



# TERMS AND CONDITIONS OF PURCHASE

## 1. SCOPE

- 1.1. The present general terms and conditions of purchase ("**EVG Terms and Conditions of Purchase**") shall apply to any and all orders placed by EV Group GmbH or by one of its respective group companies as the customer ("**EVG**") with a third-party supplier ("**Supplier**").
- 1.2. The contract between EVG and the Supplier shall be exclusively concluded on the basis of EVG's order and on these EVG Terms and Conditions of Purchase. Any other terms and/or terms to the contrary, especially any general terms and conditions of the Supplier and one-sided declarations, comments and references to general terms and conditions, which appear on invoices, delivery notes or other documents created by the Supplier do not apply, except if EVG expressly agrees to them in writing.
- 1.3. By accepting and performing the order, the Supplier expressly accepts that the present EVG Terms and Conditions of Purchase apply.

## 2. QUOTATIONS

- 2.1. In his quote, the Supplier must precisely adjust the quantity and condition of the goods to be delivered to EVG's order and separately and clearly highlight any differences. If EVG's order only mentions rough quantities ("approx."), the Supplier herewith approves any shortfalls or excess quantities required by EVG which range within a reasonable level in relation to the total order quantity (approx. 10 %).
- 2.2. The Supplier shall be bound by his quote for at least 14 calendar days after receipt of the respective quote by EVG.
- 2.3. The Supplier's quotes and cost estimates shall be binding for the Supplier himself and free and non-binding for EVG, even if they were prepared upon EVG's request.
- 2.4. Materials specifically developed and/or manufactured for EVG must already in the offer phase be given clear item numbers, which can be assigned to EVG. From this point of time onwards, such materials (in particular with such item numbers) may not be offered or sold to third parties. The Supplier must pass on any requesting third parties to EVG.

## 3. ORDERS

- 3.1. Orders, which EVG places with the Supplier, shall only be binding if made in writing. Oral additions or additions made on the phone only become binding if EVG has confirmed them in writing.
- 3.2. The date of sending of the order to the Supplier shall be the order date. The order number included in the order shall be quoted in all other documents relating to the order process, such as invoices, dispatch or delivery notes.

## 4. ORDER CONFIRMATIONS

- 4.1. The Supplier shall confirm orders placed by EVG immediately and without exception in writing. If EVG does not receive the Supplier's order confirmation at least within five calendar days from the order date – postal run not included – (or on the day after the order was placed for orders with a shorter delivery period), the contract shall be deemed to have been concluded with the provisions as contained in the order of EVG, unless

the order is revoked by EVG. Any deviations from the order shall be separately and clearly highlighted by the Supplier in the order confirmation and shall require EVG's express and written confirmation in order to become effective.

- 4.2. If EVG's order does not state prices or other conditions (e.g. delivery period), the Supplier shall add such provisions in the order confirmation. EVG shall be entitled to revoke the order within five working days upon receipt of the order confirmation if EVG does not agree with the content of the order confirmation.
- 4.3. If EVG revokes the order, the Supplier shall not be entitled to any rights and claims of any kind.
- 4.4. In the case of capital goods, EVG only accepts as order confirmation the original EVG order document signed by the Supplier and returned to EVG.

## 5. DELIVERIES

- 5.1. The place of performance for deliveries shall be the place of destination as determined by EVG, or otherwise the location of the orderer as named in the order. Delivery and dispatch to the place of performance shall be effected as instructed by EVG and free of any and all fees at the Supplier's costs and risk. To the extent that EVG's order does not state anything to the contrary, delivery and dispatch shall be DDP place of performance (Incoterms 2010).
- 5.2. The Supplier shall package the ordered goods properly and appropriately for transport. Only environmentally friendly packaging materials may be used. The Supplier shall take back the packaging materials at his own costs, if EVG requests him to do so. If, based on an explicit agreement, EVG must pay for the packaging costs, the Supplier may only charge for his own costs for which evidence can be provided; such costs must be shown separately on the invoice. In this case, EVG shall be entitled to demand the reusable packaging materials to be returned and a credit note to be issued in this respect.
- 5.3. The Supplier shall sufficiently insure the ordered goods at his own expense during transport to the place of performance. EVG does not accept cash on delivery consignments. At the same time as sending the goods, an extensive delivery list and, to the extent that the Supplier is located outside the EU or EFTA, also the invoice required for customs processing of the goods must be sent by email to [Purchasing@EVGroup.com](mailto:Purchasing@EVGroup.com). A packing slip and a separate delivery note for each order number must be added to the delivery itself.
- 5.4. The Supplier shall attach the documents, which eventually might be required for customs purposes, to the freight documents and, in the case of a delivery from outside the EU or EFTA, shall ensure that the goods transport certificate required for customs exemption is filled in correctly.
- 5.5. If the delivery is made up of several orders, these shall be packaged or sub-packaged separately and marked as such. An according comment shall be added to the delivery note and packing slip.
- 5.6. Components and assembly groups developed and/or manufactured especially for EVG may only be delivered either to EVG, or upon specific instruction of EVG, to third parties. If

customs documents are required for such deliveries, EVG shall provide these documents. Invoices for such deliveries shall be sent exclusively to EVG.

## **6. DELIVERY DATES AND PERIODS**

- 6.1. The Supplier shall exactly meet the agreed delivery dates and periods. In terms of meeting the delivery dates or periods, for goods the arrival at the place of performance and for services the date of completing the works shall be relevant. Delivery periods shall start with the order date. To the extent that EVG's order does not state anything to the contrary, the delivery period shall be eight calendar days.
- 6.2. In the case of impending delivery delays, EVG must be informed immediately, by stating the reasons for and the expected duration of the delay. In any case, the Supplier shall regardless of any fault compensate any damages caused by the delay. EVG shall be entitled to refuse goods delivered before the agreed upon delivery date, to return the goods delivered early at the Supplier's risk and expense or to store them with third parties at the Supplier's expense.
- 6.3. Delivery shall also be deemed to not have been on time if the goods have defects, which have not been corrected until the agreed upon delivery date.

## **7. DELIVERY DELAY**

- 7.1. If a delivery or partial delivery exceeds the delivery period or the delivery date, EVG shall, irrespective of its claims for compensation of damages regardless of fault and its claims for guarantee and/or warranty, be entitled - at EVG's option either with immediate effect or by setting a grace period of fourteen calendar days - either to rescind the contract or to continue to insist on due performance of the contract. A delivery in breach of the contract shall be equivalent to a delivery delay.
- 7.2. In case of a partial or full delivery delay or a delivery in breach of the contract, regardless of any fault the Supplier shall pay EVG a penalty regardless of fault in the amount of one percent of the total price for each commenced calendar day of the delivery delay or the delivery in breach of the contract - up to a maximum of ten percent of the total price. If EVG makes use of its right of rescission of contract due to a delivery delay, or if the Supplier is no longer able to fully provide the contractual delivery or service, the Supplier shall pay to EVG in any case a penalty regardless of fault in the amount of ten percent of the total price.
- 7.3. The Supplier shall also regardless of fault compensate any and all damages exceeding the penalty. The Supplier shall also be liable for any and all of his agents and suppliers like for his own fault (Section 1313a of the Austrian Civil Code - ABGB). After rescission of the contract due to delivery default, the Supplier shall at his own expense and risk immediately return any advance performance to EVG, which EVG has already provided to the Supplier.

## **8. PRICES AND PAYMENT**

- 8.1. All prices shall constitute unchangeable and fixed lump sum prices. With the agreed upon prices all deliveries and services of any kind, which the Supplier provides under the contract shall be compensated. Consequently, the prices in particular comprise any and all labour and material costs, deliveries, assistance and ancillary services as well as any and all taxes, duties and dues resulting from regulations of public authorities. Changes to the costs of material or labour or any other price changes of any kind shall have no influence on the prices.
- 8.2. To the extent that EVG's order does not state anything to the contrary, all prices shall be DDP place of performance (Incoterms 2010).

- 8.3. EVG shall be entitled to make payments by way of bank transfer, cheque or accepted bill of exchange and - without this triggering any payment default - to set off the purchase price due with counterclaims of any kind, including but not limited to, any claims resulting from penalties, compensation of damages, guarantee and/or warranty.
- 8.4. EVG makes payments within 14 working days, less a 3 % cash discount, or net within 30 working days. The payment periods shall start with receipt of the duly issued invoice by EVG, however not before the due and complete delivery of the goods and services mentioned in the order.
- 8.5. Invoices must be sent separately from the goods to the team Accounting of EVG. Invoices not addressed to EVG's team Accounting are treated as not being duly issued and will not be paid by EVG.
- 8.6. Payments are approved in a weekly run under consideration of the payment periods. In case invoices due to the time of their receipt are scheduled for payment in the following week and therefore the cash discount period is exceeded, EVG shall still be entitled to deduct the cash discount.
- 8.7. Due to the new fee regulations for EU payments, EVG will without exception reject and not pay any bank fees invoiced by the Supplier.
- 8.8. Default interest for payment delays is agreed at an annual interest rate corresponding to the base rate of the Austrian National Bank plus one and a half percentage points.

## **9. GUARANTEE AND WARRANTY**

- 9.1. The Supplier guarantees that during the guarantee and warranty period, the delivered goods (i) shall have the usually assumed and contractually agreed upon qualities and functions and shall be suitable for the required use, (ii) shall correspond to the state of the art and the relevant standards (e.g. ÖNORMEN, ÖVE requirements, EU Standards, etc.), directives, laws, export and safety regulations and (iii) shall have CE labelling according to the European directives and applicable laws.
- 9.2. The Supplier guarantees that the delivered goods or services provided are not subject to any export restrictions under Austrian, European or US export and customs regulations (particularly EC-Dual-Use regulations). Should this nevertheless be the case in exceptional cases, the Supplier shall be obligated to inform EVG of any potential certification duties for (re-) exports of his goods in accordance with the mentioned regulations as well as of the export and customs requirements of the country of origin of his goods in his business documents and to fully indemnify EVG and hold EVG harmless with respect to any and all claims asserted in this respect.
- 9.3. The Supplier also guarantees that EVG shall have unrestricted and unencumbered ownership of the delivered goods, free from any and all rights of third parties, and agrees to fully indemnify and hold harmless EVG from any and all claims asserted in this respect. If requested by EVG, the Supplier shall provide evidence of his unrestricted and unencumbered ownership, e.g. by providing a confirmation from the sub-suppliers.
- 9.4. The Supplier guarantees that the delivered goods, their use and/or further processing do not violate the rights of third parties, including, but not limited to, domestic and foreign patents, trademarks, copyrights or other intellectual property rights, and agrees to fully indemnify and hold harmless EVG with respect to any and all claims asserted in this respect.
- 9.5. Finally, the Supplier shall fully indemnify and hold harmless EVG with regard to any and all patent and other disputes relating to his delivery and service, in particular in connection with intellectual property rights, and regardless of fault shall

compensate EVG for any and all costs, expenses and other disadvantages resulting from the limited use of the delivered goods.

- 9.6. The Supplier's guarantees mentioned in the above sections are abstract guarantees within the meaning of Section 880a, 2nd half sentence of the ABGB and EVG shall be entitled to such guarantees in addition to the statutory warranty claims during the term of the guarantee and warranty period.
- 9.7. The guarantee and warranty period shall be three years in any case. In deviation from Section 933 of the ABGB, in terms of reporting a defect in a timely manner, it shall be sufficient for EVG to assert any defect to the Supplier in writing during the warranty period.
- 9.8. Section 377 of the Austrian Commercial Code (UGB) does not apply. As a result, EVG has no obligation to inspect or notify the Supplier of any defects. Acceptance and payment of the delivered goods without reservation shall not affect EVG's guarantee and warranty rights.
- 9.9. In the case of a defect, EVG, at its own discretion and without having to set a deadline, shall be entitled to demand either a rescission of the contract (termination of the contract), a refund of an equitable portion of the price or a remedy of the defect either by repair or replacement of the delivered goods. The Supplier shall carry out any remedy of the defect at its own costs at the place of performance within the time period set by EVG. After this time period has expired - or earlier in case of special urgency - EVG shall be entitled to commission third parties to carry out the remedy of the defect instead of and at the Supplier's expense. The Supplier shall compensate EVG for any and all costs, expenses and other disadvantages, which EVG may suffer resulting from or related to the remedy of the defect.
- 9.10. The Supplier shall also be liable for hidden defects if such defects only become apparent in the course of EVG's further processing or within the warranty period as agreed upon between EVG and its customers during the use of the equipment produced by EVG for its customers.

## **10. QUALITY ASSURANCE AND CHANGES TO PRODUCTS**

- 10.1. EVG shall be entitled to demand access to the Supplier's production facilities during normal working hours and to a reasonable extent and to inspect equipment, tools and documentation relating to the delivery of the ordered goods. Upon EVG's request, the Supplier shall allow EVG to inspect any and all documents relating to the ordered goods, such as design plans and calculations. In this context, EVG shall be bound by a duty of confidentiality.
- 10.2. Before making any changes to the ordered goods, the Supplier shall obtain EVG's prior written approval, regardless of whether this affects the product's functionality or not.
- 10.3. The Supplier shall be obligated to still be able to deliver the ordered goods for another 10 years after the last order has been placed by EVG and to inform EVG at least 12 months in advance if a product should be phased out or changed.
- 10.4. EVG shall be entitled to rescind the contract with the Supplier in full or in part, if the customer cancels the order placed with EVG to manufacture the equipment, for which the ordered goods are to be used, in full or in part for reasons which are not within EVG's responsibility (such as a change in the model or other design-related or technical changes). In the case of such rescission of the contract by EVG, the Supplier shall not be entitled to any rights or claims of any kind.
- 10.5. Upon EVG's request, the Supplier shall at his own expense provide extensive technical documentation relating to the ordered goods, design plans and other documents available to him – including those provided by his sub-suppliers – and, in the case of a delivery of software, transfer the sealed

source codes to EVG. If the ordered goods can no longer be delivered, EVG shall be entitled to use the mentioned documents without any restrictions without this resulting in any rights or claims of any kind on the part of the Supplier.

- 10.6. The Supplier agrees to comply with the relevant legal requirements and regulations regarding environmental protection, occupational health and safety, accident prevention, transport and equipment safety, to maintain an effective quality management system in the mentioned areas and, if requested to do so, to provide EVG with the relevant evidence or grant EVG access.
- 10.7. The Supplier warrants that he will not be receiving goods and/or services from suppliers which are known to have violated occupational health and safety provisions and especially human rights (child labour, slavery, forced labour, etc.). This also applies if goods are received via a chain of sub-suppliers.

## **11. PRODUCT LIABILITY**

- 11.1. The Supplier shall inform EVG immediately and comprehensibly of any and all potential risks, which the delivered goods might present, and of any new insights and any changes to the production, design and instructions relating to the delivered goods even before damages might occur.
- 11.2. The Supplier shall compensate EVG for any damages within the meaning of the Austrian Product Liability Act (PHG) or comparable regulations in other countries, and shall fully indemnify and hold harmless EVG from and against any and all third-party product liability claims resulting from or in relation to the delivered goods.

## **12. CONFIDENTIALITY**

- 12.1. The parties agree to treat with utmost confidentiality all non-public commercial and technical matters of which they become aware during their business relations and to also impose this confidentiality duty on their employees. This confidentiality obligation remains in force for an unlimited period of time even after the end of the business relations.
- 12.2. All documents, plans, models, drawings, materials, tools, templates and information of any kind, which EVG provided to the Supplier for the performance of the order and/or which were financed by EVG, are subject to this confidentiality obligation, remain EVG's property and shall be returned to EVG immediately in a reasonable condition after the end of the business relations.
- 12.3. The documents, materials and tools mentioned under Clause 12.2. shall not be copied, published and/or otherwise made available to third parties without EVG's prior written approval.
- 12.4. The Supplier shall ensure that components and assembly groups specifically developed and/or manufactured for EVG are protected against third-party access. If EVG has paid for the development of such components or assembly groups, all related rights to these components and assembly groups exclusively and fully pass to EVG.
- 12.5. The Supplier shall expressly be barred from enticing away any of EVG' staff. This also applies if the enticing away is carried out by a headhunter or if EVG's staff actively approaches the Supplier.
- 12.6. The Supplier shall ensure that all companies belonging to the same group of companies as the Supplier, all of his employees and other business partners comply with the obligations set out under this Clause 12.

## **13. MISCELLANEOUS**

- 13.1. The contract between EVG and the Supplier shall be governed by Austrian law excluding the conflict of law provisions and the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.2. For all disputes arising out of or related to this contract the Parties submit to the exclusive jurisdiction of the competent court for the seat of EVG.
- 13.3. Amendments to and/or modifications of the contract between EVG and the Supplier shall only be valid if made in writing and signed by both Parties. Changes and/ or additions to the contract concluded between EVG and the Supplier shall only be valid if made in writing. Any waiver of this form requirement must be explicitly made in writing.
- 13.4. Should any provision of the contract between EVG and the Supplier be or become wholly or partly invalid or unenforceable this will not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be substituted by a valid or enforceable provision which in its essential purpose comes as close as possible to the invalid or unenforceable provision. The same applies in analogy to any gaps in the contract.
- 13.5. The contract concluded between EVG and the Supplier or any of the rights and obligations arising under this contract may only be assigned or transferred by the Supplier to a third party upon EVG's prior written approval.