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General terms and conditions of trade

GENERAL TERMS AND CONDITIONS OF TRADE OF THE ENGBERTS Mess-, Steuer- und Regelsysteme GmbH (hereinafter ENGBERTS)

1. GENERAL REGULATIONS, SCOPE OF THE TERMS AND CONDITIONS

(1) All deliveries, performance and offers from ENGBERTS are exclusively subject to these terms and conditions of trade. They are therefore binding for all future business transactions even if this is not expressly agreed upon. At the latest on taking delivery of the goods or performance these terms and conditions of trade shall be deemed recognised and accepted.

(2) Our terms and conditions of trade are exclusive. Should the customer's terms be adverse to or deviant from these terms and conditions they will not be recognised, even if ENGBERTS makes no formal objection, unless ENGBERTS has expressly agreed in writing to their validity. This is also the case when ENGBERTS unconditionally carries out performance in the knowledge of the purchaser's terms which are adverse to or deviant from these terms and conditions.

(3) ENGBERTS is entitled to assign claims from the business relationship with the purchaser.

2. OFFERS AND CONTRACT COMPLETION

(1) Our offers are subject to confirmation and are non binding. Declaration of acceptance and all orders must be confirmed in writing or fax by ENGBERTS for them to be legally binding.

(2) The contract shall be deemed concluded when ENGBERTS sends written confirmation (order acceptance), which covers the extent of the performance obligations. Delivery replaces written order acceptance. Our sales personnel are not authorized to make verbal agreements or assurances over and above the written contract.

(3) All performance detailed in catalogues and offers such as illustrations, drawings etc. should be considered as approximations. Drawings, illustrations, sizes, weights or other performance data are only binding when this has been agreed expressly in writing. ENGBERTS unconditionally reserves its ownership and copyright utilization rights to estimates, drawings and other documents (hereinafter: documents). These documents may only be copied or disclosed to third party with our prior consent and must be returned immediately at our request if the commission is not given to ENGBERTS.

(4) The purchaser is responsible for the order documents and order data particularly the drawings and technical data and samples being correct and complete. Information given verbally including changes and amendments to the submitted documents must be confirmed in writing. If an order is not confirmed in writing or carried out by ENGBERTS within one month of receipt, in special cases (e.g. customised order) within 3 months, within which time the purchaser is bound to his order, the purchaser has the right to cancel his order in which case he shall have no claims to compensation against ENGBERTS.

3. PRICES

(1) Our prices are €-prices (EURO of the European Central Bank). They are valid ex works, plus statutory VAT within this country and not including installation, commissioning and assembly costs or packaging, freight, postage and insurance costs. They are based on the cost of wages, material and other costs on the day of the offer being made. If these cost factors change ENGBERTS reserves the right to adjust the prices of its offers up to the time a binding purchase contract is made. Additional supplies and performance will be invoiced separately.

(2) Unless the purchaser requests otherwise the goods will be transported by a carrier of ENGBERTS's choice. Transport risk is completely the purchaser's liability. The type of packaging will be decided upon by ENGBERTS. It will be charged to the purchaser at cost price and not taken back.

4. TERMS OF PAYMENT

(1) Unless otherwise agreed our invoices must be paid in full within 30 days of invoicing. If, in accordance with §6 part (3), taking delivery has been agreed on, and if the purchaser receives the invoice before or at the time of taking delivery, the invoice must be paid within 30 days of the later of the two dates.

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<p>(2) ENGBERTS is entitled in spite of contrary terms of the purchaser to use payments for the latter's earlier debts and will inform the purchaser of the kind of offsetting which has been carried out. If costs and interest have already accrued, ENGBERTS is entitled to use the payment for the costs, then the interest and finally for the main performance.</p> <p>(3) Payment is deemed received when ENGBERTS can dispose of the sum. In the case of cheques, payment is deemed received when the cheque has been paid into the account.</p> <p>(4) If ENGBERTS becomes aware of circumstances which call the credit standing of the purchaser into question, particularly if a cheque has not been honoured, or payments are discontinued, or if ENGBERTS becomes aware of other circumstances which call the credit standing of the purchaser into question, ENGBERTS is entitled to declare the remaining debt due also if ENGBERTS has accepted cheques. In this case ENGBERTS is also entitled to demand prepayment or a security deposit.</p> <p>(5) The purchaser is only entitled to offset, retain or reduce payments even when claims are made for defects when the counterclaims are legally binding or not disputed. The purchaser is only entitled to retain payments for counterclaims arising in the same contractual relationship.</p> <p>(6) For deliveries outside Germany ENGBERTS can request an irrevocable and confirmed letter of credit to be established payable at one of the banks specified by us, or other similar securities.</p> <p>(7) Should the purchaser be in default with any payment obligations, all existing outstanding payments shall immediately become due.</p>		
<p>5. RESERVATION OF TITLE</p>		
<p>(1) Until payment of all outstanding claims is made, (including all claims to balance on customer account; establishing of credit is not deemed to be payment) due to ENGBERTS on whatever legal basis from the purchaser now or in future, the following securities will be extended to ENGBERTS, which ENGBERTS will release on demand according to its choice, insofar as the amounts continue to exceed the claims by more than 10%.</p> <p>2) The goods remain the property of ENGBERTS. Until payment has been made in full the purchaser is not entitled to install the goods in another installation in a way that the goods cannot easily be removed from this installation. Further processing or alteration is carried out for ENGBERTS as manufacturer, but without obligation for him. If (joint) ownership ceases due to installation it is hereby agreed that the (joint) ownership of the purchaser of the integrated object will be transferred to ENGBERTS in proportion to its worth (invoice value). The purchaser looks after ENGBERTS's (joint) ownership free of charge. Goods to which ENGBERTS is entitled to (joint) ownership shall be hereinafter deemed to be conditional goods.</p> <p>(3) The purchaser is entitled to process and sell the conditional goods in the proper course of business, if he is not in default. Pledging of goods for security or transfer of ownership by way of security is inadmissible. Claims arising from the selling on of the conditional goods or on any other legal basis (insurance, unlawful action) arising in connection with the conditional goods (including all claims to balance in customer's account) will be assigned now for security in full by the purchaser to ENGBERTS. ENGBERTS accepts the assignment. ENGBERTS entitles the purchaser revocably to collect the claims assigned to ENGBERTS in his own name on his account. This authority to collect can only be revoked if the purchaser does not duly fulfil his payment obligations.</p> <p>(4) If third party should access conditional goods, in particular seize them under distress, the purchaser will indicate ENGBERTS's ownership and inform the latter without delay, in order that ENGBERTS can assert its ownership rights. Inasmuch as the third party is not able to repay the court or out of court costs in this connection, the purchaser is liable for these.</p> <p>(5) If the purchaser acts contrary to the contract – in particular default in payment – ENGBERTS is entitled to cancel the contract and to demand the return of the conditional goods.</p> <p>(6) Until payment has been made in full the purchaser is obliged to keep ENGBERTS informed of the whereabouts of the conditional goods.</p>		
<p>6. DELIVERY/ACCEPTANCE</p>		
<p>(1) Delivery dates or deadlines which can be agreed upon as binding or subject to confirmation must be in writing. Our delivery time is calculated from the date of our acceptance of order. It begins when all necessary documents, necessary authorizations, releases, clarification and authorization of the plans, the fulfilment of the</p>		

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<p>agreed payment terms and other obligations and the concurrence on all technical questions, whose clarification was made a proviso by the contractual parties on signing the contract have been received from purchaser. If these conditions have not been fulfilled in time the delivery time will be extended commensurately.</p>		
<p>(2) Delay in delivery or performance due to force majeure or due to happenings which make it, not only temporarily, very difficult or impossible for ENGBERTS to deliver – e.g. strikes, lockouts, administrative orders, breakdowns or failure of important processing installations / machinery, delays in supply of important raw and construction materials, delays in transportation and all cases of force majeure, also when this occurs at our suppliers' or sub suppliers' – is not ENGBERTS's responsibility even if the deadlines and delivery dated were agreed to be binding. The above is also the case if the above mentioned circumstances occur during a delivery delay which already exists. They entitle ENGBERTS to defer the delivery or performance for a period as long as the hindrance itself plus an appropriate start-up phase or to cancel the contract in part or in whole for the non fulfilled part.</p>		
<p>(3) If acceptance inspection is requested its terms must be stipulated by the latest at conclusion of contract. The acceptance inspection will take place at ENGBERTS's premises immediately after readiness for inspection has been declared. The costs of inspection are borne by purchaser. Part deliveries are admissible. In all other cases the delivery shall be deemed accepted when correct commissioning has taken place, at the latest, however, 30 days = 1 month after delivery to the purchaser. On acceptance risk is transferred to purchaser in as much as he does not already carry liability in accordance with §7.</p>		
<p>7. PASSING OF RISK</p>		
<p>(1) All deliveries including possible returns and part deliveries are purchaser's liability. Risk passes to the purchaser– including agreed carriage free deliveries – at the handover of the goods to the purchaser or his agent at our factory or when the delivery leaves our premises by whatever route or by whatever means of (own or external) transport.</p>		
<p>(2) If dispatch is delayed for reason beyond ENGBERTS's control, risk passes to the purchaser on the day on which the goods are ready for dispatch. After passing of risk the purchase pays for all storage expenses.</p>		
<p>(3) ENGBERTS is not obliged to take out transport insurance even for foreign business. On the purchaser's request and at his expense ENGBERTS will insure deliveries against the usual transport risks.</p>		
<p>8. PURCHASER'S RIGHTS CONCERNING DEFECTS</p>		
<p>(1) The goods will be delivered free of construction, processing and material faults; the deadline for making warranty claims is one year after the passing of risk. Shortening the term of limitation according to para.(1) is not applicable in cases of malice or gross negligence or in cases of loss of life or injury or health hazard, or in the case of intention to deceive, or in the case that ENGBERTS undertakes a guarantee. In these cases the statutory terms of limitation apply.</p>		
<p>(2) If ENGBERTS's operating or service instructions are not followed, or parts are replaced or materials are used which do not comply with the original specifications warranty claims are inadmissible if the purchaser cannot disprove a substantiated claim that one of these circumstances led to the defect. The same is the case if defects are due to incorrect or faulty installation, poor maintenance, incorrect or negligent care or storage, or incorrectly carried out repairs (not by ENGBERTS), alterations without our written approval, overuse, unsuitable utilization and operating resources or also chemical, electrochemical or electrical influences for which we are not responsible or weather or other influences of nature.</p>		
<p>(3) Before the purchaser can make a warranty claim he must first fulfil all obligations of investigation and defect notification according to § 377 Commercial Code otherwise the complaints are insubstantial. The purchaser must inform ENGBERTS's customer service manager of defects in writing without delay at the latest within one week after receipt of the object supplied. Defects which it was impossible to discover even on close inspection during this time must be reported in writing to ENGBERTS without delay after their discovery.</p>		
<p>(4) In the case of a report from the purchaser that the products are defective, ENGBERTS requests at its choice and expense that</p> <ul style="list-style-type: none"> a) the defective part or machine should be sent back to ENGBERTS for repair ore b) the purchaser should keep the defective part or machine ready for a service technician from ENGBERTS to be sent to the purchaser in order to carry out the repair. 		

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<p>Place of subsequent performance is always the place to which ENGBERTS delivered the goods as agreed in the contract. If, subsequently, the goods are taken to another place, all additional costs for the subsequent performance arising from this shall be paid by the customer. This is also the case when the goods are sent back to ENGBERTS for repair and for when the subsequent performance is carried out by ENGBERTS at customer's premises / at place where goods are located.</p> <p>(5) If the subsequent performance is not successful after an appropriate period of time the purchaser may request at his choice either a reduction in price or a cancellation of the contract.</p> <p>(6) There is no liability for normal wear and tear.</p> <p>(7) ENGBERTS's liability for third party products or materials is limited to the assignment of the claims we have against our suppliers.</p> <p>(8) We accept no liability for the performance of parts sent to ENGBERTS by the purchaser for use for completion, reconditioning, or modification; if the material becomes defective during the processing ENGBERTS must be reimbursed for the costs already incurred. Unless the defect is attributed to gross neglect of duty on the part of ENGBERTS, a wilful neglect of duty on the part of ENGBERTS, a wilful or gross neglect of duty of vicarious agents or a substantial neglect of duty for the object of the contract. This liability limitation does not apply to personal injury.</p> <p>(9) Claims for defects against ENGBERTS may only be made by the direct purchaser and are non assignable.</p> <p>9. LIABILITY</p> <p>(1) Compensation claims regardless of the type of neglect of duty, including unlawful acts, are excluded insofar as it is not a case of wilful or gross negligence.</p> <p>(2) If substantial contractual obligations are breached, ENGBERTS is liable for each case of negligence, however, only to the sum of the foreseeable damage. Claims may not be made for lost earnings, saved expenses, from compensation claims of third party or for other indirect or consequent damage, unless a characteristic feature guaranteed by ENGBERTS specifically protects the purchaser from such damage.</p> <p>(3) The liability limitation and exclusion under paragraphs (1) and (2) do not apply for claims arising from malicious behaviour on the part of ENGBERTS or for liability for guaranteed characteristic features, for claims under the product liability laws and claims for death, personal injury and damage to health.</p> <p>(4) In as far as ENGBERTS's liability is excluded or limited this shall also apply for employees, workers, agents and vicarious agents.</p> <p>10. CHANGES TO CONSTRUCTION</p> <p>ENGBERTS reserves the right to make changes to the construction at any time; ENGBERTS is, however, not obliged to make such changes to products which have already been supplied.</p> <p>11. EXPORT REGULATIONS</p> <p>When products are exported the purchase must observe both German export regulations and inform his customers that in the case of export German regulations apply.</p> <p>12. CUSTOMS CLEARANCE</p> <p>If deliveries are made duty unpaid at the request of the purchaser, the latter is liable to ENGBERTS for any possible subsequent customs demands.</p>		

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<p>13. SOFTWARE</p> <p>(1) The purchaser shall be given the non exclusive and non assignable right to the internal use of ENGBERTS software, third party software (software that has been developed by a software supplier independent of ENGBERTS) and the documentation belonging to this and subsequent updates to use with the products for which the software has been supplied. All other rights to the software and the documentation including the copies and subsequent updates remain with ENGBERTS or the software supplier.</p> <p>(2) The purchaser undertakes to ensure that this software and documentation is not made available to third party without ENGBERTS's prior written consent.</p> <p>(3) Copies may only be made for archiving purposes, as replacements or for fault finding. Handing over of source programmes requires separate written agreement. If the originals have a copyright notice, this notice must be put on the copies by the purchaser.</p> <p>(4) Unless otherwise agreed the right to use the software, documentation and subsequent updates will be deemed granted on acceptance of order and delivery of the same.</p> <p>14. PROTECTION RIGHTS</p> <p>(1) Checking and liability for possible protective rights of third party is the sole responsibility of the purchaser in the case of single productions. He takes full responsibility towards ENGBERTS that third party protective rights are not infringed. He indemnifies ENGBERTS should compensation claims be made by third party for any infringements.</p> <p>(2) For its part ENGBERTS indemnifies the purchaser and its customers against claims for infringements of copyright, trade marks or patents, unless the design of the goods originates from the purchaser. Our indemnification obligations are limited in sum to foreseeable damage. An additional condition of the indemnification is that ENGBERTS shall deal with all litigation and that the alleged legal infringement concerns solely the design and construction of ENGBERTS's goods without connection to or use with other products.</p> <p>(3) ENGBERTS is entitled at its own choice to release itself from the obligations under paragraph (2) by either</p> <ul style="list-style-type: none"> a) procuring the necessary licences for the allegedly infringed patents or b) putting amended goods or parts at the purchaser's disposal, which when exchanged for the infringing goods or parts of the same will redress the charge of infringement in connection with the goods. <p>15. CONFIDENTIALITY</p> <p>(1) Technical documentation, drawings, service and running instructions from ENGBERTS and all information given by ENGBERTS during contractual negotiations about the construction of the goods must be kept confidential. The purchaser undertakes not to give unauthorized persons access to this information.</p> <p>(2) If not otherwise agreed in writing information given to ENGBERTS in connection with orders is not deemed to be confidential.</p> <p>16. MISCELLANEOUS</p> <p>(1) Assignment of the contractual rights and obligation to third party is admissible only with written permission from ENGBERTS.</p> <p>(2) These terms and conditions of trade and the legal relationship between ENGBERTS and purchaser shall be governed by German law. The terms of UN rights of purchase shall not apply.</p> <p>(3) Insofar as the purchaser is a businessman, legal entity or special fund under public law legal forum shall be Edewecht / Germany for all litigation arising directly or indirectly from the contractual relationship. ENGBERTS is also entitled to take legal action against purchaser, place of purchaser's registered office.</p> <p>(4) According to §33 of the Federal German laws on data protection (BDSG) the purchaser is informed that his data will be saved by ENGBERTS. Processing of this data will be carried out in accordance with the Federal German laws on data protection and the Federal German laws on teleservice data protection (TDDSG).</p>		

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(5) Should any term in these terms and conditions of trade or a term in other agreement be or become invalid the validity of all other remaining terms or agreements shall not be affected.		
(6) If in doubt always valid German Terms and Conditions		