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## **General Terms and Conditions of Sale and Delivery (“GTCS D”) (dated November 2021)**

**E+E Elektronik Ges.m.b.H.**, Langwiesen 7, 4209 Engerwitzdorf, Austria

### **1 Scope of Application, General Provisions**

- 1.1 These general terms and conditions of sale and delivery shall exclusively apply to any and all offers, acceptances of offers, order confirmations or any and all deliveries and sales of E+E Elektronik Ges.m.b.H. (hereinafter “E+E” or the “Seller”), as well as to any services related thereto, including but not limited to supplies, installation and assembly services, unless expressly modified by written agreement of the parties in individual cases.
- 1.2 The Seller hereby objects to and does not accept any terms (possible terms and conditions of purchase or other unilateral terms) of the buyer, which shall only be binding on the Seller if the Seller expressly consents to such changes in writing.
- 1.3 These GTCS D shall only apply to entrepreneurs.
- 1.4 The buyer shall have a non-exclusive right to use standard software and firmware with the agreed upon performance features in an unchanged form on the agreed devices. The buyer may make a backup copy without prior agreement. Other copies must expressly not be made.

### **2 Order, Offer**

- 2.1 Unless otherwise agreed upon in writing, any offers and quotations are non-binding and subject to change and are made subject to the reservation of self-delivery if we provide components made by third parties.
- 2.2 The contract shall only be deemed to have been concluded upon acceptance of the buyer’s order by the Seller in the form of an order confirmation in written or text form or upon actual performance of the service. In the latter case, the invoice shall also be deemed to be the order confirmation.
- 2.3 All sales documents, specifications and price lists must be strictly treated confidentially and not be made accessible to third parties. The Seller reserves its unrestricted rights of use and exploitation under property and copyright law to quotations, drawings and other documents (“documents”). If the order is not placed, all documents shall be promptly returned upon request.
- 2.4 The contracting party shall be bound by the order for four weeks unless otherwise stated in the order.
- 2.5 The goods only offer the safety that can be expected due to approval regulations, manuals, assembly and operating instructions, rules from E+E in relation to the handling of the object of purchase – in particular with regard to any required inspections – and other instructions given.
- 2.6 If the goods have to be manufactured or otherwise processed or finished by the Seller and the buyer has furnished specifications, documents or other data for this purpose, the buyer shall indemnify the Seller against any loss, damage, costs or other expenses of the buyer which the buyer has to pay or is prepared to pay because the contractual manufacturing, processing or finishing of the goods has turned out to violate a patent, copyright, trademark or other property right of a third party due to data furnished by the buyer (specifications, documents, etc.).

### **3 Purchase Price/Prices**

- 3.1 All prices quoted by the Seller are on an “ex works” basis unless otherwise stated in the offer or agreed upon between the buyer and the Seller. Insofar as the Seller is willing to deliver the goods to other locations, the buyer shall bear all costs thereby incurred for transport, packaging, insurance and customs duties, if applicable. The prices are exclusive of packaging and plus applicable value added tax or other sales tax.
- 3.2 The Seller reserves the right to increase the price of the goods in such a manner and to such extent as is necessary due to general price developments beyond the Seller’s control (such as exchange rate fluctuations, currency regulations, changes in customs duties, significant increases in material or

manufacturing costs) after due notice to the buyer and before delivery of the goods. The Seller is also entitled to correspondingly increase the price of the goods due to changes in delivery details.

#### **4 Terms of Payment**

- 4.1 The buyer shall pay the purchase price within 30 days of the invoice date unless otherwise agreed upon. Payments shall only be made by bank transfer into an account designated by E+E. Bills of exchange and cheque payments will not be accepted as fulfilment of the payment obligation.
- 4.2 E+E shall be entitled to make partial deliveries or deliveries before the delivery date and to issue an invoice therefor.
- 4.3 If the buyer does not fulfil their payment obligation by the due date, the Seller, at its option, may – without waiving any further rights and claims it is entitled to –
  - terminate the contract; or
  - suspend further deliveries to the buyer; and/or
  - charge interest on the outstanding amount at a rate of 9 percentage points above the applicable basic rate of interest of the European Central Bank to the buyer; and/or
  - claim compensation from the buyer for all out-of-court costs and expenses incurred in connection with the default of payment.

#### **5 Delivery**

- 5.1 Delivery shall be EXW (Incoterms 2020) at the Seller's place of business as soon as the Seller has notified the buyer that the goods are ready for collection or, if another place of delivery has been agreed upon with the Seller, by delivery of the goods to such place.
- 5.2 Should the buyer be in default of acceptance of delivery on the due date, they shall nevertheless be obligated to pay the purchase price. In such cases, the Seller shall store the goods at the buyer's risk and expense.
- 5.3 Any delivery dates or delivery periods stated are estimates. Unless expressly agreed upon otherwise, compliance with the delivery time is not an essential contractual obligation constituting grounds for liability cases.
- 5.4 If E+E is not supplied, not supplied on time or not supplied properly by its upstream suppliers for the products to be delivered to the buyer or for those goods or services which are necessary for the processing or manufacture of the products to be delivered to the buyer, although E+E is not responsible for this, E+E shall be obligated to notify the buyer of this without undue delay and entitled to rescind the contract with the buyer within a reasonable period of time after the occurrence of such delivery difficulties on the part of its upstream suppliers. In case of rescission, the Seller is obligated to reimburse the buyer for any consideration already paid, in particular down payments, without undue delay. Any further claims of the buyer are excluded in this case.
- 5.5 Should the Seller fail to deliver on time, the buyer is entitled to terminate the contract after setting a reasonable grace period twice without success. The buyer may only claim damages for non-performance if the delay in delivery was due to intent or gross negligence.

#### **6 Passing of Risk**

- 6.1 The risk of damage to or loss of the goods shall pass
  - to the buyer at the time of handover or, if the buyer is in default of acceptance, at the time the Seller offers to hand over the goods

Insofar as the goods are delivered to or at the Seller's premises (EXW, Incoterms 2020) at the time the Seller notifies the buyer that the goods are ready for collection.

#### **7 Reservation of Title**

- 7.1 Notwithstanding delivery and the passing of risk or any other provision of these GTCS, title to the goods shall not pass until the purchase price has been paid in full.

As long as the retention of title applies, the buyer may neither pledge the goods nor assign them as security. In the event of seizure or other intervention by third parties, the buyer shall notify the Seller without undue delay so that the Seller can take appropriate legal action. If the buyer fails to comply with this obligation, they shall be liable for any damage incurred.

- 7.2 Until full payment has been made, the buyer may use or resell the goods in the ordinary course of business, provided that they keep any remuneration (including any insurance payments) for the Seller and the funds separate from their assets and those of third parties.
- 7.3 If the goods have been further processed and if the further processing has also been made using parts in which the seller of the reserved goods has no ownership, then the seller of the reserved goods shall acquire corresponding co-ownership. The same shall apply in the event of mixing for goods of the Seller.
- 7.4 The Seller undertakes to release securities to which it is entitled at the buyer's request to the extent that the realisable value of the securities exceeds the claims to which the Seller is entitled. The Seller is entitled to choose the securities to be released.
- 7.5 The revocation or assertion of the reservation of title or the seizure of the reserved goods by the Seller does not constitute rescission from the contract unless the Seller has expressly declared this.

## **8 Warranty and Liability**

- 8.1 The buyer must promptly inspect the goods upon receipt and raise any complaints in accordance with Section 377 of the Austrian Business Code (*Unternehmensgesetzbuch*, "UGB").
- 8.2 The Seller warrants that the delivered goods are free from defects of quality and defects of title. A defect of quality exists in the case of material and processing defects which impair use and which do not comply with the agreed specifications. Defects of quality shall be repaired or the goods delivered or provided again free of charge at the Seller's option, provided that the defect of quality already existed at the time of the passing of risk.
- 8.3 Claims for subsequent performance, reduction or cancellation of the contract or other claims based on a defect of quality or a defect of title shall become statute-barred within 12 months from the commencement of the statutory limitation period. This period shall not apply insofar as the law prescribes a longer period in the case of buildings/construction defects, in the case of intent, fraudulent concealment of a defect or non-fulfilment of a guarantee as to quality.
- 8.4 If supplementary performance fails after two reasonable deadlines have been set, the buyer may rescind the contract or reduce the remuneration without prejudice to any claims for damages pursuant to section 9.
- 8.5 Notification of defects must be made in writing without undue delay. If the notice of defect is unjustified, the Seller is entitled to be reimbursed by the buyer for the expenses incurred.
- 8.6 The Seller accepts no liability that the goods are fit for a particular purpose unless it has expressly agreed to the intended purpose.
- 8.7 The Seller's liability does not extend to parts, materials or other equipment manufactured by or on behalf of the buyer unless the manufacturer of such parts accepts liability vis-à-vis the Seller.
- 8.8 The warranty does not cover any defects that arise due to faulty installation or use by the buyer or third parties, misuse, negligence, defective or lack of maintenance, improper use, non-compliance with the operating instructions or other instructions of the Seller, or in the course of normal wear and tear. It also does not cover any insignificant deviations from the agreed quality.
- 8.9 Any claims of the buyer due to defects of quality or defects of title are excluded. This shall not apply in the event of fraudulent concealment, non-fulfilment of a guarantee as to quality, culpable injury to life, body or health or in the event of an intentional or grossly negligent breach of duty by the Seller. The provisions above do not shift the burden of proof to the buyer. The Seller shall not be liable for the services and goods provided or delivered by its suppliers.

Further claims or claims of the buyer other than those regulated in sections 8 and 9 due to defects of quality or defects of title are excluded.

## **9 Liability and Exclusion of Liability**

- 9.1 Unless otherwise provided for in these GTCSD, any claims for damages of the buyer, in particular due to breach of obligations arising from the contractual relationship and for tort, shall be excluded irrespective of their legal basis.

The Seller's exemption from liability shall, however, not apply in the event of a cause of defect or damage attributable to fraudulent intent, wilful misconduct or gross negligence, or in the event of claims under the Product Liability Act, non-fulfilment of an assumed guarantee, or culpable injury to life, body or health.

- 9.2 Claims of the buyer for loss of profit, loss of production, installation and removal costs or due to the loss of data are excluded.
- 9.3 Any recourse claims shall be excluded unless the ultimate buyer is a consumer or the buyer has entered into agreements with the ultimate buyer that go beyond the statutory claims based on defects.

## **10 Export Control**

- 10.1 The buyer is obligated to comply with any and all applicable export control regulations.
- 10.2 The fulfilment of the contract is subject to the proviso that there are no obstacles due to Austrian, U.S. or other applicable national EU or international regulations of foreign trade law as well as no embargoes or other sanctions.
- 10.3 The buyer is obligated to provide all information and documents required for export, transfer or import.
- 10.4 If the buyer violates the aforementioned provisions, they shall indemnify the Seller against any and all claims, demands, etc. arising from or in connection with such violation, and they shall indemnify the Seller and hold the Seller harmless in this respect.

## **11 Service and Maintenance**

- 11.1 These GTCS D shall correspondingly apply to the provision of service, calibration, repair or installation works ("services") if not otherwise agreed upon.
- 11.2 At the Seller's option, the buyer shall make the products available for the performance of services at their premises or shall send them to the Seller at the buyer's expense and risk.
- 11.3 The Seller is entitled to outsource the performance of the services, including to delegate all rights and obligations, to third parties.
- 11.4 The service staff shall be given free and safe access to perform the commissioned services unhindered. The buyer shall provide qualified and authorised personnel as necessary for the duration of the services. Any necessary hazard warnings and safety instructions shall be provided by the buyer in writing.
- 11.5 If, due to lack of cooperation by the buyer, lack of access, lack of qualified, authorised personnel or lack of necessary information it is not possible to carry out the services at the agreed time or only at additional expense to the Seller, the resulting additional costs shall be borne by the buyer in accordance with the current rates (hourly rates, expenses, travel costs, etc.).
- 11.6 The buyer shall also bear the costs of any waiting times of the service staff of 30 minutes or more caused by the buyer, e.g. due to longer registration times, non-presence of contact persons or similar.
- 11.7 The risk for the services shall pass to the buyer upon the provision of the services. Formal acceptance is not required, notification of completion of the services is sufficient unless otherwise agreed upon.
- 11.8 If deadlines cannot be met due to circumstances for which a party is not responsible (cf. in particular section 13 of these GTCS D), a reasonable new deadline shall be agreed upon between the parties.

## **12 IP Rights, Industrial Property Rights**

- 12.1 E+E shall only be liable for the infringement of third party industrial property rights or copyrights ("property rights") within Austria. E+E shall not be liable for the infringement of any property rights if based on a change in the results of the services which was not wholly or partly carried out or authorised by E+E. E+E shall also not be liable for infringements of property rights resulting from a use not contractually intended for the relevant results of the services.
- 12.2 In the event of justified claims by third parties against the buyer due to infringements of property rights by the Seller, the Seller shall be liable for the period of 12 months pursuant to section 8 as follows:

The Seller has the option of either obtaining a right of use for the goods in question at its own expense or modifying or replacing the goods in such a way that no property right is infringed. If this is not possible for the Seller on reasonable terms and conditions, the buyer shall have the statutory rights of rescission or reduction.

- 12.3 Claims for damages shall be subject to section 9.

- 12.4 The aforementioned obligations of the Seller shall only exist if the buyer is not responsible for the infringement of the property right and immediately notifies the Seller in writing of the claims made by the third party, if the buyer does not acknowledge the infringement, and if all defensive measures and settlement negotiations are reserved for the Seller.
- 12.5 Apart from the claims regulated herein, the buyer shall not be entitled to any further claims against the Seller and its vicarious agents due to defects of title.

### **13 Force Majeure**

- 13.1 "Force majeure" means the occurrence of an event or circumstance ("force majeure event") which prevents a party from performing one or more of its contractual obligations under the contract if and to the extent that the party affected by the impediment ("affected party") proves that (a) the impediment is beyond their reasonable control; and (b) the impediment could not reasonably have been foreseen at the time of the conclusion of the contract; and (c) the effects of the impediment could not reasonably have been avoided or overcome by the affected party.
- 13.2 An event of "force majeure" shall be in particular but not exclusively: (i) war (declared or undeclared), attack, large-scale military mobilisation; (ii) civil war, riot and revolution, military or other seizure of power, acts of terrorism, sabotage or piracy; (iii) monetary and trade restrictions, embargo, sanctions; (iv) lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation; (v) epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged failure of transportation, telecommunications, information systems or power; (vii) general industrial unrest.

The affected party shall notify the other party of such event without undue delay.

- 13.3 A party who successfully pleads the existence of a force majeure event shall be released from the obligation to perform their contractual obligations and from any liability for damages or any other contractual remedy for breach of contract, but only if they notify the other party thereof without undue delay. If the notice is, however, not given without undue delay, the release shall take effect only from the time the other party has received the notice. The other party may suspend the performance of their obligations from the time of such notification if force majeure is indeed to be assumed. Payment obligations are excluded from the aforementioned exemption from performance.

### **14 Miscellaneous**

- 14.1 The buyer shall only be entitled to set-off, retention and plea of non-performance of the contract if counterclaims from the same contractual relationship are concerned or the claims have been established or acknowledged by a court of law.
- 14.2 In the event any provisions of this contract are or become invalid or unenforceable, the remaining provisions hereof shall not be affected thereby. The contracting parties undertake to promptly agree upon such valid and enforceable provision which most closely corresponds to the legal and economic intent of the invalid or unenforceable provision. This applies correspondingly in case of possible legal gaps herein.

### **15 Applicable Law and Place of Jurisdiction**

- 15.1 This contract is subject to and to be interpreted in accordance with Austrian law without giving effect to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.2 Exclusive place of jurisdiction for all disputes arising under or in connection with this contract shall be the competent court in Linz, Austria.
- 15.3 In addition, the Seller has the right to also sue in the court having jurisdiction over the buyer or in any other court that may have jurisdiction under national or international law.