



TERMS AND CONDITIONS OF PURCHASE

As of 1 November 2003

1. SCOPE OF APPLICATION

- 1.1. All orders of EVG - are subject to the following Terms and Conditions of Purchase. It is expressly stated that Supplier's terms and conditions of purchase to the contrary shall not apply. Unilateral declarations, notations and references to general terms and conditions of purchase shown on invoices, delivery notes or other documents issued by Supplier shall be ineffective.
- 1.2. Supplier's deviating terms and conditions of sale and delivery are binding upon EVG only if these were expressly acknowledged in writing. By accepting and executing the order, Supplier acknowledges these Terms and Conditions.

2. OFFERS

- 2.1. Supplier shall adjust quantities and condition exactly to EVG's inquiry, and he shall specifically indicate any deviation. If the inquiry refers to approximate quantities ("circa"), Supplier approves any excess or shortfall by the Ordering Party that is minor compared to the order sum (approx. 10 %).
- 2.2. Supplier shall be bound to his offer at least 14 days after Ordering Party has received the offer.
- 2.3 Offers and cost estimates of a supplier are free of charge for and non-binding upon EVG, even if issued upon our request.

3. ORDERS

- 3.1. Orders shall be binding only if placed in writing. Any change made orally or by phone shall be binding only if confirmed in writing.
- 3.2. The order date shall be date on which the order is delivered. The order number stated in the order shall be included in all other documents related to the transaction of the business, such as invoices, shipping documents or delivery notes.

4. CONFIRMATIONS OF ORDER

- 4.1. Any order EVG has placed shall be confirmed immediately, without exception, in writing. If Ordering Party does not receive the confirmation within five calendar days after the order date – not counting mailing time – (in case of shorter delivery time the day following the placement of the order) a contract having the contents indicated in the order will become effective, unless Ordering Party cancels the order placed in writing. Any deviation from the order shall be expressly stated in the confirmation of order and accepted in writing by EVG.
- 4.2. If the order does not state prices and other conditions (e.g. delivery period), Supplier shall provide this information in the confirmation of order. EVG may revoke the order within 5 days if it disagrees with the contents of the confirmation of order.

5. DELIVERY

- 5.1. Place of performance for deliveries shall be the destination Ordering Party has indicated, or Ordering Party's establishment stated in the order. Goods shall be delivered and shipped to the place of performance as instructed by EVG free and clear of all expenses, at Supplier's expense and risk.
- 5.2. Goods shall be appropriately packed for transport. Supplier shall take back any packaging material at his expense upon Ordering Party's request. If packaging costs shall be borne by Ordering Party under a separate agreement, only cost of sales will be demonstrably charged and shown separately on the invoice. In this case Ordering Party

may request Supplier to take back recyclable packaging material and to grant a relevant credit.

- 5.3. Supplier shall at his expense procure sufficient insurance cover for the delivery. Registered c.o.d. consignments will not be accepted. A detailed delivery notice shall be sent when the shipment is dispatched. A packing slip and a separate delivery note for each order number shall be enclosed to the delivery.
- 5.4. Supplier shall attach to the transport documents all documents required for customs clearance, if any; for deliveries from the European Union or the EFTA, Supplier shall procure the correct issue of the movement certificate required for duty-free access.
- 5.5. If the delivery consists of several orders, these shall be separately packed or subpacked and marked as such. A relevant note shall be affixed to the delivery note and the packing slip.
- 5.6. By delivering the goods, Supplier accepts our order and thus our Terms and Conditions of Purchase.

6. DELIVERY DATES AND PERIODS

- 6.1. Supplier is obliged to comply with the agreed dates and periods of delivery. Compliance with periods or dates of delivery shall be considered on the basis of the date on which goods are received at the place of performance and, in case of services, on the basis of the date on which work is completed. Delivery periods shall start to run on the order date; unless otherwise provided, an agreed delivery period of eight days shall apply.
- 6.2. In case of a threatening delay in delivery, Ordering Party shall be immediately advised in writing, stating reasons and probable length of the delay. Supplier is obliged to reimburse any damage caused by delay. EVG is entitled to refuse acceptance of goods delivered before the agreed delivery date, and it may return or store with third parties the goods delivered ahead of schedule at Supplier's expense and risk.

- 6.3. A delivery shall not be deemed performed in time if the goods are defective, and if defects have not been removed within the agreed delivery date.

7. DELAY IN DELIVERY

- 7.1. If a date or period of delivery or a part delivery is not complied with, EVG, notwithstanding its entitlement to damages or warranty, may rescind the contract either immediately or by granting a grace period of fourteen days or insist upon performance of the contract. Any delivery contrary to the terms of the contract shall be deemed a delay in delivery.
- 7.2. Irrespective of his fault, Supplier shall pay to EVG a penalty of one percent per commenced calendar day of any delay in delivery or service - however, no more than ten percent of the total price - in case of a delay in delivery in whole or in part or delivery contrary to the terms of the contract. If Ordering Party exercises its right of rescission due to a delay in delivery or if Supplier is no longer able to fully provide the contractual service, a penalty of at least ten percent of the total price shall be payable.
- 7.3. Supplier shall also reimburse any damage in excess of the penalty, irrespective of his fault. Supplier shall also be liable for his servants and upstream suppliers. Any preliminary services Ordering Party has provided to Supplier shall be immediately surrendered to Ordering Party at Supplier's expense and risk after the contract has been rescinded on the grounds of a delay in delivery.

8. PAYMENT

- 8.1. All prices are fixed prices. Any increase in prices - also in case of statutorily approved prices - shall be timely notified to EVG in advance and requires a separate written agreement between the parties.
- 8.2. EVG is entitled to pay by bank transfer, check or acceptance of a bill of exchange and - without being in default with payment - may set off the purchase price payable against counterclaims, arising in particular under penalty, damages or warranty.

- 8.3. Payments will be made within 14 working days, less a 3 % discount, or net within 30 days. Payment periods will start to run upon receipt of a proper invoice - however, not before goods have been delivered or services provided.
- 8.4. Invoices are to be transmitted to the department invoice verification separated from goods delivered. Invoices not addressed to the department invoice verification are considered as not rendered and thus not considered for payment.
- 8.5. Payments are authorized by a weekly payment run depending on payment period. In case of receipt of the invoice leading to a deferment of the payment to one week later and thus exceeding discount period, reclaims of deducted discount on suppliers' side are rejected by EVG.
- 8.6. Based on the new fee regulation of EU payment transactions, all suppliers' bank charges invoiced are rejected without exception.

9. GUARANTEE - WARRANTY

- 9.1. Supplier guarantees that the products delivered comply with the state of the art, the relevant standards (e.g. ÖNORMEN, ÖVE provisions, EU standards, etc.), guidelines, laws and safety provisions, and feature the CE mark according to the EU Directives and applicable laws.
- 9.2. Supplier also guarantees that unrestricted and unencumbered title to the goods delivered will be passed on, and supplier undertakes to hold harmless and indemnify EVG from and against all claims asserted in this respect. Upon EVG's request, Supplier will procure his unrestricted title - for example, by confirming his upstream suppliers.
- 9.3. Supplier warrants that the goods delivered will not infringe upon any rights of third parties, in particular no Austrian or foreign patent, trademark, design, copyright or other industrial property rights, and he will hold harmless and indemnify EVG should any third party assert claims against EVG in this respect.

- 9.4. The warranty period is two years for movable goods and three years for immovable goods. Any defects that become evident not until when a product is used in accordance with its intended purpose are subject to a three-year warranty period. In derogation of § 933 Civil Code (*ABGB*), the parties agree that defects may be asserted not only in court but also in writing. Any warranty claims asserted in writing within the warranty period can therefore also be asserted in court after the warranty period has expired.
- 9.5. § 377 Commercial Code (*HGB*) is not applicable. EVG is therefore not obliged to inspect goods and to issue complaints. The unconditional acceptance or payment of goods delivered is irrelevant in view of the buyer's warranty rights.
- 9.6. In case of any defect, EVG, without setting a deadline, may at its election demand a cancellation of the contract, a price reduction or removal of the defect through repair or delivery of proper goods. Supplier shall remove defects, if any, at his expense within a reasonable period to be set by EVG. At the end of - and in case of particular urgency also before - this period, Ordering Party may procure that defects be otherwise removed at Supplier's expense.
- 9.7. Supplier shall also be liable for hidden defects, even if these become evident only upon fabrication or within the warranty periods agreed with our customers when using the machines we manufacture.
- 9.8. EVG is released from the statutory obligation to immediately inspect the goods delivered and to immediately give notice both of hidden and visible defects, if any.

10. QUALITY ASSURANCE AND PRODUCT ALTERATIONS

- 10.1. EVG is entitled to request reasonable access to Supplier's production premises during regular business hours and to inspect equipment, tools and documentation for the delivery of the goods ordered. Upon EVG's request, Supplier shall allow the inspection of all documents related to the product ordered, such as construction plans and calculations. EVG undertakes to keep this information confidential.

- 10.2. Before changing a product ordered, Supplier shall obtain EVG's written consent, irrespective of whether the product's functionality is affected.
- 10.3. Supplier undertakes to be able to deliver the contractual goods at least one year after the last order has been placed and to give at least six months' prior written notice if a product phases out or is altered.
- 10.4. Upon EVG's request, Supplier shall deliver to EVG at his expense a sealed set of comprehensive technical documentation of the product, construction plans and all documents available to him - including those documents that were made available to him by his upstream suppliers - and, if software is delivered, all source codes. If the product ordered can no longer be delivered, EVG may use the documents mentioned, and Supplier may not derive any claim therefrom.

11. PRODUCT LIABILITY

- 11.1. Supplier shall inform EVG immediately and comprehensibly of potential risks emanating from the goods delivered and of new findings already before damage occurs, and of alterations of products, and changes in construction and instruction with respect to the goods delivered.
- 11.2. Supplier undertakes to reimburse EVG for any damage as defined in the Austrian Product Liability Act and to hold harmless and indemnify EVG from and against all product liability claims third parties may assert in connection with the goods delivered.

12. CONFIDENTIALITY

- 12.1. The parties undertake to treat as business secrets all non-obvious commercial and technical matters they become aware of in the course of the business relationship and to assign this secrecy obligation also to their employees. This obligation shall be valid for an indefinite term and survive the end of the business relationship.
- 12.2. All plans, models, sketches, materials, tools, designs or information of any kind made available or financed by EVG to carry out the order are covered by the secrecy

obligation, they will remain the property of EVG and shall be immediately returned to EVG after termination of the business relationship.

- 12.3. Except with EVG's written consent, the documents, materials and tools made available as set forth in Clause 12.2 may not be reproduced, published or otherwise made available to third parties.

13. MISCELLANEOUS

- 13.1. If EVG is prevented from or substantially hampered in performing its contractual obligations (also towards third parties) through force majeure, EVG may cancel the contract in whole or in part or demand performance or delivery later on, and Supplier may not assert any claims in this respect. If Supplier cannot be reasonably expected to carry out the order in these events, Supplier may rescind the contract. Force majeure shall be in particular war, domestic unrest, acts of terror, strike, machine breakage, natural disasters and other circumstances beyond EVG's control.

- 13.2. EVG may rescind the contract in whole or in part and Supplier may not assert damages, if EVG's customer cancels the order with respect to the goods ordered in whole or in part due to an alteration of the model or other constructive or technical changes or for any other cause beyond EVG's control.

- 13.3. Except with EVG's written consent, Supplier's rights and duties may not be assigned to third parties.

14. AMENDMENT OF TERMS AND CONDITIONS

- 14.1. New or amended laws as well as the discontinuation of or change in the economic or political basis underlying a legal transaction will entitle EVG to amend these Terms and Conditions of Purchase by giving written notice. Any other amendment of or supplement to these Terms and Conditions shall be made in writing and signed by both parties. This shall also apply to any waiver of the written form requirement. Oral side agreements were not made.

14.2. Should any or several terms of these Terms and Conditions of Purchase be invalid, this shall not affect the validity of the remaining terms hereof. In this event, the invalid term shall be replaced by a valid term that reflects the parties' intent.

15. APPLICABLE LAW - PLACE OF JURISDICTION

15.1. Any dispute that may arise between the parties from their business relationship shall be governed by Austrian law.

15.2. The parties expressly exclude the application of the United Nations Convention for the International Sale of Goods (UN Sales Convention).

15.3. Exclusive place of jurisdiction shall be the court having subject-matter jurisdiction for EVG's registered offices.

THE ABOVE TERMS AND CONDITIONS WERE ACKNOWLEDGED AND SHALL BE DEEMED AGREED BETWEEN EVG AND ITS CONTRACTING PARTNER FOR ALL CURRENT AND FUTURE TRANSACTIONS.

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EVG

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Supplier's authorized signature