

## General Terms and Conditions

### Conditions of Sale and Delivery

of affiliated EJOT Group Companies - hereinafter referred to as "EJOT" -

#### 1. Area of application

- 1.1 These General Terms and Conditions apply to business owners, legal entities under public and private law and special funds under public law.
- 1.2 All deliveries and services are provided exclusively on the basis of the terms and conditions below and any other agreements. In addition to these General Terms and Conditions, any specifications, drawings, descriptions, standards and other documents, and in particular agreements of confidentiality and compliance agreements stipulated between EJOT and the contractual partner, as amended, are applicable. Contractual partner's contradictory or additional terms and conditions, or terms deviating from the EJOT General Terms and Conditions not expressly acknowledged by EJOT in writing, are not valid. EJOT's General Terms and Conditions also apply if EJOT, being aware of the contractual partner's contradictory or additional terms and conditions, or terms deviating from the EJOT General Terms and Conditions, executes the delivery to the contractual partner without reservation.
- 1.3 These General Terms and Conditions also apply to all future orders and contractual relations between EJOT and the contractual partner, unless agreed otherwise.

#### 2. General regulations

- 2.1 Generally, the agreement is concluded by contractual partner's order and EJOT's confirmation (acceptance) in text form (also via fax, email, or Web portal).
- 2.2 If the order qualifies as an offer in the sense of § 145 BGB (German Civil Code), EJOT can accept this offer within 2 weeks.
- 2.3 The parties to the contract shall either jointly document any verbal agreements, e.g. in the form of negotiation records, or immediately confirm them in detail and in written form.

#### 3. Long-term and call-off purchase contracts, price adjustments

- 3.1 Unlimited contracts and contracts with a term of more than 6 months (long-term contracts) can be terminated by both parties at any time giving 3 months' notice.
- 3.2 If a major change in the cost of labour, material or energy occurs in the course of a long-term contract, each of the parties to the contract shall have the right to demand adequate adjustment of the price having regard to these factors.
- 3.3 Where a binding order quantity is not agreed, EJOT's calculation will be based on the non-binding order quantity expected by the contractual partner for a specific period of time (target quantity).
- 3.4 Where the contractual partner purchases less than the target quantity, EJOT has the right to increase the unit price by an appropriate amount.
- 3.5 In the case of call supply contracts, unless otherwise agreed, binding quantities are to be notified to EJOT by call not less than 1 month before the delivery date.
- 3.6 Any additional costs caused by EJOT's contractual partner through late calling or subsequent amendments to the call in respect of time or quantity are to be borne by the contractual partner; in this respect a calculation will prevail.

#### 4. Confidentiality

- 4.1 The contractual partner shall use all not generally known documents which are commercial or technology-related (and analogously samples, models, drawings, templates, similar objects, and data) and information received by it as a result of the business relationship with EJOT only for the jointly pursued purposes, and maintain secrecy in respect of third parties with the same due care as applied to its own documents and information, provided that EJOT described them as confidential or has an obvious interest in maintaining secrecy in respect of such documents or information.
- 4.2 The reproduction of such items is permitted only in the frame of operational requirements and copyright regulations.
- 4.3 This obligation commences upon receipt of the first documents or information and ends 5 years after the end of the business relationship.
- 4.4 The obligation does not apply to documents and information which are generally known, or which were already known to the contractual partner on receipt and where the contractual partner was not under obligation of secrecy, or where they are subsequently disclosed by a third party who is authorised to pass on such documents or information, or where the documents or information are developed by the receiving contractual partner without exploitation of EJOT's documents or information.
- 4.5 Subsuppliers must be bound to respective commitments.
- 4.6 The contractual partner shall not use the fact of the business relation for PR purposes unless previously agreed by EJOT in writing.

#### 5. Drawings and specifications

EJOT reserves property rights and copyrights in all pictures, drawings, calculations and other documents. This also applies to written documents marked "confidential". Before disclosing these documents to third parties, the contractual partner must procure EJOT's express consent in writing.

## 6. Samples and production equipment

- 6.1 Manufacturing costs for samples and production equipment (tools, moulds, templates, etc.) will, unless otherwise agreed, be invoiced separately from the goods to be supplied. This also applies to production equipment which has to be replaced as a result of wear and tear.
- 6.2 If, during the period of manufacture of samples or production equipment, the contractual partner abandons or terminates the co-operation without EJOT giving the contractual partner a justified reason to do so, all manufacturing costs incurred up to that time will be borne by that contractual partner.
- 6.3 Even where the contractual partner has paid for it, the production equipment remains EJOT's property at least until completion of the supply contract. The contractual partner is then entitled to reclaim the production equipment, where a mutual agreement has been reached in respect of the time of delivery and the contractual partner has fully complied with its contractual obligations.

## 7. Prices

EJOT's prices are in Euro, exclusive of turnover tax, packing, freight, carriage, customs duties and insurance. Statutory turnover tax will be stated separately on the invoice in the amount applicable at invoice date.

## 8. Payment terms

- 8.1 All invoices are due for payment within 30 days of the invoice date. In case of payment within 14 days after the date of invoice, cash discount in the amount of 2 per cent is granted provided the contractual partner has settled all claims when due.
- 8.2 If EJOT has indisputably supplied goods which are partly defective, the contractual partner is nevertheless obliged to pay for the non-defective part, unless partial delivery is of no use to the contractual partner. The contractual partner cannot set off any claims unless its counterclaims have been awarded in a final judgement, are uncontested, or accepted by EJOT.
- 8.3 If the payment terms are not met, EJOT shall be entitled to bill interest on arrears at the rate charged to EJOT by the bank for current account overdrafts, but at a minimum of 9 percentage points above the base interest rate of the European Central Bank at the time.
- 8.4 In the event of any delay in payment, EJOT may, after giving notice in writing to the contractual partner, suspend its obligations until payments have been received.
- 8.5 Bills of exchange and cheques will only be accepted where this has been agreed, and only on account of performance and on condition that they may be discounted. Discount charges will be calculated from the due date for payment of the invoice amount. A guarantee for presentation of bills of exchange and cheques at the due and proper time and for the lodging of a protest is excluded.

## 9. Delivery

- 9.1 Unless otherwise agreed, EJOT shall deliver "ex-works"/"EXW". Compliance with the delivery date or delivery period will be based on EJOT's notification of readiness for despatch or collection.
- 9.2 The delivery period commences at despatch of EJOT's order confirmation and will be extended as appropriate where the provisions of Section 17 apply.
- 9.3 Partial deliveries are permitted within reason. They will be invoiced separately.
- 9.4 Production-related long or short deliveries are permitted within a tolerance of 10 per cent of the total order quantity. The total price will be adjusted accordingly.

## 10. Despatch and transfer of risk

- 10.1 Goods which are notified as being ready for despatch are to be taken over immediately by the contractual partner. Otherwise, EJOT has the right, at its option, to despatch such goods or to store them at the cost and risk of the contractual partner.
- 10.2 In the absence of any special agreement, EJOT will select the transport method and routing.
- 10.3 On contractual partner's request, EJOT will take out transport insurance to cover the delivery. The contractual partner shall bear the costs.
- 10.4 The risk passes to the contractual partner on handover to the railway, forwarding agent or freight carrier, or on commencement of storage, but in any case not later than departure from the factory or warehouse; this also applies if EJOT has arranged for the delivery.
- 10.5 Special arrangements apply for taking back packaging.

## 11. Delay in delivery

- 11.1 When EJOT can anticipate that it will not be able to deliver the goods within the delivery period, EJOT shall immediately inform the contractual partner in writing of the reasons for this, and also if possible indicate the probable delivery date.
- 11.2 In the event of delivery being delayed by one of the circumstances set forth in Article 17 below, or as a result of any action or omission on the part of the contractual partner, an extension of the delivery period will be granted appropriate to the circumstances.
- 11.3 The contractual partner is only entitled to withdraw from the contract if EJOT is responsible for the delivery date not being met and the contractual partner has allowed EJOT a reasonable period of grace without result.

**12. Reservation of title**

- 12.1 EJOT reserves the right of ownership in respect of the goods supplied until such time as all claims under the business relationship with the contractual partner have been met. In case of violation of the agreement by the contractual partner, in particular delay in payment, EJOT is entitled to retrieve the purchased goods. EJOT's retrieval of the purchased goods constitutes a withdrawal from the agreement. Following retrieval of the purchased goods, EJOT has the right to sell them; the proceeds of such sale, minus reasonable selling costs, shall be deducted from the contractual partner's liabilities.
- 12.2 The contractual partner is obliged to treat the purchased item with care; in particular, it is obliged to insure it at its own expense against fire, water, and theft at its original value. The contractual partner shall duly carry out any maintenance and inspection work, if required, at its own expense.
- 12.3 The contractual partner is entitled to sell these goods in the regular course of business, provided it meets its obligations arising from the business relationship with EJOT in good time. However, it may neither pledge the reserved goods nor transfer ownership in them as a security. It is obliged to protect EJOT's rights if goods which are subject to reservation of title are resold on credit.
- 12.4 All claims and rights deriving from the sale or any leasing, for which EJOT may have given the contractual partner permission, of goods in which EJOT has property rights, are herewith assigned by the contractual partner to EJOT as security with immediate effect. The contractual partner also assigns to EJOT the claims for securing EJOT's claims against it arising against a third party from the connection of the purchased goods with a plot of land. EJOT herewith accepts the assignment.
- 12.5 For good cause, the contractual partner is obliged at EJOT's request to announce the assignment to the third-party buyers, and to give EJOT the information and hand over the documents required to assert EJOT's rights.
- 12.6 Any machining or processing of the goods which are subject to reservation of title shall at all times be carried out by the contractual partner on EJOT's behalf. If the goods which are subject to reservation of title are processed or inseparably mixed with other items not owned by EJOT, EJOT shall acquire joint ownership in the new product in the proportion of the invoice value of the goods which are subject to reservation of title to the other processed or mixed items at the time of processing or mixing.
- 12.7 If EJOT's products are combined or inseparably mixed with other moveable items to form a single product and the other product is deemed to be the principal product, the contractual partner shall transfer joint ownership to EJOT on a pro rata basis, as far as the principal product is owned by it. The contractual partner shall maintain ownership or joint ownership on EJOT's behalf. In all other respects, the same shall apply to the product created by processing or combination or mixing as to the goods which are subject to reservation of title.
- 12.8 The contractual partner must inform EJOT immediately of enforcement measures being taken by third parties in respect of the reserved goods by handing over to EJOT the documents required for any intervention. This also applies to infringements of any other kind.
- 12.9 If the value of the existing securities exceeds the secured claims in total by more than 10 per cent, EJOT shall, at the contractual partner's request, release securities to which EJOT is entitled in the respective amount. EJOT is free to choose which securities to release.

**13. Breach by the contractual partner**

In the event of breach of contractual partner's duties, in particular in the case of delayed payment, EJOT is entitled, after a reasonable period of grace allowed to the contractual partner for performance has elapsed without result, to withdraw from the contract and to retrieve the goods; this shall not affect the statutory provisions concerning cases where it is not necessary to allow a period of grace. The contractual partner shall be obliged to surrender the goods. EJOT is entitled to withdraw from the contract if an application is filed for insolvency proceedings to be instituted against the contractual partner's assets, or out-of-court settlement is applied for.

**14. Defects of quality**

- 14.1 The contractual partner can assert claims for defects only if it duly fulfilled the requirement to inspect and to make a complaint in respect of a defect immediately on receipt of goods in accordance with § 377 HGB (German Commercial Code).
- 14.2 The quality of the goods is determined exclusively by the agreed technical supply specifications. In the event of EJOT having to supply in accordance with drawings, specifications, samples and the like provided by the contractual partner, the latter will take over the risk of fitness for the intended use. The condition of the goods in accordance with the contract is determined as at the time of passing of risk.
- 14.3 EJOT shall not take liability either for any material defects attributable to the violation of operating, maintenance, and installation regulations or to unsuitable or improper use, faulty assembly or commissioning by the contractual partner or third parties, normal wear and tear, defective or negligent handling, nor for the consequences of unsuitable modifications or repairs undertaken by the contractual partner or third parties without EJOT's approval.
- 14.4 Claims for material defects shall become statute-barred 12 months after passing of risks. This shall not apply where the law prescribes longer periods of time as mandatory, particularly for defects in a building and in a product which has been used in accordance with its customary form of use for a building and has caused the latter to be defective.
- 14.5 Complaints about obvious faults shall be made in writing immediately after receipt of the goods, and about hidden faults immediately after occurrence of the failure.
- 14.6 If an acceptance test or initial samples test was agreed, notification of defects which could have been discovered by the contractual partner in the course of thorough acceptance test or initial samples test is excluded.
- 14.7 EJOT must be given the opportunity of assessing the reported defect. The goods complained of must be returned to EJOT immediately; EJOT will take over the transport costs where the notice of defect is justified. If the contractual partner, without EJOT's approval, modifies the goods which are subject to a complaint already submitted to EJOT, any claims for material defects shall be forfeited.

- 14.8 In the event of notice of defect which is justified and made at the due and proper time, EJOT will, at its own choice, make improvements to the goods complained of or supply a replacement free of defect. In case of a defective delivery, the contractual partner shall allow EJOT to have the stock sorted at short notice.
- 14.9 If EJOT fails to meet these obligations, or fails to do so within a reasonable period of time in accordance with the terms of the contract, the contractual partner may set in writing a final deadline within which EJOT must fulfil its obligations. After unsuccessful expiry of this period, the contractual partner may demand a reduction of the price, or withdraw from the contract.
- 14.10 Warranties regarding product characteristics and useful life must expressly and individually be defined as such in writing.

### **15. Other claims, liability**

- 15.1 Unless otherwise specified below, any additional or more extensive claims by the contractual partner against EJOT are excluded. This shall apply in particular to claims for damages for a breach of duties arising from delays, impossibility of performance, culpable breach of contractual ancillary obligations, and torts. EJOT is therefore not liable for any damage not deriving from the delivered goods themselves. EJOT is in particular not liable for any loss of profit, damage from interrupted operation, or other financial losses by the contractual partner.
- 15.2 Generally, EJOT is only liable to pay damages if EJOT is to blame for the damage caused by EJOT.
- 15.3 The liability to pay damages is excluded as far as the contractual partner effectively restricted its liability vis-a-vis its customers. Here, the contractual partner shall endeavour to agree limitations of liability, as far as legally permissible, also for EJOT as a supplier.
- 15.4 Contractual partner's claims are excluded in so far as the damage has been caused by the violation of operating, maintenance, and installation instructions, unsuitable or improper use, improper or negligent handling, natural wear, or faulty repairs for which the contractual partner is responsible.
- 15.5 The limitations of liability indicated above do not apply in the case of specific intent, gross negligence on the part of EJOT's legal representatives or executive employees, and in the event of culpable violation of significant contractual obligations. In the event of culpable violation of significant contractual obligations, EJOT is liable - other than in cases of specific intent or gross negligence on the part of EJOT's legal representatives or executive employees - only for standard contractual loss, or loss which might reasonably have been expected.
- 15.6 The limitation of liability is also not applicable in those cases where there is liability in accordance with product liability laws for personal injury or material damage in the case of defects in goods supplied for private use. It is also not applicable in case of injury of life, body or health and in the absence of guaranteed characteristics, if, and insofar as the object of the guarantee was to cover the contractual partner against any losses not deriving from the goods supplied themselves.
- 15.7 If the contractual partner intends to assert claims against EJOT pursuant to the above regulations, it shall inform and consult EJOT immediately and in full detail. It shall give EJOT the opportunity to examine the damage. The contractual parties shall coordinate the measures to be taken, in particular in case of settlement negotiations.
- 15.8 Insofar as EJOT's liability is excluded or limited, this is also applicable to the personal liability of EJOT's employees, workers, personnel, legal representatives and vicarious agents.
- 15.9 The legal provisions relating to burden of proof are not affected by this.

### **16. Patent rights**

The contractual partners agree to inform each other immediately of any patent rights and purported violation of patent rights and patent right applications, and to endeavour to proceed against such claims jointly.

### **17. Force majeure**

Acts of God, industrial disputes, disturbances, official measures, non-arrival of deliveries from EJOT's suppliers and other unpredictable, unavoidable and serious events will release EJOT from its duty to perform for the duration of the disturbance and to the extent of its effect. This is also applicable where these events occur at a time when EJOT is in default. The parties to the contract undertake to immediately provide, within the limits of reasonableness, any information necessary and adapt their obligations to changed circumstances in good faith.

### **18. Place of performance, place of jurisdiction and applicable law**

- 18.1 Unless otherwise indicated in the order confirmation, the place of performance is EJOT's principal place of business.
- 18.2 The place of jurisdiction for all legal disputes, including any action relating to payment bills of exchange or cheques, is EJOT's principal place of business, provided the contractual partner is a merchant, a legal entity under public law and a special fund under public law. EJOT is also entitled to bring an action at the place of business of the contractual partner.
- 18.3 The contractual relationship is exclusively subject to the laws of the Federal Republic of Germany under exclusion of the conflict of laws regulation. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG - "Viennese sales law") dated 11 April 1980 shall be excluded.
- 18.4 If a provision of these General Terms and Conditions and additional agreements concluded by the parties to the contract is or becomes invalid, the validity of the remaining stipulations of the contract shall not be affected.