

General Terms of Delivery for enkootherm GmbH

1. General

- 1.1 These general terms of delivery (GTD) apply to all deliveries and services of enkootherm GmbH (henceforth 'the supplier'). This GTD only applies if the ordering company (§ 14 of the BGB [German Civil Code]) is a legal entity under public law or a special fund under public law.
- 1.2 This GTD applies exclusively. Deviating, contradicting or supplementary sales conditions of the purchaser shall only become part of this agreement if and to the extent that the supplier has expressly agreed to their validity.

2. Contract conclusion

- 2.1 Offers from the supplier are subject to change and are non-binding, unless they have been expressly indicated otherwise. This applies if the supplier has left the purchaser with catalogues, technical documentation (e.g. drawings, charts, computations, calculations, references to DIN standards, etc.), other product descriptions or documentation – also in electronic form – to which the supplier reserves its rights of title and copyright.
- 2.2 When the purchaser orders goods this is considered a binding contractual offer. Unless otherwise stipulated in the order, the supplier is then entitled to accept this contractual offer within 2 weeks after the supplier receives it.

3. Prices and payment terms

- 3.1 Prices are ex works, inclusive of loading at the works, but exclusive of packaging, transport and unloading. Prices are subject to sales tax at the respective statutory amount.
- 3.2 Payment of the purchase price becomes due and is to be paid within 14 days from the date of invoice and delivery or acceptance of the goods. The supplier is entitled to request an advance payment amounting to 30% of the purchase price. The advance payment becomes due and is to be paid within 14 days from the date of invoice.
- 3.3 The purchaser is only entitled to offsetting or retention rights insofar as its claim has been established as legally valid or is undisputed.

4. Delivery periods and delays

- 4.1 Dates and periods specified by the supplier are non-binding, unless something other has been agreed to explicitly. The purchaser may withdraw from the contract once the non-binding deadline or the non-binding period is exceeded by 6 weeks where the supplier is responsible for this delay. The purchaser must provide the supplier with an appropriate grace period before doing so.
- 4.2 The supplier's keeping to delivery times always requires that all commercial and technical questions are clarified between the contractual parties and that the purchaser has fulfilled all the obligations incumbent on it; such as supplying necessary official certifications or approvals or making an advance payment. If this is not the case, then the delivery period will be extended as appropriate. This does not apply if the supplier is responsible for the delay.
- 4.3 The delivery period is complied with if the object of delivery leaves the supplier's premises or readiness for delivery is reported prior to the expiration of this period. If the goods are to be accepted, the date of acceptance is decisive – except for justified rejection of acceptance – or alternatively the announcement of readiness for acceptance.
- 4.4 If shipping or acceptance of the object of delivery is delayed due to reasons for which the purchaser bears responsibility, then the costs that are incurred because of the delay will be charged to the purchaser starting 14 days after shipping or acceptance readiness was announced.
- 4.5 The supplier is not responsible for delays due to force majeure or due to events which make service delivery considerably difficult or impossible for the supplier – this also includes subsequently occurring material sourcing issues, operational disruptions, strikes, lockouts, personnel shortages, transport equipment deficiencies, administrative orders, etc., also if these events occur at the supplier's suppliers or their sub-suppliers – even in the event of binding periods and deadlines that have been agreed to, unless the supplier is responsible for these impediments or is already late with performance delivery. Such delays entitle the supplier to postpone service delivery by the period of time covering the hindrance plus an appropriate start-up period, but up to a maximum of 4 months, unless the supplier announces the delay and its predicted duration to the purchaser immediately when this obstacle appears.
- 4.6 The purchaser may withdraw from the contract without notice if performance of the entire service ultimately becomes impossible for the supplier prior to the transfer of risk. Furthermore, the purchaser may withdraw from the contract if the performance of a part of the delivery on an order becomes impossible and the purchaser has a legitimate interest in rejecting the partial delivery. If this is not the case, then the purchaser must pay the contract price attributable to the partial delivery. The same applies in the event of supplier incapacity. In all other respects, point 8 applies. If this impossibility or incapacity occurs during acceptance delay, or if the purchaser is solely or predominantly responsible for these circumstances, it remains obligated to pay.
- 4.7 If the supplier gets behind schedule and the purchaser incurs damages as a result, then the purchaser is entitled to demand a flat rate amount of compensation for delay. This shall amount to 0.5% for each full week of delay, but shall be no more than 5% of the value of that particular part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay; unless the supplier can demonstrate to the purchaser that only minor damages have been incurred. In the event of such evidence, only damages that have actually been incurred will be compensated for.
- 4.8 If the purchaser sets the supplier an appropriate grace period for service delivery after the due date – accounting for statutory exceptions – and if this period expires without delivery, the purchaser is entitled to withdraw in accord-

ance with statutory regulations. Further claims relating to delays in delivery are exclusively determined based on point 8 of this GTD.

5. Transfer of risk and acceptance

- 5.1 Risk is transferred to the purchaser once the object of delivery has left the supplier's premises; and even once partial deliveries are made or the supplier has assumed other services – such as shipping costs or delivery and installation. If acceptance has to take place, this is decisive in terms of the transfer of risk. It must be performed immediately on the date of acceptance or alternatively following the supplier's notification of readiness for acceptance.
- 5.2 The purchaser may not refuse acceptance in the event of a minor defect.
- 5.3 If shipment or acceptance is delayed or stopped due to circumstances which cannot be attributed to the supplier, then the risk is transferred to the purchaser on the day of the notification of shipping/acceptance readiness. The supplier obligates itself to obtain insurance demanded by the purchaser at the purchaser's cost.
- 5.4 Partial deliveries are permitted, provided this is acceptable to the purchaser.

6. Reservation of proprietary rights

- 6.1 The reservation of property rights agreed to below is used for claims of the supplier that exist currently and in the future against the purchaser emanating from the supply relationship that exists between the contractual partners (including outstanding balances from a current account relationship restricted to this supply relationship).
- 6.2 The goods supplied to the purchaser by the supplier remain the property of the supplier pending full payment of all secured receivables. The goods and the goods covered by reservation of title acting in their place in accordance with the following provisions are henceforth referred to a 'reserved goods'.
- 6.3 The purchaser shall keep the reserved goods safe for the supplier without charge.
- 6.4 The purchaser is authorised to process and sell the reserved goods in the regular course of business until such time as a claim is made against them (point 6.9). Pledging and assigning by way of security is not permitted.
- 6.5 If the reserved goods are processed by the purchaser, then it is agreed that this processing occurs on behalf and on the account of the supplier as the manufacturer, and the supplier directly obtains ownership or – if processing is made using materials with several owners, or the value of the processed object is greater than the value of the reserved goods – joint ownership (fractional share ownership) of the newly created object as a proportion of the value of the reserved goods to the newly created object. In the case of the supplier obtaining no such ownership, the purchaser shall transfer its future ownership or, as in the case above, its joint ownership of the newly created object as security to the supplier with immediate effect. If the reserved goods are combined with other objects into a single object or are inseparably mixed, and if one of the other objects is considered to be the main object, then the purchaser transfers its joint ownership of the single object proportionally to the supplier to the ratio defined in line 1, provided the main object belongs to the purchaser.
- 6.6 If the reserved goods are sold on again, the purchaser immediately assigns resulting receivables owed by the procurer – or the proportion of joint ownership in the event of the supplier owning part of the reserved goods – to the supplier by way of security. The same applies to other claims taking the place of the reserved goods, or which otherwise emerge in relation to the reserved goods; such as insurance claims or claims from unauthorised action in the event of loss or destruction. The supplier revocably authorises the purchaser to collect receivables assigned to the supplier of its own accord. The supplier may only revoke this collection authorisation in the event of enforcement.
- 6.7 Should third parties seize the reserved goods, especially by means of pledging, the purchaser shall immediately alert them to the supplier's ownership of the reserved goods and notify the supplier to enable the supplier to assert its rights of ownership. If the third party is not able to compensate the supplier for judicial or extra-judicial costs arising from this circumstance, the purchaser bears responsibility to the supplier in this regard.
- 6.8 The supplier will release the reserved goods and any items or claims replacing it if their value exceeds the amount of the secured receivables by more than 50%. Selection of the items subsequently to be released is made by the supplier.
- 6.9 If the supplier withdraws from the contract owing to conduct of the purchaser which is contrary to the contract (enforcement), it is entitled to demand the return of the reserved goods.

7 Warranty and material defects

- 7.1 The warranty period is one year from the date of delivery or, if acceptance is required, from the date of acceptance.
- 7.2 The delivered items are to be inspected carefully immediately upon delivery to the purchaser or a third party appointed by it. In the event of obvious deficiencies or other defects that would be detected during an immediate and careful inspection, the goods shall be considered as approved by the purchaser, unless a written notice of defects is submitted to the supplier within seven working days following the delivery date. With respect to other defects, the delivery items are considered to be approved by the buyer if the notice of defects is not submitted to the supplier within seven working days of the defect appearing. However, if the deficiency was noticeable to the purchaser during normal use at an earlier point in time, then this earlier date is to be taken as the date for the start of the notification period. At the supplier's request, a rejected delivery item is to be shipped back to the supplier free of transport charges. If the notice of defects is justified, the supplier will reimburse the costs of the cheapest method of dispatch. However, this will not apply if the costs increase because the delivery item is located in a location other than that for its intended use.

- 7.3 In the event of material defects of the supplied items, the supplier is initially obligated and authorised to decide within an appropriate period of time between improvement and a replacement delivery. In the event of failure – meaning the impossibility, unreasonableness, rejection or inappropriate delay to improvement or replacement delivery – the purchaser may withdraw from the contract or reduce the purchase price accordingly.
- 7.4 If a defect is the result of intent or gross negligence on the part of the supplier, the purchaser may demand compensation for damages under the requirements specified in point 8.
- 7.5 In the event of defects to components from other manufacturers which the supplier cannot remedy due to license-related or factual reasons, the supplier can decide whether to enforce its warranty claims against the manufacturers and suppliers on the purchaser's account or assign these to the purchaser. In the event of such defects, warranty claims against the supplier only exist under other conditions and on the basis of this GTD if the legal enforcement of the claims cited above against the manufacturers and suppliers has been unsuccessful or is futile; in the case of insolvency, for example. During the course of the legal dispute, the limitation of the purchaser's warranty claims against the supplier is suspended.
- 7.6 The warranty is invalidated if the purchaser modifies the delivery item, or has it modified by third parties, without the consent of the supplier, whereby the remedying of the defect is made unreasonably difficult or impossible. In all cases, the purchaser is to bear the additional costs to eliminate the defect caused by the change.
- 7.7 A delivery of used items agreed with the purchaser in individual cases is to be made under exclusion of all warranty for material defects.

8 Liability

- 8.1 Unless something other is stipulated in this GTD and the terms that follow, the supplier is to be liable in the event of breaches of contractual and extra-contractual obligations in accordance with the relevant statutory regulations.
- 8.2 The supplier is liable for compensation for damages in the event of intent or gross negligence, irrespective of the legal grounds. In the event of simple negligence, the supplier is only liable
 - a) for damages resulting from physical injury, damage to health and the loss of life,
 - b) for damages due to breaching an essential contractual obligation (an obligation whose fulfilment fundamentally enables the orderly performance of the contract, and the observance of which the contractual partner should normally rely on and may rely on). In such a case, however, the supplier's liability is limited to replacing foreseeable, typically occurring damages.
- 8.3 The limitations of liability provided by point 8.2 do not apply if the supplier fraudulently concealed a defect or assumed a guarantee for the condition of the goods. The same applies to claims of the purchaser in accordance with the German Product Liability Act.
- 8.4 In the case of a breach of duty which does not involve a defect, the purchaser may only withdraw from or terminate the contract if the supplier is responsible for this breach of duty. A free right of termination for the purchaser (especially in accordance with § 651 and § 649 of the BGB [German Civil Code]) is excluded. Statutory requirements and legal consequences shall apply in all other respects.

9 Applicable law, court of jurisdiction and place of fulfilment

- 9.1 The law of the Federal Republic of Germany applies to this GTD and all legal relationships between the supplier and the purchaser under exclusion of international uniform law, especially the UN Convention on Contracts for the International Sale of Goods (CISG).
- 9.2 If the purchaser is a merchant in the sense of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the sole court responsible, even internationally, for all disputes arising directly or indirectly from this contractual relationship is where the supplier's business premises are based in Merkendorf. However, the supplier is also entitled to bring actions at the general court of jurisdiction of the purchaser. Mandatory legal regulations about exclusive jurisdiction remain unaffected from this regulation.
- 9.3 The place of fulfilment is where the supplier is based. This also applies if the supplier sends the product to a delivery address specified by the purchaser at the supplier's cost.