

Purchasing Conditions

1. General – Scope

1.1. In reservation of the right to apply the applicable legislation of the place of our registered office if it would be in favor for us, we will purchase deliveries and services of any type only in accordance with these present terms of purchase and any special conditions previously made known to Contractor. The General Terms and Conditions of Contractor shall apply only following our express written confirmation.

1.2. All agreements entered into between us and Contractor for the purposes of executing this contract must be recorded in writing.

1.3. The following terminology applies to our Purchasing Conditions:

“we”, “us”, “our” = Eloy & Becker
Contractor = the contractual partner acting commercially or independently as a contractor as commercial company

2. Purchase Order – Order Confirmation, Quotation Documents

2.1. Contractor is required to confirm our purchase order in writing without delay. If we do not receive the order confirmation within a period of two weeks of receipt, we reserve the right to withdraw the purchase order.

2.2. Figures, diagrams, calculations, samples, models, and other documents as well as data media remain our property and must be treated in confidence. These must be used solely for the purposes of executing our purchase order; once the purchase order has been processed and completed, they must be returned to us free of charge and without the need for a reminder.

2.3. Contractor may use subcontractors to fully or partially execute the scope of production services only following our written approval.

3. Prices, Payment Terms, Assignment

3.1. The prices agreed on placement of the order are fixed prices, and include all incidental services required to fulfill the contract. Delivery shall be made “ex works” or “specified place of delivery” and must include reusable packaging.

3.2. The statutory rate of value added tax is not included in the price.

3.3. Once the delivery/service has been made/provided as agreed, following and we have received a correct invoice and all necessary shipping papers, we will effect payment within 60 days net following goods receipt.

3.4. Our payments do not represent any recognition of correct performance of contract or the accuracy of the calculations.

3.5. Without our prior written approval – which we may not decline without good reason – Contractor is not entitled to assign any outstanding receivables due to us or to arrange for collection of same by a third party.

4. Delivery

4.1. The delivery date shown in the purchase order is binding, and — unless a particular date is specified — shall begin on the issue date of the purchase order or its receipt. The delivery date shall be deemed as having been met once the goods have been delivered to us or to the agreed place of delivery.

4.2. Contractor must inform us in writing without delay if it becomes aware of any circumstances that may mean that the delivery date cannot be met.

4.3. If there is a delay in delivery, then, in addition to performance of the contract, we are entitled to demand a penalty of 0.5% of the order value for each commenced week of delay in delivery, but no more than 5% of the order value without having to prove specific losses. We agree to assert any claim for contractual penalty on or before the final payment, but not later. Standard, statutory regulations and laws also apply.

4.4. Ordered delivery quantities must be strictly adhered to.

4.5. Our complete order number, our article numbers, the article name, and the vendor number must be shown on the delivery note and the invoices (duplicate). Invoices must comply with the applicable legislations including the VAT ID number.

4.6. Unless otherwise agreed, packaging will not be reimbursed. If the costs for packaging are not included in the price, the packaging will be returned if required carriage forward.

5. Acceptance, Defects

5.1. Goods and services shall be deemed as accepted only following an explicit declaration by us. Our scheduling agreements oblige us only to accept call-off quantities from the first four weeks. Follow-up dates authorize Contractor to implement material planning for up to a further four weeks at most. The manufacturing release and the right to implement material planning will be adjusted in each case in accordance with the time interval if no alteration is announced by us. Forces majeures, strikes, civil unrest, official actions, transport disruptions, and any other disruption affecting us or our suppliers or customers, which could limit or halt our production efforts, shall release us from acceptance or claims for compensation for the duration and scope of such events if we are unable to avert such disruption by reasonable means. This also applies to the obligations of the vendor.

5.2. Acceptance of a delayed delivery does not constitute a waiver of any further rights or claims; the statutory laws also apply.

5.3. Complaints shall be deemed as resolved providing that they are remedied within five days calculated from the date of acceptance in the case of obvious defects and from the day of discovery in the case of hidden defects. We are not obliged to list defects for delivered goods on bills of lading or to declare caveats.

5.4. In the event of complaints, we are entitled to withhold payments that reasonably equate to the defects notified.

5.5. The limitation period governing claims for defects is 24 months calculated from the transfer of risk. This also applies to parts with rectified defects or redelivered parts. If, with our consent, Contractor checks that a defect exists or rectifies a defect, the expiry date of the limitation period for defect claims shall be frozen from the date of notification of the defect until Contractor presents the final results of the tests or declares that the defect has been rectified or refuses to continue to rectify the defect. The provisions defined under Section 7.3. remain unaffected.

5.6. We are entitled to assert statutory liability claims in full. In urgent cases, or if Contractor defaults on its obligations, we are entitled to remedy defects at Contractor's expense or have non-defective goods delivered via alternative means.

5.7. If as a result of defective delivery we incur costs including transport, route, labor, or material costs, or costs that exceed the normal costs that may be expected for goods inwards inspection, Contractor will be liable to bear these costs.

6. Liability, indemnification, Insurance Protection

6.1. If Contractor is aware that delivered goods are to be resold by us and if Contractor

is aware to which country the goods are to be delivered, Contractor shall indemnify us against any claims that may be asserted against us by our customers as a result of defective goods or as a result of any other service that does not comply with the contract whether based on statutory provisions under substantive German law or based on the statutory provisions under the substantive laws of the country to which the goods were delivered. If a claim asserted by one of our customers is based on a contractual infringement on our part, the indemnification shall not apply.

6.2. We are entitled to seek compensation from Contractor for claims of compensation asserted against us by our customers wherever they have incurred costs for subsequent performance including transport, route, labor, and material costs.

6.3. The limitation period for cases applicable under Sections 6.1. and 6.2. shall not begin less than two months from the date on which we have resolved the claims asserted against us by our customers, and may not begin later than 36 months following delivery by Contractor.

6.4. If a third party claims damages from us under statutory law, Contractor must indemnify us on first demand to the extent to which Contractor is also directly liable.

6.5. Contractor agrees to take out product liability insurance with an appropriate level of cover, and to provide proof of this on first request.

6.6. If we or our customers instigate measures to avert danger (e.g. a recall campaign), Contractor shall be held liable if legally required and will indemnify us on first request. Contractor must submit proof to us of insurance against recall costs with appropriate cover.

7. Rights of Third Parties, Proprietary Rights

7.1. Contractor warrants that the use and resale of the ordered goods/services is permitted and does not infringe the rights of third parties including industrial property rights and copyrights.

7.2. If the rights of third parties are infringed, Contractor will indemnify us at first request against any claims that third parties may assert against us based on statutory provisions. This applies to claims asserted under foreign law only if Contractor is aware that we are reselling the goods delivered by Contractor and to which country we are reselling the goods, or if Contractor knows in which country we are using services provided by Contractor.

7.3. A limitation period of ten years from the transfer of risk shall apply to defects in title.

8. Retention of Title, Purchase Order, Damages

8.1. If goods are offered under retention of title, we recognize the simple retention of title of Contractor only.

8.2. If we supply parts to Contractor, we retain ownership of these parts. Processing or alteration will be performed for us by Contractor. If any of our goods that are subject to retention of title are processed together with other items not belonging to us, we shall acquire co-ownership in any resulting goods in accordance with the ratio of the value of our goods to the other items for processing at the time of processing.

8.3. In the event that any goods supplied by us are mixed with other goods not belonging to us, we shall acquire co-ownership of the new goods in accordance with the ratio of the value of the goods in which we hold retention of title to the other mixed goods at the time of the mixing. If the goods of Contractor are mixed in such a way that they could be seen as the main product, it is hereby agreed that Contractor shall transfer proportionate co-ownership to us; Contractor shall retain sole ownership or co-ownership on our behalf.

8.4. Insofar as the security interests to which we are entitled under Section 8.2 and/or Section 8.3 exceed the purchase price of all our goods that are subject to retention of title and have not yet been paid for by more than 20%, we are obliged at the request of Contractor to release the security rights that are in excess of the purchase price by 20% in a manner of our choosing.

9. Production Equipment and Materials

9.1. Contractor agrees to use the production equipment provided by us or procured by Contractor for the purposes of executing the supplier contract and paid for by us only for the production of the goods ordered by us. This production equipment must be labeled as our property. The production equipment belonging to us must be insured against fire and water damage and theft to the replacement value as new by Contractor at Contractor's own expense. Any maintenance and inspection work required must be promptly completed at Contractor's own costs. Any malfunctions must be reported immediately; if Contractor culpably fails in this obligation, claims for compensation and damages shall remain enforceable.

9.2. Production equipment ordered or procured by Contractor may only be scrapped before expiry of a period of 15 years following the last delivery of goods has elapsed with our written approval; notification of any scrapping of equipment must be issued in writing.

9.3. The production equipment and materials given to Contractor or manufactured in accordance with our instructions may not be reproduced, sold, transferred as security, pledged or otherwise passed on to or used for third parties in any manner whatsoever without our express written consent. We shall be entitled to all copyrights and other industrial property rights in the production equipment even if this equipment was subsequently reconstructed by Contractor. Use of such production equipment is permitted only within the framework of the actual order.

10. Place of Performance, Legal Venue, Applicable Law, UN CISG

10.1. The place of performance and the legal venue is the headquarters of our company. We also reserve the right to take legal action against Contractor at Contractor's general legal venue.

10.2. The law applicable is the law of the place of our registered office and applies to all legal relations between us and Contractor under the exclusion of conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (UN CISG). INCOTERMS 2010 shall apply to the interpretation of delivery clauses.

10.3. If one of the provisions of these Terms and Conditions and of additional agreements entered into between the parties should be or become ineffective, this shall not affect the validity of the remaining Terms and Conditions. In this case, both parties to the contract are obliged, so far as it is possible, to replace the ineffective provision with one that is similar in economic outcome to the ineffective condition.