

# **GENERAL TERMS AND CONDITIONS OF PURCHASE**

of EGSTON Eggenburger System Elektronik  
Gesellschaft m.b.H. and  
EGSTON System Electronic spol. s.r.o.

(hereinafter referred to as "EGSTON")

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## **Clause 1 Basic provisions**

- 1.1. These General Terms and Conditions of Purchase of EGSTON (hereinafter referred to as "the GTC" or "these GTC") shall bindingly govern the relations established through purchase of goods from the Supplier by EGSTON. The rights and obligations of EGSTON and the Supplier concerning delivery of goods to EGSTON shall be governed by these GTC even if the Supplier's terms and conditions of delivery and/or other general terms and conditions exclude applicability of these GTC. Terms and conditions of the Supplier shall only be deemed accepted upon express written statement by EGSTON provided that such written statement is made before the Supplier serves upon EGSTON an acknowledgement of its purchase order.
- 1.2. Deviations from these GTC may only be made upon express written agreement between EGSTON and the Supplier.

## **Clause 2 Purchase order, acknowledgement**

- 2.1. Supply agreements (purchase order and acceptance) and delivery calls as well as modifications of and amendments to the same shall be made in writing. Purchase orders, their acknowledgement and calls may also be effected by remote data transmission, i.e. transmission via fax or via e-mail. Any and all purchase orders by EGSTON shall be subject to acceptance of these GTC.
- 2.2. Forecast / call orders:

In the case of global purchase orders the obligation to deliver shall be established by receipt of the purchase order provided that the purchase order is within the quantities stated in the forecast, irrespective of the fact that a purchase order must be confirmed immediately upon receipt.

With regard to quantities which go beyond those stated in the forecast, the Supplier's obligation to deliver shall be established upon acknowledgement of the purchase order or within three days of receipt of the purchase order unless the Supplier objects to the purchase order in writing within this three-day period.

- 2.3. Single purchase orders shall be acknowledged in writing within three working days. EGSTON may cancel a single purchase order if the Supplier fails to confirm the agreed standard delivery periods on time.

Single orders may be unilaterally cancelled by the ordering party without the same being obliged to give reasons and with no costs for it until four weeks prior to the delivery date.

- 2.4. Upon the Supplier's acceptance of the purchase order from EGSTON a contract between EGSTON and the Supplier is established the contents of which are determined by the relevant purchase order and these GTC. In case of deviations of the purchase order from these GTC the latter shall prevail.

### **Clause 3    Delivery dates and delivery periods**

- 3.1. Delivery dates and delivery periods shall be binding and fixed.
- 3.2. The goods shall be received by the receiving agent advised not later than at the confirmed delivery date. The Supplier shall deliver with an accuracy of -3/0 working days.

If the agreed delivery date cannot be met for whatsoever reasons, EGSTON shall be immediately informed thereof in writing and its decision shall be obtained.

- 3.3. The Supplier shall use all efforts to also realise calls at shorter notice on a case-by-case basis. The Supplier shall use all efforts to also realise earlier delivery dates than those agreed with EGSTON, on a case-by-case basis.

#### **Clause 4 Delivered quality, design and quantity**

- 4.1. The delivered goods shall be in exact compliance with the quality and design specifications defined in the purchase order. The quality and design specifications may be defined in the purchase order by reference to the relevant standards (e.g., DIN, ENORM, plant standard), catalogues and/or drawings, etc. The version and/or copy applicable as of the date of issuance of the purchase order by EGSTON shall be decisive for assessment of the quality of the goods. The Supplier shall be obliged to deliver to EGSTON, without a request being necessary, all records, manuals, drawings and other documentation necessary for proper use (setting up, handling, etc.) of the goods together with delivery of the goods.
- 4.2. If the quality and/or design of the goods is not defined in more detail in the purchase order, the Supplier shall be obliged to deliver the goods in such a quality and design which is suitable for the purpose for which such goods are normally used. The delivered goods shall be in compliance with all applicable safety provisions and accepted rules of technology and with the provisions of EU law (directives, regulations, standards, etc.) and of the country of destination of the final product. The relevant certificates of conformance of the country of destination shall also be part of the delivery.
- 4.3. The order in accordance with the accepted purchase order may neither in whole nor in part be executed by a supplier of the Supplier without the prior written consent of EGSTON.

- 4.4. If a separate agreement on quality has been concluded between EGSTON and the relevant Supplier, the Supplier shall also comply with the quality requirements resulting from such agreement in addition to the quality requirements resulting from these GTC.
- 4.5. EGSTON shall give immediate written notice to the Supplier of defects of the delivery as soon as they are identified in the course of ordinary business operation. The Supplier waives the plea of late notification of defect to this extent.
- 4.6. The Supplier guarantees to ensure supply with material for the products according to the rolling forecast.
- 4.7. On the basis of the yearly negotiations the Supplier guarantees to keep on stock a sufficient security volume. The exact volume shall be co-ordinated with the ordering party's purchasing department on a regular basis.
- 4.8. If a product is discontinued for reasons of production engineering or other reasons, EGSTON shall be informed in writing at least twelve months in advance.
- 4.9. At EGSTON's request the Supplier shall agree to amendments to contracts regarding consignment stocks or logistics.

#### **Clause 5 Place of performance, price of the delivery, packaging**

- 5.1. The place of performance shall be the agreed place of delivery unless the relevant purchase order or a written agreement between EGSTON and the Supplier states otherwise.
- 5.2. The Supplier shall bear the risk of loss regarding the delivered goods and all costs incurred, such as transport costs or customs duties, including but not

limited to the insurance premium for adequate transport insurance until the time EGSTON takes delivery of the goods at the place of performance, also in the event that the Supplier is obliged to hand over the goods to a carrier for the purpose of delivery to EGSTON.

- 5.3. The price shall be a fixed price unless otherwise agreed between the contracting parties. The price for the delivered goods shall particularly include the packaging of the goods, shipment of the goods to the place of performance including customs duties, if any, and unloading of the goods.
- 5.4. The delivered goods shall be properly packed in an expert manner and shall be in compliance with the transport requirements stated in the purchase order. If the purchase order does not define how the goods are to be packed and/or equipped for transport, the Supplier shall be obliged to pack the goods in a manner which is customary in the trade for such goods or, if such manner cannot be determined, in a manner necessary for preservation and protection of the goods.
- 5.5 The Supplier shall be liable for damage or loss suffered by EGSTON due to improper packaging unless the packaging was prescribed by EGSTON.

## **Clause 6 Terms of payment**

- 6.1 The prices stated in the purchase order shall apply. Unless otherwise agreed payment shall be effected within 30 days of complete delivery without defects with a 3% cash discount or without deduction within 90 days.

The Supplier agrees to effect invoicing in the form of global monthly invoices.

Prices for forecast products shall be negotiated at least once a year, usually during the third or fourth quarter of the current year for the following calendar year.

- 6.2 In order to ensure competitiveness of EGSTON the Supplier guarantees to keep the agreed prices for products which are not negotiated stable for at least 24 months. Price reductions shall be aimed at. The joint target shall be the cutting of costs.

#### **Clause 7 Invoice and delivery notes**

- 7.1. The invoice for the delivered goods and the delivery note of the Supplier shall contain the number of the purchase order, the date of the purchase order and detailed data on the delivered goods (stating quantity and nature) and shall be in compliance with all statutory provisions, in particular with relevant tax law provisions. The number of the purchase order of EGSTON shall be stated with every item of the invoice and of the delivery note of the Supplier.
- 7.2. The invoice must be delivered to EGSTON in duplicate.
- 7.3. An invoice which is not in compliance with these General Terms and Conditions shall be sent back by EGSTON to the Supplier without payment and the Supplier may not claim any sanctions from such sending back of the invoice.

#### **Clause 8 Time of performance, default**

- 8.1. The delivery dates and delivery periods agreed between EGSTON and the Supplier shall be binding and fixed as defined in Clause 3. The goods shall be deemed timely delivered only if they are received at the agreed place of performance not later than on the last day of the delivery period and/or on the delivery date; otherwise the Supplier shall be in default.
- 8.2 In the event that the Supplier is in default for whatsoever reason, EGSTON shall be entitled to the following:

- subsequent delivery by the Supplier after having been granted a reasonable grace period or
- cancellation of the specific delivery in whole or in part with no grace period and, if applicable, he shall be entitled to substitute performance at the Supplier's cost.

In case of repeated delay of the subsequent delivery and/or improvement EGSTON may cancel the whole or parts of the purchase order with immediate effect.

The right to claim additional damages shall not be affected thereby. If delivery is taken of a late delivery or service, this shall constitute no waiver of claims for damages.

- 8.3. In the case of default the Supplier shall, in addition, be obliged to pay to the Ordering Party a contractual penalty independent of fault of 2% of the relevant total contract value for each commenced week of delay until actual delivery or cancellation of the order by the Ordering Party. In case the order is cancelled an additional contractual penalty that is independent of fault of 10% of the total contract value shall be paid by the Supplier.

## **Clause 9 Insurance**

The Supplier undertakes to take out product liability insurance for all deliveries effected and services rendered by him with a sum insured appropriate for the risks of the region where the deliveries or services will be used, for property damage and physical injury, including cover for costs of recall actions, and to maintain the same for the duration of the delivery/service. The Supplier shall provide evidence of conclusion of an insurance contract upon signing of the Contract by presenting a written confirmation of the insurer. The Supplier

undertakes to immediately notify the Ordering Party of any changes of insurance contracts, in particular if insurance coverage ceases to exist.

As to the merits and the amount EGSTON's claims vis-à-vis the Supplier shall be independent of the foregoing insurance contracts and the sums insured agreed therein. In addition, the Supplier shall insure the goods to be delivered against usual risks, such as fire, theft, transportation and damage, at his cost until delivery.

#### **Clause 10 Payment, prohibition to assign**

- 10.1. The period for payment of the purchase price by EGSTON shall commence upon receipt of the proper invoice as defined in Clause 7 of these GTC by EGSTON or upon receipt of the goods by EGSTON if this occurs at a later point of time.
- 10.2. Payment of the purchase price by EGSTON shall neither constitute recognition of proper delivery free from defects nor a waiver of any claims for damages and/or any other claims of EGSTON which have arisen in the course of defective delivery.
- 10.3. An assignment of claims from deliveries of goods shall only be effective vis-à-vis EGSTON upon prior written consent.

#### **Clause 11 Secrecy**

- 11.1 The Supplier and EGSTON undertake to treat as confidential all information, documents, know-how and knowledge of the other which is/are not obvious, in particular if of a commercial or technical nature, which they receive or which they obtain knowledge of due to the business relationship, to use the same only for the purpose of execution of the individual purchase orders and to return the same immediately and without request upon termination of this

Contract. The Supplier shall be obliged to agree on these conditions in writing with his upstream suppliers. This stipulation shall survive the term of this Contract.

#### **Clause 12 Rights of third parties**

The goods delivered to EGSTON must not be encumbered by any security rights or other rights of third parties of whatsoever kind. In case of a violation of the Supplier's obligation as defined in the previous sentence EGSTON shall be entitled to consider the entire delivery defective and to claim immediate delivery of goods which are free from defects. Through exercise of the rights as defined in the second sentence of this Clause 12 the claims of EGSTON for damages and other claims in accordance with the statutory provisions and/or these GTC, in particular according to Clause 14, shall remain unaffected.

#### **Clause 13 Acceptance**

Self-control has been agreed with the Supplier. When taking delivery of the goods EGSTON shall not be obliged to carry out a receiving inspection. EGSTON shall not be subject to a duty to inspect and notify defects as defined by Section 377 HGB [Austrian Commercial Code]. A confirmation on a document of the Supplier on acceptance of the goods shall in no case be deemed a confirmation of quality, freedom from defects or completeness.

#### **Clause 14 Liability for defects**

- 14.1. The Supplier warrants and guarantees for a period of 36 months that the products delivered by him have been made according to the specifications and in a professional manner and that they are state of the art and comply with any and all relevant technical and legal standards and that use of the product by

EGSTON will not infringe any rights of third parties whatsoever and that the products will maintain these properties for a period of 36 months.

- 14.2. If the Supplier plans to change materials, manufacturing processes, supplied parts, data sheets or other documents with regard to delivery products, he shall inform EGSTON. In the case of purchase orders which are already being processed changes may only be made upon EGSTON's written approval.
- 14.3. If agreed with EGSTON, both a Certificate of Conformance (COC) regarding the technical standards and safety regulations to be applied and a COC regarding the applied workmanship standards shall be enclosed. Every COC shall state the exact order number.
- 14.4. The Supplier shall immediately inform EGSTON about problems which might impair reliability, processability and/or usability of the products. The Supplier shall be responsible for damage suffered or costs incurred by EGSTON due to non-compliance with this duty to inform EGSTON.
- 14.5. If defects occur regarding a minimum of 3% of the component type delivered (so-called serial defects), the Supplier shall newly deliver all parts of the series concerned and reimburse EGSTON all expenses resulting therefrom.
- 14.6. EGSTON shall be entitled to immediately notify Supplier in writing of any defects of the delivery as soon as they are noticed.
- 14.7. In case incomplete or defective goods are delivered, EGSTON shall, at his option, be entitled to the following:
  - either to demand improvement and/or subsequent delivery by the Supplier by fixing a reasonable grace period, or
  - to rescind the contract in whole or in part without granting a grace period and return of the shipment at the risk and cost of the Supplier

and, if applicable, to have the defect repaired, either by EGSTON itself or a third party, at the Supplier's cost.

If the same goods are repeatedly delivered with defects, then EGSTON shall be entitled to cancel the order with immediate effect.

Claims based on incomplete or defective goods shall include any additional reimbursement, including but not limited to reimbursement of costs of testing, transportation, travelling, labour and material.

- 14.8. The Supplier's liability for defects of the goods which are repaired by EGSTON and/or a third party shall remain in effect. If a third party asserts a claim vis-à-vis EGSTON on grounds of defects of the goods delivered to EGSTON by the Supplier, the Supplier undertakes to prevent that EGSTON suffers a disadvantage as a result thereof, be it in the form of lost profit, consequential damage of any kind or otherwise, and to compensate EGSTON for such disadvantage in the event that such a disadvantage occurs to EGSTON. For the purpose of fulfilling its obligation as defined in the foregoing sentence the Supplier shall, in particular, be obliged to provide EGSTON with all necessary information, documents and additional items in a timely manner, to effectively support EGSTON in negotiations and any possible dispute with the relevant third party and to reimburse EGSTON all costs incurred by EGSTON through the assertion of the said claim by the third party.

## **Clause 15 Liability**

- 15.1. Damage suffered by EGSTON which is caused by insufficient services of the Supplier or by negligent violation of its contractual obligations shall be reimbursed by the Supplier in accordance with and subject to the statutory provisions.

- 15.2. The Supplier shall bear all the costs of legal defence of EGSTON including all court or out-of-court costs. The same shall apply to costs for defence measures under administrative law and criminal law if and to the extent that EGSTON itself is not responsible.
- 15.3. The Supplier undertakes to compensate EGSTON for any damage and any other pecuniary disadvantage suffered by the same in connection with assertion of a claim by a third party or otherwise directly or indirectly related to the provisions on damage caused by a defect of a product (product liability) with regard to the goods delivered to EGSTON by the Supplier. In particular, the Supplier shall be liable for damage in accordance with the relevant provisions of EU law. Such obligation refers to damage in the form of death, bodily injury and/or damage to or destruction of property other than the defective product and to damage or loss caused by taking defective products out of circulation. In any case, EGSTON shall be compensated for lost profit and any, including contractual, claim of third parties vis-à-vis EGSTON caused by the Supplier, even if indirectly.
- 15.4. The Supplier undertakes to know and comply with all relevant product safety provisions, in particular European and national ones, and to observe all safety requirements for putting the products onto the market, as well as to reimburse any losses caused by non-compliance with product safety provisions.
- 15.5. If the Supplier subsequently obtains knowledge of circumstances which might lead to a claim under product liability in connection with the goods delivered to EGSTON, the Supplier shall be obliged to inform EGSTON thereof without delay. Fulfilment of the obligation defined in the previous sentence shall not affect the obligations of the Supplier defined in the remaining provisions of this Clause 15.
- 15.6. The obligations of the Supplier according to Clause 15.5 shall also relate to those cases where a third party asserts a claim under product liability.

Particularly in disputes based on these grounds the Supplier shall be obliged to timely make available to EGSTON all means of evidence and to otherwise effectively support EGSTON and to reimburse EGSTON all costs related to the conduct of such proceedings.

- 15.7. The Supplier shall be liable for measures of EGSTON or EGSTON's customer to ward off damage (e.g. recall measures) to the extent he is legally obliged thereto.

#### **Clause 16 Production documents, intellectual property**

- 16.1. Drawings, samples, models, moulds and other aids which EGSTON provides to the Supplier for the purpose of fulfilment of its purchase order shall remain the property of EGSTON and EGSTON may freely dispose thereof. The Supplier shall be obliged to keep the same secret and to use them only in accordance with the purpose for which they were made available as defined in the previous sentence and to use them and dispose of them only in a way which does not expose EGSTON to the risk of third parties asserting claims based on patents, utility patents, topographies, trademarks, copyrights or other intellectual property or on account of unfair competition.

- 16.2. The Supplier warrants to EGSTON that delivery of the goods in accordance with these GTC and use of the goods by EGSTON or its customers will not result in any infringement of rights under patents, utility patents, topographies, trademarks, copyrights or other intellectual property of third parties or of provisions on unfair competition.

#### **Clause 17 Governing law and place of jurisdiction**

- 17.1. All legal relationships resulting from these GTC shall be governed by substantive Austrian law. Non-mandatory statutory provisions which are in

conflict with these GTC and/or with the contract of which these GTC are part, shall not be applied.

- 17.2. All disputes between EGSTON and the Supplier and/or their legal successors which result from the contractual relationship and which, at least in part, are governed by these GTC or are related thereto, including the issues of establishment, validity, interpretation or termination of the relevant contract, shall be settled by Austrian courts of law. The Supplier and EGSTON agree on exclusive jurisdiction of the courts in Vienna. At the option of EGSTON a claim against the Supplier may also be filed with the court having jurisdiction over the registered office of EGSTON or of the Supplier.

## **Clause 18 General**

- 18.1. If the Supplier becomes insolvent or if court or out-of-court insolvency proceedings are initiated in Austria or abroad over a part of the Supplier's assets which is not insubstantial, EGSTON shall be entitled to rescind the contract with regard to the unfulfilled part.
- 18.2. By his signature the Supplier expressly confirms that he has carefully read these GTC, that he agrees to their entire content and that he is aware of their applicability to and binding nature for all purchase orders of EGSTON and contracts between it and EGSTON which are or were concluded on the basis of such purchase orders. These GTC shall also apply in case of different or conflicting notes in the terms and conditions of delivery of the Supplier.
- 18.3. If individual provisions of these GTC are or become ineffective in whole or in part or if it turns out that there is a gap in these GTC, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision permitted under law which comes as close as possible to the purpose of the ineffective provision. In the case of a gap the parties agree on

a valid provision which corresponds to that which would have been agreed in accordance with these GTC if this matter had been considered in advance.