

ENGEL Purchasing Terms (as from March 1st 2010)

(1) VALIDITY

Provided nothing to the contrary has been agreed upon explicitly in writing - inferior to the text of the order or acceptance - the purchasing terms rendered hereinafter shall be applicable exclusively. General terms and conditions of business or forms of the supplier shall by no means be accepted or become part of the contract, independent of whether we knew them or not, whether we have contradicted their validity or not and irrespective of whether they are in opposition to the purchasing terms or not. Even the unopposed acceptance of the delivery or performance activities by us shall not be construed to indicate a submission to these terms and conditions. In case of continuous business transactions, our purchasing terms shall be applicable even without special reference to the said.

(2) ORDERS / OFFERS

Our suggestions to conclude a legal transaction shall constitute a binding order only, if they have been submitted in writing, the goods or services have been described in detail, and if it has been expressed that we shall be bound by the said. In this case as well, however, we shall be entitled to countermand until the legal transaction has been established. The supplier shall have to check carefully all data contained in the order, in particular the technical requirements and conditions, other descriptions, specifications and data with respect to the technical feasibility and purposefulness, and shall inform us without delay of any circumstances which could frustrate, aggravate or delay the ordered realization and/or use of the supplied objects as directed. The said shall apply also for any subsequent modification or supplementation. At least up to the end of fourteen calendar days after receipt, the supplier shall be bound to his offer to the exclusion of any possibility of countermand. The costs accruing for the preparation and submittal of the offer (including cost estimates) shall always be borne by the supplier.

(3) CONCLUSION OF CONTRACT

The legal transaction shall be brought about effectively as soon as the supplier receives our approval to his offer (acceptance / order confirmation) or as soon as we receive the approval of the supplier - in case of an effective order. If the supplier starts with the execution of the legal transaction, the said shall be considered to be an approval. If the acceptance of the supplier contains supplements or deviations to our order, the said shall be considered not written, unless the supplier has explicitly pointed out to these supplements or modifications. Thus, the effectiveness of the legal transaction shall require our explicit and written approval of these modifications or supplements; the acceptance of the delivery alone shall not be considered an effective approval. If our acceptance (order confirmation) deviates from the offer of the supplier, this deviation shall be considered accepted, if the supplier does not contradict within fourteen days after receipt, at the latest, however, on execution of the delivery. As long as the supplier has not completely fulfilled his obligations, we shall be entitled to request modifications inclusive of modifications of the goods or services, if the said is reasonable and the consequences are taken into consideration adequately with respect to delivery and outlay.

(4) DELIVERY ITEM (GOODS OR SERVICES)

If no further requirements are mentioned in the order, the delivery item shall be in keeping with the latest state of technology, shall be made of first-class quality material, and shall be in conformity with the pertinent EU directives and factory standards or other standards, such as ÖNORM, ÖVE, DIN, ISO, EN, VDE, VDI or any equal national and international standards that exist, if the said exist. Moreover, the delivery item shall be in conformity with the contract only, if it is suitable for the purposes the delivery item is usually used for, and if the said is suitable for the specific purpose, in particular for the conditions and place of use, of which the supplier has been informed explicitly or in any other way. Documentations and operating instructions shall have to be prepared in hardcopy and in electronic pdf.-version as well as in conformity with the specifications to be contractually agreed upon between the parties; if, however, the said is absent, they shall be drawn up as otherwise usual for technical documentations. If public-law provisions for the protection of consumers, employees or the environment obligate the marking, the preparation and hand-over of declarations of conformity, of declarations of compliance, of operating and mounting instructions, et cetera, the preparation and hand-over of the said shall be part of the obligation of the supplier. The seller shall be obligated to keep available spare parts for a period of at least ten years after the delivery. The spare parts shall be supplied at serial price.

(5) PRICES

In the absence of other explicit agreements, the prices shall be considered inclusive of all duties, customs and incidental expenses; incidental expenses shall comprise in particular the costs for packaging, loading, transport and the procurement of export and import permits. If nothing to the contrary has been agreed upon, the prices shall also include the re-acceptance and correct recycling and disposal in keeping with the manufacturer's obligation of re-acceptance and disposal, in particular of old electrical and electronic devices. Prices agreed upon and/or based on the contract shall be fixed prices. Sliding price clauses and the like shall not be accepted by us.

(6) DELIVERY TIME

Dates of delivery or delivery periods shall have to be strictly kept. Decisive for their observation shall be the hand-over of the delivery item free from defects in keeping with the Incoterms applicable for the delivery; if, however, a formal acceptance of the delivery item has been arranged, the time of formal acceptance shall be applicable. We shall not be obligated to accept deliveries prior to their delivery date. If, however, we accept deliveries prior to their delivery date, the agreed date shall continue to be the time of acceptance which shall be decisive for the beginning of the payment and warranty periods as well as for the passing of risk. In addition, we shall reserve the right to charge the accruing costs (warehousing costs). In the event of delay we shall be entitled to charge a penal sum independent of fault to the amount of 1 per cent of the total delivery value for each calendar day started, which shall be limited to a total of 5 per cent for each case of delay. Any damage exceeding the penal sum shall have to be compensated in addition. The supplier shall have to inform us in writing without delay about any recognizable delay in delivery stating the reasons and the potential duration. If he does not comply with this obligation, he shall not cite that he is not responsible for the delay; without giving grace we shall be permitted to withdraw from the contract immediately. In all other cases, the supplier shall have to fulfill his obligations within a reasonable period, at the latest, however, within seven calendar days, failing which we shall be permitted to declare the withdrawal from the contract without further grace.

(7) DELIVERY

If nothing to the contrary has been agreed upon explicitly in writing, the delivery or shipment shall be made at the cost and risk of the supplier always free of expenses to our headquarters or to one of our factories ("DDP" - Incoterms 2000). If another place of delivery has been indicated, in particular the seat or factory of our customer, the delivery shall have to be made DDP to the place of delivery indicated. Part deliveries shall require our previous approval. The costs of packaging, loading and transport shall be borne by the supplier. The packaging shall have to take into consideration environmental and transport aspects; the packaging and filling material has to be homogeneous and recyclable. Deliveries of replacements and wearing parts shall have to be made in suitable individual packaging. Independent of the delivery clauses agreed upon in keeping with Incoterms 2000, the supplier shall have to carry out export and import clearance in case of deliveries originating in countries outside of the EU. If the delivery item is forwarded by us to a country outside the EU, the supplier shall have to assist us with the export clearance as well as the import clearance into the third-party country. In case of deliveries originating in a country outside of the EU, the shipping bill shall be provided free of charge with a customs invoice (in duplicate) as well as a certificate of origin (declaration of origin, movement certificate, et cetera) for favoured import customs clearance. The consignment shall be accompanied by a delivery note containing all order data as well as data on gross and net weight.

(8) GUARANTEE

The supplier shall assure the manufacture of the delivery item in conformity with chapter (4) and guarantees that no defects or faults in the delivery item will occur within a period of thirty months after the actual acceptance of the delivery. If a defect can be remedied, it shall be at our discretion to decide whether the remedy shall be by replacement or rework; we shall not be obligated to give the supplier the opportunity for natural restitution. The outlay required for the remedy of the defect, in particular costs for transport, travelling, work and material as well as the outlay to find the cause and to remove the defect shall definitely be borne by the supplier, independent of his fault. Legal obligations with respect to the examination of the delivery and the obligation to complain (notice of lack of conformity) shall be limited to the extent defined in chapter (12).

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(9) RIGHTS OF THIRD PARTIES

The supplier shall guarantee that the delivery item is free from any rights of third parties, in particular from intellectual property rights (industrial property rights, copyrights or associated property rights), and that the ownership or the use of the delivery item is not infringed by property rights or property right applications of a third party. Should the rights or claims of a third party result from industrial secrets or other intellectual property, the guarantee shall apply to all countries of the European Union and to such states in which the supplied goods are subsequently sold or used in any other way; however, in the latter case under the proviso that the supplier had knowledge of, or could not have been unaware of, the fact that the supplied goods were to be sold or used in the said country. The supplier shall indemnify us and our customers concerning any third-party claims and shall obtain free of charge the required permissions (licenses) or, however, shall change the delivery item in keeping with the contractual targets in such a way that an infringement is no longer given.

(10) INVOICING

The invoices shall have to be submitted in duplicate. The invoices shall have to contain all order and delivery data, the value-added tax registration number (VAT Reg. No.) as well as the ARA license number, if and when applicable. In addition, the invoices shall have to be categorized according to the orders. In case of work services and mounting work, the time sheets confirmed by us shall have to be included. Invoices which contradict our conditions or the public-law provisions (in particular those rendered in the Austrian customs and tax acts) shall be considered not submitted.

(11) TERMS OF PAYMENT

If nothing to the contrary has been agreed upon explicitly, we shall pay on the thirtieth day of the month following the delivery deducting a trade discount of 3 per cent or within sixty days after receipt of invoice deducting a trade discount of 2 per cent; in the case of part invoices the trade discount shall be deducted each time separately; cash on delivery consignments shall not be accepted. The payment shall be made in time, if the order in the form of instruction to the banking institution is given on the last day of the period. The due-date of the invoice shall require that the delivery has been complete and correct, and we have had the opportunity to examine the delivery item beforehand, the invoice is substantiable, and the invoice including all enclosures is in keeping with chapter (10) otherwise. If the supplier has to render available other documents (chapter (4)) apart from the actual delivery item, the period allowed for payment shall not start before the complete handover of these documents. The payment shall not indicate the acknowledgement of the correctness of deliveries or services, and thus is no waiver of any kind of claim due to us. We reserve the right of offset of counter-claims, also those of companies in the group. The assignment of payment claims shall be permitted only with our previous written approval.

(12) QUALITY ASSURANCE / TERMS OF ACCEPTANCE

The supplier undertakes to guarantee that all public-law provisions (as well as national and international public-law provisions) for the protection of consumers, employees or the environment are observed in the manufacture of the delivery item. The said shall apply at least for the standards of the European Union and of the country, in which the nominated place of delivery is located or of the country, in which our customer is domiciled, to whom the delivery is forwarded and which was known when the legal transaction was concluded. If the delivery item contains chemicals, and if the said are included in the scope of application of the REACH directive (EU Directive 1907/2006), the supplier shall have to prove their registration; the said guarantees that the intended use of the delivery item is covered by the registration, and shall provide us with all safety-related information (safety data sheet). If the supplier employs sub-suppliers, the said shall have to be made known to us. The supplier shall have parts critical for the function manufactured by or shall purchase the said from those sub-suppliers only, which have been cleared by us. Our technical terms of delivery shall have to be observed for purchased parts or commissioned work which is carried out by means of drawings. The realization of process, production and construction modifications as well as a shift of the manufacturing location shall have to be notified in advance and shall require our previous approval, if (i) in our and our customers' case the shape or function compatibility of the delivery item or its individual components is no longer ensured, if (ii) a change of use occurs, if (iii) the properties agreed upon or those properties could be affected which are required for the intended or usually applicable use, if (iv) the delivery item is no longer downward compatible. Upon arrival, we and/or our customer (in the case of direct delivery) shall carry out an inspection only for identity, delivery quantity and transport damage potentially recognizable clearly on the outside packaging.

Other legal examination and complaint obligations shall be ruled out herewith explicitly. We shall reserve the right to carry out a system, process or product audit at the suppliers works at any time without prior notification. We shall be permitted to demand that ingoing materials, parts of the delivery item or entire delivery items, which are procured from sub-suppliers, are included in the quality assurance system of the supplier. In this case, the supplier shall have to ensure that the audits mentioned hereinbefore can be carried out at the sub-suppliers location as well.

(13) PLACE OF PERFORMANCE, PASSING OF PROPERTY AND RISK

The place of performance shall be defined as the place of delivery mentioned explicitly in the order, if such an explicit nomination is absent, the place of delivery mentioned in chapter (7) shall apply. The passing of the price and performance risk as well as of the property risk shall depend on the Incoterm to be applied to the respective delivery. If, however, a formal acceptance takes place, the risk and property shall not pass prior to this formal acceptance.

(14) LIABILITY

The supplier shall be fully liable for the replacement of the damage caused directly or indirectly by illegal, in particular contract-breaking and culpable behaviour including lost profit and any other consequential damage. The supplier shall be liable for the fault of his sub-contractor or his supplier as he is for his own fault. If the applicable law provides for liability even without fault, in particular for faulty products or for hazardous action, the supplier shall be liable also without fault in keeping with these provisions. Claims for damages shall have the same legal standing as recourse, if we are held liable by a third party due to a defect or fault of the delivery item. The pre-requisites and the scope of recourse shall be determined by the applicable law. The supplier shall have to keep us indemnified against claims of our customers as well as of other third parties if he is liable in keeping with the provisions rendered hereinbefore or if we have recourse claims against the supplier. If the supplier violates a legal obligation for operational safety through the construction, manufacture or presentation of the delivery item or through a lack of control, the supplier shall be liable to us for the compensation of the damage. If the supplier recognizes or should recognize when applying reasonable care that the delivery item or hence a product, to which the delivery item is mounted or connected up, is faulty or turns faulty thus causing a hazard for life, limb, health, property or environment, he shall be obligated to recall the delivery item. The outlay caused shall have to be borne by the supplier, if he has caused the necessity of the recall. Measures which we take within the framework of the product recall shall constitute an outlay in keeping with the provisions mentioned hereinbefore.

(15) CHOICE OF LAW, PLACE OF JURISDICTION

Our legal relationship with the supplier shall be subject to substantive Austrian law to the exclusion of the conflict of law rules of Austrian international private law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods. All disputes, disagreements or any claim arising out of or in connection with this or subsequent orders including any question regarding its existence or validity shall be exclusively referred to the competent court in Linz, Republic of Austria. Independent thereof, we shall be permitted to bring action against the supplier at the competent court of law at his domicile, headquarters or usual abode.

(16) MISCELLANEOUS

Messages sent to us shall be observed only, if they are written in German or English language. Messages may be transmitted by facsimile or by electronic means. They shall become effective at the point in time when they have reached the recipient or would have reached the said under normal circumstances with the type of transmission chosen. Messages which reach us on Saturdays, Sundays or one of our legal public holidays shall become effective only on the next working day. The contract concluded on the basis of these purchasing terms shall remain effective, even if one of the clauses is null and void or becomes null and void. In such a case, the void or ineffective clause shall be replaced by such a clause which comes closest in an effective manner to the economic purpose of the ineffective clause. Loopholes in the contract shall be filled in the same manner.