

**General Terms and Conditions of Delivery and Sale of the evopro systems engineering AG**

(State: Enero 2020)

**§ 1 General provisions**

- (1) All our deliveries, services and offers are performed exclusively on the basis of these General Terms and Conditions of Delivery and Sale, irrespective of the legal nature of the contract on which the service is based
- (2) These conditions apply only if the customer is an entrepreneur (§ 14 BGB), a public-law entity or a special fund under public law.
- (3) Divergent, conflicting or supplementary terms and conditions of the customer or of third parties shall not apply, even if we do not separately object to their validity in individual cases. Divergent terms and conditions do not become subject matter of the contract, even by unreserved acceptance of the order.
- (4) To our drawings, models, samples, cost estimates, similar documents and auxiliary means we reserve all property rights and copyrights without restriction; passing on to third parties in any form is only permitted with our prior consent. The same applies to the use or reproduction by third parties.

**§ 2 Prices and payment**

- (1) Unless otherwise agreed in individual cases, our prices are valid for the scope of supply and services specified in the order confirmations. The prices are ex works in EUR plus packaging, the statutory value added tax as well as, in case of export deliveries, plus customs duty, import sales tax, fees and other public charges.
- (2) Provided we assume installation and assembly in accordance with the contractual agreement and unless agreed otherwise, the customer shall bear all necessary ancillary costs (e.g. travel expenses) in addition to the agreed remuneration.
- (3) Unless agreed otherwise, payments of the customer are due and payable within 14 days after invoicing and delivery or acceptance of the goods.
- (4) The customer is only entitled to offsetting or retention rights in so far as his claim has been legally established or is undisputed.

**§ 3 Delivery and delivery time**

- (1) Deliveries are ex works.
- (2) Our delivery times result from the contractual agreements. Deadlines and dates for deliveries and services promised by us are always only approximate, unless a fixed deadline or a fixed date has been promised or agreed explicitly. If dispatch has been agreed, delivery periods and delivery dates refer to the time of transfer to the forwarding agent, carrier or other third party commissioned with the transport.
- (3) The observance of our delivery periods presupposes that the customer fulfils all his obligations (e.g. provision of necessary documents, data and approvals, observance of payment obligations) and that all technical and other questions necessary for fulfilling the delivery obligation have been clarified finally. If the aforementioned conditions have not been fulfilled, we can demand from the customer an appropriate extension of the delivery and performance deadlines, without prejudice to our rights arising from default. This does not apply if we are responsible for the delay.
- (4) The compliance with the delivery time is subject to the reservation that we are supplied by our subcontractors correctly and in time. If this is not the case, we are not liable to our customers for impossibility of performance and delivery delay caused by this. This applies only if we are not responsible for the incorrect or untimely self-delivery despite congruent covering transaction. In case of temporary obstacles to delivery, our delivery and service deadlines are extended appropriately. Hereof we will inform the customer immediately. If obstacles to delivery of our suppliers make a service or delivery considerably more difficult or impossible and if they are not only of temporary duration, we are entitled to withdraw from the contract (in whole or in part). We will immediately refund services already rendered by our customers.
- (5) Furthermore, we shall not be liable for the impossibility of delivery or for delays in delivery, insofar as the same are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. malfunctions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortage of manpower, of energy or of raw materials, difficulties in procuring necessary official authorizations, official measures), for which we are not responsible. In this case, the deadlines are extended appropriately. The regulations of the above section (5) (in particular concerning the right of withdrawal) apply accordingly.

- (6) We are entitled to make partial deliveries if the customer can reasonably be expected to accept this with reasonable assessment of customer's situation and his own interests warranting protection. In particular, this is the case if
  - a. the partial delivery can be used by the customer within the scope of the contractual purpose,
  - b. the delivery of the residual ordered goods is ensured and
  - c. the customer does not incur considerable additional expenditure or additional costs as result (unless we have agreed to bear these costs).
- (7) If we should be in default with a delivery or service or if a delivery or service should be impossible for us for whatever reason, our liability for damages is limited in accordance with § 7 of these General Terms and Conditions of Delivery.

#### **§ 4 Place of performance, passing of risk, acceptance**

- (1) Place of performance for all obligations arising from the contractual relationship is the registered office of our company in Regensburg, unless otherwise provided. If we also owe the installation, the place of performance is the place where the installation is to be carried out.
- (2) If acceptance is not required, the following applies to the transfer of risk: The risk of accidental loss and accidental deterioration passes to the customer at the latest with the handing over of the delivery item to the forwarding agent, carrier or other third party designated to carry out the shipment. The start of the loading process is decisive for the handing over of the delivery item. This also applies if we perform partial deliveries or if we have undertaken further services (e.g. dispatch, assembly or installation).
- (3) If an acceptance has to be executed, the following applies to the transfer of risk: The acceptance or the fiction of acceptance is decisive for the transfer of risk. Independent on the fiction of acceptance according to § 640 Section 2 BGB (German Civil Code), the delivery is considered to be accepted (fiction of acceptance) if
  - a. the delivery and, if we also owe the installation, the installation have been completed,
  - b. we have informed the customer of this with reference to the fiction of acceptance and if we have requested him to accept the goods,
  - c. 21 working days have elapsed since delivery or installation or if the customer has started to use or commission the delivery item and in this case a period of six working days has elapsed since delivery or installation,
  - d. the customer has failed to accept the goods within this period of time for another reason than a defect notified to us making the use of the delivery item impossible or impairing it significantly.
- (4) If dispatch or acceptance is omitted or delayed due to a circumstance caused by the customer, the risk passes to the customer from the day of notification of readiness for dispatch or acceptance.

#### **§ 5 Warranty, material defects**

- (1) The warranty period is one year from delivery or, insofar as acceptance is required, from the date of acceptance or fiction of acceptance. This period does not apply if the law according to §§ 438 Section 1 No. 2 BGB, 634 a Section 1 No. 2 and No. 3 BGB, 445 b BGB provides mandatory longer periods. Furthermore, the one-year warranty period does not apply to claims for damages of the customer according to § 7 (2) of these conditions.
- (2) Warranty rights of the customer presuppose that he has properly fulfilled his obligation of inspection and notification of defects according to § 377 HGB. Immediately after delivery to the customer or to the third party designated by him, the delivered items are to be inspected carefully. Notifications of defects are to be executed immediately in writing.
- (3) Insofar as our expenses for subsequent performance are increased by the fact that the delivery item has been taken to another location than the place of performance after delivery, any additional costs incurred as result of this are to be borne by the customer. This does not apply if the transfer of the delivery item corresponds to the intended use.
- (4) The warranty claims are cancelled if the customer modifies the delivery item or has it modified by third parties without our consent and thereby the remedy of defects will be impossible or unreasonably difficult. In any case, the customer has to bear the additional costs of the removal of defects arising from the modification.
- (5) A delivery of used objects agreed with the customer in individual cases is carried out to the exclusion of any warranty for material defects.

#### **§ 6 Reservation of ownership**

- (1) Until complete payment of all our present and future claims arising from the contractual relationship underlying these General Terms and Conditions and our current business relationship, we reserve the right of ownership of the delivered goods. If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities at customer's request. In case of different security interests, we are entitled to decide which security is to be released.

- (2) We are entitled to insure the objects of security against theft, fire, water and other damages at customer's expense, unless the same has effected an insurance himself and has proved this to us immediately by presenting the insurance policy or comparable documents.
- (3) Before full payment of the secured claims, the delivery items subject to reservation of title must never be pledged to third parties or assigned by way of security. The customer must inform us immediately in writing if an application for opening of insolvency proceedings or access of third parties (e.g. distraints) to the goods belonging to us have been made.

## **§ 7 Liability**

- (1) Our liability for damages, for whatever legal reason, is limited in accordance with the following paragraphs.
- (2) For damages, regardless of the legal reason, we are only liable
  - a. in case of culpable injury to life, body, health
  - b. in case of intent and gross negligence
  - c. in case of fraudulent intent, especially in case of fraudulently concealed defects
  - d. in case of non-compliance with our warranty promises
  - e. in case of liability according to the product liability law
- (3) In case of culpable violation of essential contractual obligations, we are also liable for simple negligence. In this case, the liability is limited to damages which we have foreseen as possible consequences of a breach of contract at conclusion of contract or which we should have foreseen with due diligence.
- (4) Insofar as we give technical information or advises and this information or advises are not part of the contractually agreed scope of services owed by us, that will be done free of charge and to the exclusion of any liability.

## **§ 8 Final provisions**

- (1) All legal relations between us and the customer are governed exclusively by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Sales Convention.
- (2) Exclusive - also international - place of jurisdiction for all disputes, arising directly or indirectly from the contractual relationship, is our registered office in Regensburg. But in all cases we are also entitled to take legal action at the customer's general place of jurisdiction. Priority statutory provisions, in particular those concerning exclusive jurisdiction, remain unaffected.