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## General Terms and Conditions of Purchase of Ebnat AG

### 1. Application of the General Terms and Conditions of Purchase

1.1 These General Terms and Conditions of Purchase apply to all orders of Ebnat AG. Any terms of delivery of Supplier contained in Supplier's general terms and conditions or order confirmation are hereby repudiated; any unconditional acceptance of an order confirmation or delivery does not constitute acceptance of such terms.

1.2 Upon acceptance of an order by Supplier, where the order refers to these "General Terms and Conditions of Purchase", the latter shall become an integral part of the contract. Upon initial delivery at these General Terms and Conditions of Purchase, Supplier accepts that they will exclusively also apply to all future deliveries.

### 2. Order and Contract Formation

2.1 Orders shall only be binding if they have been placed in writing by the Ordering Party. Each order must be confirmed in writing by Supplier within 3 working days. The contract shall be deemed formed upon receipt of the order confirmation corresponding to the order.

2.2 Changes to deliveries and services may be requested, provided that this does not affect their overall character and the changes can be reasonably expected of Supplier. Any additional or reduced costs to this effect, as well as the necessary adjustments of the delivery periods, require express, written consent. Suppliers shall be compensated for any proven expenses, which are incurred prior to a change to the order and which are rendered useless thereby. No compensation shall be paid for any loss of profit of Supplier, which is incurred by changes to deliveries or services. The following items must be included in the order confirmation: order number, Ebnat article number, designation, quantity, price, delivery date, delivery address, terms of delivery, customs tariff number, origin.

### 3. Prices

3.1 Unless agreed otherwise, the agreed prices shall be deemed fixed prices. They include all agreed services and shall apply irrespective of the place of fulfilment. They include packaging and freight costs, as well as any taxes and duties, excluding VAT.

3.2 No payment for the preparation of quotations and for the delivery of the relevant design documents, samples and equipment shall be owed without the express, written consent of the Ordering Party.

3.3 Any price changes require prior mutual, express and written consent in order to come into force.

3.4 All payments are subject to proper delivery and accurate prices. If the delivery is faulty or incomplete, the Ordering Party is entitled to withhold payments for claims arising from the business relationship to a reasonable extent until proper fulfilment.

### 4. Delivery Date and Consequences of Delay

4.1 The delivery shall be due on the agreed delivery date at the place of fulfilment. In the event of a late delivery caused by Supplier, any additional transport costs, incremental costs, costs for accelerated processing and any financial consequences or losses resulting from late delivery, shall be borne by Supplier. The right to withdrawal by the Ordering Party pursuant to section 7 shall remain unaffected.

4.2 If a contract penalty has been agreed for the event of late delivery, this penalty shall be 3% for every 5 working days of delay, however, not exceeding 20% of the price of the delivery. If Supplier is behind schedule with a partial delivery, the rates of the contract penalty shall be calculated based on the total service to be rendered by Supplier, the use of which is affected by the delay of the partial delivery. Claims for damages by the Ordering Party shall remain unaffected.

4.3 Supplier may invoke a claim that the Ordering Party has failed to make the necessary provisions, only if Supplier requested said provision in due time in writing.

4.4 Partial deliveries and deliveries ahead of schedule, which deviate from the agreed delivery date, shall only be permissible by prior agreement.

4.5 If the agreed delivery quantity is exceeded by more than 10%, the Ordering Party has the right to return the excess quantity and Supplier's costs to Supplier.

#### **5. Transport, Risk Assumption, Insurance and Packaging**

5.1 Any special types and routes of transport must be agreed. Unless specific provisions have been made for individual cases, any goods shall be Delivered Duty Paid (DDP) CH-9642 Ebnat-Kappel (Incoterms 2010).

5.2 The risk shall be transferred after delivery at the place of fulfilment to a person authorised to take delivery for the Ordering Party.

5.3 If a transport insurance policy is to be taken out, this shall be agreed in advance.

5.4 Supplier is solely responsible for the proper packaging of the goods. Any material damage to the goods to be transported that is due to insufficient or inappropriate packaging, as well as any resulting financial consequences, losses or incremental costs incurred by the Ordering Party shall be charged in full to Supplier. The packaging must be labelled with the article number of the Ordering Party and the quantity. Supplier must bring to the Ordering Party's attention if special care is required when removing auxiliary constructions or similar.

5.5 All paperwork (delivery documents, invoices, etc.) must quote the article number and the order number of the Ordering Party, as well as the batch number.

5.6 The reward and risk shall be transferred after delivery at the place of fulfilment, even if the transport was undertaken or organised by the Ordering Party.

5.7 Supplier is liable for ensuring that the goods, their components and packaging comply with the regulatory requirements and safety standards at the place of fulfilment.

5.8 Unless otherwise agreed in writing, the goods shall be delivered on Euro pallets (model in accordance with UIC standard 435-2). These will be invoiced, unless like-for-like on site has been agreed. In this case, the exchange pallet must be white and not dirty.

5.9 The driver must unload the goods from the HGV independently.

#### **6. Warranty and Quality**

6.1 As a specialist, Supplier warrants that the delivery item does not have any defects that affect its value or fitness for the assumed purpose, that the delivery item has the warranted characteristics and complies with the statutory services and specifications. Furthermore, Supplier undertakes to continuously perform the appropriate quality controls. The delivery item must meet the statutory provisions at the place of fulfilment. Upon request Supplier shall hand over copies of the inspection records to the Ordering Party.

6.2 The warranty period shall be a minimum of 12 months after delivery of the delivery item.

6.3 Unless otherwise agreed in writing, the Ordering Party is not obligated to inspect Supplier's goods for defects upon receipt, be it only by performing spot-checks. Notification of defects can be given at any time throughout the entire warranty period, before and/or after processing and/or after resale.

6.4 If, during the warranty period, it materialises that the delivery item is defective (cf. section 6.1), the Ordering Party is entitled to demand rectification of the defect in situ at Supplier's cost or defect-free subsequent delivery. In urgent cases, the Ordering Party is entitled, after notifying Supplier, to rectify the defect at Supplier's cost, either itself or by bringing in a third party. If, in spite of a reasonable grace period – provided this is not pointless from the outset – Supplier does not make or properly make the demanded subsequent delivery or replacement delivery, the Ordering Party is entitled to rectify the defect at Supplier's cost, either itself or by bringing in a third party, or to procure a replacement.

6.5 Supplier shall be liable not only for its own services but also for those of its subcontractors.

6.6 Supplier shall grant a warranty for replacement deliveries and remedies to the same extent as for the original deliveries.

6.7 Any quality-related and technical changes with respect to the specifications and previous deliveries must be notified to the Ordering Party in writing without delay. They entitle the Ordering Party to cancel the order.

## **7. Ebnat AG Code of Conduct**

7.1 All products delivered to the Ordering Party must be manufactured in line with the criteria of Ebnat AG's code of conduct. To view the criteria of Ebnat AG's code of conduct, please visit <https://www.ebnat.ch/code-de-conduite.html>. In the event of demonstrable non-compliance with the criteria, the Ordering Party reserves the right vis-à-vis Supplier to have production stopped, to terminate the relevant contracts, to cancel any future orders and/or to discontinue the business relationship with the Supplier in breach of the code of conduct.

## **8. Withdrawal**

8.1 If Supplier is behind schedule with the delivery or warranty work pursuant to section 6.3, and if a reasonable grace period has expired unsuccessfully, the Ordering Party may withdraw from the contract and relinquish the delivery without incurring any costs.

8.2 If, prior to the due date of the delivery, it becomes apparent that Supplier is behind schedule to such an extent that Supplier will be unable to deliver, even within a reasonable grace period, the Ordering Party may withdraw from the contract and relinquish the delivery without incurring any costs.

8.3 In addition, the Ordering Party has the option to withdraw from the contract if, in the course of production, it can definitely be determined that the delivery item will not be fit for purpose.

8.4 Claims for damages by the Ordering Party shall remain unaffected.

## **9. Product Liability, Indemnity, Liability Insurance**

9.1 If Supplier is responsible or jointly responsible for a recorded product defect that is due to a defective and/or nonconforming product, the Ordering Party reserves the right to have recourse to Supplier, either fully or to a reasonable extent. If the product defect can beyond all doubt be attributed to Supplier's defective and/or nonconforming product, Supplier undertakes to indemnify the Ordering Party from all third-party damage claims on first request. The claims to recourse of the Ordering Party are subject to the same limitation periods as the third-party claims against the Ordering Party arising from product liability.

9.2 Within this scope, Supplier is also obligated to recompense any expenses arising from, or in connection with, a product recall undertaken by the Ordering Party. The Ordering Party shall – to the extent possible and reasonable – notify Supplier of the content and scope of the recall measures to be taken and grant Supplier the opportunity to respond.

9.3 Supplier undertakes to take out and maintain an all-inclusive product liability insurance policy with a minimum insured sum of CHF 5 million per personal injury/material damage. This shall not affect any further claims for damages of the Ordering Party. The Ordering Party reserves the right to request the respective insurance certificate from Supplier at any time.

9.4 In the event of faulty deliveries, in addition to the costs for the faulty material, the administrative expenses related to the faulty delivery may also be charged to Supplier.

## **10. Warranty of Title**

10.1 Supplier is liable for ensuring that the delivery and use of the delivered items does not infringe upon any third-party property rights (patents, samples, models, trademarks, etc.) Otherwise, Supplier shall indemnify the Ordering Party fully.

## **11. Intellectual Property Rights to Documents and Non-Disclosure**

11.1 All rights to documents (drawings, etc.) and the items described therein, which the Ordering Party hands over to Supplier within the scope of a supply agreement, shall remain the property of the Ordering Party. Supplier is not entitled to use such documents for any other purposes than the manufacture and delivery of the delivery item to the Ordering Party. In particular, Supplier is not entitled to use these documents for third-party orders, publish them or make them available to any third party in any other way. Upon request, all documents, including all and any copies and reproductions thereof, must be handed over to the Ordering Party without delay.

11.2 Supplier shall treat the order and the associated work and/or deliveries as confidential.

11.3 Any technical documents of Supplier or its subcontractors shall be treated as confidential by the Ordering Party. They shall remain the intellectual property of Supplier and/or its subcontractors.

11.4 For custom-made products, Supplier shall submit working drawings to the Ordering Party for approval prior to commencement of production. The specifications on the drawings shall be binding; any samples shall simply serve to illustrate the product. Approval shall not release Supplier from its product responsibility, in particular with respect to the development, design and manufacture. Supplier shall submit to the Ordering Party, without any additional charges, the definitive implementation plans, maintenance and operating instructions, as well as the lists of spare parts.

## **12. Invoicing and Payment Terms**

12.1 Unless agreed otherwise, payment shall be made within 30 days. The payment period commences upon receipt of invoice or, if receipt of the goods is after receipt of the invoice, upon receipt of the goods.

12.2 Supplier is not entitled to assign its claims against the Ordering Party, whether in whole or in part, or to dispose of them in any other way without the prior written consent of the Ordering Party.

## **13. Force Majeure**

13.1 The contracting parties shall not be held liable for any non-fulfilment of their contractual obligations as a result of so-called "acts of God". "Acts of God" means unforeseeable and objectively unavoidable circumstances that occur after the contract has been formed.

13.2 Any contracting party invoking reasons of force majeure is obligated to notify the other party immediately of the occurrence and anticipated duration of the delay. In the event of failure to notify or delayed notification, the party concerned shall be liable towards the other party for any additional incremental cost and financial consequences arising from this.

13.3 On request, Supplier shall provide the Ordering Party with a certified confirmation of the circumstances, which Supplier wants to be regarded as force majeure.

## **14. Data Protection**

14.1 The Ordering Party is entitled to process personal data within the scope of order processing. In particular, Supplier agrees that the Ordering Party may disclose such data to a third party for the purpose of establishing and maintaining its business relationships. Supplier shall ensure data protection by implementing appropriate measures.

## **15. Final Provisions**

15.1 These General Terms and Conditions of Purchase are governed by Swiss law.

15.2 Unless otherwise agreed, the place of fulfilment for deliveries and payment is the destination named by the Ordering Party, CH-9642-Ebnat-Kappel. The place of jurisdiction is the registered office of the Ordering Party. However, the Ordering Party is also entitled to prosecute Supplier at Supplier's registered office.

15.3 The conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

07/08/2018 Ebnat AG, 9642 Ebnat-Kappel