

# General Terms and Conditions of Purchase of AEMtec GmbH

## 1 Scope of application

- 1.1 These General Terms and Conditions of Purchase shall apply to all orders and contracts of AEMtec GmbH (hereinafter referred to as “**Purchaser**”) for the purchase and/or delivery of movable goods (hereinafter referred to as “**Products**”), if the seller is an entrepreneur as defined in Section 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law (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 Conclusion of contract

- 2.1 Any inquiries of the Purchaser are subject to change and 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 concluded with the offer of the Supplier and the order of the Purchaser reflects the agreements between the Supplier and the Purchaser in full, and any verbal agreements between the contracting parties are replaced by this contract, unless they expressly state that they continue to be binding. 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 according to “DDP AEMtec Berlin”, 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.
- 5.2 The receipt of the defect-free Products at the place of destination shall be decisive 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 higher damage has occurred. The Supplier reserves the right to prove that no damage at all or only a significantly lower 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 place of receipt of 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 The Purchaser does not owe any interest on the due date. The statutory provisions shall apply to payment defaults.
- 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 must provide defect-free Products. 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.
- 8.2 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.
- 8.3 The Purchaser's commercial obligation to examine the Goods is limited to defects which become apparent during an incoming goods inspection in the course of an external examination, including the delivery documents (e.g. transport damage, short delivery), or which are recognisable during a quality control via a random sampling procedure. Moreover, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The Purchaser's obligation to give notice of defects discovered later remains unaffected. Notwithstanding the Purchaser's duty to inspect, a notice of defect by the Purchaser shall in any case be deemed to have been sent without undue delay and in good time if it is sent within three working days of discovery or, in the case of obvious defects, of the arrival of the Products at the Purchaser's premises.
- 8.4 Limitations or exclusions of liability by the Supplier are not accepted. In the event of defects and in the event of a warranty claim, the Purchaser shall be entitled to the 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 subject to the statute of limitations, beginning with the arrival 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. 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 in accordance with the statutory provisions.

## **9 Supplier recourse**

- 9.1 The legally determined recourse claims within a supply chain (supplier recourse according to Sections 445a, 445b, 478 BGB) are available to the Purchaser without restriction in addition to the defect-related claims. In particular, the Purchaser shall be entitled to demand from the Supplier exactly the type of subsequent performance (repair or replacement delivery) which the Purchaser owes to its customer in the individual case. The statutory right of choice of the Purchaser (Section 439 para. 1 BGB) shall remain unaffected.
- 9.2 Before the Purchaser acknowledges or fulfils a defect-related claim asserted by its customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2) and (3) BGB), the Purchaser shall notify the Supplier and request a written statement, briefly setting out the facts of the case. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is brought about, the defect-related claim actually accepted by the Purchaser shall be deemed to be owed to its customer. In this case, the Supplier bears the burden of proof to provide evidence to the contrary.
- 9.3 The Purchaser's claims from supplier recourse shall also apply if the defective Products have been further processed by the Purchaser or another entrepreneur.

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

- 10.1 The Supplier shall ensure that the Purchaser does not infringe the industrial property rights of third parties, by using or selling the Products in accordance with the contract. The Supplier shall indemnify the Purchaser against all claims made against the Purchaser for infringement of an industrial 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.
- 10.2 The Purchaser objects to retention of title regulations of the Supplier, insofar as these go beyond a simple retention of title. Those regulations require a prior written agreement in individual cases. Should it nevertheless come about that sub-suppliers assert property rights, co-ownership rights or liens against the Purchaser or have compulsory enforcement measures carried out, the Purchaser will raise a claim against the Supplier for all damages resulting from this.

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

- 11.1 The non-contractual product and manufacturer liability of the Supplier shall be governed by the statutory provisions. The Supplier shall indemnify the Purchaser against all claims 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 it 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.
- 11.2 Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to Sections 683, 670 BGB 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.
- 11.3 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.

## **12 Confidentiality**

- 12.1 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.
- 12.2 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.
- 12.3 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.

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

- 13.1 The Supplier is obliged to comply with the applicable national and international legal provisions.
- 13.2 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 authorised in advance.
- 13.3 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.

### **14 Quality assurance**

- 14.1 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.
- 14.2 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.
- 14.3 The Supplier shall only transfer its contractual obligations to third parties with the Purchaser's prior written consent.
- 14.4 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.
- 14.5 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.
- 14.6 The execution of such audits will not affect or in any way restrict Supplier's sole responsibility for the quality of the Products.

### **15 Place of performance, choice of law, place of jurisdiction**

- 15.1 Unless expressly agreed otherwise, the place of destination is the place of performance.
- 15.2 These General Terms and Conditions of Purchase and all contracts between the Supplier and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded.
- 15.3 The exclusive place of jurisdiction for all disputes arising from or in connection with the contract is Berlin. This shall also apply if the Supplier does not have a general place of jurisdiction in the Federal Republic of Germany or has moved his usual place of residence abroad after conclusion of the contract. However, the Purchaser may sue the Supplier at any other legal place of jurisdiction.