

## **General Terms and Conditions of Purchase of AEMtec USA Inc.**

### **1 Scope of application**

- 1.1 These General Terms and Conditions of Purchase shall apply to all purchase orders and contracts of AEMtec USA Inc. (hereinafter referred to as "**Purchaser**") for the purchase and/or delivery of goods in the United States (hereinafter referred to as "**Products**") from seller (hereinafter referred to as "**Supplier**").
- 1.2 These General Terms and Conditions of Purchase shall apply exclusively. Any terms and conditions deviating from, conflicting with, or supplementing these General Terms and Conditions of Purchase shall be excluded. General terms and conditions of sale, delivery or other terms and conditions of the Supplier shall only apply if and to the extent that the Purchaser has expressly agreed to their application in the individual case. These General Terms and Conditions of Purchase shall also apply to all future orders and contracts, even if the Purchaser does not make specific reference to them.
- 1.3 Any reference to an offer, a letter, an e-mail or other declarations of the Supplier which contain or refer to deviating, conflicting or supplementary terms and conditions or the unconditional acceptance of deliveries as well as their payment in knowledge of such terms and conditions shall not constitute an agreement of the Purchaser, and these General Terms and Conditions of Purchase shall apply exclusively also in such cases.

### **2 Offer and acceptance of contract**

- 2.1 Any inquiries of the Purchaser are subject to change and are non-binding.
- 2.2 All offers made by the Supplier shall be deemed to be a binding contractual offer. Unless otherwise stated in the offer, the Purchaser is entitled to accept such a contractual offer within 10 days of receipt by placing an order.
- 2.3 The contract is binding upon acceptance of the offer of the Supplier by the Purchaser, and reflects the agreements between the Supplier and the Purchaser in full, and any verbal agreements between the contracting parties are replaced by this contract. Supplements and amendments to the contract, including these General Terms and Conditions of Purchase, must be made in writing or text form (e.g. by letter, fax or e-mail) in order to be effective.

### **3 Delivery, transfer of risk, acceptance of the Products**

- 3.1 Deliveries must correspond to the agreements made in terms of execution, scope, and scheduling, and must be made on time and within the agreed deadlines.
- 3.2 Unless expressly agreed otherwise, deliveries shall be made FOB destination for deliveries in the United States. Deliveries originating outside of the United States shall be made according to DDP (Delivered Duty Paid) Incoterms®, as amended from time to time.
- 3.3 The Supplier bears the procurement risk with regard to self-supply by its suppliers. Any reservations of self-delivery on the part of the Supplier shall not apply.
- 3.4 The Supplier bears the risk of accidental loss and accidental deterioration of the Products until they are handed over at their place of destination.
- 3.5 Furthermore, the Purchaser is only obliged to accept deliveries if they comply with the agreed specification features or have the other guaranteed features.

### **4 Partial, excess, or short delivery**

- 4.1 Partial deliveries require the prior written consent of the Purchaser. In such cases, the outstanding remaining quantity must be listed on the delivery note. If the Purchaser accepts partial deliveries without prior consent, this shall not cause any early maturity of payment obligations or constitute consent to the assumption of additional transport costs.
- 4.2 The Purchaser reserves the right to acknowledge excess or short deliveries in individual cases. If excess deliveries are made without prior written consent, the Purchaser shall be entitled to refuse acceptance of the excess quantity or the complete delivery. Insofar as the Purchaser cannot reasonably be expected to separate the quantities or such separation is not practically possible, the Purchaser shall be entitled to store excess deliveries at the Supplier's expense or to return them to the Supplier at the Supplier's expense and risk.

### **5 Periods, deadlines, delay in delivery**

- 5.1 The delivery time stated by the Purchaser in the order is binding, TIME IS OF THE ESSENCE in the performance by Supplier of all of its covenants and obligations as set forth in this Agreement.
- 5.2 The receipt of the defect-free Products at the place of destination shall be determinative for the compliance with agreed periods and dates.

- 5.3 As soon as the Supplier realises that it will be unable to meet agreed deadlines and dates in full or in part, it shall inform the Purchaser thereof, stating the reasons and the expected duration of the delay. Such notifications shall not affect the rights and claims to which the Purchaser is entitled in the event of a delay.
- 5.4 If the Supplier is in default, the Purchaser may - in addition to further statutory claims - demand a lump-sum compensation for the damage caused by the delay in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the Products, the delivery of which has been delayed. The Purchaser reserves the right to prove that a greater amount of damage has occurred.

## **6 Prices, packaging, shipping**

- 6.1 Agreed prices are fixed prices and exclude subsequent claims by the Supplier. Unless expressly agreed otherwise, the costs for packaging and transport to the place of destination are included in the prices.
- 6.2 The Products must be transported in such a way as to avoid damage or spoilage in transit.
- 6.3 If Products to be delivered must be marked or packaged in accordance with special national or international shipping regulations, the Supplier shall do so even in the absence of an express request.
- 6.4 Order numbers communicated to the Supplier, the designated recipients, article description and number, as well as the correct shipping destination, for the Products must be stated in all shipping documents.

## **7 Invoice, payment, rights of set-off, and retention**

- 7.1 Invoices must be submitted in a form that is suitable to being audited, containing all mandatory details required by applicable law after complete delivery free of defects and submission of documents for each order. Invoices may be rejected if they are not suitable to being audited.
- 7.2 Unless otherwise agreed in writing, payments shall be made within 14 days with a 3% discount or within 30 days net. The payment and discount period runs from receipt of the invoice, but not before the contract has been fulfilled without defects. Payment shall be deemed to have been made when the Purchaser has instructed the bank to make the payment on the last day of the period.
- 7.3 In the event of late payment, Supplier may charge interest at the rate of 1.5% per month after the due date, but in any event not more than the maximum rate allowed by law. .
- 7.4 The Purchaser shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent provided by law. In particular, the Purchaser shall be entitled to withhold payments due as long as the Purchaser is still entitled to claims against the Supplier arising from incomplete or defective performance. The Supplier shall have a right of set-off or retention only in respect of counterclaims which have been legally established or are undisputed.

## **8 Warranty**

- 8.1 The Supplier warrants that the Products are free of any defects which impede, restrict or reduce their value, functioning and use for their intended purpose, and that the Products will perform in accordance with the specifications set forth in the purchase order. In particular, the Supplier warrants that the Products comply with the samples and product or other specifications on which the contract is based as well as all applicable statutory and regulatory requirements and are fit for the purpose on which the contract is based. The Purchaser has the right to all remedies and warranties to the fullest extent provided under the Uniform Commercial Code (“**UCC**”), including, but not limited to warranties of merchantability and fitness for a particular purpose. Such remedies and warranties shall survive inspection, tests, acceptance and payment.
- 8.2 Acceptance of all or any part of the Products by the Purchaser does not relieve the Supplier from any of its obligations and warranties hereunder, nor will acceptance of any part of the order bind the Purchaser to accept future shipments or deprive Purchaser of any right which the Purchaser may have to return Products already accepted. Acceptance of all or any part of the order shall not be deemed a waiver of the Purchaser’s rights either to cancel or to return all or any portion of the Products because of failure to conform to the order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, suffered by the Purchaser as a result of any default by the Supplier or the Supplier’s products or performance. In no event shall payment be deemed to constitute acceptance.
- 8.3 The relevant statutory provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title, unless otherwise stipulated below.
- 8.4 Limitations or exclusions of liability by the Supplier are not accepted, including any exclusion of special or consequential damages. In the event of defects and in the event of a warranty claim, the Purchaser shall be entitled to all statutory rights in respect of defects. Insofar as individual warranty claims, e.g. on the basis of an assumed durability guarantee, go beyond the statutory defect-related rights, these shall remain unaffected.
- 8.5 A period of 36 months shall apply in each case to defect-related claims (unless a longer statute of limitations is available in the circumstances), beginning with the delivery of the Products at the place of destination. Any longer statutory limitation periods for the limitation of defect-related claims as well as the course of the statutory limitation period for guarantees shall remain unaffected.

- 8.6 If a defect becomes apparent within the limitation period, the Purchaser shall be entitled, at its own discretion, to demand subsequent performance by way of repair, subsequent delivery, or new manufacture within a reasonable period of time, including, but not limited to, a full refund of the purchase price. If the Supplier does not fulfil its obligation to remedy the defect within the set period, the Purchaser may remedy the defect itself and demand compensation from the Supplier for any expenses borne or a corresponding advance payment. In the event of defective packaging or incorrect declaration of the Products, the expenses to be reimbursed to the Purchaser shall also include the costs incurred by the Purchaser as a result of this (e.g. for repackaging or new packaging). In urgent cases, if the Supplier could not be reached and there is a risk of disproportionately high damages, the Purchaser has the right to carry out the supplementary performance at the expense and risk of the Supplier or to have it carried out by third parties. The Purchaser shall inform the Supplier of such measures without delay.
- 8.7 Furthermore, in the event of a material defect or defect of title of the Products, the Purchaser may reduce the purchase price, withdraw from the contract, and claim damages or the reimbursement of futile expenses.

## **9 Third-party property rights, ownership**

- 9.1 The Supplier shall ensure that the Purchaser does not infringe the intellectual property rights (including patent, trademark, copyright, and trade secrets) of third parties, by using or selling the Products in accordance with the contract. The Supplier shall defend, indemnify and hold harmless the Purchaser against all claims and expenses (including reasonable attorneys' fees) made against the Purchaser for infringement of an intellectual property right and shall bear the costs of protecting the rights if the claims are based on a breach of duty due to the Supplier's fault. In the event of a claim being raised the Purchaser shall inform the Supplier immediately.
- 9.2 The right to use the samples, drawings, designs, product specifications, data sheets and other documents of the Supplier, along with the Supplier's intellectual property rights thereto are assigned to the Purchaser insofar as such rights arise or are produced as part of the performance of this contract. The Purchaser has the right to use, within the scope necessary for the use of the Products, all software used in connection with the Products, including the appurtenant documentation. The Purchaser may make a back-up copy for its own purposes.

## **10 Product and manufacturer liability, insurance**

- 10.1 The non-contractual product and manufacturer liability of the Supplier shall be governed by the UCC. The Supplier shall defend, hold harmless and indemnify the Purchaser against all claims and expenses (including reasonable attorneys' fees) and damages (including consequential and special damages) arising from product and manufacturer liability if these are attributable to a defect in the Products supplied by it, the cause of which lies within its sphere of control or organisation and the Supplier itself is liable in relation to third parties. Under the same conditions, the Supplier shall also be liable for damages incurred by the Purchaser in such cases as a result of reasonable and necessary precautionary measures, e.g. public warnings or recalls. The Purchaser's right to assert its own claim for damages against the Supplier remains unaffected by this.
- 10.2 Within the scope of its indemnification obligation, the Supplier shall reimburse costs and expenses arising from or in connection with a third party claim, including recall actions carried out by the Purchaser. The Purchaser shall inform the Supplier of the content and scope of recall measures - insofar as this is possible and reasonable - and give the Supplier the opportunity to comment. Further legal claims remain unaffected.
- 10.3 The Supplier undertakes to insure corresponding risks to an appropriate amount, to maintain the insurance cover at least for the term of the business relationship with the Purchaser, and to prove this to the Purchaser on request by presenting its insurance policy.

## **11 Confidentiality**

- 11.1 Documents and samples made available to the Supplier by the Purchaser are to be treated as confidential and may not be made available to third parties or otherwise used without prior written consent.
- 11.2 The Supplier is obliged to keep confidential all operational data and information of which it becomes aware in connection with the business relationship with the Purchaser, including information about customers of the Purchaser, and to oblige its employees and other vicarious agents accordingly. This does not apply to data that is generally accessible to the public.
- 11.3 Where the Purchaser provides the Supplier with parts, tools, or other materials, the Purchaser reserves the ownership of all such items. All such items must be separately stored by the Supplier free of charge, labelled and managed. Their use is only allowed in connection with the orders placed by the Purchaser and for no other purpose. In the case of depreciation of value or loss of these items, the Supplier must provide a replacement. This will also apply to the case of leasing of any items in connection with the order. Repair and replacement of such items by the Supplier will be carried out on behalf of the Purchaser.
- 11.4 All tools, forms, samples, models, profiles, drawings, norm sheets, setting copy and measuring tools provided to the Supplier and/or produced by the Supplier on behalf of the Purchaser, as well as the items produced with them, will remain property of the Purchaser and may not be sold, transferred or assigned to third parties or used for a purpose other than that stipulated in the purchase order without the written consent of the Purchaser. All such items must be secured against unauthorized access or use. The Purchaser can demand their return in the event the Supplier breaches these duties. The Supplier will be obligated to use the items and documents provided exclusively for the manufacture of the Products ordered by the Purchaser and to insure the tools at replacement value at the Supplier's own expense against damage by fire, water, theft and other broad form casualties, and to perform any necessary repair and inspection work at the Supplier's own expense in due time and to report any trouble immediately.

- 11.5 The Supplier also will be obligated to treat all samples, drawings, calculations, trade secrets, mask rights, and other documents and information with strict confidentiality and to submit its subcontractors to the same duty. The duty of confidentiality will apply even after the contract has terminated. It will only cease to apply where the knowledge in the samples, drawings, calculations and other documents provided has become public.
- 11.6 Documents or data concerning secret business processes or other confidential information which are disclosed to the Supplier shall be returned by the Supplier to the Purchaser without delay after their use in accordance with instructions, at the latest, however, at the ending of the contract.

## **12 Compliance with applicable laws and Responsible Business Alliance code of conduct**

- 12.1 The Supplier is obliged to comply with the applicable national and international legal provisions.
- 12.2 Insofar as Regulation (EC) 1907/2006 (REACH Regulation) applies to the deliveries of Products and insofar as not expressly agreed otherwise, the respective substances must be registered or authorized in advance.
- 12.3 The Purchaser is member of the Responsible Business Alliance and has declared its support for the Responsible Business Alliance code of conduct (download: [http://www.responsiblebusiness.org/media/docs/RBACodeofConduct7.0\\_English.pdf](http://www.responsiblebusiness.org/media/docs/RBACodeofConduct7.0_English.pdf)). The Supplier undertakes to acknowledge and implement the Responsible Business Alliance code of conduct.

## **13 Quality assurance**

- 13.1 The Supplier undertakes to implement and maintain an appropriate quality assurance system. The Supplier shall ensure through appropriate quality assurance measures that the Products comply with quality requirements and specifications agreed.
- 13.2 Furthermore, the Supplier undertakes to provide a proof of the existence of a quality assurance system and showing the quality standards applied to the Purchaser upon the Purchaser's request, and to inform the Purchaser without delay in writing if changes to the quality assurance system occur. If the quality assurance system of the Supplier is certified, the Supplier shall provide a copy of the certificate upon the Purchaser's request and to inform the Purchaser without delay in writing if changes to the certificate occur or the certification expires.
- 13.3 The Supplier shall only transfer its contractual obligations to third parties with the Purchaser's prior written consent.
- 13.4 If the Supplier procures production or test equipment, raw materials, software, services, material or other basic material or services from sub-suppliers (sub-supplies) for the production or quality assurance of the Products, the Supplier shall include such sub-suppliers in its quality assurance system or to assure through appropriate measures the quality of such sub-supplies. Upon request the Purchaser, the Supplier shall provide a proof showing that the Supplier has assured oneself of the efficiency of the quality assurance system of its sub-suppliers.
- 13.5 The Supplier allows the Purchaser to conduct audits in order to check whether the Supplier's quality assurance measures comply with the Purchaser's requirements. Upon the Purchaser's written notice an audit can be executed as a systems or a process audit. The Supplier allows the Purchaser to enter the factories, laboratories, testing centers, warehouses and other facilities which are production relevant and to examine documents which are quality relevant. The Purchaser accepts reasonable audit restriction which are necessary to secure business secrets of the Supplier or third parties.
- 13.6 The execution of such audits will not affect or in any way restrict Supplier's sole responsibility for the quality of the Products.

## **14 Place of performance, choice of law, place of jurisdiction; severability**

- 14.1 Unless expressly agreed otherwise, the place of destination is the Purchaser's business domicile in the United States.
- 14.2 These General Terms and Conditions of Purchase and all contracts between the Supplier and the Purchaser shall be governed by the laws of the United States and of the State of Delaware. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded.
- 14.3 The exclusive place of jurisdiction for all disputes arising from or in connection with the contract is the federal and state courts located in the State of Delaware or in Boston, Massachusetts. However, the Purchaser has the right to bring a lawsuit against the Supplier in the federal or state courts located in any jurisdiction where the Supplier is located.
- 14.4 Should any provision of the contract, as well as any additional agreements between the parties, become invalid, this will not affect the validity of the remaining terms. The invalid term is to be replaced by a term which comes as close as possible to the economic purpose of the invalid term.