

Purchasing Terms and Conditions

1. General

1.1. The legal relationships between the Supplier and EBRO ARMATUREN Gebr. Bröer GmbH, Hagen (hereinafter referred to as "EBRO") are governed exclusively by these Terms and Conditions and any other agreements, unless agreed otherwise. Amendments and supplements require written form. Any general terms and conditions of the Supplier contrary to or different from our Purchasing Conditions do not apply even if no objection has expressly been made to them in the specific case.

1.2. The basis for the business relationship with the Supplier is that the Supplier remains competitive in each case with regard to prices, quality, innovation and security of supply.

2. Definitions

The following terms are understood as follows in these General Terms and Conditions:

- **"Delivery Call-up"**: order in the course of a contractually agreed Order and Call-up Plan.
- **"Delivery Contract"**: order outside of an Order and Call-up Plan and the acceptance of the order.
- **"in writing"**: written communication by means of a document signed by the parties or by means of telefax.
- **"text form"**: communication in writing as well as communication by email or other long-distance data transmission.
- **"Contract"**: the agreement made in writing between the parties about the delivery of the Purchase Object as well as all annexes, including any supplements and additions to the above documents agreed in writing.
- **"Purchase Object"**: the goods, including software and documentation to be delivered as well as other performance to be

rendered under the Contract.

3. Conclusion of the Contract and Amendments

- 3.1. Contracts and Delivery Contracts as well as amendments and supplements to them must be in writing. In the case of Delivery Call-ups, text form is sufficient.
- 3.2. Oral agreements of all kinds – including future amendments and supplements to EBRO's Purchasing Conditions – require confirmation from EBRO in writing in order to be valid.
- 3.3. Cost proposals are binding and will not be compensated unless expressly agreed otherwise.
- 3.4. The Supplier will confirm the order in the form of a written order confirmation within three workdays after receipt. If the Supplier does not accept the order within two weeks after receipt, EBRO is entitled to cancel the order without the Supplier obtaining any right for damages as a result of the cancellation.
- 3.5. Delivery Call-ups in the case of an Order and Call-up Plan become binding unless the Supplier has objected within three workdays after receipt.
- 3.6. EBRO can demand changes and additions to the Purchase Object with regard to design and execution and in the specifications at any time in EBRO's reasonable discretion, taking into account the interests of the Supplier. The effects, especially with regard to cost increases and decreases as well as the delivery dates, must be reasonably regulated by an agreement.
- 3.7. The Agreement on Quality, Work Safety, Environmental Protection and Social Responsibility for Suppliers (Quality Assurance Agreement) as well as the Packaging Guideline of EBRO are a part of this Agreement.
- 3.8. On all correspondence with EBRO such as documentation based on contract, inclusive advice of dispatch, bill of loading and invoices, EBRO's order-no.

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has to be specified.

4. Prices and Payment Terms

- 4.1. The statements contained in our orders and Delivery Call-ups apply. The invoice must be addressed in one original to the respective printed address, stating the invoice number and other aspects of allocation; the invoice must not be attached to the shipments.
- 4.2. Agreed prices are fixed prices and include all costs, which will be occurred for the supplier during the implementation of the contract including all taxes, contributions and other operating expense. Turnover tax has to be disclosed separately.
The Prices are understood "delivery at place of designation" (DAP or DDP under the INCOTERMS® 2010), including packing. Value added tax must be shown separately. Unless agreed otherwise, the Supplier bears the risk until acceptance of the goods by EBRO or EBRO's agents at the place to which the goods must be delivered under the order.
- 4.3. Payments will be made within 14 days with a deduction of 3 % discount for prompt payment or within 60 days without deduction, calculated from the earlier of the receipt of the goods or the performance of the services, respectively, or the receipt of a proper and verifiable invoice. Each payment is made under reservation of a review of the respective invoice. If invoices are issued flawed, the aforementioned terms of payment will become effective not before the new issued and correct invoice is received.
- 4.4. In the case of acceptance of early deliveries, the due date for payments is determined by the agreed delivery date. In the case of a partial delivery which has not been agreed, the due date for the entire delivery is based on the date on which the last partial delivery is made. In the case of incorrect or defective delivery, EBRO is entitled to withhold the proportionate value of the payment until proper performance.

5. Terms of Delivery and Delay

- 5.1. Deviations from agreements and orders are only permissible with EBRO's prior written consent.
- 5.2. Agreed dates and time periods are binding. Compliance with the delivery date or the delivery period depends on when the goods are received duly at EBRO or rather the flawless provision of performance as well as the transfer of appendant documentation at place of reception or application site which is mentioned by EBRO or in timeliness of successful decrease. To the absence of documents which are necessary for the delivery and EBRO needs to hand out, the supplier is only able to invoke on if he reminded in written form and within an adequate deadline which enable the supplier to provide the performance on the due date.
- 5.3. Unless delivery "free factory" (DAP or DDP under the INCOTERMS® 2010) has been agreed, the Supplier must make the goods available in a timely manner, taking into account the normal time for loading and shipping. For earlier deliveries EBRO reserves the right to redeliver at suppliers costs and risk. If a reshipment doesn't occur at earlier delivery EBRO stores the goods until the agreed delivery date on costs and risk of supplier.
- 5.4. If the Supplier has assumed the installation or assembly, the Supplier bears all ancillary costs, for example, travel costs, providing the required tool as well as other costs related to the installation or assembly, unless agreed otherwise.
- 5.5. If agreed dates and deadlines are not complied with, the statutory provisions apply, unless provisions otherwise are contained in these Terms and Conditions. If the Supplier anticipates difficulties with regard to production, supply with up-stream materials, compliance with the delivery date or similar circumstances which could hinder a delivery on the agreed date or

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in the agreed quality, the Supplier must notify EBRO's ordering department and provide information on the reasons and state, if possible, the likely time for delivery. If the Supplier fails to give such a notification, the Supplier is required to compensate EBRO for all costs arising as a result of the failure to notify.

- 5.6.** The acceptance or payment for the Purchase Object or other services of the Supplier without any reservation means neither an acknowledgement of the respective goods or services as being in accordance with the Contract or the timing, nor do they constitute in the case of delayed delivery or services a waiver of claims of EBRO for compensation due to the delay.
- 5.7.** If the Purchase Object has not been delivered in accordance with the Contract on the agreed date, EBRO can demand from the Supplier liquidated damages in the amount of 0.5 percent for each commenced week of delay, however, limited in total to a maximum of 7.5 percent of the value of that part of the overall delivery which has not been delivered in accordance with the Contract or in a timely manner, starting as of that point in time when the delivery in accordance with the Contract was required to occur. The contract penalty or the assertion of the penalty does not affect EBRO's other legal rights or contractual claims based on default. Contract penalties that have been paid will be credited against claims for damages.
- 5.8.** If the supplier isn't able to deliver in case of delay, even not in adequate deadline, EBRO is entitled to abdicate of the contract without given further deadline. EBRO is allowed to conduct covering purchases; the supplier has to bear the additional costs if applicable.
- 5.9.** Notwithstanding all other rights of EBRO all over the contractual relationship with the supplier or this terms, EBRO is entitled to charge on a penalty for late deliveries, which has to be paid to the customer, to the supplier.

- 5.10.** Partial deliveries are generally not permissible, unless EBRO has expressly consented to them in advance.
- 5.11.** The values determined by EBRO upon controlling the receipt of the goods are determinative for the numbers of units, weights and measurements, subject to the Supplier providing proof to the contrary.
- 5.12.** EBRO has the right to use to the extent permitted by law (§§ 69a et seq. German Copyright Act [*Urheberrechtsgesetz*, "UrhG"]) the software belonging to the scope of delivery of the Purchase Object, including the documentation for the software. EBRO also has the right to use such software, including the corresponding documentation, together with the agreed performance features and in the scope required for using the product in accordance with the Contract. EBRO can also prepare back-up copies even without having an express agreement.

6. Export Control and Customs

- 6.1.** The Supplier is required to inform EBRO about any licensing requirements for the (re-)export of its goods in accordance with German, European as well as US American export and customs provisions and the export and customs provisions of the country of origin for the Supplier's goods in the Supplier's business records. For this purpose, the Supplier must state in its offers, order confirmations and invoices with regard to the relevant line items for goods at least the following information:
- the export list number in accordance with Appendix AL to the German Foreign Trade Regulation [*Außenwirtschaftsverordnung*] or comparable line item positions in relevant export lists,
 - for US goods, the ECCN (Export Control Classification Number) in accordance with the US Export Administration Regulations (EAR),

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- the origin of the Supplier's goods and for the components in the Supplier's goods, including technology and software,
- whether the goods have been transported through the USA, manufactured or stored in the USA or produced with the assistance of US American technology,
- the statistical goods number (HS Code) for the Supplier's goods as well as a contact partner in the Supplier's company for the purpose of answering any inquiries.

In addition, the Supplier is required at the request of EBRO to notify EBRO in writing of all other foreign trade data, records or information for the goods and their components and to inform EBRO in writing without undue delay (i.e. prior to delivery of corresponding goods affected by the measure) about all changes in the above data. The supplier is unrequested obliged to inform about any export restrictions for the products supplied which might exist.

- 6.2.** To the extent that the Supplier violates its duties under Clause 6.1, the Supplier is liable to EBRO for all fees, customs duties, penalty payments with regard to export control or customs and any other damages or expenditures incurred by EBRO as a result of the violation of the duty.

7. Acceptance Checks

- 7.1.** Each acceptance of the Purchase Object will be made subject to an examination with regard to freedom of defects, especially with regard to externally recognizable proper performance of the order and completeness of the delivery or services (acceptance) to the extent and as soon as this is appropriate in the normal course of business.
- 7.2.** Acceptance tests agreed in the Contract will be conducted at the place of manufacture during normal working

hours unless agreed otherwise. If the Contract does not contain any provisions about technical requirements, the general practice of the relevant branch of industry existing in the country of manufacture is determinative for the tests.

- 7.3.** The Supplier must inform EBRO in writing about the acceptance testing in so timely a manner that EBRO can be represented at the testing. If EBRO is not represented, EBRO will receive from the Supplier a detailed and signed test protocol.
- 7.4.** If the Purchase Object turns out not to be in conformity with the Contract during the acceptance testing, the Supplier must correct every defect without undue delay in order to establish the contractual condition of the Purchase Object.
- 7.5.** The Supplier bears all costs for the acceptance tests conducted at the place of manufacture.

8. Claims for Defects and Recourse

- 8.1.** EBRO will complain about defects without undue delay after discovering them. In this regard, the Supplier waives the defense that the complaint about the defect was too late.
- 8.2.** The statutory provisions about defects in the substance and legal defects apply unless provided otherwise below or in the Contract.
- 8.3.** EBRO generally has the right to select the form of corrective performance [*Nacherfüllung*]. The Supplier can refuse the type of corrective performance chosen by EBRO if the corrective performance is only possible at disproportionately high costs.
- 8.4.** If the Supplier does not start without undue delay after EBRO's request to correct the defects, EBRO has the right in urgent situations to correct the defects at the expense of the Supplier or to have these corrections made by a third party, especially in order to avoid threatening

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harm or avoid substantial damages.

- 8.5. In the case of legal defects, the Supplier must indemnify EBRO against any existing claims of third parties unless the Supplier is not responsible for the legal defects.
- 8.6. Claims for defects are time barred in three (3) years unless the law establishes a longer time bar period. The time bar period begins upon delivery of the Purchase Object (transfer of risk).
- 8.7. If the Supplier satisfies its obligation to provide corrective performance by making a replacement delivery, the time bar period begins to run anew for the goods delivered as a replacement after they have been delivered, unless the Supplier has correctly made a reservation in writing when rendering corrective performance that the replacement delivery is only being made for purposes of customer relations, in order to avoid disputes or in the interests of the continuing existence of the supplier relationship.
- 8.8. In case of the supplier delivers not conventional goods and isn't able to abdicate of the contract without given further deadline, EBRO is entitled to abdicate of the contract without given further deadline and send back the goods at costs and risk of supplier. EBRO is entitled – if necessary – to deal with covering purchase; herefrom as the case may be accrue additional costs, the supplier has to bear the costs. Further rights of the contract or this terms remain unaffected.
- 8.9. If EBRO incurs costs as a consequence of defective delivery of the Purchase Object, especially costs for inspection, transport, transit, labor, installation, disassembly or materials or costs for any control upon receipt that goes beyond the normal scope, the Supplier must bear these costs.
- 8.10. The supplier has to fulfill amendment and resupply if necessary, in multi-shift

operation or with overtime- or public holiday hour commitment, if this is necessary out of urgent internal reasons on EBRO's site and reasonable on supplier's site.

- 8.11. If homogeneous defects occurs at more than 2.5% of delivered goods (serial default), EBRO is entitled to reject the whole batch and enforce all legal and contractual agreed claims for defects for that.
- 8.12. Notwithstanding all other rights of EBRO all over the contractual relationship with the supplier or this terms, EBRO is entitled to charge on a penalty for defective deliveries, which is to pay to the customer, to the supplier.

9. Product Liability

- 9.1. In the event that customers or third parties assert claims against EBRO based on product liability, the Supplier is required to indemnify EBRO from such claims if and to the extent the harm has been caused by a defect in the Purchase Object delivered by the Supplier. In cases where liability depends on culpability, however, this only applies if the Supplier has acted in a culpable manner. If the cause of the harm lies within the scope of responsibility of the Supplier, the Supplier must prove that it does not have any culpability.
- 9.2. In the cases under Clause 9.1, the Supplier assumes all costs and expenses, including the costs for any assertion of rights.
- 9.3. EBRO will inform the Supplier prior to any recall action which is completely or partially a consequence of a defect in the Purchase Object delivered by the Supplier, and EBRO will give the Supplier the opportunity to cooperate and communicate with the Supplier about efficient implementation unless the information or involvement of the Supplier is not possible due to particular urgency. To the extent that a recall action is the consequence of a defect in the Purchase Object delivered by the

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Supplier, the Supplier bears the costs for the recall action.

- 9.4. Aside from this, the statutory provisions apply.

10. Performance of Work

Employees of the Supplier, the Supplier's agents for purposes of performance [Erfüllungsgehilfen] or other third persons performing work on the property of EBRO on the order of the Supplier and for performance of the Contract must comply with the provisions of the respective plant rules. The liability for accidents to these persons on the plant property is excluded unless these accidents were caused by intentional or grossly negligent violation of duties on the part of the statutory representatives of EBRO or its agents for purposes of performance.

11. Production Materials

- 11.1. Production materials provided by EBRO, for example, information, materials, parts, containers, special packaging, tools, models or other items (Production Materials) remain the property of EBRO and can only be used in accordance with the intended purpose. The processing of Production Materials as well as the installation, reinstallation or assembly will be carried out on behalf of EBRO. The Supplier has no right of retention over the Production Materials, regardless of the reason.

- 11.2. Production Materials manufactured by the Supplier for EBRO become the property of EBRO upon completion and acceptance by EBRO, but at the latest upon beginning of use for the production of Purchase Objects. Instead of transfer of possession, the Supplier grants to EBRO the indirect possession to the relevant Production Materials as of the time of completion and acceptance by EBRO, but at the latest as of the beginning of their use.

- 11.3. In the case of processing, connection or combination of Production Materials,

EBRO obtains co-ownership to the new product proportionately according to the value of the Production Materials provided by EBRO to the value of the overall product.

12. Rights of Withdrawal and Termination

- 12.1. In addition to the statutory rights of withdrawal, EBRO is entitled to withdraw from or terminate the Contract with immediate effect if

- a) the Supplier has stopped making deliveries to its customers,
- b) a material deterioration in the financial circumstances of the Supplier occurs or threatens to occur and this or other reasons endangers the performance of the obligation for delivery to EBRO,
- c) the situation of inability to meet ongoing payment obligations [Zahlungsunfähigkeit] or over-indebtedness [Überschuldung] occurs at the Supplier, or
- d) enforcement measures are initiated into the asset of supplier
- e) the Supplier repeatedly does not deliver in time or in accordance with the Contract, or
- f) at injury of other essential contractual obligations.

- 12.2. If EBRO withdraws from or terminates the Contract on the basis of the above contractual rights of withdrawal or termination, the Supplier must compensate EBRO for the resulting damages unless the Supplier is not responsible for the coming into existence of the rights of withdrawal or termination.

- 12.3. Rights and claims under the law are not affected by the provisions contained in this Clause 12.

13. Records and Confidentiality

- 13.1. All business or technical information (including features which can be derived from any provided items, documents or software, and other knowledge or know-how) that is made available must be kept confidential from third parties with regard to third parties so long as and to

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the extent that such information cannot be proven to have already been publicly known at the time it was disclosed, and such information can only be provided to those persons in the operations of the Supplier who must necessarily be involved in order to perform the duties of the Supplier under the respective Contract and who are also under an obligation of confidentiality, and such information remains exclusively the property of EBRO.

- 13.2. Corresponding obligations must be imposed on sub-suppliers.
- 13.3. Except for deliveries to EBRO, such information cannot be reproduced or commercially or otherwise used without the prior consent of EBRO in writing. Upon request of EBRO, all information from EBRO (including any prepared copies or recordings) and any items provided on a loan basis must be returned to EBRO completely and without undue delay, or they must be proven to have been destroyed.
- 13.4. EBRO reserves all rights to such information (including copyrights and the right to file for intellectual property rights such as patents, use patents, semiconductor protection, etc.). To the extent that EBRO has been provided the subject information by third parties, this reservation of rights also applies for the benefit of these third parties.
- 13.5. Products which have been produced according to the documents drafted by EBRO, such as drawings, models and similar items, or which have been produced based on confidential information from EBRO or with tools of EBRO or with tools built according to the same design cannot be used by the Supplier, nor can they be offered or delivered to third parties. This applies accordingly also for orders issued by EBRO for publication or reproduction.
- 13.6. The Supplier will provide to EBRO free of charge at the latest at the time of delivery of the Purchase Object the drawings as well as every other

documentation in the agreed number which enables EBRO to set up, commission, maintain and service the Purchase Object.

- 13.7. The parties can only advertise with their business relationship with the other party's prior written consent.

14. Force Majeure

- 14.1. *Force majeure*, war, civil unrest, currency and export restrictions as well as other unforeseen, unavoidable and major events release the parties from their respective duties to perform for the duration of the existence of such events and to the extent they have an effect. This also applies if the event occurs at a point in time when the affected party is late in performance.
- 14.2. The party referring to *force majeure* must inform the other party in writing without undue delay about the occurrence and the end of such an event. If a party fails to make such a notification, the other party is entitled to demand compensation for all additional costs it incurs as a result of the circumstance that it did not receive such a notification.
- 14.3. For the duration of the *force majeure* as well as within two weeks after the end of the *force majeure* event, EBRO is entitled – in addition to its other rights – at its discretion to completely or partially withdraw from the Contract to the extent that the underlying event is or was not just of an insignificant duration and EBRO's needs have decreased substantially due to required procurement from another source.

15. Compliance

- 15.1. The Supplier is required to comply with the relevant statutory provisions on dealing with employees, environmental protection and work safety and to work on reducing adverse effects on people and the environment from the Supplier's activities. For this purpose, the Supplier must install a management system in accordance with ISO 14001 to the extent

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possible for the Supplier and further develop such a management system. The Supplier will also comply with the principles in the Global Compact Initiative of the United Nations. These principles relate primarily to the protection of international human rights, the right to engage in collective bargaining negotiations, the elimination of forced labor and child labor, eliminating discrimination in hiring and employment, responsibility for the environment and preventing corruption. Additional information on the Global Compact Initiative of the United Nations can be found at www.unglobalcompact.org.

directly or indirectly from the contractual relationship is Hagen, Germany. However, EBRO is entitled to also file a complaint against the Supplier before its general court of jurisdiction or at the court of the place of performance.

- 15.2.** In the event that a Supplier repeatedly violates the law and/or violates the law despite being informed that it is doing so, and if the Supplier does not provide proof that the violation of the law has been cured to the extent possible and that reasonable precautions have been taken to avoid violations of the law in the future, EBRO reserves the right to withdraw from or immediately terminate existing Contracts.

16. General Provisions

- 16.1.** Place of performance is that location where the Purchase Object or the service must be delivered or rendered in accordance with the order.
- 16.2.** If any provision in these Purchasing Conditions is or becomes completely or partially invalid or unenforceable, this does not affect the validity of the rest of the provision or its parts. The parties are required to replace the invalid provision or its invalid part by a provision which comes as close as possible to the commercial result. This also applies in the event of a gap in the Contract.
- 16.3.** The contractual relationships are exclusively governed by the laws of the Federal Republic of Germany, excluding its laws on conflicts of laws as well as the United Nations Convention on the International Sale of Goods (CISG).
- 16.4.** Venue for all legal disputes resulting