



Terms & Conditions of Purchase of Eisenwerk Erla GmbH (Dated: 2017-10)

1. **General**
 - 1.1. We place orders on our Terms & Conditions of Purchase only. Reference to the business connection with us shall only be made with our written consent. You are obliged to consider the order and any objects handed over with it to be a business secret and to handle them confidentially. In the following provisions, AG means: Purchaser (EWE) and AN means: Supplier.
 - 1.2. The Supplier shall set up, verify and maintain a certified quality management system. The Purchaser shall be notified in writing of any changes to the processes and such changes shall not be implemented until the Purchaser has given their consent. The Supplier shall keep their quality records for 15 years and if present them as and when necessary. Shorter storage periods require a written agreement. Sub-suppliers (suppliers of the Supplier) are to be obligated in the same way.
 - 1.3. If special terms and conditions are agreed for specific orders, these Terms and Conditions of Purchase apply with lower priority and are supplementary.
 2. **Quotation, Tender, Contract, Order Confirmation**
 - 2.1. The quantity, quality and execution in the Supplier's Quotation or Tender shall be as stated in the content of our enquiry or call for tenders and the Supplier shall explicitly indicate any deviation in writing. In the case of investment goods, this shall require special agreement. All quotations and tenders are free of charge for us.
 - 2.2. Our order is only binding if it is placed by us in writing or in electronic form and has been confirmed in writing by the Supplier without delay. Until we receive written order confirmation, we are entitled to withdraw the order.
 - 2.3. The assessment of the procurement of energy services, products and facilities, which have or may have an impact on the significant energy use, will be also based on the energy related performance.
 - 2.4. Delivery call-offs (schedules) become binding for the Supplier, if the Supplier does not contradict them within 3 days of receipt at the latest.
 - 2.5. To be effective, verbal agreements require our written confirmation. The written form includes communications sent by fax and by electronic means.
 3. **Prices**

The basis of the pricing will be defined before the order is placed. If no separate price agreements have been made, the prices are fixed prices, free to Purchaser's address, incl. packaging, freight costs, postage, documents and customs duty.
 4. **Delivery dates and Deadlines**
 - 4.1. **The dates, quantities and deadlines named in the order or delivery schedule are binding and are to be fulfilled/met in full. As soon as the Supplier anticipates difficulties which could prevent them from delivering on-schedule, above all in accordance with the agreement, they shall notify the Purchaser immediately. This does not affect the Supplier's obligation to deliver on schedule. The relevant date with regard to the meeting of the scheduled date, quantity or deadline is the date the goods are received at the agreed place of destination.**
 - 4.2. The Supplier will inform us immediately of any relevant changes to the goods, their deliverability, usability or quality due to statutory regulations, especially due to the REACH Regulations and shall agree suitable measures with us on a case by case basis. The same applies accordingly as soon as and insofar as the Supplier realises or should have realised that such changes could occur. The Purchaser (downstream user) is under no obligation whatsoever to ensure registration with regard to the delivered goods.
 - 4.3. In the event of late delivery, the Supplier is in default with expiry of the delivery day without requiring a reminder. In the event of default, we are entitled to compensation for all disadvantages incurred by us as a result.
 - 4.4. Unforeseen event for which we are not responsible, through which we or our recipient companies are seriously affected or disrupted, and strikes, walkouts, operational disruptions or cutbacks and similar cases which result in substantial reduction in consumption, entitle us to wholly or partly cancel the order or to postpone the acceptance date. **Any claims for compensation by the Supplier therefore do not apply if the Purchaser informed the Supplier with a notice period appropriate under the given circumstances.**
 - 4.5. Apart from the statutory provisions, our "General Rules of Conduct and Safety Instructions" and the our directive on health & safety, environmental protection and construction site regulations apply to any work and services to be carried out on the Purchaser's premises.
 5. **Invoicing and Payment**
 - 5.1. **Invoices must contain all information specified by us and are to be submitted to us immediately.** Invoices from machinists, plasterers and painters may each only refer to one delivery note.
 - 5.2. We pay within 14 days with 2% discount, **30 days net** (unless agreed otherwise), whereby these periods are based (unless agreed otherwise) on the most recently arriving (proper goods or proper invoice). **In the event of incorrect delivery, the Purchaser is entitled to withhold pro rata payment until proper performance and then to pay with discount.**
 - 5.3. We are entitled to offset accounts receivable, including those due from companies affiliated with the Supplier as defined by § 15 AktG (German Companies Act).
 - 5.4. Claims against us may only be assigned to **third parties** with our written consent. § 354 a HGB (German Commercial Code) remains unaffected.
 6. **Liability, Warranty and Defects Correction**
 - 6.1. **All properties given by the Supplier regarding the purchased item or required by us according to our order, including certificates and works test certificates/quality control reports, are deemed to be guaranteed. For materials which, by virtue of their composition or effect on the environment, require special handling with respect to packaging, transport, storage, handling, use and/or waste disposal according to laws, regulations or other provisions, the Supplier shall hand over the safety data sheet, further product information and applicable (transport) safety instructions. In the event of changes to the materials, the legal situation or the production site, the Supplier will hand over updated data sheets to the Purchaser. The Purchaser is not obliged to make any payment whatsoever until the aforementioned data sheets have been handed over.**
 - 6.2. **The Supplier shall undertake all the necessary controls of the products produced/delivered by them and is responsible for conforming, defects-free quality of the delivery item. The Purchaser checks the condition of the packaging for outwardly visible damage and defects and correlation between the delivery note and goods. Otherwise, § 377 HGB is excluded.**
 - 6.3. The Purchaser is liable for and guarantees their delivery according to the legal requirements. This also includes all provisions, regulations and specifications of the European Union, the Federal Republic of Germany, e.g. the REACH regulations (EC Regulations No. 1907/2006), the regulatory authorities, the Berufsgenossenschaften (German trade associations liable for industrial safety and insurance) and the trade associations, currently applicable at the place of destination. If the delivery item is subject to EU rules or labelling requirements (e.g. CE marking), this labelling shall be attached and if necessary a declaration of conformity shall be submitted. The Supplier guarantees that the delivered goods are free of ionising radiation, beyond naturally occurring radiation.
 - 6.4. The warranty period is 2 years beginning with delivery of the item, unless specified otherwise on a case by case basis. The stay of the period of limitation and new start of the limitation period depend on the legal provisions. In the event of rework attempts to remedy the defect the limitation is **stayed for a further 3 months, starting from the end of the last rework attempt.** The warranty covers all costs associated with the defects correction, including the dismantling, return transport and similar expenses. If defects are found, the Supplier must be given the opportunity to immediately sort out, make good or make an additional delivery. If this is not possible for economic, technical or organisational reasons, the Purchaser or even the end customer can carry out the making good work themselves or have it carried out by third parties. Any resulting costs are borne by the Supplier. At our request, any investigations required shall be carried out in our works. Non-conforming deliveries will be returned at the cost and risk of the Supplier.
 - 6.5. **In the event of defective goods being supplied for reasons for which the Supplier is responsible, the Purchaser can demand compensation for the losses caused as a result, even if these defects are not identified until later in the business process. In the event of delivery of defective spare parts, this liability also includes losses caused by continued machine stoppage. In each case, the Supplier shall owe the Purchaser compensation for culpable breach of duty or breach of guarantee.**
 - 6.6. **Cutting, plastering and blasting of unfinished castings are subject to a limitation of liability as follows:**

The allowable limit for machining rejects (normally shaped castings, which have been machined in such a way that they are no longer usable) is 0.3% in relation to the calendar quarter and weight. The condition for this limitation of liability is that all rejects are returned to the Purchaser.

The following provision applies to the machining of castings provided by the Purchaser:
If a processed part becomes unusable due to concealed casting defects, the pro rata machining costs will be invoiced (casting costs are borne by the Purchaser). Parts which are separated out following the least due to material defects are deemed to be rejected EWE material and will be offset by the Supplier as an ok part less a good well deduction of 3%. If parts become unusable as a result of the machining by the Supplier, an allowable limit of 0.1% applies, related to the calendar quarter and value of the order volume during the given period (without consideration of setting parts).

The **return of all rejects** to the Purchaser is a condition for these limitations of liability. Return quotas for the chips arising will be arranged in separate agreements.
 7. **Industrial Property Rights/Patents**

The Supplier guarantees that the item delivered by them does not infringe the rights of third parties. Should patents, utility models, or other industrial or intellectual property rights of third parties nevertheless be affected, the Supplier is obliged to procure the necessary licence at their own cost. They shall indemnify us against the claims of third parties.
 8. **Dispatch**
 - 8.1. **Each delivery shall be made DDP, according to Incoterms 2010, to the dispatch address given on the order, additional costs incurred due to poor or incorrect addressing shall be borne by the Supplier.** The consignment itself is to be accompanied by a delivery note stating the order number, **product number of the Purchaser**, information enabling traceability of the products (**batch number**) and agreed test certificates.
 - 8.2. If no packaging and dispatch regulations have been agreed between the Purchaser and Supplier, the Supplier is obliged to choose the packaging and transport option which is most favourable for us.
 - 8.3. **If the packaging used to send the goods is invoiced separately, we are free to make them available again to the Supplier carriage paid in a usable condition in exchange for a credit note.** Otherwise we can return the packaging according to the packaging regulations.
 - 8.4. Trucks with weighing specification are to be weighed, full and empty, by a firm to be named by the Purchaser.
 9. **Retention of ownership**
 - 9.1. The Purchaser recognises retention of ownership claimed by the Supplier including the extended retention of ownership, if this is declared by the Supplier or is included in their terms and conditions of sale. All other provisions in the terms and conditions of sale are not recognised as a result of this. This does not apply to machinists, plasterers and painters.
 - 9.2. If the Purchaser supplies the Supplier with the objects to be machined, the Supplier does not acquire any rights to these objects. EWE remains the unrestricted owner of these objects and can demand their return at any time without objection.
 10. **Termination and Withdrawal**
 - 10.1. Notwithstanding other rights of termination and withdrawal, the Purchaser is entitled to terminate or withdraw from the Contract if the Supplier or their senior employees are suspected of criminal offences, especially fraud, bribery, etc. or such preliminary inquiries regarding such offences have been initiated.
 - 10.2. The Purchaser can also withdraw from the Contract or terminate the Contract if insolvency or similar proceedings are opened or applied for against the Supplier's assets or the Supplier has stopped making payments, not only temporarily.
 - 10.3. In addition, the Purchaser can demand compensation for all losses incurred due to the termination of the Contract.
 11. **Secrecy**
 - 11.1. The Supplier undertakes to treat with strict secrecy all information of a material, technical or business nature made accessible to them by the Purchaser or acquired elsewhere including samples, analyses, data sheets, product information, drawings, models, tools, moulds, design data or similar and shall not make such information accessible to third parties, neither directly nor indirectly, without the Purchaser's prior written consent.
 - 11.2. The Supplier undertakes to obligate in writing all persons directly or indirectly involved, in particular employees and staff and involved third parties or if applicable subcontractors to whom they give access to the information named in Clause 11.1 to maintain the same secrecy.
 12. **Compliance**

The Supplier assures to comply with the applicable laws governing the general minimum wage and to oblige subcontractors appointed by him to the same extent. Upon request, the supplier proves compliance with the above assurance. In the event of a breach of the above assurance, the Supplier indemnifies us against claims of third parties and is obliged to refund any fines imposed on us in this connection. The Supplier will comply with the respective legal regulations regarding social interaction with employees, environmental protection and occupational safety and will work to reduce adverse effects on people and the environment in their activities. In addition, the Supplier will observe the principles of the UN Global Compact Initiative, which essentially concern the protection of international human rights, the abolition of forced and child labor, the elimination of discrimination in recruitment and employment, and environmental responsibility.
 13. **Jurisdiction**

The place of jurisdiction for all disputes arising out of the contractual relationship is the court responsible for us. This also applies if the Supplier has their registered offices abroad. In this case, the competence of German jurisdiction and the jurisdiction of Chemnitz Landgericht is explicitly agreed. We are further entitled to bring take legal action in the place where the Supplier has their registered offices. This provision also applies to lawsuits based entirely on documentary evidence, summary enforcement of bills of exchange and cheque proceedings.
- These Terms and Conditions of Purchase shall be exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany. This also includes agreements ratified by Germany.
- Should a provision of the Contract or these Terms and Conditions of Purchase be or become invalid, the validity of the remainder of the Contract or these Terms and Conditions shall not be affected. The Parties to the Contract are however obligated within the scope of that which is reasonable in good faith. The invalid term or condition shall be replaced by a provision with the same economic success, provided this does not cause any material alteration to the contents of the Contract.