



## EUROGATE Group: General Terms & Conditions of Purchase

### 1. Scope

- 1.1 The following General Terms & Conditions of Purchase shall be a constituent part of all contracts concluded by ourselves with suppliers and contractors (both hereinafter called the "Supplier").
- 1.2 Any conflicting terms and conditions of business issued by the Supplier shall form no constituent part of contract, even if we are aware thereof, or have been apprised thereof, e.g. in offers or confirmations of order, nor shall they be applied to the contract, even if we do not separately protest them. The Supplier recognises these General Terms & Conditions of Purchase as solely binding in every case by virtue of his performance of the supply or service in question.
- 1.3 These Terms & Conditions of Purchase shall apply to all future business with the Supplier, until such time as new Terms & Conditions of Purchase shall come into force.

### 2. Offers by the Supplier

- 2.1 Offers made by the Supplier shall be binding on said Supplier within the normal term of commercial acceptance (usually four weeks), unless another time of commitment is explicitly stated in the offer. All offers by the Supplier shall be non-binding upon ourselves and shall be made free of charge.
- 2.2 The Supplier must closely adhere in his offer to the commission or tender which we have issued, with respect to quantities, properties and construction, and must draw attention in writing to any deviations therefrom.
- 2.3 Unless there is a CE-marking for the requested or offered service, the supplier is obliged to offer the performance with CE-marking

### 3. Orders by EUROGATE

- 3.1 Our orders and other statements shall only be binding upon ourselves if we have given them in textual form. All orders or statements given verbally or by telephone, as well as any amendments, supplements and ancillary agreements, shall only become legally valid when we have confirmed them in textual form.
- 3.2 The Supplier shall have a duty to respond immediately and in textual form to any order issued by ourselves, i.e. either to confirm or to decline conclusion of contract. Should we have an ongoing business relation with the Supplier, contract shall be deemed to have been concluded unless the Supplier declines conclusion of contract in textual form within four working days following receipt of order.

- 3.3 The provisions of the Purchase Contract shall exclusively be reflected by our written order as per 3.1 of these General Terms & Conditions of Purchase. Should any change from our order be contained in the Supplier's declaration of acceptance or written confirmation of order, or should supplementary contractual conditions be introduced, the Supplier must refer thereto in an explicit and clearly visible way. Changes shall only become an effective and constituent part of contract if they have been explicitly recognised by ourselves in textual form.
- 3.4 We reserve the right to amend obvious errors in contractual documentation, even after conclusion of contract, without incurring any disadvantage thereby.

### 4. General duties of supply and service

- 4.1 The Supplier shall deliver his supplies and services in accordance with contractual agreements, free of defects, to the quality usual in the trade, new ex works, packed in a way suitable for the product in question, as per contract and by due deadline, to the address given in the order.
- 4.2 The Supplier shall cede unlimited and unencumbered ownership of all supplies to ourselves immediately, and no later than the time when full payment of the agreed price has been made. The Supplier shall guarantee that no copyrights or other protected privileges of Third Parties impede provision of the supply or service to ourselves, or our enjoyment thereof, or of any resale of said supply or service.
- 4.3 The contracting party is bound to comply with all the obligations deriving from the minimum wage law [MiLoG] and sees to that any subcontractor likewise pays his employees, who perform their jobs in the Federal Republic of Germany, in line with MiLoG and also complies with the obligations deriving from MiLoG. In addition to that, the contracting party is obliged to pay contract penalty amounting to € 5,000.00 for each offence against MiLoG as well as for neglecting obligations deriving from this agreement in connection with MiLoG. The contracting party compensates us for any claim, claims for damages or penalty as well as for costs of prosecution and legal defence brought forward against ourselves due to the contracting party offending against the obligations mentioned above, especially obligations deriving from MiLoG or due to any subcontractor offending against obligations deriving from MiLoG.

### 5. Packaging, carriage, acceptance

- 5.1 The Supplier must provide proper packaging (in particular ensuring compliance with all relevant packaging and shipping regulations), and ensure its professional disposal/recycling, at his own cost.



- 5.2 A packing slip/delivery note showing our order number, the quantity dispatched, and the precise designation of the goods in question must be enclosed with each shipment, containing the same information as the forwarding advice.
- 5.3 Should an individual contract contain an agreement for delivery "ex works", the Supplier shall have a duty to select the cheapest transport route and to declare the bill of lading in the due and proper way. Shipments by railway wagon must be properly and fully marked (labelled). Should information be missing from the dispatch documents, the Supplier shall be liable for all costs arising therefrom, such as wagon-stallage charges, conversion charges, and similar costs.
- 5.4 We shall be entitled to claim as damages any additional costs that are incurred to us as a result of the Supplier failing to comply with the preceding provisions.
- 5.5 Dispatch must be made in every case to the delivery address given in the order.
- 6. Deadlines, periods of grace**
- 6.1 All delivery and finishing dates are binding as given and must be strictly kept. Unless explicitly agreed otherwise, the deadline agreed with the Supplier shall start to run upon conclusion of contract. Delivery and finishing dates shall be deemed to have been kept if the supplies and services in question have arrived at our premises in a contractual condition on the agreed dates, or within the deadlines agreed, and all work services have been performed by expiry of said deadlines.
- 6.2 Should it be anticipated that a delivery or finishing date will be overrun, the Supplier must immediately inform us in textual form of the reason for such overrun and its probable duration. In the event of a delivery or performance delay, the Supplier shall compensate us for any damage arising therefrom. Acceptance of any delayed delivery or performance shall not constitute a waiver of claims for damages.
- 6.3 The Supplier is aware that adherence to delivery and performance times is of the essence of the contract for ourselves. Should there be a delay, the supply or service is frequently of no further value to us, so that in such cases, without setting a period of grace, we may decline to accept performance and withdraw from the contract, or require damages in place of performance.
- 7. Contractual penalties**
- 7.1 Should the Supplier be in arrears of delivery or performance caused in his sphere of responsibility, the Supplier shall pay a contractual fine amounting to 0.2% of the price of the delivery and/or performance for which the Supplier is in arrears, for every working day or part thereof, but to no more than a maximum of 5 % of the agreed price.
- 7.2 Payment of such contractual fine shall not signify release of the Supplier from his duty of delivery. Should we accept the Supplier's delayed delivery or performance as fulfilment, our right to impose a contractual fine shall subsist even if we do not explicitly reserve this when accepting said delivery and/or performance, providing we have imposed the contractual fine by the time we have executed the counterperformance (e.g. by making an appropriate deduction from invoice).
- 7.3 We reserve the right to deduct the fine from the sum for which we have been invoiced.
- 7.4 All other rights to which we may be entitled as a result of delay by the Supplier shall not be affected hereby. Any contractual fine shall be allowed against such claims.
- 8. Right of rejection for infringement of delivery regulations and force majeure**
- 8.1 We may refuse to accept the supply or service if and so long as an eventuality of force majeure or other unforeseeable circumstances beyond our control (including industrial disputes) make it impossible or unreasonable for us to take said item of supply or service. In such cases the Supplier must store the item of supply or service at his own cost and hazard and deliver it without delay as soon as we inform him that the obstacle to acceptance has been removed, in pursuance of the above regulations.
- 8.2 Should the delivery regulations (Sections 4–6) be infringed, we shall be entitled to refuse to accept the shipment at the Supplier's cost, or to invoice the Supplier for any additional expenditure which we may incur thereby, or to offset it against the Supplier's receivables. This shall apply, for example, to premature deliveries, part deliveries, over-deliveries and under-deliveries, and to failure to provide a proper packing slip.
- 9. Place of fulfilment, transfer of risk**
- 9.1 The place of fulfilment for all supplies and services performed by the Supplier shall be the place of reception or use as given by ourselves from time to time. Should no place of reception be named, the place of fulfilment shall be the registered office of the EUROGATE company in question.
- 9.2 Risk shall be transferred to ourselves only when we have taken over the goods or accepted the performance at the place of fulfilment, and no earlier.
- 10. Prices**
- 10.1 Prices shall be effective maximum prices and "free point of use."
- 10.2 Prices shall further include payment for all deliveries and performances for which the Supplier has been commissioned (including any compulsory certificates, drawings, valuations etc.)



- 10.3 Separate payment for any supplementary performances by the Supplier may only be made if this has been agreed explicitly and in textual form.
- 10.4 Should payment be agreed in currencies other than the EURO, and should significant changes occur in the relation between the currency agreed and the EURO in the period between our order and contractual issue of invoice, we shall be entitled to pay either in the currency agreed or in EUROS, as we deem fit.

#### **11. Value Added Tax**

- 11.1 All prices shall be plus VAT at the rate as valid from time to time.
- 11.2 For deliveries and performances effected in a Free Port Zone, the statutory special provisions for Duty Free Areas as valid from time to time must be observed.

#### **12. Defects**

- 12.1 The Supplier shall have a duty in developing and manufacturing the item of supply or service to observe the latest state of science and technology at all times and to follow all compulsory statutory regulations. All performances must satisfy, if available, the requirements set out in DIN, EN, VDE or VDI or similar norms and regulations, as well as the statutory regulations in force at the place where the item of supply or service is to be used.

The same shall apply to all items of supply or service purchased by the Supplier from, or prepared by, a Third Party.

- 12.2 The Supplier shall guarantee that the item of supply or service reflects the current state of technology and does not suffer from material defects or deficiency in title. The Supplier shall have a duty to make careful inspection of any goods which he has obtained by delivery from Third Parties to ensure that they are free from defects.
- 12.3 Should a material defect transpire within the first 24 months following transfer of risk, it shall be assumed that the item was already defective when risk was transferred, unless such assumption is incompatible with the type of item or the type of material defect.

#### **13. Complaints**

- 13.1 The issue of a receipt certificate to the carrier upon receipt of goods shall not signify any relinquishment of claims or rights vis-à-vis the Supplier and shall only be made subject to a subsequent quantity and quality inspection as set out in the following Paragraph. Payments shall not signify any recognition of proper and defect-free supply or service.
- 13.2 Notification of defects in supplies or services shall be deemed to have been made in good time if such notification is made within two weeks, in the

case of obvious defects meaning two weeks from transfer or acceptance of the performance, and in the case of concealed defects meaning two weeks from the time when they were discovered. Dispatch of notification in good time shall be sufficient to observe this period of grace.

#### **14. Manufacturing inspection, final check**

- 14.1 We reserve the right, during manufacture and/or prior to delivery, to inspect the quality of materials used by the Supplier, the accuracy of measurement and quantitative accuracy of manufactured parts, and adherence to any other regulations, such inspection to be made at the Supplier's works and/or at the works of his initial supplier.
- 14.2 We reserve the right to institute a final check on all manufactured items of supply and service at the Supplier's works, either ourselves, or by a Third Party whom we have commissioned.
- 14.3 The Supplier shall pay the costs of such inspections, except for the costs of the staff whom we have sent.

#### **15. Legal rights in face of defects**

- 15.1 Should a defect be discovered, we shall be entitled to our full legal rights by way of remedy. Should the Supplier fail to make rectification, after we have required him to do so, within a reasonable period of grace set by ourselves, we shall be entitled, irrespective of our other legal rights, to make such rectification or to obtain a substitute, immediately and at the cost of the Supplier, either ourselves or through a Third Party.
- 15.2 The Supplier shall, upon request, remove any defects in items of supply or service of which he was notified during the warranty period (this also includes the failure to meet guaranteed specifications and the absence of warranted characteristics) immediately and free of charge, and also free of charge of any ancillary costs incurred, at our discretion either through rectification of the defect or through replacement of the defective parts or new delivery/new production of such parts.

The Supplier shall bear all the cost incurred in connection with the identification and removal of defects, including any costs incurred by us; this includes, without being limited to, inspection costs, dismantling and reassembly costs, labour and material costs as well as any transport and other costs incurred in replacing defective parts. This also applies to the extent that expenses increase because the supply item was delivered to a location other than the place of fulfilment, but not if the cost incurred thereby is unreasonably high. Our chosen type of rectification or replacement may not be refused on the grounds that this would incur unreasonably high costs, unless the cost of the chosen type of rectification or replacement exceeds twice the value of the item of supply or service (free of defects).



15.3 All claims for defects shall be subject to the statutory periods of limitation. For items of supply or service rectified or replaced, or parts thereof, such period of limitation shall recommence from the day when successful rectification is effected or the replacement delivery has been made.

15.4 Should the Supplier, with our agreement, undergo an inspection to ascertain the presence of a defect, or the removal of a defect, the period of limitation shall be suspended until such time as the Supplier informs us of the result of the inspection or declares to us that said defect has been removed, or has refused to continue with such removal. All and any declarations must be submitted to us at least in textual form.

#### **16. Rights of Third Parties**

16.1 The Supplier shall guarantee that no rights of any Third Parties, and in particular no industrial property rights, are infringed by the performance or by use of the item supplied. This shall also apply to industrial property rights abroad, unless the Supplier was unaware that the goods would be supplied within the purview of these property rights.

16.2 The Supplier shall have a duty to notify us immediately should rights of any Third Parties, e.g. industrial property rights, patents or legal protection of a utility model, be asserted upon an item of supply.

16.3 The Supplier shall release us from all obligations arising from the fact that an item of supply is encumbered by rights of Third Parties.

16.4 Further legal rights shall not be affected hereby.

#### **17. Child labour**

17.1 We strictly reject all forms of child labour in the supply and production chain.

17.2 The Supplier shall recognise the rights of the child within the meaning of Section 32 of the UN Convention on the Rights of the Child.

17.3 The Supplier undertakes to comply with all laws and regulations enacted by the Contracting States to the UN Convention on the Rights of the Child aimed at protecting children against economic exploitation and by the Members of ILO Convention Nos. 138 and 182 concerning the minimum age for admission to employment as well as the prohibition and immediate action for the elimination of the worst forms of child labour.

17.4 The Supplier further undertakes to impose the aforementioned obligations on any sub-suppliers, including, in turn, this obligation to impose a similar obligation on their sub-suppliers.

#### **18. Invoices, payments**

18.1 The Supplier must send us invoices following performance of the contractual supply and/or service, stating the order number on each case, the order date, and a copy of the proof of

performance. Should this information fail to be given, or should it be incorrect or incomplete, arrears of payment shall be excluded.

18.2 Following performance of the contractual supply and/or service, and receipt of proper invoice, we shall pay within 45 days net. We shall not be automatically in arrears on expiry of this period. Section 286, Paragraph 3 of the Civil Code shall not apply.

18.3 Should a supply or service be performed prior to the agreed deadline, this shall not alter the periods of grace given in Section 18.2, which shall begin to run only from the contractual deadline of the supply and/or service in question.

18.4 Should we be in arrears, we shall owe arrears interest of 5% per year. The Supplier shall be entitled to prove higher specific arrears damages in the individual case.

#### **19. Acquisition of title, proviso of ownership in processing and repair orders**

19.1 Should processing, conversion or repair work be commissioned on items under order, or on items handed over by ourselves to the Supplier, and if in this process materials are to be used, wholly or in part, which are already in our possession, the Supplier shall transfer to ourselves, at the time processing, conversion or repair commences, all ownership of such items or materials as he is to supply or utilise, irrespective of whether or not a uniform, inseparable or new item shall be created as a consequence of combination, mixing, commingling, processing or conversion as defined in Sections 947 to 950 of the Civil Code.

19.2 In these cases the Supplier shall transfer such items or materials as he is to supply or utilise to our mediate ownership at the time when their utilisation commences, and we shall allow the Supplier immediate ownership for the purpose of carrying out the order.

19.3 The Supplier shall be liable for any loss or damage of items transferred to himself. The same shall apply should our property be destroyed or damaged through combination, mixing, commingling, processing or conversion. The Supplier must notify us immediately of any impairment.

19.4 The above agreements shall also apply in particular to any case in which an item belonging to ourselves is used as a constituent part of another item.

19.5 In cases of processing or conversion, we shall be deemed to be the manufacturer under the terms of section 950 of the Civil Code.



## **20. Documents, drawings, designs, data**

- 20.1 All information provided by us within the framework of the order process, in particular documents, drawings, designs and other data, shall remain our property. The Supplier may utilise them only to execute his tender and to carry out the supply or service ordered. He must store them carefully and protect them from access by Third Parties. The Supplier must not use or duplicate the aforesaid documents and data, or make them available to Third Parties, for extra-contractual purposes, without our prior written permission.
- 20.2 The documents and other items listed in Paragraph 1, along with all copies or duplicates, must be returned to us immediately and without solicitation following completion of our commission or following performance of the supply or service ordered.

## **21. Cession of rights, rights of offset and retention**

- 21.1 The Supplier shall not be entitled to transfer any claims against ourselves to Third Parties, either wholly or in part.
- 21.2 The Supplier shall be entitled to rights of offset and retention only if his counterclaim is undisputed by ourselves or has already been successfully asserted at law. This shall also apply to the defence of non-performance of contract under Section 320 of the Civil Code.

## **22. Data protection**

- 22.1 For information and details on data protection please refer to our "Data Privacy Policy for our Customers and Business Partners", which can be found on our website at [www.eurogate.eu](http://www.eurogate.eu).

## **23. Place of jurisdiction, applicable law and partial invalidity**

- 23.1 The exclusive place of jurisdiction of both Parties for all disputes arising directly or indirectly from contractual agreements, or in connection therewith, including their preparation – whether from documents, bills of exchange or cheques – shall be the competent court for the Ordering Party. We shall nevertheless also be entitled, as we think fit, to pursue claims against the Supplier before the courts in whose jurisdiction his domicile, registered office or assets are situated.
- 23.2 German Law shall apply. Application of the Uniform Law on the International Sale of Goods is hereby excluded.
- 23.3 Should individual provisions of these Terms & Conditions of Purchase, or a contract for supplies or services of which these Terms & Conditions are a constituent part, be or become invalid, or should a regulation within the contract fail to be complete, the remaining provisions of the contract in question shall not be affected thereby. The invalid or incomplete provision shall be replaced by a regulation approaching most nearly to the sense and purpose of the desired provision.