

## **General terms and conditions of business and contracts of epro GmbH**

Date: 27.08.2009

### **Article I. Scope of our business and contract conditions**

(1) For our contractual relationships as well as for preliminary contractual obligations, these general terms and conditions of contracts and business exclusively apply particularly for deliveries, services and offers.

Any conditions of the customer (buyer, purchaser) standing contrary to or deviating from our general conditions we do not recognize, unless we would have agreed expressly to their validity in writing.

Our conditions shall be valid too, when we deliver the goods or services unconditionally in knowledge of conditions of the customer, standing contrary to or deviating from our conditions.

(2) Our general terms and conditions of business and contracts shall also apply to all future business with the customer, even if they are not stipulated expressly again.

(3) At the latest by receipt of our goods or services these conditions shall be considered to be accepted by the customer.

### **Article II. Offer and conclusion of contracts**

(1) An order of the customer which is to qualify as an offer in accordance with BGB § 145 (e.g. offer for conclusion of a sales contract), we can accept within a period of two weeks by sending an order confirmation or by forwarding the ordered product within the same period.

(2) Our offers are subject to alteration without notice and without obligation, unless we have particularly denominated them to be obligatory.

### **Article III. General regulations, industrial property rights and copyrights, liability arising from warranty of title**

(1) We unconditionally reserve property rights, copyrights as well as any other protective rights, particularly exploitation rights on all illustrations, calculations, drawings, estimates of expenses and other documents (hereinafter called "Documents"). This shall also apply to such written documents which are described as "confidential". For disclosing these documents to third parties, the customer requires our express consent in writing. Aforementioned documents have to be returned to us by the customer immediately upon request if the contract relationship has not come into existence.

(2) Title to and ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Goods ("Software") shall remain with us and is not transferred hereby to the customer. Except as otherwise provided herein, customer is hereby granted a non-exclusive, royalty-free licence to use the Software in conjunction with the Goods, provided that and for so long as the Software is not copied (unless expressly authorised by applicable law) and customer holds the Software in strict confidence and does not disclose them to others, or permit others to have access to them (other than our standard operating and maintenance manuals). Transfer of Software to third parties requires our express consent. The use of certain Software shall be governed exclusively by our or third party licence agreement. We and our Affiliates shall retain ownership of all inventions, designs and processes made or evolved by us and save as set out in this Article no rights in intellectual property are hereby granted.

(3) a) unless otherwise agreed upon in writing, we are just obliged to furnish the shipping free of industrial protective rights and copyrights of third parties (hereinafter called „protective rights“) in the country of the place of delivery.

(b) Provided that a third party has filed a justified claim against our customer, due to injury of protective rights by deliveries or services rendered by us, we are legally responsible to the customer, subject to the following conditions, within the period mentioned in article IX (6):

(aa) We will exempt the customer from claims due to the injury of protective rights unless the outline of the subject of delivery and service was made by the customer. This exemption obligation is limited on the amount of the predictable damage occurring typically.

(bb) We shall have the right to exempt from the obligations take over with the before mentioned paragraph alternatively by either.

(aaa) providing the customer with the right for the use of the subject of delivery and services, particularly e.g. by obtaining the required licenses regarding the allegedly injured protective rights or

(bbb) making available to the customer the modified subjects and services or parts of it, which in case of a replacement, remove the reproach of injury regarding the subject of delivery and services or

(ccc) taking back the delivery at the invoice price (reduced by an adequate compensation for use).

(cc) Additional claims for damages of the customer act in accordance with article XII. Claim for damages.

c) The before mentioned obligations shall only apply, as far as the customer immediately contacts us in writing about claims asserted by third parties, does not recognize the injury, reserves all avoidances and composition negotiations to our decisions, expressly, reserves us the right to litigate legal disputes in these matters. If our customer stops using the delivery or

service due to reasons of lowering the damage or for any other important reason, he is obliged to point out to third parties that stop using the delivery shall not be related with an acknowledgement of the injury of protective rights.

d) As far as the customer is responsible for the injury of the protective rights, any claim shall be excluded.

e) Furthermore, claims of the customer shall be excluded as far as the protection rights were injured due to specifications defined by the customer, by applications not foreseeable by us or as far as our delivery or service was modified by the customer or operated along with products not delivered from epro GmbH.

(4) As for the rest, at the presence of defects of title, the regulations of article IX shall apply correspondingly.

(5) Further claims or any other claim of the customer, as regulated in this article, due to a defect of title, against us or our vicarious agents, shall be excluded.

#### **Article IV. Terms of payment / price adjustment regulation**

(1) Unless otherwise agreed in writing, expressly in the order confirmation, our prices are valid ex works (EXW – Incoterms 2000), without packing.

(2) Our contract price does not include value added tax (VAT), customs duties, insurance premiums etc..

(3) If not agreed otherwise in writing and as far as services are invoiced on time and material basis, expressly on hourly basis, our actual price list, valid with the beginning of the year, shall apply.

(4) If we, as supplier, have e.g. taken over installation or mounting and if not agreed otherwise, the customer shall be charged, in addition to the normal remuneration, with all special expenses such as travelling costs, costs for the transport of tools and personal luggage as well as with the costs for daily allowances.

(5) Unless otherwise agreed in writing with the customer, cash discounts are not permitted.

(6) Provided that nothing else follows from the order confirmation, the amount of invoice is net cash (without discount) payable duly within 14 days as of the date of invoice.

(7) A payment is considered to be carried out not before the amount is at our disposal.

(8) If the customer fails to make any payments when due, article VI hereinafter shall apply correspondingly; as for the rest, the legal regulations shall apply.

(9) Even in case of complaints or counterclaims, the customer shall only be entitled on compensation if complaints or counterclaims, that have become absolute, are indisputable or were accepted by us.

(10) The customer shall only be entitled to practice a retention, if his counterclaim is based on the same contract relationship.

(11) We reserve the right to adjust our prices correspondingly, if cost reductions or increases in costs have occurred, notably due to conclusions of collective agreements or changes in material prices. We will prove them against the customer upon request.

**Article V. Delivery time and time of performance, Settlements at delay of delivery or performance**

(1) Dates of delivery or payment terms that were not agreed as obligatory, are exclusively non-binding information. The delivery or payment terms shall start not before all technical questions are settled. (2) The observance of our delivery commitments or furnishing performances owed by us, presupposes the fulfillment of the customer's obligations, properly and in time, particularly of his cooperation duties. This applies expressly for the timely receipt of all documents to be provided by the customer, e.g. required authorizations and releases, especially of drafts, but also the compliance with the agreed terms of payment and other obligations of the customer. If these prerequisites are not fulfilled on time, the terms will prolong adequately; this shall not apply, if we are responsible for the delays.

(3) If the non-observance of agreed terms is attributed to force majeure, e.g. mobilization, war, riot, or similar events such as strike, lock-out, or interruptions of operation at epro or at one of our suppliers, who, without and fault on his part, temporarily inhibit us to supply or to furnish performances owed by us, the agreed terms will be prolonged adequately, at least by the delay, caused by these events. If either party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that customer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. We shall have no obligation to supply hardware, software or technology or to provide services in the absence of government permits or fulfilment of statutory conditions of exemption from such permits within the framework of import and export control (in particular, according to the regulations applicable in the United States, the European Union and the Federal Republic of Germany or from which components of the Goods are supplied) and the underlying circumstances could not be foreseen by us and are outside of our sphere of influence. In the event of revocation of issued government permits or in the event of a change in the applicable statutory import and export control regulations such that we are prevented from fulfilling the contract, we are discharged from the contractual obligation without any liability.

(4) The customer can only withdraw from the contract within the context of the legal regulations, as far as we are responsible for the delay of the delivery or services.

**Article VI. Delay of the customer**

(1) If the customer has come into delay, we shall be entitled to assert a claim on the compensation of the damage and any possible expenses. The same applies if the customer culpably neglects his cooperation duties.

(2) Upon occurrence of the default of acceptance or default of the debtor, the risk of accidental loss, destruction or deterioration passes to the buyer.

**Article VII. Delivery, passing of risks, delivery terms (Incoterms)**

(1) Unless otherwise expressly stated in the Contract, the Goods will be delivered EX Works (EXW – Incoterms 2000).

(2) Even with freight paid delivery, the risk will pass to the buyer as follows:

- a) For deliveries without installation or mounting, if the goods were dispatched to or taken from the forwarding department.
- b) For deliveries with installation or mounting at the day of taking over in the factory or, as far as agreed, after the test run was performed perfectly.

(3) Upon request of the customer, we will insure the shipments in his name and on his invoice against the usual transport risks.

(4) If the customer is responsible for the delay of shipment, delivery, start accomplishment or installation or mounting, taking over in the own factory or the test run, the risk shall pass to the customer at the time of the start of the delay.

**Article VIII. Installation and assembly**

Unless otherwise agreed in writing, the following regulations shall apply for installation and mounting:

- (1) If mounting and connection of the delivered goods are carried out by staff or by third parties entrusted by us, the customer is obliged to provide the necessary supply connections (electricity, water, pressed air, as well as working facilities) free of charge.
- (2) After the completed installation a receipt of delivery shall be drawn up and signed from the customer and us.
- (3) The customer has to point out the special safety regulations applying to his installation place to the installation staff, to provide corresponding protection facilities free of charge and, as far as required, to obtain the required approvals or official permissions stipulated for the installation.

**Article IX. Right of the customer due to defect in case of a sales contract or at applicability of the sales contract law**

In case of a sales contract or at applicability of the law of sales contracts in accordance to § 651 BGB the following shall apply:

(1) Notwithstanding § 434 BGB and unless otherwise agreed individually, the contracting parties have come to an agreement that the nominal condition of the part of delivery in the moment of passing the risk shall be regarded to be met, when, with respect to the production in general or to the serial production in our factory, it is of average kind and quality. In case of lower quality this shall not be regarded as a defect, as long as the use, as stipulated in the contract, is not impaired. § 434 paragraph 2 clause 2 BGB shall not apply.

(2) Claims of the purchase, based on defects shall not be valid in case of only irrelevant variance from the agreed condition, at only insignificant impairment in serviceability, in case of normal wear and tear or damages, that have occurred after passing the risk due to incorrect or negligent handling, excessive loads, unsuitable equipment, imperfect workmanship, unsuitable building ground or which arise due to special external circumstances, which are not presupposed in accordance with the contract, as well as in case of not reproducible software faults.

If improper modifications or repairs are made by the customer or third parties, they are not entitled to assert claims for damages on the consequences resulting thereof.

(3) As for the rest, claims of the purchaser based on defects shall only exist, if the customer has properly met his duties to examine and to make complaints in respect of defects immediately, in accordance to § 377 HGB.

(4) As far as a defect of the object of the contract does already exist in the moment of passing the risk, we are obliged, to the exclusion of the customer's rights to cancel the contract or to reduce the purchase price, for subsequent performance, unless we are entitled to refuse subsequent performances, due to the provision of law. The customer has to grant an adequate period to us for the subsequent performance. At our option, the subsequent performance can be made by elimination of the defect (subsequent improvement) or by delivery of a new product. In case of eliminating the defect, we have to pay the required expenses, as far as these are not increased, because the object of the contract is located on another place than the place of performance.

(5) If the subsequent performance has failed, the customer is entitled at his option to require reduction of the purchase price (reduction) or to explain the cancellation of the contract. With the second vain trail, the subsequent improvement is regarded as failed, as far as further trails for the object of the contract is located on another place than the place of performance.

(6) Claims on material defects are subject to a limitation period of 24 months as of the due date of the claims. The term shall also apply for consequential damages of the defects, as far as no claims from tortuous acts are asserted. Clause 1 shall not apply, if the law in force in accordance with § 438 par. 1 No. 2 BGB (buildings and objects for buildings) prescribes longer

time limits and in cases of injuries of person or health, in case of deliberate or gross breaches of duties or fraudulent concealments of defects by us. As for the rest, the settlements of the product liability law shall remain untouched.

(7) Claims of the customer against us, due to defects, are due to only the customer and are not transferable.

(8) Further-reaching and other claims of the customer against the supplier or his vicarious agent due to material defects, as settled with this Article, are excluded. As for the rest, claims for compensation are settled with Article X.

#### **Article X. Compensation**

(1) We are liable within the legal provisions, as far as the customer asserts a claim on compensation which is based on intention or gross negligence of us or intention or gross negligence of our representatives or various agents. As far as we are not charged of having violated the contract intentionally, the liability for compensation shall be restricted on the predictable typical damage occurred.

(2) As far as we have violated essential contractual duties culpably, we shall be liable within the legal provisions. In this case the liability for compensation shall be restricted on the predictable typical damage occurred.

(3) The liability due to culpable injury of the life, the body or the health remains untouched; this also applies to the mandatory liability in accordance with the product liability law.

(4) Unless the before mentioned is agreed otherwise, the liability shall be excluded. This applies without consideration on the legal nature of the asserted claim. This applies particularly to claims for compensation due to faults at completion of the contract, due to other breaches of duties or due to claims in tort for § 823 BGB. Any further liability for compensation shall also be excluded, if the customer asserts a claim on replacement of useless expenses instead of the claim on compensation for the damage. Furthermore we shall not be liable for compensation for indirect damage and, in particular, we shall not be liable for compensation for loss of profit, unless such damage is covered by the protective purpose of a warranty explicitly assumed.(5) As far as our liability is excluded or restricted, this shall also apply to the personal liability of our employees, staff members, representatives and vicarious agents.

(6) As amendment of the burden of proof to the disadvantage of the customer shall not be associated with the regulations hereinbefore.

#### **Article XI. Compliance with laws**

Customer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which customer is established or from which items may be supplied, and the requirements of any licenses, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of hardware, software, services and technology. In no event shall customer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licences, authorisations or licence exceptions relating thereto. Customer agrees furthermore that it shall not engage in any activity that would expose us or any of our affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Customer agrees to comply with all appropriate legal, ethical and compliance requirements.

**Article XII. Default, insolvency and cancellation**

We shall be entitled, without prejudice to any other rights we may have, to cancel the Contract forthwith, wholly or partly, by notice in writing to customer, if customer is in default of any of its obligations under the Contract and fails, within 30 (thirty) days of the date of our notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take action to remedy the default.

**Article XIII. Nuclear clause**

UNLESS OTHERWISE SPECIFICALLY PROVIDED IN OUR QUOTATION, GOODS AND SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Customer (i) accepts Goods and Services in accordance with the foregoing restriction, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold us and our Affiliates harmless from any and all claims, losses, liabilities, suits, judgements and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the our liability is based on negligence or strict liability.

**Article XIV. Liability of the contract between the customer and us**

(1) Even if an individual provision of the contract, signed between the customer and us, has been or becomes invalid, the remaining provisions shall remain valid. Instead of the ineffective provision, an adequate settlement has to be agreed between the parties, which comes nearest to the point, the contracting parties have wanted or would have wanted in accordance to the

whole purpose of the contract, provided they would have considered the point. The same applies in case of an incomplete contract. If the invalidity of the contract is based upon the definition of performance or time, it shall be superseded by definitions recognized by law.

(2) The above mentioned shall not apply if compliance with the terms of the contract would cause inequitable harm to any of the parties.

**Article XV. Place of jurisdiction, applicable right, place of performance**

(1) As far as our customer is merchant, legal person under public law, or a separate estate under public law, the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship, is our place of business; we are however, authorized to sue the customer at the court of his place of residence. The same applies, when the customer does not have a place of jurisdiction in his home country, has changed his residence to abroad, or his residence or place of residence at the moment of filing a complaint is unknown.

(2) Place of performance is Gronau/ Westfalen Germany

(3) For the privity of contract between the customer and us, the law of the Federal Republic of Germany shall be valid. The UN sales convention shall not apply.

**Article XVI Statutory and other regulations**(1) If our obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of our quotation of any law or any order, regulation or bye-law having the force of law that shall affect the performance of our obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate. A price adjustment shall not be implemented if the delivery is to be carried out within 4 months after the closing of the Contract.

(2) Except to the extent otherwise required by applicable law, we shall have no responsibility for the collection, treatment, recovery or disposal of (i) the Goods or any part thereof when they are deemed by law to be 'waste' or (ii) any items for which the Goods or any part thereof are replacements. If we are required by applicable law, including waste electrical and electronic equipment legislation, European Directive 2002/96/EC (WEEE) and related legislation in EU Member States, to dispose of 'waste' Goods or any part thereof, customer shall, unless prohibited by applicable law, pay us, in addition to the Contract Price, either (i) our standard charge for disposing of such Goods or (ii) if we do not have such a standard charge, our costs (including all handling, transportation and disposal costs and a reasonable mark-up for overhead) incurred in disposing of such Goods.

(3) Customer's personnel shall, whilst on our premises, comply with our applicable site regulations and our reasonable instructions, including but not limited to those relating to safety, security and electrostatic discharge.

#### **Article XVII Assignment**

Customer shall not be entitled to assign its rights or obligations hereunder without our prior written consent.

#### **Article XVIII Non Solicitation**

Customer acknowledges and agrees that we and our Affiliates have expended considerable resources in selecting and training employees and independent contractors to perform the specialized work contemplated by this Contract. Accordingly, customer agrees that it shall not, and shall procure that each customer Affiliate shall not, at any time during the term of this Contract and for a period of one (1) year following completion of the Services, either on its own behalf or in association with any other person, directly or indirectly, approach, canvass, solicit, hire, engage or employ any employees or independent contractors of us or any of our Affiliates or our representatives or contractors engaged in the performance of the Services. Should customer violate the foregoing provision, customer agrees to pay us an amount equal to €150,000. Customer acknowledges that nothing in this Clause shall restrict us from seeking any remedy available to it pursuant to applicable laws to compensate us for breach of this provision, including but not limited to injunctive relief. To the extent that customer is unable to ensure compliance by any customer affiliate with the terms of this Article XVIII then customer shall indemnify us in respect of any loss, costs, claims or expenses incurred as a result of such non-compliance.