ten thousand Euros); the supplier is at liberty to prove that no or only minor damage was incurred by us. Should this proof be successful, then there is only a title to the reimbursement of the actually incurred damage. We reserve the right to assert a claim in lieu of the lump sum damages or beyond them for provably higher damage.
3. With the production of his delivery/ service and/ or the shipment of his delivery, the supplier transfers to us all contract-related production devices, tools and models which were manufactured at our costs. We accept the transfer. If they remain with the supplier, the transfer is replaced in such a way that the

production devices and tools are lent to the supplier for the execution of the order.

4. Provided that the supplier, at our request and with our assistance – e.g. by providing him with models, drawings, etc. – produces goods, the goods of the relevant kind must be exclusively produced for us and supplied and sold to us.

## **§ 5 Payment conditions**

1. Payment deadlines start on the fixed delivery or performance day, at the earliest starting from the day of the receipt of goods or the day of the complete performance of the contract, inspection and approval thereof – provided that this has been agreed or is legally required – and the issue of correct invoices.
2. Unless otherwise agreed by the parties, the supplier grants a 3 % prompt payment discount for payments within 14 days after the receipt of goods, otherwise the payment is effected within 60 days net. Should any defect of the delivery occur or be discovered during this term, we have a right of retention and the claim of the supplier will not become due until the final rectification of the defect or until the faultless replacement delivery. We are also entitled to the deduction of the prompt payment discount in this case.
3. We are entitled to effect payments by checks or discountable bills of exchange, the discount charges and taxes of which are to be borne by the supplier.
4. The payment of an invoice does not constitute a waiver of any notice of defects. In the case of faulty delivery, we are entitled to retain the payment on a pro-rata basis until the proper fulfillment.
5. As for the remainder, we are entitled to the rights of set-off and retention under applicable law.
6. The supplier is not allowed to assign his claims for payment of his remuneration to any third parties without our prior written consent. We will not unreasonably refuse our consent.

## **§ 6 Prices, shipment, packaging, delivery**

1. The agreed prices are principally fixed prices. In case no prices are indicated in the order, the list prices of the supplier shall apply with the discounts customary in trade. If the supplier reduces the prices for the ordered products before delivery, then the reduced prices are effective. Unless otherwise agreed, the shipment of goods within the country is principally carried out carriage and insurance paid: CIP (Incoterms 2020) and abroad delivered, duty paid: DDP (Incoterms 2020) to the delivery address indicated by us.
2. Packaging
  - 2.1 Packaging costs are to be borne by the supplier.
  - 2.2 The supplier has to take transportation and outer packaging with him and dispose of it at his expense, unless something different has been agreed.
3. All deliveries have to come with packaging lists, the according shipping documents are to be sent in on the date of dispatch of the goods. Complete order and article numbers have to be specified in dispatch notes, consignment notes, on package addresses, delivery notes and invoices. The VAT ID number of the supplier must be identifiable. Invoices have to contain invoice numbers. Deliveries without sufficient accompanying documents are put on hold regarding handling and payment until clarification and are stored at our premises until the correction at the exclusive costs and risk of the supplier. The supplier alone is liable for any damage and cost which are caused by the faulty adherence to and non-compliance with these terms and conditions.

## **§ 7 Delivery and performance period**

1. Agreed schedules and deadlines are binding. Decisive for the fulfillment of the delivery date or the performance period is the receipt of the goods or the performance of the work at our premises. The supplier is obliged to immediately notify us in writing if circumstances occur or are about to occur that lead to a situation that the agreed delivery date or performance period cannot be fulfilled. This notification does not release the supplier from his liability for default.

2. The supplier can only invoke the lack of necessary documents or information or materials to be provided by us as an obstacle to performing the contractual object if he has sent us a written reminder regarding the handing over of documents, information and materials and has not received them within a reasonable period – provided that we are obliged to provide them.
3. Deliveries ahead of schedule have no influence on the agreed due date for payments. Partial deliveries are only accepted after explicit agreement. The remaining partial delivery is to be listed in the shipment documents. In case partial deliveries have not been agreed, the agreed due date for payments is calculated at the earliest from the date of complete delivery.
4. The supplier is in default of delivery without a reminder as soon as the relevant bindingly agreed delivery date has been exceeded.
5. If the supplier exceeds the contractually agreed delivery period, he has to pay penalties of 0.2% of the delivery price (without value-added tax) for every work day of culpable exceeding, in total however not more than 5% of the delivery price (without value-added tax). A forfeited penalty can be claimed until the final payment.
6. In case the delivery delay is the supplier's fault, he shall be liable without limits for all damage incurred by us due to the delayed delivery; the forfeited penalty is credited against the default damage.
7. Inspection and approval of a delivery does not constitute any waiver of damages claims for default of delivery.

## **§ 8 Warranty for defects, limitation, liability**

1. We accept delivered goods subject to the reservation of an examination for absence of defects. We fulfill our obligation to examine and give notice of defects in accordance with Art. 377 HGB [*German Commercial Code*] in view of obvious defects of the delivery/ work if we send off our notice of defects within 20 work days after receipt of the delivery by us. Provided that an examination of the delivery is not feasible in the orderly course of business within this period, we will

notify the supplier immediately after the examination and the detection of the defect. The supplier in this respect waives the claim of late notice of defects.

2. If the delivery/ work of the supplier show material defects, we are entitled to asserting the statutory claims for defects within 36 months after transfer of risk. If law provides for longer limitation periods for claims for defects for certain items or rights acquired by us or for products which we manufacture by using delivered items, then these longer periods are also considered to be agreed in the relationship with the supplier.
3. Provided that we have a legal claim to supplementary performance, at our discretion the supplier either has to rectify the defect or to supply a faultless item.
4. In case the supplementary performance fails or in case the supplier refuses to provide the chosen type of supplementary performance, we can withdraw from the concluded contract, we can reduce the claim of remuneration against us or, if the supplier does not prove that he is not responsible for the defects, we can assert damages instead of the performance. The same applies if the supplementary performance by the supplier is unreasonable for us. This is particularly the case when the supplier does not immediately fulfill his obligation for the rectification of defects despite the request to do so and acute risks or larger damage is imminent. In these cases we have also the right to execute the rectification of defects ourselves or have it carried out by third parties at the supplier's expense. This applies in particular if larger damage – in particular claims of our buyers due to default – can be avoided only by a rectification of defects by us or by third parties contracted by us. We will inform the supplier about this. Further statutory claims – such as claims for reimbursement of expenses – remain unaffected.
5. The course of limitation periods is suspended for the duration of the supplier's supplementary performance. The suspension of the limitation period starts with our notice of defect. The suspension of the limitation period only ends with the date on which the delivery item can be used without defects. For newly delivered parts within the limitation period in the framework of the warranty for defects, the limitation period starts anew from the time when the supplier has completely

fulfilled our claims for new delivery, unless we had to assume from the supplier's behavior that he did not feel obliged to undertake the measure but carried out the supplementary delivery or rectification of defects simply for reasons of goodwill or for similar reasons.

6. If we take back an item sold to our customers by us as a consequence of its faultiness, which was caused by the delivery/service of the supplier, or if our customer reduced our remuneration due to this, we are entitled to rights against the supplier as to Art. 437 BGB [*German Civil Code*] and Art. 445a, and this does not require the setting of a deadline.
7. If a material defect occurs within six months after the transfer of risk, it is assumed that the item was already defective at the transfer of risk, unless this assumption is incompatible with the kind of item or the defect.
8. If the supplier's service/ delivery received by us shows defects of title, then the supplier releases us from any possibly claims of third parties unless the supplier is not responsible for the defect of title.
9. The supplier is principally liable towards us in case of all types of culpable violation of duty, unlimited for damages independent of whether direct or indirect claims for damage, property damage or other types of damage are asserted. The supplier is additionally liable according to the product liability law, to the extent that its preconditions are met.
10. If we are held responsible for any violation of domestic or foreign or government safety regulations or product liability rules or if claims are asserted against us due to a deficiency of our products which can be traced back to the deliveries or services of the supplier, then we are entitled to demand a reimbursement from the supplier for damage caused by his products and a release from according claims by third parties. In the cases of fault-based liability, however, this does only apply when the supplier is at fault. Provided that the cause of the damage lies in the responsibility of the supplier, he has to bear the according burden of proof.
11. The costs to be reimbursed also include the costs for a possibly necessary recall campaign as well as necessary legal costs. The supplier will be informed about

the content and scope of the recall campaigns to be carried out. The supplier is obliged to take out a producer's liability insurance for his obligations from the liability as producer of the delivery items.

## **§ 9 Rights of withdrawal in case of force majeure**

If, due to events of force majeure, in particular due to epidemics or pandemics, labor disputes, operational disruptions beyond our control, unrest, government measures or other not preventable events which occur after the conclusion of the contract, the demand for the goods ordered is no longer given to a considerable extent beyond our control, then we can withdraw completely or partially from the contract or ask for its execution at a later time, and this does not entitle the supplier to any claims against us provided that the events listed are of no insignificant duration.

## **§ 10 Inspection and approval**

1. If we owe the inspection and approval of the goods/ services in the framework of the according order, then, in the case of the contractual provision of goods/ services, we will declare in writing that the contractual obligations of the supplier have been performed.
2. If we do not declare the inspection and approval within the set period, then the supplier can set another reasonable deadline for making the declaration. Upon expiry of this deadline, the goods/ services are considered inspected and approved if we neither declare the inspection and approval in writing nor explain in writing which defects still need to be rectified. The supplier will inform us about this legal consequence when setting the deadline.
3. There is no claim to the execution of partial inspections and approvals.

## **§ 11 Property rights**

1. The supplier is liable that no rights of any third party are infringed in connection with his delivery/ service, unless he is not responsible for the infringement.

2. If claims are asserted by a third party against us for alleged infringement of property rights, the supplier is obliged to release us from these claims unless he is not responsible for the infringement of property rights. The release obligation refers to all expenses which would necessarily arise from or in connection with the assertion of claims by a third party.
3. To the extent that the supplier already holds commercial property rights regarding the ordered deliveries or services or regarding the processes for their production, we have to be notified about them upon request by indicating the relevant registration number; we receive a free-of-charge, non-exclusive right of use without time limit.

**§ 12 CE declaration of conformity/ manufacturer's declaration/ certificates**

Delivery items have to comply with all regulations, rules and standards applicable to the relevant merchandise and have to be supplied with the mandatory certificates and confirmations. Should the merchandise require a manufacturer's declaration or a declaration of conformity (CE), the supplier has to prepare this and make it available immediately upon request at his own expense.

**§ 13 Final provisions: place of performance, place of jurisdiction, applicable law, data processing, contractual language, severability clause**

1. Place of performance is our registered office in Düsseldorf
2. Exclusive place of jurisdiction for any disputes arising from the contractual relationship between the parties is "Landgericht Ulm" [*Ulm District Court*], provided that the supplier is a merchant, legal entity of public law or of special fund under public law, or the supplier has no general place of jurisdiction in the Federal Republic of Germany or has relocated his place of jurisdiction abroad. As an exception to this, we also have the right to claims against the supplier at his general place of jurisdiction.

A merchant is every entrepreneur who is entered in the trade register or who operates a commercial business and requires a business operation set up in a

commercial way. The supplier has his general place of jurisdiction abroad if his registered office is abroad.

3. Should a provision of these Terms and Conditions of Purchase or a provision in the framework of other agreements be or become invalid, the validity of the other provisions or agreements shall not be affected.
4. The supplier is aware that data from the business transactions, also personal data has to be stored and processed and transmitted to third parties in the framework of commercial necessities. The supplier agrees with this collection and processing of data.
5. The contractual language is German. Should the parties use another language apart from German, then the German wording shall prevail according to the agreement.
6. German law shall apply to the contractual and other legal relationships by excluding the UN Sales Convention.