

## ***General Terms and Conditions of Purchase of Engelmann Sensor GmbH***

### **§1 Scope of application**

Our General Terms and Conditions of Purchase (GTCP) apply to all current and future business transactions and orders vis-à-vis sellers and suppliers (hereafter referred to as "Supplier") without it being necessary to resend or refer to them again. Deviating, conflicting or supplementary conditions of the Supplier are not binding on us, even if we do not expressly contradict them, unless we have expressly agreed to these conditions in text form.

### **§2 Inquiry/offer/acceptance**

- (1) We may accept offers from the Supplier within a two-week period. The Supplier is obliged to accept our orders in text form within a period of one week or to fill the order without reservation by shipping or delivering the ordered goods, unless another period is specified by us. A delayed acceptance shall be deemed a new offer and requires express acceptance in text form.
- (2) The Supplier is obliged to point out obvious errors in our orders, e.g. spelling and calculation errors or incompleteness of the orders, for the purpose of correction. The contract shall otherwise be regarded as not concluded.
- (3) We reserve the right of ownership and copyrights to illustrations, drawings, calculations or other documents which we have made available to the Supplier for the purpose of concluding the contract; they may not be made available to third parties without our express consent in text form. They are exclusively to be used for the submission of an offer or the production based on our order. After the order has been completed, they are to be returned to us unsolicited. They must be kept confidential from third parties.

### **§3 Payment**

- (1) The price stated in the order is binding and applies "free domicile" to a place of delivery named by us within Germany, including packaging unless agreed otherwise by the parties in text form. The price is inclusive of the applicable statutory sales tax; it includes all the Supplier's services and ancillary services (e.g. assembly, installation) as well as all ancillary costs (e.g. transport costs including possible transport and liability insurance). The Supplier must remove the packaging material at our request.
- (2) All invoices of the Supplier shall show the order number specified by us. Unless otherwise agreed in writing with the Supplier, we shall pay within 30 calendar days from the date of full delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we pay within 14 working days, the Supplier shall grant us a 3% discount on the net invoice amount.
- (3) In the event of default in payment, the statutory provisions shall apply, whereby deviating from this, in any case, a reminder in text form from the Supplier shall be required. Default interest on payments owed by us shall be 5 %-points above the base rate.
- (4) We are entitled to all statutory rights of offsetting and retention as well as the plea of non-performance of the contract. In particular, we are entitled to withhold payments as long as we have claims against the Supplier from orders which have not yet been executed in full or which are defective.
- (5) The Supplier has a right of offsetting or retention only on the basis of *res judicata* or undisputed counterclaims.

**§4  
Delivery period**

- (1) The delivery period or the delivery date specified by us in the order shall be binding for the Supplier. The Supplier shall inform us immediately in text form if he is likely to be unable to meet agreed delivery times.
- (2) If the Supplier does not deliver his performance within the agreed delivery period or if he is in default, we shall be entitled to the statutory claims. The regulations in para. 3 remain unaffected.
- (3) If the Supplier is in default, we may demand a contractual penalty in the amount of 1% of the net price of the goods or services in default per completed calendar week, but no more than 5% of the net price of the goods/service delivered late. We shall be entitled to demand the contractual penalty in addition to the fulfillment and as a minimum amount of compensation owed by the Supplier in accordance with the statutory provisions; the assertion of further damages remains unaffected. The Supplier is expressly permitted to prove that damages have not occurred at all or are significantly less than the contractual penalty.

**§5  
Delivery, transfer of risk,  
delay of acceptance**

- (1) The Supplier is not entitled, without our prior consent in text form, to have the performance owed by him performed by third parties (e.g. subcontractors).
- (2) Deliveries within Germany are "free domicile" to the location specified by us. If the destination is not specified and if nothing else has been agreed, the delivery must be made to our place of business in Wiesloch. The respective destination is also the place of performance (obligation to be performed at the creditor's place of business). We shall be entitled to keep partial deliveries and, moreover, assert the rights provided for in the GTCP.
- (3) The shipment must include a delivery note listing the date (printing and shipping), the contents of the shipment (item number and quantity) as well as our order number (date and number). If the delivery note is absent

or incomplete, we shall not be held responsible for any resulting delays in processing and payment.

Separate from the delivery note, a shipping notice with the same content must be sent to us.

- (4) The risk of accidental destruction and accidental deterioration of the item transfers to us upon delivery at the place of performance. Insofar as acceptance has been agreed, this is decisive for the transfer of risk.
- (5) Force majeure, strikes, lockouts and all circumstances that fall outside our responsibility extend the period for acceptance of the Supplier's delivery and performance in our favor.

**§6  
Guarantee and liability**

- (1) Statutory provisions apply regarding our rights in the event of material defects and defects of title of the goods or the performance to be provided by the Supplier (including incorrect delivery and undersupply as well as improper assembly, or inadequate operating instructions or user manuals) and in the event of other breaches of duty by the Supplier, unless specified otherwise below.
- (2) In accordance with the statutory provisions, the Supplier shall be liable in particular for ensuring that the goods exhibit the agreed quality at the point of passage of risk. In any case, those product descriptions which are the subject of the respective contract or have been included in the contract - in particular by designation or reference in our order - are deemed to be an agreement on the quality. It makes no difference whether the product description comes from us, from the Supplier or from the manufacturer.
- (3) Section 442 para. 1 clause 2 BGB (German Civil Code) notwithstanding, we are entitled to claims for defects without restriction even if the defect remained unknown to us due to gross negligence at the time the order was placed.
- (4) The statutory provisions of Sections 377, 381 HGB (German Commercial Code) ap-

ply to the commercial duty to inspect and to give notice, with the following proviso:

- a) Our obligation to inspect incoming goods is limited to defects that are revealed during a superficial examination including the delivery documents and during a quality control in a random sample procedure (e.g., transport damage, delivery of the wrong products and short deliveries).
  - b) Insofar as acceptance has been agreed, this shall replace the obligation to inspect.
  - c) The complaint of obvious defects or deviations shall be regarded as delivered promptly and on time if it is notified to the Supplier within ten working days of receipt of the goods.
  - d) The complaint of concealed defects or quantity deviations shall be regarded as delivered promptly and on time, if we notify the Supplier of the defects or deviations within ten working days of their discovery.
- (5) The Supplier shall perform his own inspection of the outgoing goods to be delivered to us before transport. Defective goods detected in this case may not be delivered without our prior consent. Should we determine the defectiveness of the goods within the scope of the obligation to inspect and to give notice of defects, the Supplier must prove that the defectiveness of the goods/services did not exist at the time of the outgoing goods inspection.
- (6) The expenses which are necessary for the purpose of inspection and supplementary performance, in particular transport, route, work and material costs, including removal and installation costs, shall be borne by the Supplier, if there is actually a defect.
- (7) If the Supplier fails to meet his obligation of supplementary performance – at our discretion, by remedy of defects (subsequent improvement) or by delivering an item that is free of defects (replacement) – within an appropriate period of time

specified by us, then we may remedy the defect ourselves and demand compensation from the Supplier for the necessary expenses or demand an appropriate advance payment. In case the Supplier's supplementary performance was not successful or is unacceptable for us (e.g. because of special urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline will be required; the Supplier shall be immediately informed of such circumstances.

- (8) Incidentally, in the case of material defects or defect of title, we are entitled according to statutory provisions to reduce the purchase price or withdraw from the agreement. In addition, we are entitled to statutory claims for damages and compensation of expenses.

## **§7**

### **Limitation period**

- (1) The mutual claims of the contracting parties shall expire by limitation according to statutory provisions, unless agreed otherwise below.
- (2) The limitation period for claims for defects shall be three years from the transfer of risk or, if acceptance has been agreed, from acceptance, unless deviating agreements have been made in our favor.
- (3) Section 438 para. 1 no. 3 BGB notwithstanding, for claims arising from defects of title, a limitation period of 3 years shall apply, whereby the statute of limitations for third-party material claims to surrender (Section 438 para 1 no. 1 BGB) shall remain unaffected. The statute of limitations for claims arising from defects in title is inhibited in our favor as long as the third party can assert non-statute-barred rights against us.

## **§8**

### **Indemnification and insurance cover**

- (1) If a third party claims liability from us on the basis of a product defect of the Supplier's goods, the Supplier shall indemnify us against all claims of third parties including the costs necessary to defend

against these claims upon first request, if the cause lay in the Supplier's sphere of control and organization.

- (2) If we have to carry out a recall because of a claim in the sense of the previous paragraph or if we incur other expenses in connection with a claim by third parties, the Supplier is obliged to reimburse all necessary expenses according to Sections 683, 670 BGB such as may arise from or in connection with a third-party claim, including recall actions we implement. As far as possible and within reasonable time limits, we will inform the Supplier about the content and scope of the recall and give him the opportunity – in urgent cases at short notice – to remedy the situation. All other claims shall remain unaffected.
- (3) The Supplier is obligated to conclude and maintain product liability insurance that is appropriate for the goods with a coverage amount of at least EUR 5 million per person/property damage.
- (4) Paragraphs 1 and 2 shall apply mutatis mutandis if claims are made against us for infringement of a third party's intellectual property rights.

## **§9**

### **Material provision/tools/retention of title**

- (1) Insofar as we provide parts to the Supplier, we reserve title to these items. Any processing or transformation done by the Supplier is being done on our behalf. If our reserved goods are processed with other objects not belonging to us, we acquire co-ownership of the new object in proportion to the value of our provision (purchase price plus sales tax) to the other processed items at the time of processing.
- (2) If we provide tools to the Supplier, we reserve title to those tools. The Supplier is obliged to use the tools exclusively for the manufacture of the goods ordered by us and to insure the tools belonging to us at replacement value against fire, water and theft at his own expense. At the same time, the Supplier assigns as of now all proceeds from any claims under this cov-

erage to us. We hereby accept the assignment. The Supplier is obliged to carry out any necessary maintenance and inspection work on our tools as well as all maintenance and repair work at his own expense in good time so that the consumption and functionality of the tools provided by us is guaranteed at all times. He must notify us of any incidents immediately; should he culpably fail to do so, our claims for damages shall remain unaffected. Tools must be handed over to us immediately upon request. Right of retention and/or liens do not exist on the tools in favor of the Supplier, unless they exist due to mandatory legal provisions.

- (3) Insofar as the Supplier produces and acquires tools for the production of the goods intended for us and charges us for them, these tools and other devices shall be produced and acquired for us as the owner and are to be surrendered to us upon payment of the purchase price. The provisions on the right of retention and liens of the previous paragraph apply accordingly.
- (4) The Supplier is obliged to keep all provided illustrations, drawings, calculations, estimates, technical data and other documents and information, including tools, strictly confidential. They may only be disclosed to third parties with our explicit consent in text form.

## **§ 10**

### **Jurisdiction/place of performance/ applicable law/assignment/miscellaneous**

- (1) Place of performance and exclusive place of jurisdiction for deliveries and payments as well as all disputes between the Supplier and us arising from concluded contracts and orders is our place of business, insofar as the Supplier is a merchant within the meaning of the Commercial Code.
- (2) The law of the Federal Republic of Germany applies exclusively to the relations between the contracting parties to the exclusion of private international law and the UN Sales Convention.
- (3) We are entitled to assign all claims from the contract without the consent of the Supplier. The Supplier is not entitled to as-

sign claims from the contractual relationship to third parties without our prior consent in text form.

- (4) Insofar as text form is provided for in the contract, the requirement is based on Section 126 b BGB and is also fulfilled by the written form requirement according to Section 126 BGB.

**Engelmann Sensor GmbH**  
**Updated: January 2019**  
**AG Heidelberg HRB 350980**