

§ 1 Applicability

1. These General Conditions of Sale and Delivery will apply to any and all types of deliveries and services ("Contractual Item" or "Contractual Service") of
 - a) EDAG Engineering GmbH or
 - b) any of the associated companies of a)hereinafter referred to either individually or jointly as "Contractor" to its or their customer - hereinafter referred to as "Principal".
2. Legal relationships between the Contractor and Principal are to be governed solely by the following terms and conditions. Any deviations, modifications or amendments, including amendments to this requirement for the written form, are to be made in writing. Any conditions of the Principal which are contradictory or supplementary to, or which deviate from these conditions, will not apply unless they have received the Contractor's express, written approval. The commencement and/or execution of deliveries and services or receipt of payments without objection or silence on the part of Contractor shall in no case imply that terms and conditions of Principal are accepted.
3. As far as mutual commercial business is involved, these General Terms of Sale and Delivery are also to be applicable to any and all future transactions between the Principal and the Contractor, even if, in the individual case, no express reference has been made to these General Terms of Sale and Delivery.

§ 2 Quotation and Documents on Quotation

Verbal offers are always without engagement and subject to confirmation; to become binding, written confirmation is required. Unless otherwise expressly stipulated in the quotation, the period of commitment is 30 days following submission of the quotation. Any details and information included in the documents accompanying the quotation, such as technical descriptions, drawings, diagrams, data, programs and performance figures of the Contractor, are without engagement. Any information submitted in the quotation and related documents is the intellectual property of the Contractor only. The recipient must not use it for any purpose other than that contractually agreed upon. The recipient of the quotation is, during the offer phase, to check any information included in the documents accompanying the quotation to ascertain its feasibility for the proposed project. Should there be any discrepancies, the Contractor is to be notified within 10 days of receipt of the documents, otherwise the Principal is to answer for any defects and deviations occurring as a result.

§ 3 Conclusion of Contract, Written Form

No declaration by the Contractor of its intention to enter into a contract will be considered valid unless submitted in writing. Verbal statements will not become effective until they have been confirmed in writing by the Contractor. Any and all additional agreements and amendments must also be made in writing. The conclusion of a contract cannot be inferred from the written, unilateral reference by the Principal to contract negotiations which have taken place. Under no circumstances will silence on the part of the Contractor constitute consent. The written counter-confirmation of the Contractor is required for acceptance of the contents to be valid.

§ 4 Transfer of Risk

The risk of loss of the work performed will pass to the Principal as soon as the Contractor has handed it over for shipment to a forwarding agent or other person; or upon notification that the contractual item to be supplied have been completed and are available, as specified in the contract, at the Contractor's plant; or, in the case of data transfer, upon dispatch of the data.

§ 5 Retention of Title

1. The Contractual Item will remain the property of the Contractor until any and all of the Contractor's outstanding invoices arising from business relations with the Principal have been settled in full. Should the Principal process or treat the Contractual Item in any way, the Contractor's retention of title will cover any new item in its entirety.
2. Should the Principal process, combine or merge the Contractual Item with third-party items, the Contractor will acquire joint ownership of the fraction thereof commensurate with the proportion of the invoice value of the Contractual Item in relation to that of the other items used by the Principal at the time of processing, combining or merging.
3. Should the item subject to retention of title be combined or merged with a major item of the Principal or a third-party, then the Principal here and now transfers to the Contractor any title it might have to the new item. Should the Principal, in return for payment, combine or merge an item subject to retention of title with a major item of a third-party, then the Principal here and now transfers to the Contractor any entitlement it might have to remuneration by the third party.
4. The Principal is entitled to resell Contractual Items subject to retention of title in the course of well regulated business operations. Should the Principal resell these goods without receiving payment of the full purchase price either in advance, or against individual deliveries, then the Principal is to arrange with its own customer retention of title terms in accordance with these conditions. The Principal here and now transfers to the Contractor any title it might have to claims arising from this resale, and to any rights from the retention of title terms arranged.

5. The Principal is obliged, if requested by the Contractor, to notify the purchasers of such transfer of rights, and to provide the Contractor with any information and documents required by the latter to claim from the purchasers its due rights.

Notwithstanding the transfer of rights, the Principal is only authorised to collect receivables from resale as long as its own obligations to the Contractor are being met duly and correctly.

Should the value of securities surrendered to the Contractor exceed its claims by more than 10%, then, if the Principal so requests, the Contractor will be obliged to release securities of its own choice. Should the Contractor assert retention of title, the contract will not be deemed to have been cancelled without the Contractor's prior, written and express notice to this effect.

6. In the event of any breach of contract on the part of the Principal, in particular default of payment, or of the institution of insolvency proceedings against the assets of the Principal, or in the event of the rejection of such application due to lack of sufficient assets, the Principal will be obliged, at the request of the Contractor, to surrender any items subject to retention of title, without possibility of recourse to any right of retention.

Any such Contractual Item will then be subject to the unrestricted exploitation rights of the Contractor. If software has been provided, then in such an event, any of the Principal's rights of utilisation or exploitation granted within the context of the contract will lapse.

§ 6 Tools

1. Any auxiliary models, tools, moulds etc. (hereinafter referred to as "Tools") produced by the Contractor whilst completing the contractually agreed work do not constitute an integral part of the work performance, and will remain the property of the Contractor.
2. The Contractor will store the Tools for a period of six (6) months following acceptance of the parts by the Principal, without acknowledging any legal obligation in this respect.
3. Upon expiry of this term, and unless arrangements have been made by the Contractor and the Principal for the Tools to be stored for a further period, or for title to be transferred against payment of a reasonable sum, the Contractor will scrap the Tools.

§ 7 Periods of Delivery and Delays

1. In order for delivery deadlines to be met, it is essential that any and all documents to be supplied by the Principal, necessary permits and releases, especially those relating to plans, are received in good time, and that the Principal adheres to the agreed terms of payment and fulfils any other obligations it might have. Should these conditions not be complied with, the delivery periods will be extended appropriately; this will not apply in the event of the Contractor's being responsible for the delay.
2. The statutory consequences of default of the contractor shall not apply. In any case, regulations regarding liquidated damages or penalties for the default of the contractor shall only be valid if agreed in writing between the parties.
3. In any event, any claims by the Principal for compensation for delays in delivery in excess of the above-mentioned limits are excluded, even if the Supplier fails to meet an deadline which has already been extended.
4. Any mandatory legal liability provisions, e.g. liability on acceptance of a guarantee, liability for intent and gross negligence, injury to life, body or health, fundamental breach of contract, liability as per product liability laws, and the regulations covering the purchase of consumer products will remain unaffected.

§ 8 Force Majeure

Acts of God of any type, in particular unforeseeable shortages of labour, energy, raw or auxiliary materials, strikes, lockouts, official measures or other obstacles not caused by the Party under contract, which will delay, prevent, or render unreasonable the production, shipment, or approval of the Contractual Item, will release the Parties from their obligation to deliver or approve the goods for the duration and extent of the disturbance. If, as a result of the disruption, delivery and/or approval is delayed by more than eight weeks, then both Parties will be entitled to withdraw from the contract.

§ 9 Price and Payment, Crediting, Withholding right

1. Prices are quoted ex works, and do not include any incidentals such as statutory value added tax, packaging, customs duties, freight, insurance, etc. Unless otherwise agreed, payment in full will become due immediately upon conclusion of the contract.
2. To begin with, the Contractor will be entitled to use payments received from the Principal to settle any previous debts, and to balance first costs and interest, and then the main Contractual Item with incoming payments.
3. If, following conclusion of the contract, any justified doubt should arise as to the Principal's solvency, the Contractor may request payment in advance or the furnishing of securities. Should the Principal fail to meet any such request, the Contractor will be entitled not only to withhold its services, but also to terminate the contract. The Principal is entitled to offset, withhold or reduce only if claims are undisputed or are the subject of a final court judgement.

§ 10 Acceptance

Insofar as the type of service ("Contractual Item") calls for an approval test, this must be carried out without undue delay on the part of the Principal, who is to draw up a written test report. Should the Principal fail to approve the service within 14 days of notice of completion and/or delivery, the service will be considered to have been duly approved and accepted, provided that during this period there has been no complaint of any defect which would impede acceptance. A partial approval test may, in accordance with the above-mentioned provisions, be requested for independent partial performances.

§ 11 Warranty

1. Warranty claims by the Principal are limited to the right to subsequent performance (the Contractor deciding whether to rectify defects, or provide replacements). Should subsequent performance provided by the Contractor fail to be satisfactory, the Principal will be entitled to reduce the price accordingly, or, if it prefers, withdraw from the contract. Claims for damages as per § 14 remain unaffected. Claims made by the Principal due to expenses incurred as a result of subsequent performance, in particular transport, travel, labour and material costs, will be excluded where such expenses have been increased by the fact that the item was subsequently transported to a location other than the premises of the Principal, unless its transport to this location was in keeping with its intended use.
2. In the event of recourse to the guarantee by the Principal following a successful claim against the latter on the basis of the provisions governing the purchase of consumer goods, the claims under a right of recourse in accordance with the regulations on the purchase of consumer goods will remain unaffected. § 14 will apply to any claim for damages.
3. The Principal is obliged to inform the Contractor without delay of any case of recourse within the supply chain. Statutory claims made under a right of recourse by the Principal against the Contractor will apply only to arrangements entered into by the Principal with its own customer which do not exceed statutory warranty claims.
4. Any guarantee agreement must be made in writing. A statement of guarantee will only be effective if it describes the contents of the guarantee and the duration and physical scope of guarantee protection in sufficient detail.
5. Warranty claims will not be admissible in cases of only slight deviations from the agreed condition, or only slight impairment of serviceability, nor in the case of non-reproducible software errors.
6. Any claims for defects made by the Principal against the Contractor, its organs, staff and agents which go beyond or differ from those governed by § 11 hereof will be excluded.

§ 12 Infringement of Third Party Property Rights

1. Unless otherwise agreed, the Contractor is to effect delivery free from industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights") solely in the country of the place of delivery. Should any third party lodge a legitimate claim against the Principal for the infringement of Property Rights by deliveries made by the Contractor and then put to their intended use, then the Contractor will be liable to the Principal within the period stipulated in § 14, as follows:

The Contractor will have the option, at its own expense, of acquiring the right to use the Property Rights to the items concerned, or so modifying them that there is no infringement of Property Rights, or replacing them. Should the Contractor not be able to do so under reasonable conditions, the Principal will be entitled to exercise its statutory rights to withdraw from the contract or reduce the purchase price. The Principal is not entitled to request reimbursement of monies expended in vain. The Contractor's liability to pay damages is to be governed by § 14.
2. The duties of the Contractor described above will be applicable only insofar as the Principal notifies the Contractor in writing and without undue delay of any claims asserted by third parties, fails to recognise an infringement, and all the Contractor's rights to any and all means of defence and settlement negotiations will be retained. Should the Principal discontinue usage of the delivery in order to mitigate damages, or for any other good cause, then the Principal is obliged to advise the third party to the effect that the discontinuance of usage must not be construed as recognition of any infringement of Property Rights.
3. Should the Principal itself be responsible for the infringement of Property Rights, then any claims it might have will be excluded.
4. Further, claims of the Principal will be excluded if the infringement of Property Rights is caused as a result of particular demands of the Principal, of the Contractual Goods having been put to a use not foreseeable to the Contractor, of modifications being made to the Contractual Goods by the Principal, or of their having been used in conjunction with products not supplied by the Contractor.
5. In the event of infringements of Property Rights, the provisions set out in §§ 7, 10, 12, 13, 14 and 15 will apply accordingly to claims of the Principal.

§ 13 Notification of Defects

1. Any complaints, in particular notices of defects, must be received by the Contractor in writing without delay, but within 10 days of receipt of the Contractual Goods (in the case of concealed defects within 10 days of their discovery) at the latest.

Should the Principal fail to provide notification of any complaints or defects within the time limit or in the written form agreed upon, then, in the absence of any complaint, or notification of the defects not being given in due form or time, the Contractual Item will be deemed free of defect.

Should the Principal take delivery of the Contractual Goods in the knowledge of the existence of a defect, then the Principal has no entitlement to rights derivable from such defect unless it expressly reserves all rights arising from this defect in writing.

2. Notification of a defect will not extend the limitation period. The only reason for extending the limitation period will be the successful assertion of claims.

§ 14 Damages

1. Any claims for damages and the reimbursement of expenses on the part of the Principal (hereinafter referred to as "Claims for Damages"), for any legal reason whatsoever, in particular breach of duty in connection with contractual obligation and tort, are excluded.
2. This limitation of liability shall not apply in the event of damage due to wilful intent or gross negligence on the part of the Contractor, its senior staff and agents, in the event of injury to life, body or health, of wilful misconduct, of the acceptance of a guarantee or risk of procurement, in the case of the absence of a guaranteed feature, or of the infringement of a material contractual obligation, and in cases in which the Contractor has mandatory liability under the German Product Liability Act. In the event of damage to property and financial loss caused by negligence as the result of the infringement of a material contractual obligation, however, the amount of claims for damages shall be limited to damages foreseeable at the time the contract is entered into, and typical for this type of contract. Material contractual obligations are those, the fulfilment of which characterise the contract, and on which the Principal can depend.
3. The above provision will not constitute any change in the burden of proof that would be detrimental to the Principal.
4. Claims for damages for any loss of stored data are to be excluded if such damage would not have occurred had a data backup been duly performed.

§ 15 Warranty Period

1. Claims for defects will become invalid 12 months following commencement of the legal limitation period. This shall not apply if the matter concerns a building construction or an item that was used for a building construction in accordance with its usual purpose and which caused the deficiency or concerning a work with results consisting of rendering planning and supervision services for a building construction. The statutory period of limitation in these cases is five (5) years.
2. Any mandatory legal limitation and liability provisions, e.g. liability on acceptance of a guarantee, liability for intent and gross negligence, injury to life, body or health, fundamental breach of contract, liability as per product liability laws, and the regulations covering the purchase of consumer products will remain unaffected.

§ 16 Impossibility

1. Should the Contractor refuse to deliver due to the fact that, at the time when the contract was entered into, delivery was impossible or would have called for expenditure grossly disproportionate to the Principal's interests, then the Contractor will be liable to the Principal for compensation in place of performance, provided the Contractor is responsible for the impossibility. In cases where the Contractor could neither know of, nor be required to know of, the impossibility of delivery, the Contractor will not be held accountable. Claims for damages on the part of the Principal will be limited to 10% of the value of those parts of the delivery which, due to impossibility, cannot be put into practical operation. This restriction will not apply in cases where, in the event of intent, gross negligence, injury to life, body or health, liability is prescribed by law; this will not constitute any change to the detriment of Contractor in the burden of proof. The right of the Principal to withdraw from the contract will remain unaffected.
2. Should the impossibility or disproportionate expense not occur until after the contract has been entered into, the Contractor will be liable for damages, unless such occurrence was neither foreseeable nor avertable.

§ 17 Inventions

1. In the event of any inventions which might lead to industrial property rights arising as a result of the contractually agreed work, then the only Party entitled to register such Property Rights will be the Party whose employees or agents have made the invention. The Parties will inform each other of any inventions they are recording or applications for industrial property rights they are planning. Should the Party in possession of the rights to a discovery not be planning to file a record of its own, the Parties will come to an agreement regarding the possibility of transferring the rights to the invention.
2. If, in the context of the contractually agreed work, inventions are made in which the employees or agents of more than one party are involved (hereinafter referred to as "Joint Inventions"), then separate arrangements will be made in each individual case to decide who is to register any Property Rights, and where.

Registration may also be made jointly, in which case each Party will bear the proportion of the costs commensurate with its share in the invention. In the event of Joint Inventions or joint property rights and/or copyrights, each Party is entitled, at any time, to waive its share in favour of the other Party. The Party waiving such rights will, in a timely manner, make any provisions and arrangements necessary to enable the other Party to protect its interests.

3. Should one Party intend to relinquish one of the Property Rights in the sense of paragraph 1 or 2 (alternative 1), or transfer it to a third party (alternative 2) then it must inform the other Party of this intention without delay. The other Party will be entitled either to acquire these free of charge (should alternative 1 apply), or to pre-emptive rights (alternative 2).

§ 18 Assignment of Rights and Duties

Subject to the legal provisions governing the admissibility of assignment prohibitions, any assignment of rights and duties arising from the contract will not become effective without the approval of the Contractor.

§ 19 Applicable Law, Interpretation of Clauses, etc.

1. Exclusively the laws of the Federal Republic of Germany shall apply excluding the UN Convention on Contracts for the International Sale of Goods (UN commercial law) and the conflict rules of international private law.
2. Standard commercial clauses are to be interpreted in line with the Incoterms 2010.
3. Principal assumes the customs and import duties of the destination country and all other fees, taxes and costs in connection with the purchase contract.

§ 20 Place of Performance and Court of Jurisdiction; Validity Clause

1. The place of performance for delivery is to be the dispatch office; for payment Fulda.
2. The exclusive place of jurisdiction for any legal disputes arising from or in connection with a contract is to be - to the extent permitted by law and provided that both partners are traders - the locally competent court at the location of the head office of the Contractor. Further, the Contractor is entitled to assert its claims at the general court of jurisdiction of the Principal.
3. Should all or part of any individual clause in these General terms of Sale and Delivery prove to be legally invalid, this will not affect the validity of the remaining clauses or parts thereof. The Parties are to replace any invalid provision by one which is valid and comes closest to the economic purpose of that of the invalid provision.