

General Purchase Terms and Conditions for the Purchase of Goods and Services in Business Relations

I. General / Scope of Application

- These General Purchase Terms and Conditions of ETO (hereinafter referred to as "these Purchase Terms") apply to all purchase contracts, contracts for work and materials, contracts for work and services as well as service contracts made with the supplier or other service provider (hereinafter referred to as "Supplier") by
 - ETO GRUPPE Beteiligungen GmbH, with registered office in Stockach, Germany
 - ETO MAGNETIC GmbH, with registered office in Stockach, Germany
 - ETO SENSORIC GmbH, with registered office in Nuremberg, Germany
 - EKS Elektromagnetik GmbH, with registered office in Vaihingen/Enz, Germany
 (hereinafter collectively referred to as "ETO").
- Any conflicting, deviating or supplementing General Terms and Conditions of the Supplier shall not apply unless ETO has expressly agreed to their application in writing. ETO's unconditional acceptance of the deliveries and services while being aware of the Supplier's conflicting or deviating General Terms and Conditions shall likewise not be regarded as acceptance of such terms.
- These Purchase Terms also apply to any future purchase contracts, contracts for work and materials, contracts for work and services and service contracts with the same Supplier, without ETO being required to newly refer to these Purchase Terms in each particular case.
- Unless agreed otherwise in these Purchase Terms, the statutory regulations regarding purchase contracts, contracts for work and materials, contracts for work and service as well as service contracts shall otherwise apply exclusively.
- Any legally relevant declarations and notifications to be made after conclusion of the contract by the Supplier to ETO (e.g. setting of deadlines, reminders, notices of rescission) must be made in written form to be valid.

II. Conclusion of Contract

- Orders shall be valid only if placed by ETO in text form (§ 126b German Civil Code). Orders placed orally shall be binding only if confirmed by ETO in text form (§ 126b German Civil Code).
- In principle, the Supplier does not have to provide an order confirmation.
- The order will be deemed accepted unless the Supplier objects to it within 3 working days following receipt of the order.
- If the Supplier states to ETO within 3 working days following receipt of the order that it accepts the order only subject to modifications, this will be deemed a binding offer by the Supplier and requires acceptance by ETO in text form (§ 126b German Civil Code).

III. Additional and Reduced Quantities

- ETO reserves the right in view of increased requirements from customers to raise the quantity ordered even after conclusion of the contract, as long as this is not unreasonable for the Supplier. If this leads to a change of the Supplier's costs and/or the delivery or service period required for performance of the contract, the price and/or the delivery or service period shall be adjusted such that the Supplier's interests are reasonably taken into consideration.
- In case of reduced customer requirements, ETO reserves the right to reduce the quantities ordered and/or cancel the order. Upon receipt by the Supplier of a corresponding written notice given by ETO to the Supplier, the Supplier shall cease any work in relation to the concerned order. ETO agrees to pay for any goods or services already accepted based on the price agreed with the Supplier. ETO will also pay the Supplier the agreed price for services already rendered or for goods already finished and will reimburse the Supplier for any expenses for partially rendered services, partially finished items and/or for raw materials ordered in fulfilment of the order, provided that the provision of the services, completion of the goods, the expenses as well as the order of the raw materials were called for in the ordinary course of business at that time. The Supplier agrees to follow ETO's instructions regarding use of such items or materials and to try, above all, to employ such goods or materials otherwise after the release by ETO. The Supplier will further endeavour to employ released capacities otherwise.

IV. Special Obligations of the Supplier

- As an expert in its field, the Supplier is aware of the needs and requirements of the automotive and/or mechanical engineering industry, particularly in terms of quality, costs and punctuality; the Supplier agrees to comply with such needs and requirements. The deliveries or services must live up to the rules and standards in this industry as well as with the legal regulations and standards applicable in the areas of health, safety, energy, environmental protection and labour law in the concerned countries in which the services are performed, the delivery items are produced or the products are sold with the Supplier's knowledge. The supplier will produce or provide its goods and services in an energy-efficient and resource-conserving way.

- The Supplier agrees to indemnify ETO with respect to any claims raised against ETO resulting from any culpable breach of the Supplier's obligations referred to in this section of these Purchase Terms. In such event, the Supplier shall be liable for all direct and/or indirect damage thereby caused to ETO.
- Based on the German Ordinance on Hazardous Substances (*Gefahrstoffverordnung*) and the EC Regulations thereby implemented, manufacturers and suppliers of chemicals are obligated to deliver to their customers without request the latest safety data sheets regarding the products supplied.
- No products the ingredients of which are marked as prohibited (classification "P" Prohibited) in the "Global Automotive Declarable Substance List" ("GADSL"; s. <http://www.gadsl.org>) may be delivered to ETO. If the products to be supplied to ETO contain substances which are considered declarable according to the GADSL (classification "D" Declarable), the Supplier shall inform ETO accordingly without undue delay. This information obligation exists also if any substances used which have so far been permitted are classified as prohibited or declarable in any later version of the GADSL. A corresponding entry in the International Material Data System ("IMDS") shall not be deemed sufficient as information to ETO.
- The statutory provisions according to Reach EC No. 1907/2006 must be implemented by the Supplier. This applies, above all, to the information obligation according to Article 33 according to which each supplier of a product will notify ETO of a substance listed in Article 59 (SHVC substances of the candidates list). The current candidates list is published and regularly supplemented by the European Chemicals Agency (s. <http://www.echa.europa.eu>). The Supplier will inform itself on its own and will comply with its information obligation to ETO in accordance with Reach.

V. Period of Delivery/Performance

- The delivery dates and performance periods specified in the order or the accepted offer (II. 4.) are binding. The Supplier agrees to inform ETO immediately in writing if circumstances are recognizable for it which indicate that an agreed delivery date or the agreed performance periods cannot be met.
- If the Supplier delays in performance, ETO may rescind the contract, terminate the contract and/or claim damages, in accordance with the statutory regulations. In such case, ETO has the right to obtain replacement elsewhere. In the event of default, the Supplier shall also be obligated, in particular, to reimburse ETO for express freight charges becoming necessary or other additional costs incurred by reason of the delayed delivery or services.

VI. Reservation of Title/Confidentiality

- Title shall be transferred to ETO unconditionally. Title to a delivery item shall pass to ETO upon ETO obtaining possession thereof. If ETO has made any down-payments for the delivery item, title to it and/or to the raw materials used for such item and the semi-finished products shall pass proportionately to ETO upon effecting such down-payment even before obtaining possession thereof, i.e. on a percentage basis according to the payment effected; ETO acquires co-ownership proportionately according to the down-payment performed. In such case, until transfer of possession, the parties are deemed to have an indirect possession arrangement under which the Supplier shall procure for ETO possession of the contractual items on a percentage basis in accordance with the down-payment made by ETO.
- Any extended or prolonged reservation of title shall be expressly excluded, which means that any reservation of title validly declared by the Supplier shall be effective only until payment of the supplied goods and only for such goods.
- ETO reserves the ownership and copyright to drawings, specifications, functional specification documents, files for electronic data processing, specimen as well as other documents; these documents shall be regarded as trade secrets and shall therefore be treated confidentially. They shall be used exclusively for the production in accordance with ETO's order. Oral information provided by ETO to the Supplier for the purpose of executing the order shall likewise be treated confidentially. Items produced based on ETO's proposals and drawings may not be supplied to third parties or sampled by third parties without the written approval of ETO. Drawings, specifications, functional specification documents, files for electronic data processing, specimen as well as other documents shall be returned to ETO without request upon completion of the order, unless these have been used up in accordance with their purpose.

VII. Warranty of Quality/Other Defective Performance

- If the supplied goods are defective or in case of any other poor performance by the Supplier, ETO shall be fully entitled to the statutory rights.
- Defectiveness shall particularly be deemed to exist if the supplied goods are not produced of the agreed material or do not comply with the instructions, specifications and/or drawings of ETO. The Supplier shall be liable regardless of whether a hidden or obvious defect is concerned.

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3. The Supplier agrees to undertake outgoing goods checks before the goods to be supplied are delivered to ETO. ETO shall meet the commercial duty to examine and requirement to give notice of defects according to § 377 German Commercial Code as follows: The duty to examine shall be limited to defects which are recognizable in the incoming goods check by way of sampling procedure conducting a visual examination (particularly with respect to transport damage as well as wrong and short delivery). ETO will examine the goods in the scope specified above immediately following delivery by the Supplier and will give immediate notice of any visible defects. The notice (notice of defect) will be deemed to be immediate and in good time in any event if received by the Supplier within 5 working days following dispatch of the goods. Any defects not recognizable in such examination shall be notified by ETO within 5 working days following their detection. The confirmation of receipt of the goods and the payment of the purchase price shall not be considered an approval by ETO of the delivery. Where acceptance is required, no duty to examine and notify defects shall apply.
4. If the Supplier fails to meet its obligation to make subsequent performance within a reasonable period set by ETO, ETO may remove the defect itself and demand reimbursement from the Supplier for any expenses thereby incurred. In case of imminent danger or particular urgency (e.g. threat of unreasonable loss), no setting of a deadline shall be necessary. Before ETO causes the defect to be removed itself, the Supplier will be notified accordingly.
5. ETO's claims based on defects of the contractual products delivered will become statute-barred based on the statutory regulations. In case of the Supplier's liability for defects of title, however, claims will become statute-barred no earlier than three years after delivery.

VIII. Product Liability/Measures to Avert Danger

1. The Supplier will indemnify ETO against damage claims made by third parties resulting from defective products to the extent that the cause of the defect derives from the Supplier's area of responsibility and the Supplier is directly liable in the external relationship.
2. Subject to the same conditions, the Supplier shall be obligated to indemnify ETO against such expenses and costs which are incurred by or charged to ETO in connection with necessary measures to avert danger, particularly any recall campaigns.
3. Insofar as possible and reasonable, ETO will inform the Supplier in advance about any measures to avert danger and give the Supplier the opportunity to comment.
4. Additional statutory claims of ETO based on product defects as well as claims and rights of ETO based on warranty of quality remain unaffected.

IX. Insurance

The Supplier shall maintain a public liability insurance policy with extended product liability cover as well as a recall campaign insurance policy, each with the terms and sums insured as are customary in the industry, and shall provide proof of such insurance cover to ETO upon request. Maintaining such insurance cover shall not limit the Supplier's liability.

X. Intellectual and Industrial Property Rights

The Supplier shall be responsible for the validity of the intellectual and industrial property rights concerning the delivered goods as well as for the unlimited usability of the delivered goods in respect of the intellectual and industrial property rights of third parties. The Supplier warrants that no rights of third parties are infringed in connection with its supply. The Supplier shall indemnify ETO against any actions and/or claims raised by third parties against ETO on the basis of the infringement of any intellectual and/or industrial property rights. This indemnification covers all expenses necessarily incurred by ETO under or in connection with claims made against ETO by third parties. The Supplier will support ETO in the defence of such measures.

XI. Prices/Incoterms

1. The prices stated in the order or in the accepted offer (II. 4.) are binding. These prices are fixed prices.
2. Unless stated otherwise in the order, the delivery terms DDP ("Delivery Duty Paid" according to Incoterms 2010) shall be deemed agreed.

XII. Assignment

Without the express written approval of ETO the rights and obligations of the Supplier resulting from the contract may not be assigned. This prohibition of assignment applies within the limits of § 354a German Commercial Code.

XIII. Invoicing

Invoices shall be provided to ETO immediately, i.e. without culpable delay, following completed delivery or service. Invoices must state the order date and number and must identify the delivered objects in correspondence with the concerned order or accepted offer (II. 4.). The Supplier must address the invoice to the address indicated on the face of the order form. Invoices must not be attached to the goods.

XIV. Payment Terms

The agreed price shall be due for payment within 60 calendar days from complete delivery and service and, where necessary, acceptance and the receipt of a proper invoice. If payment is made within 30 days, ETO shall have the right to deduct a 2% discount from the net amount. Payment will be made as collective payment within the payment periods once a week.

XV. Packaging and Dispatch Documents

1. The Supplier agrees to package the delivery items such as required by the type of storage and shipment concerned. The items to be delivered shall be packed with regard to the type of the concerned objects as well as the form of their dispatch and storage. This is to ensure that the delivery items will be delivered to ETO in perfect condition. In selecting the type of packaging, unreasonable environmental impact shall be avoided. The use of re-usable packaging/containers shall be aimed at. ETO will pay for packaging only if such payment has been specifically agreed. The Supplier shall be liable for any and all damage (destruction, wrong quantities, partial loss, etc.) caused to the delivery items due to improper or inadequate packaging within the Supplier's responsibility.
2. The delivery notes must indicate the content of each shipment with the number of pieces and/or weight.

XVI. Validity

If one provision or several provisions of the contract is/are or becomes/become invalid, unenforceable or void, the validity of the contract shall not be affected otherwise. The parties will attempt to replace the invalid, unenforceable or void provision with a valid and enforceable provision which comes closest to the financial purpose of such provision. The parties shall agree on such provision in written form by amending the contract as soon as possible after learning of the invalidity, unenforceability or voidness of such provision. This shall apply correspondingly also to the filling of any gaps in this contract.

XVII. Applicable Law / Place of Performance

1. German law applies, with the exclusion of UN purchasing law (CISG).
2. The place of performance for the delivery, payment as well as all other rights shall be the registered office of the ordering company listed in I. 1 above.
3. The exclusive place of jurisdiction for all disputes arising under or in connection with the contractual/delivery relationship shall be Stuttgart, unless another place of jurisdiction applies mandatorily.