

European Technical Center for Engineering & Distribution GmbH

General Terms and Conditions of Sale

1. Scope of General Terms and Conditions of Sale

1.1 These General Terms and Conditions of Sale ("GTC") of European Technical Center for Engineering and Distribution GmbH (ETC-Distribution GmbH) shall apply to contracts concluded between ETC-Distribution GmbH and companies only.

1.2 The GTC shall apply to deliveries and services from ETC-Distribution GmbH ("Products") to the contracting party of ETC-Distribution GmbH ("Buyer") on the basis of the contract ("Contract") concluded between ETC-Distribution GmbH and the Buyer ("The Parties").

1.3 Provisions which differ in wording from the GTC – to the extent that they are not stipulated in ETC-Distribution GmbH whole offer – shall not apply.

2. Offer

2.1 Specifications of the Products are set out exclusively and finally in the "Technical Specifications" of ETC-Distribution GmbH which is valid at the time of conclusion of the Contract.

2.2 ETC-Distribution shall reserve all rights of ownership and copyrights to all cost estimates, drawings and other documents ("Documents") included in its offer.

2.3 ETC-Distribution GmbH shall be committed to the offer for 45 calendar days as from the date of the offer if not stated differently.

3. Terms of Delivery

3.1 All prices are Ex Works of ETC-Distribution GmbH, Germany (EXW according to Incoterms 2000).

3.2 All prices are net prices in EUR, plus the turnover tax valid at the time of delivery of the Products, without further deductions.

4. Terms of Payment

4.1 Invoices shall be payable immediately and without any deductions to the payment.

4.2 The Buyer may only set off claims which are undisputed or have been finally determined in a legally binding manner.

4.3 ETC-Distribution GmbH is entitled to request advance payments from the Buyer.

5. Reservation of Title

5.1 ETC-Distribution GmbH shall retain ownership of the delivered Products ("Reserved Goods") until the Buyer has fulfilled all its obligations from the business relation. Should the total value of ETC-Distribution GmbH legitimate securities exceed the total value of all claims to be secured by more than 20 percent, ETC-Distribution GmbH shall, at the Buyer's request release a corresponding part of the securities.

5.2 For the duration of the reservation of title, the Buyer shall not be entitled to pledging or transfer of security.

5.3 The Buyer may only re-sell the Reserved Goods within the scope of normal business operations and under the condition that the Buyer receives payment from its buyer or provides for the reservation that the transfer of ownership onto the buyer does not take place until the buyer meets its payment commitments.

5.4 ETC-Distribution GmbH ownership of the Reserved Goods shall also remain valid during the manufacturing and after the completion of the product of the Buyer for which the Reserved Goods are used ("Final Product"). ETC-Distribution GmbH ownership of the Reserved Goods shall continue as towards the Final Product; ETC-Distribution GmbH shall obtain common ownership of the Final Product in proportion of the value of the Reserved Goods to the total value of the Final Product.

5.5 The Buyer shall, upon the conclusion of the Contract, assign to ETC-Distribution GmbH as security a part of his claims against its customer arising from the resale or manufacturing of the Reserved Goods corresponding to ETC-Distribution GmbH claims against itself arising from the Products. This shall not affect ETC-Distribution GmbH obligation to release set out in 5.1.

5.6 In the event of a levy of execution, seizure or any orders of third parties the Buyer shall inform ETC-Distribution GmbH without delay.

5.7 In the event of breach of duty, in particular a default of payment, on the part of the Buyer, the following provisions shall apply:

5.7.1 After unsuccessful expiry of an appropriate deadline set by ETC-Distribution GmbH for the rectification of the default, ETC-

Distribution GmbH shall be entitled to rescind the Contract and to take back the Reserved Goods; the Buyer shall be obliged to hand over the Reserved Goods. This shall not affect the statutory regulations concerning the dispensability of fixing a time-limit.

5.7.2 The enforcement of the reservation of title and the taking back of the Reserved Goods is not subject to a prior rescission of the Contract on the part of ETC-Distribution GmbH; such action or a levy of execution of the Reserved Goods by ETC-Distribution GmbH shall not be considered as a rescission of the Contract, unless expressly stated otherwise.

6. Delivery time

6.1 Compliance with the agreed delivery time for the Products requires the timely receipt of all documents, necessary permissions and releases, to be provided by the Buyer, as well as the observance of the agreed terms of payment and other obligations by the Buyer. If these conditions are not fulfilled, the delivery time shall be appropriately extended; this shall not apply if the delay is caused by ETC-Distribution.

6.2 If delivery times are not complied with due to force majeure, e.g. mobilization, war, riots or similar events, e.g. strikes or lock-outs, delivery times shall be appropriately extended.

6.3 Should ETC-Distribution GmbH be in delay, the Buyer may, if it can substantiate any damage on its part resulting from such delay, claim a compensation for each day of delay amounting to 0.2 percent of the price of the part of the delivery which could not be used due to the delay, but not more than a total of 5 percent of the said price.

6.4 Any claims for compensation for delayed delivery of Products or claims for compensation to replace Products on the part of the Buyer which are beyond the limits of 6.3, shall be excluded in all events of delayed delivery of Products. This shall also apply in the event of the expiry of a deadline set by the Buyer. It shall not apply, however, where there is obligatory liability, in the event of wilful misconduct or gross negligence or due to injury to life, body or health. The Buyer may only rescind the Contract if the delay of delivery of the Products is caused by ETC-Distribution GmbH. No shift in the burden of proof to the detriment of the Buyer is connected with the above provisions.

6.5 The Buyer shall only have a right of rescission if it has granted ETC Distribution GmbH an appropriate time deadline for performance and declares that it shall refuse to accept the performance upon the expiry of the deadline, and after the deadline has unsuccessfully expired.

6.6 At ETC-Distribution GmbH request, the Buyer shall declare within an appropriate time limit whether it shall rescind the Contract due to the delay or whether it insists on delivery.

6.7 If, at the Buyers request, dispatch or consignment is delayed for more than a month after readiness to dispatch has been expressed, ETC Distribution GmbH may, for each beginning month, charge the Buyer 1.0 percent of the net price of the Products, but not more than 8 percent of the total net price, for storage costs. The Parties shall remain at liberty to prove that storage costs were higher or lower.

7. Passing of risk

7.1 Subject to provisions, if any, in ETC Distribution GmbH Order Acknowledgement related to passing of risk ("Delivery Clauses"), the passing of risk onto the Buyer shall take place at the moment the Products to be delivered have been made available for dispatch by ETC Distribution GmbH at the Place of Performance; the provisions of 7.2 shall have precedence over 7.1 and any "Delivery Clauses".

7.2 The passing of the risk onto the Buyer shall take place at the moment the dispatch or the beginning of assembly are delayed due to reasons caused by the Buyer or the occurrence of any other events causing a default in acceptance by the Buyer.

8. Acceptance

The Buyer shall accept the Products even if it shows insignificant defects.

9. Material Defects

9.1 ETC Distribution GmbH shall be liable for all material defects of newly manufactured products according to 9.1 – 9.11. Should the Product delivered not be a newly manufactured product (e.g. second-hand goods, samples, exhibits), ETC Distribution GmbH liability for material defects shall not apply.

9.2 The parts of the Products concerned which show material defects within the term of limitation (if such defects were not caused after the passing of the risk) must, at ETC Distribution GmbH discretion, be repaired at ETC Distribution GmbH cost, newly delivered or newly provided (“Subsequent Performance”).

9.3 The Subsequent Performance does not initiate a new term of limitation (9.3).

9.4 The term of limitation for the liability for material defects is 24 months. This shall not apply where paragraphs 438, section 1, No. 2, 479, section 1 and 634a, section 1, No. 2 of the BGB (German Civil Code) provide for longer terms, and in the event of injury to life, body or health, in the event of intentional or gross breach of duty by ETC Distribution GmbH or fraudulent concealment of a defect. This shall not affect life, body or health. No shift in the burden of proof affect the statutory regulations concerning the suspension of the running, the suspension or the new beginning of the periods of limitation.

9.5 The Buyer shall complain about material defects to ETC Distribution GmbH without delay in writing. The complaint must include information on the data of the concerned Products – name and number of the model, number of ETC Distribution GmbH order confirmation, and a description of the fault or defect.

9.6 In the event of complaints of defect the Buyer may retain payments to an extent appropriate in proportion to the defects occurred. The Buyer shall only be entitled to retain payments if it is able to assert a complaint of defect justified beyond any doubt. If the complaint of defect proves to be unjustified, ETC Distribution GmbH shall be entitled to request payment of any expenses incurred to it by such complaint.

9.7 ETC Distribution GmbH must be granted the opportunity of subsequent performance within an appropriate period of time. Otherwise ETC Distribution GmbH shall be freed of any liability for material defects.

9.8 In the event of unsuccessful subsequent performance, the Buyer may – notwithstanding any provisions on claims for compensation (11.) rescind the Contract or reduce the payment.

9.9 Warranty claims shall not be admissible in the event of insignificant deviations from the agreed composition, insignificant impairment of the practicability, natural wear and tear or damages caused after the passing of risk as a result of faulty or negligent treatment, excess utilisation, inappropriate service equipment, or damages caused by exceptional external factors, which are not provided for in the Contract. Should the Buyer carry out inexpert alterations or repairs, no warranty claims shall be admissible for such alterations, repairs or consequences thereof.

9.10 Any claims of the Buyer for expenses necessary for the subsequent performance, in particular transportation, labour and material costs, shall be excluded, if such expenses should be caused because the Products has been transferred to a place other than the Place of Performance.

9.11 Claims under a right of recourse of the Buyer against ETC Distribution GmbH shall only be admissible insofar as the Buyer has not agreed with his customer any arrangements beyond the scope of the statutory warranty claims. For the scope of the claims under a right of recourse according to paragraph 478, section 2 of the BGB (German Civil Code), 9.8 shall apply respectively.

9.12 Any further claims based on material defects, and claims other than those settled under 9. of the Buyer against ETC Distribution GmbH shall be excluded. For any claims for damages 11. shall apply.

10. Impossibility, Adjustment of Contract

10.1 Should delivery be impossible, the Buyer shall be entitled to request compensation, unless ETC Distribution is not responsible for the impossibility. However, the Buyers claim for compensation shall be limited to 5 percent of the value of the part of the Products for which delivery is impossible. This shall not apply where there is obligatory liability due to wilful misconduct, gross negligence, initial inability or injury to the detriment of the Buyer is connected with the above provisions. The Buyers right of rescission shall remain unaffected.

10.2 Should events of force majeure (6.2) substantially alter the economic significance or the contents of the Products or substantially affect ETC Distribution GmbH business, the Contract shall be appropriately adapted under good faith. If this is not economically acceptable, ETC Distribution GmbH shall have a right of rescission. Should ETC Distribution GmbH wish to make use of such right, it has to notify the Buyer after realization of the consequences of such incidents without delay, also if the Parties had agreed to an extension of the Products time beforehand.

11. Other Claims for Compensation

11.1.1 Claims for compensation of the Buyer, irrespective of their cause in law, but in particular claims arising from the breach of duties resulting from obligation or tort, shall be excluded.

11.1.2 This shall not apply where there is mandatory liability, e.g. according to the law on product liability or in the event of wilful misconduct, gross negligence, injury to life, body or health or the infringement of substantial contractual obligations.

11.1.3 However, compensation for damages for the infringement of substantial contractual obligations shall be limited to foreseeable damages typical for the Contract, unless there is liability for of wilful misconduct or gross negligence, injury to life, body or health.

11.2 The exclusion or limitation of ETC Distribution GmbH liability as set out in 11. shall also apply to the personal liability of its workers, employees, co-workers and other persons employed, but not to the personal liability of legal representatives and executives.

11.3 The claims for compensation the Buyer is entitled to according to 11., shall expire upon the expiry of the term of limitation applying to material defects according to 9.3 in the event of wilful misconduct and claims for damages in connection with the law on product liability the statutory terms of limitation shall apply.

11.4 No shift in the burden of proof to the detriment of the Buyer is connected with the provisions of 11.

12. Confidentiality

12.1 The Parties shall undertake not to make available to third parties any documents, knowledge and information, tools, samples, models and other technical documentation (“Information”) received within the scope of the contract and irrespective of the carrier medium without written approval of the respective other party, or use them for other than contractual purposes. Such Information must be secured against unauthorized inspection or use. With reservation of further rights, each party may request the return of such Information, should the other party breach such duty.

12.2 The obligation according to 12.1 shall commence upon the first receipt of Information and expire 36 months after the termination of the Contract.

12.3 The obligation according to 12.1 shall not apply to Information which is generally known or which was known to the respective party at the moment of receipt without the party being obliged to confidentiality or to Information which was passed on by a third party authorized to submit such Information or which was developed by the receiving party without utilization of confidential Information of the other party.

13. Applicable Law

The substantive law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

14. Jurisdiction

The exclusive place of jurisdiction – also for cheques and notes receivable – shall be Fuerth