

## GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF PLANTS, MACHINERY AND/OR PARTS OF THE ECKELMANN AG (May 2025)

### General

- (1) Any contract between Eckelmann AG ("**EAG**") and any customer for plants, machinery, (spare)parts and/or services ("**Supplies**") shall exclusively be governed by this terms and conditions. Any terms and conditions of the customer shall not apply and the customer agrees to their exclusion even if such terms and conditions are referenced by the customer and if EAG has not expressly objected to application of such terms and conditions.
- (2) Any agreement between EAG and the customer must be made in writing to be valid. Explanations and agreements exchanged via electronic mails are deemed to be in writing and become an integral part of a contract.
- (3) In case of EAG and the customer not signing a contractual document, the contract will be bindingly agreed upon and become effective with the customer receiving the written order confirmation of EAG.
- (4) If a contract consists of several documents the following order of precedence shall apply:
  - a. The contract with its annexes
  - b. The order confirmation of EAG
  - c. These general terms and conditions
- (5) If a quotation is not expressly stated as non-binding, a quotation is only binding for a period of four (4) weeks after the date of issuance of the quotation.

### Scope of Supplies

- (1) Any contract includes solely Supplies as expressly included in the contract. EAG is entitled to unilateral changes to the Supplies, if such changes improve the Supplies and do not increase the price.
- (2) Any Supplies are dependent on the customer fulfilling any and all of its obligations to cooperate. The obligations to cooperate includes especially the customer to timely provide complete, correct and accurate information required by EAG to fulfil the contractual obligations.
- (3) Any description of the Supplies not expressly included in a contract (e.g. in a marketing document) does not constitute any legal warranty of EAG.

### Duty to co-operate

- (1) The customer is responsible for its personnel made available throughout the entire period of a contract to have sufficient language and linguistic qualifications. Especially for the personnel, which needs to be trained and/or instructed by EAG.
- (2) In any event of the customer failing to meet its contractual obligations (whether explicit or implied), EAG is entitled to reimbursement of all additional cost and expenses directly or indirectly resulting

from such a failure of the customer. Furthermore, EAG will be entitled to a reasonable extension of time for the performance of EAG's obligations out of or in connection with a contract.

- (3) Whenever an approval of the customer is required out of or in connection with a contract, such approvals or reasons for withholding of such approvals shall be notified to EAG within ten (10) business days of receipt of request for such approvals. If no reply is received by EAG within this period, such an approval shall be deemed to be given by the customer.
- (4) Any condition necessary for the fulfilment of a contract, which is not explicitly stated as an obligation of EAG, is the obligation of the customer.

## **Changes**

- (1) EAG or the customer may request changes that affect the Scope of Supplies, delivery or price of a contract. If EAG or the customer requests any such change, there shall be good faith negotiations for a reasonable and equitable adjustment of the contract.
- (2) Any change in a contract or a change in law after the date of the contract becoming effective, shall be effective only if made in a change order been agreed in writing in a document signed by EAG and the customer.
- (3) If EAG and the customer agree in writing to the changes and all the consequences arising out of the changes including but not limited to price and time implications, EAG will start with the work on the changed scope of Supplies.

## **Intellectual Property Rights**

- (1) EAG and the customer retains all intellectual property rights to plans and technical documents provided to the respective other. The customer shall become owner of the physical plans and technical documents provided. Despite becoming the owner of the physical plans and technical documents, the customer shall keep the plans and technical documents according to the confidentiality obligations.
- (2) EAG is solely entitled to any and all intellectual property rights created by EAG during and/or arising out of the performance of a contract irrespective of EAG immediately registering any such intellectual property right and/or the new intellectual property rights were created by using intellectual property rights of the customer.

## **Delivery**

- (1) EAG will deliver the Supplies FCA Wiesbaden, Germany, according to INCOTERMS<sup>®</sup> 2020.
- (2) All risks will be transferred with delivery according to the agreed upon INCOTERMS<sup>®</sup> 2020 to the customer.
- (3) Any agreed date of delivery is subject to:
  - a. EAG being supplied in a timely and correct manner by its suppliers;
  - b. the customer having fulfilled any and all of its obligations in due time; and
  - c. all technical and commercial issues have been clarified to EAG's satisfaction in due time by EAG and the customer.
- (4) Only the date of delivery shall be bindingly agreed between EAG and the customer. Any other date shall only be agreed for information and organisational purposes. Any delay of such other date shall not entitled the customer to any kind of remedy and/or compensation.
- (5) In the event of EAG having caused a delay in delivery and after a grace period of two (2) weeks, the customer shall be entitled to liquidated damages of zero-point five percent (0.5%) of the net price of the delayed part of the Supplies for each completed week of delay up to a maximum of five percent (5%) of the net price.
- (6) If the customer is entitled to the maximum liquidated damages, EAG shall be granted a last

reasonable extension of time. If EAG also fails to meet this final delivery date, the customer shall also be entitled to terminate the contract in addition to the liquidated damages. If the customer terminates the contract, the customer shall be entitled to compensation for the damage incurred as a result of the delay by EAG. The total amount of compensation, including the maximum amount of liquidated damages for delay, shall not exceed 15% (fifteen percent) of the net price.

- (7) Any other right or remedy of the customer shall be excluded, unless mandatory law provides otherwise or EAG acted with gross negligence or wilful misconduct.
- (8) The customer will become owner of the packaging and shall dispose of the packaging at its own expense.

**Export control**

- (1) EAG and/or the customer may refuse to fulfil their contractual obligations out of or in connection with a contract insofar as the fulfilment is prohibited or impaired by applicable law. The reason for such refusal shall be communicated to the customer respectively EAG without undue delay. Claims for damages or losses based on such a prohibition to fulfil contractual obligations are excluded unless such damages or losses have been caused at least by gross negligence.
- (2) The customer recognises that the Supplies may be subject to German, European, American and/or other countries legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred, exported, re-exported or used for a purpose other than the agreed without an export or re-export permit of the competent authority. The customer undertakes to comply with applicable provisions and regulations.
- (3) Due to binding EU law EAG and the customer agree especially to the following export prohibitions:
  - a. The customer shall not sell, export or re-export, directly or indirectly,
    - i. to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014; and/or
    - ii. to Belarus or for use in Belarus any goods supplied under or in connection with this Contract that fall under the scope of Article 8g of the Council Regulation (EU) No 765/2006.
  - b. The customer shall undertake its best efforts to ensure that the purpose of §7 (3) a. is not frustrated by any third parties further down the commercial chain, including by possible resellers.
  - c. The customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of the first sentence of §7 (3) a.
  - d. Any violation of §7 (3) a., b. and/or c. shall constitute a material breach of an essential element of the contract, and EAG shall be entitled to seek appropriate remedies, including, but not limited to termination of the contract and a penalty of 10% of the total value of the contract or price of the goods exported, whichever is higher, but at least 50.000 EURO.
  - e. The customer shall immediately inform the Seller about any problems in applying §7 (3) a., b. and/or c., including any relevant activities by third parties that could frustrate the purpose of §7 (3) a., b. and/or c. The customer shall make available to EAG information concerning the customer's compliance with the obligations under §7 (3) a., b. and/or c. within two (2) weeks of the simple request of such information.

**Compliance**

The customer will at all times and at its own expense:

strictly comply with all applicable laws, rules, regulations, ordinances and governmental orders, now or hereafter in effect, relating to its performance of a contract;

pay all fees and other charges required by such laws, rules, regulations and orders; and maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder. If requested by EAG, the customer will sign written assurances and other documents, as may be required under applicable laws and regulations.

## **Delay in delivery caused by the customer**

If the customer is delaying the delivery or is requesting to postpone the delivery for reasons that originate in the customer's sphere of risk, the following shall apply:

- a. EAG will suspend the manufacturing and store any finished part of the supply at the cost of the customer;
- b. If EAG encounters more cost due to the delay, EAG shall be entitled to invoice these additional cost.

## **Price**

- (1) The price is based on FCA Wiesbaden, Germany, according to INCOTERMS ® 2020, excluding packing, duties, levies and/or fees whatsoever.
- (2) The price is agreed in Euro (€).
- (3) Prices for Supplies may be adjusted by EAG, upon notice to customer at any time prior to shipment, to reflect any increase in EAG's cost of raw materials, components (e.g., steel, aluminum, electronic components), inability to secure Supplies, changes in law, labor, taxes, duties, tariffs or quotas, acts of Government, any similar charges, or to cover any extra, unforeseen and unusual cost elements.

## **Payment terms**

- (1) The customer shall make the payments latest fourteen (14) days after receiving of the invoice without deduction.
- (2) Any right of the customer to set-off claims against claims of EAG are excluded, unless mandatory law provides otherwise or EAG agrees in writing to except the set-off.
- (3) If the customer is delayed in its payment obligations, without prejudice to any other remedies available to it by law or in equity, EAG may demand immediate payment and at EAG's option
  - a. suspend all further deliveries or performance to be made under the contract or any further performance under any other contract with the customer, in which event Buyer shall not be released in any respect from its obligations to EAG under the contract;
  - b. recover all costs of collection including but not limited to reasonable attorneys' fees;
  - c. repossess the Supplies for which payment has not been made;
  - d. retain any Supplies supplied by the customer to EAG;
  - e. charge interest at the maximum percentage allowed by law; and
  - f. reassess the credit worthiness of the customer and change any current payment terms to immediate payment of all outstanding payment rates.
- (4) The price shall be paid in the following instalments:
  - a. 1/3 down payment after receipt of the order confirmation,
  - b. 1/3 as soon as the customer has been informed that the main parts are ready for despatch,
  - c. the remaining amount of 1/3 within one month after the transfer of risk.

## **Taxes**

- (1) Unless otherwise set out in EAG's quotation or a contract, the price excludes all present or future sales taxes, revenue or excise taxes, value-added taxes, import and export duties and any other taxes, surcharges or duties now existing or hereafter imposed by any competent governmental

authority upon Supplies included in EAG's quotation or a contract. The customer shall be solely responsible for all such taxes, duties and charges resulting from a contract. EAG is required to impose taxes on orders and shall invoice the customer for such taxes and/or fees according to applicable law.

- (2) Any duty, tariff, levy, tax or charge (including without limitation, sales, use, excise, goods and services, harmonized, value-added and withholding taxes), customs levy or inspecting, licensing or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any competent governmental authority or measured by any transaction between EAG and the customer, shall be paid by the customer in addition to the prices quoted or invoiced, and such charges will appear as a separate line item on the invoice.
- (3) The customer agrees that a price will be equitably adjusted in the event EAG is required to pay any incremental amounts for any duty, tariff, levy, or charge on any input components of the Supplies.

## **Retention of title**

- (1) Title in the Supplies shall not pass to the customer until EAG has received the complete price. Until the ownership in the Supplies passes to the customer, the customer shall:
  - a. keep the Supplies properly maintained, stored and protected;
  - b. insure the Supplies with their complete value with a reputable insurer against all risk; and
  - c. neither sell, pledge, lease, transfer ownership (as security) or otherwise dispose of the Supplies without EAG's prior written approval.
- (2) If the applicable property laws do not acknowledge a reservation of title or request additional preconditions (e.g. a registration), the customer shall support EAG in order to fulfil these preconditions or supply EAG with a comparable security.

## **Acceptance**

- (1) If EAG and the customer have not agreed upon a formal acceptance of the Supplies, the customer has to inspect the Supplies immediately after the delivery and respectively immediately after their rendering. If the customer does not notify EAG within a reasonable time, which shall not be longer than two (2), weeks, the Supplies are accepted.
- (2) If EAG and the customer agree upon a formal acceptance of the Supplies, EAG and the customer will agree on a acceptance procedure in writing as well as the preconditions and details of the acceptance procedure. If the customer is using the Supplies for industrial use for a total of two (2) non-consecutive weeks without the agreed upon acceptance procedure or the acceptance procedure cannot take place at the agreed upon time due to reasons not attributable to EAG, the Supplies are deemed accepted. Other events of deemed acceptance according to applicable law remain unaffected.

## **Warranty**

- (1) A **"Defect"** is any non-conformity of the Supplies to the contractually agreed specifications due to incorrect design, insufficient workmanship and/or use of inadequate materials. Any non-conformity due to normal wear and tear, improper maintenance or operation and/or resulting from any other reason beyond the control of EAG are no Defects and exclude any liability of EAG for such non-conformity.
- (2) The customer has to immediately after delivery examine the Supplies for visual detectable Defects. If the customer identifies any such Defect, EAG is to be immediately informed, but not later than fourteen (14) days after delivery.
- (3) In case of a Defect, the customer has to immediately notify EAG about such a defect with a sufficiently specified notice of defect. EAG will at its discretion either repair a Defect or replace the

whole or part of the defective Supplies. The customer shall give EAG adequate time and opportunity as well as grant EAG sufficient access to the Supplies to remedy the Defect.

- (4) If EAG fails twice to remedy a Defect, the customer shall set a final reasonable time for EAG to remedy the Defect. If EAG fails to remedy the Defect also during this final period of time or in cases of emergency, the customer is entitled to remedy the Defect or have it remedied by a third party at reasonable cost of EAG.
- (5) If a Defect can finally not be remedied and the Defect is a material one, depriving the customer of the functionality of the Supplies, the customer may terminate the contract and receive the paid money back. If the Defect is not a material one, the customer is entitled to reasonably reduce the price, but by not more than fifteen percent (15%).
- (6) The warranty period is twelve (12) months after the transfer of risk, but not longer than eighteen (18) months after notification of readiness to ship, if the transfer of risk is delayed due to reasons not attributable to EAG.
- (7) The customer is not entitled to any other right or remedy out of or in connection with a Defect or a warranty other than expressly contained in herein, unless mandatory law provides otherwise or EAG acted with gross negligence or wilful misconduct.

## **Liability**

- (1) Notwithstanding anything to the contrary elsewhere, EAG shall in no event and irrespective of the legal basis (including but not limited to contract, tort, misrepresentation, indemnity) be liable for loss of profit or revenue, loss of (partial) use, loss of production, loss of data, cost of capital cost of substitute goods, property damage external to the Supplies and any damage, expenditure or loss arising out of such damage, or any other special loss or damage and/or any indirect and/or consequential loss or damage suffered by customer or any third party. The exclusion of liability shall apply whether any loss or damage or claim or expenditure was directly caused by EAG or by any his subcontractors (if any), suppliers, agents, advisors, consultants or employees or anyone else acting on the behalf of EAG.
- (2) Notwithstanding anything to the contrary elsewhere, there shall be no strict liability of EAG and any liability (including but not limited to warranty obligations) must be proven to have been caused by EAG.
- (3) Any claim or right of the customer arising out of or in connection with a contract shall be excluded after expiration of the warranty period.
- (4) Any liability of EAG is capped at an aggregated maximum of fifty percent (50%) of the net price.
- (5) Any limitation or exclusion of liability in a contract shall not apply in the event of either (a) gross negligence or intentional misconduct attributable to EAG, (b) bodily injury or death culpably caused by an act or omission attributable to EAG or (c) insofar as mandatory law provides otherwise .

## **Force Majeure**

- (1) If EAG is not able to fulfill any of its contractual obligations due to an event or Force Majeure irrespective of whether the event affects EAG directly or indirectly (e.g.: a supplier is affected by an event of Force Majeure), EAG shall be relieved from its contractual obligations and any liability for non-performance for the duration of the hindrance plus a reasonable start-up period.
- (2) An event of Force Majeure is any event, which is beyond the reasonable control of and could not have been foreseen by EAG before the contract became effective. An event of Force Majeure includes but is not limited to: natural disasters, warlike events, sabotage, terrorism, strike, lockouts, weather events, epidemics, pandemics and/or traffic obstructions.
- (3) If an event of Force Majeure lasts longer than two (2) months, EAG or the customer may terminate the contract. In case of termination of a contract, EAG shall receive full payment for any part of the

Supplies and services finished at the time of termination.

## **Suspension**

- (1) In the event that the customer notifies EAG of a postponement of a date due to a delay attributable to the customer, the dates specified in the contract shall be adjusted accordingly. The customer shall reimburse EAG any additional direct and documented costs incurred as a result of the postponement and for any documented costs which the EAG has to pay to its own suppliers as a result of the postponement.
- (2) EAG will restart the fulfilment of any obligations of the contract as soon as the business environment of EAG will allow the commencement.

## **Severability Clause**

To the extent one or more provisions of a contract are or become void and/or unenforceable, the remaining provisions shall remain unaffected valid. The void and/or unenforceable provision shall be replaced by a valid provision representing the economic purpose intended by the void and/or unenforceable provision as far as legally possible.

## **Confidentiality**

- (1) **"Confidential Information"** shall mean any information which is disclosed by EAG to the customer and any contract between EAG and the customer and which was provenly not legally known by the customer before the disclosure of EAG.
- (2) The customer shall
  - a. keep Confidential Information strictly confidential not disclose Confidential Information to any third party;
  - b. disclose Confidential Information only to such employees, representatives, suppliers, agents and/or advisors, who need to know the Confidential Information in order for the customer to fulfil its contractual obligations;
  - c. solely use the Confidential Information only for the purpose of the contract; and
  - d. procure that the Confidential Information is protected from any unauthorized access of any third party.
- (3) The obligation to keep Confidential Information confidential shall not apply to the extent that the customer is required by mandatory law or an enforceable court order. The customer shall immediately notify EAG of its duty to disclose Confidential Information.

## **Applicable law and dispute resolution**

- (1) Any contract is governed by Swiss substantive law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are expressly excluded.
- (2) Any dispute, controversy, or claim arising out of, or in relation to, a contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be one (1). The seat of the arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English.

## **Miscellaneous**

- (1) The customer shall obtain the prior written consent before assigning any contractual obligation to a third party, including affiliates of the customer.
- (2) EAG shall be entitled to source worldwide.



- (3) A contract can be terminate for good cause by EAG or the customer. If the customer is terminating a contract not for good cause or any other cause attributable to EAG, EAG shall be entitled to full payment of the part of the Supplies, which is finished, and fifteen percent (15%) of the price of the part of Supplies, which is not finished.
- (4) In connection with the contract, EAG confirms that all legal requirements for the Scope of Supplies, such as health and safety laws, accident prevention regulations and ordinances/guidelines, are known and are complied with. The customer shall be responsible for the workplace-related instruction of EAG's employees at the installation site.
- (5) Unless otherwise agreed, one (1) copy in German and English in accordance with EAG standards of the operating instructions and CE declaration are provided in paper form, all other documentation in electronic form on a USB stick.
- (6) If EAG also owns installation and/or commissioning services, the respective General Terms and Conditions for such services of EAG shall apply.
- (7) If EAG also owns supervision of installation and/or commissioning services, the respective General Terms and Conditions for supervision of such services of EAG shall apply.