

## GENERAL TERMS AND CONDITIONS **GTC**

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**§ 1. GENERAL**

- 1.1. Products and services of effidur GmbH (hereinafter referred to as Supplier) shall only be delivered or provided in accordance with the Terms and Conditions specified below. They form an integral part of all contracts that the Supplier concludes with its Customers for offered services and products. The General Terms and Conditions of the Supplier shall also be valid for all future deliveries, services or offers towards the Customer even if they are not separately stipulated again.
- 1.2. Terms and Conditions of the Customer shall not be binding for the Supplier, even if they have not been explicitly rejected. Even so, if the Supplier refers to a document of the Customer which contains general terms and conditions of the Customer or of third parties or which refer to such terms and conditions, it is not deemed as the Supplier's agreement with the validity of these terms and conditions.
- 1.3. All business transactions and relations shall be performed by electronic data processing equipment. In the framework of the Federal Data Protection Law, the Customer is informed that the company-related and personal data required for this will be stored by the Supplier. This data will only be used within the Supplier's company and is not disclosed to any third parties.

**§ 2. QUOTATIONS AND QUOTATIONRELATE DOCUMENTS**

- 2.1. Any quotations submitted by the Supplier shall be non-binding and subject to confirmation unless it is explicitly characterised as binding or does contain specific terms of acceptance.
- 2.2. Any documentation such as figures, drawings and weight specifications shall be of an approximate nature, unless explicitly characterised as binding. The same shall apply to any performance or consumption data. Therewith no acceptance of a warranty is associated. They are no guaranteed properties, but serve as descriptions or identifications of services and products. Customary variations or variations that are due to regulatory framework or which represent a technical improvement as well as the replacement of single components by equal parts are licit as long as the usability of the product for the contractually destined purpose is not affected.
- 2.3. The Supplier reserves all ownership and industrial property titles as well as copyrights to any cost estimates, drawings, pictures, brochures and catalogues, samples, tools and other documentation or resources. In case the objects mentioned before and possible copies thereof are not required for the proper course of business anymore or negotiations did not lead to a contractual agreement, the Customer shall immediately upon request return these objects completely to the Supplier. The Customer shall not gain access or disclose these objects themselves or their content to any third party, nor shall he use or copy them himself or by third parties without the explicit agreement of the Supplier.

**§ 3. ORDERS**

- 3.1. An order shall be deemed accepted after written confirmation by the Supplier. Any agreements or subsidiary agreements made on phone, by fax, telex or in oral conversation shall require the Supplier's written confirmation to become effective.
- 3.2. The concluded contract between the Customer and the Supplier including these General Terms and Conditions is solely relevant for the legal relation between both parties. This contract completely comprises all agreements and subsidiary agreements between both contract parties relevant to the subject of the contract. Any oral engagements of the Supplier before the conclusion of the contract are legally non-binding and oral agreements of the contract parties are replaced by the written contract, unless the oral agreements explicitly state, that they continue to bindingly apply. Modifications and amendments of the concluded agreements, including these General Terms and Conditions, shall be made in writing to become effective. Except for the Managing Directors or authorised signatories the Supplier's staff members are not authorised to conclude differing oral agreements. The written form is ensured by a transmission via facsimile. Any other form of telecommunication, especially email, is not effectual. The Supplier may accept orders within 14 days after receipt.
- 3.3. Contracts can also be concluded via electronic data transmission (especially via email and EDIFACT-systems), (hereinafter referred to as electronic contracts). The criteria mentioned under clause 3.1 and 3.2 apply for electronic contracts under the condition that:

- » written confirmations are replaced by confirmations in a tele-communicative form (e.g. emails or EDIFACT messages)
- » written contracts are replaced by electronic contracts
- » the written form is replaced by any form of telecommunication (especially emails or EDIFACT messages).

**§ 4. PRICES AND PAYMENTS**

- 4.1. Prices shall be deemed ex Supplier's works and without VAT, for deliveries to foreign countries customs duties, fees and other public charges are additionally charged. Prices shall be valid for a period of 4 months after the signing of the contract. In case of altering metal prices for more than 5 % within the terms of binding offers or within the 4-months-term prices may be adapted according to the weight of the offered product and proportionally to the metal price change. In case of a hereby caused increase in price of more than 15 % the Customers shall be entitled to resign from the contract.

(source: [www.kme.com/de/service/metallpreise](http://www.kme.com/de/service/metallpreise))

The effectual VAT tax rate that is valid at the day of invoicing is applied. In case longer delivery periods have been agreed or the performance can only be realised after a period of 4 months due to reasons caused by the Customer, the prices valid at the time of delivery shall apply, even if the Customer has not been expressly notified of the adjustment of prices.

- 4.2. For any deliveries of up to a net invoice value of EUR 1.500,00 packaging and freight (postage) shall be additionally charged. An extra charge of EUR 15.00 shall be made on deliveries with small quantities of up to a net invoice value of EUR 50.00. Deliveries to foreign countries with a net invoice value of more than EUR 1.750,00 are free German border. Return deliveries shall not be made unless the Supplier's prior written agreement has been obtained. Any customised goods will not be taken back.

Any disbursed freight, packaging, inspection and repair costs for return deliveries shall be borne by the Customer, if they do not comprise defective goods from the Supplier and/or the return delivery has been effected by the Customer without the agreement of the Supplier. In any case the Customer will be charged with a rate of 15 % of the value of the commodities, however, a minimum amount of EUR 20.00. The Customer is allowed to proof, that the Supplier's expenses were considerably lower.

- 4.3. Any additional costs for special forms of dispatch (such as express delivery, night delivery, transport insurance, consignment with value declared) shall only be borne by the Supplier in the case that the return delivery is effected on demand and/or due to defective goods of the Supplier and if this is required to ensure Customer's right.
- 4.4. Invoices shall be payable within 21 days after the invoicing date without any deductions. Payments within 14 days after the invoicing date shall be subject to a 2 % discount. The Supplier's date of receipt is relevant as date of payment.
- 4.5. Any payments made to persons who are not in possession of a written authority to collect, shall be deemed ineffective.
- 4.6. Retention of payments or any set-off with possible counterclaims shall be excluded unless the Customer's counterclaims are undisputed, legally determined or decisive.
- 4.7. The Supplier shall be authorised to effect outstanding deliveries or services of the contract against payment in advance or against deposits in case the Supplier is informed after signing of the contract about circumstances, that are likely to considerably lower the credit standing of the Customer, in case the Customer is already in delay with payments and in case the Customer's payments of the Supplier's outstanding invoices emerging from the contractual relationship (including open invoices emerging from single orders that are legally bound to the same master agreement) are at risk.

**& 5. DEFAULT**

- 5.1. Should the Customer be in default with the acceptance of the goods or services, the Supplier may specify a reasonable additional period for acceptance of at least 2 weeks. After the expiration of this period, the Supplier shall have the right to terminate the contract and to claim compensation for damages amounting to 15 % of the order value, subject to the right of claiming a higher damage if this can be proved by respective

evidence. The Customer has the right to verify that a damage did not or only to a significantly lower amount occur.

## § 6. DELIVERY .....

- 6.1. The delivery is effected immediately resp. to an agreed delivery period. The period of delivery shall start with the confirmation of the order, but not before the Customer's submittal of any documents, permits from authorities and releases to be provided by him, and the receipt of any down payments agreed.
- 6.2. The delivery period shall be deemed to be complied with if the object to be delivered has left the works, or the Customer has been notified of the readiness for dispatch, within the period specified. In the case of services the delivery period shall be deemed complied with, if the performance of the services has been offered up to the expiration of the delivery period.
- 6.3. In case that the Customer does not comply with his contractual obligations, the Supplier shall have the right – irrespective of his rights from the default of the Customer – to ask the Customer for an extension of the delivery period or a postponement of the delivery date for a time period equal to the Customer's default.
- 6.4. Should the Supplier be unable to comply with the period of delivery for reasons he is not responsible for (this also includes strike and lockout), the delivery period shall be extended by a reasonable time after the removal of the reasons. Similar provisions shall apply in case such events occurred in one of the sub-suppliers' works. In case that the delivery is considerably impeded or impossible due to these circumstances and the obstacles are not temporary the Supplier shall have the right to resign from the contract.
- 6.5. In case of non-compliance with the delivery period for reasons other than the ones specified under Clause 6.4. the Customer may specify an additional period of at least 2 weeks and terminate the contract after the expiration of that period.
- 6.6. Should the period of delivery be extended on the request of the Customer or for reasons for which the Customer is responsible, any costs incurred as a result of this shall be invoiced to the Customer.
- 6.7. The Supplier shall have the right for partial deliveries, if
  - » the partial delivery is useful for the Customer within the scope of the intended use,
  - » the delivery of the remaining goods is guaranteed and
  - » no significant additional expenses or costs for the Customer are caused (unless the Supplier explicitly accepts to bear these costs).

## § 7. PASSAGE OF RISK / ACCEPTANCE / COSTS FOR STORAGE .....

- 7.1. The delivery is effected though the Supplier's dispatch or through collecting by the Customer. This also applies if a freight paid delivery is agreed.
- 7.2. Any goods supplied shall be accepted by the Customer, even if they exhibit insignificant defects. Where required the acceptance of the delivered goods shall be deemed to be effected if
  - » the delivery and the installation, if also to be effected by the Supplier, is completed.
  - » the Supplier has informed the Customer under reference to clause 7.2 about the acceptance and has asked him to accept the delivery.
  - » 12 working days have passed since the delivery or installation or if the Customer has begun to use the goods and 6 working days have passed since the delivery or installation, and
  - » the Customer has failed to accept the delivery within this period due to other reasons than defects claimed by the Customer to the Supplier which significantly affect the use of the goods or make it impossible.
- 7.3. Should the dispatch or the collection of the goods be delayed for reasons caused by the Customer, the risk shall pass to the Customer on the day of readiness for dispatch / collection or the notification thereof to the Customer.
- 7.4. At the latest the risk shall pass to the Customer when handing over (relevant is the beginning of the loading process) the delivery goods to the forwarding agent, the freight carrier or any other third party being authorised for forwarding. This also applies for partial deliveries or when the Supplier has undertaken further services (e.g. dispatch and installation).

- 7.5. Storage costs occurring after the passage of risk shall be borne by the Customer. For storage by the Supplier costs amounting to 0,25 % of the invoice value of the stored goods are charged per week. The rights to claim and verify further costs or lower storage costs are reserved.

## § 8. ERECTION AND AFTER-SALES SERVICES .....

- 8.1. Any erection work shall be paid for separately. Erection costs comprise in particular material and travelling costs as well as wages.
- 8.2. Any lump-sum prices agreed for erection work shall not include any extra costs for overtime, work at night or on Sundays or public holidays, if such work has been ordered by the Customer or became necessary for reasons for which the Customer can be blamed. Thus work shall be subject to additional payment.
- 8.3. Any erection or commissioning work shall be deemed completed with the successful trial commissioning by the Supplier and shall be accepted immediately afterwards. Should any delays in erection or commissioning occur for which the Supplier cannot be held responsible, risk shall pass to the Customer from that point of time.
- 8.4. The above shall apply mutatis mutandis for after-sales services.

## § 9. WARRANTY .....

- 9.1. The warranty period is 1 year starting with the delivery resp. acceptance. This does not apply for the production or delivery of buildings, products that are commonly intended to be used for buildings as well as planning and supervising services for buildings.
- 9.2. The delivered goods shall be checked thoroughly immediately after being delivered to the Customer or to third parties determined by the Customer. The goods are deemed accepted if the Supplier is not informed about defects in the manner stated under clause 3.2 point 6 regarding evident defects or other defect that are noticeable at an immediate and careful control within 7 days after the detection of the defect or after the point of time when the defect became noticeable for the Customer during normal use without closer control. Upon request the defective goods are to be returned carriage paid to the Supplier. In case of an entitled notice of defect the Supplier reimburses the costs for the most favourable way of dispatch; this does not apply when the costs are increased since the goods are located elsewhere than the location of the intended use.
- 9.3. If a defect is caused by the Supplier the Customer has the right to claim for compensation under the preconditions mentioned under clause 10.
- 9.4. In case of defective parts from sub-suppliers that the Supplier cannot remove due to legal licensing or effective reasons, the Supplier shall choose whether to claim warranty himself against the sub-supplier in the Customer's favour or to cede his right of warranty to the Customer. Warranty claims against the Supplier for such parts are only accepted in case the legal enforcement of the before mentioned claims against the sub-supplier were ineffective, e.g. due to bankruptcy of the sub-supplier, or if they are unwinable and if all other preconditions required within these General Terms and Conditions are met.
- 9.5. The right of warranty is excluded if the Customer or third parties authorised by the Customer modify the delivered good without the prior agreement of the Supplier and if the removal of the defect therewith becomes impossible or is unreasonably impeded. In any case the Customer will be charged with additional costs occurring during the removal of the defect due to the modification.
- 9.6. Any right of warranty is excluded in the particular case of a delivery of used parts that is properly agreed with the Customer.

## § 10. LIABILITY FOR CAUSED DAMAGES .....

- 10.1. The Supplier's liability for damages, independent from legal grounds, especially for impossibility, delay, defective or wrong delivery, breach of contract, neglect of duties at negotiations and unauthorised acts is - if the damage is caused by the Supplier - limited under the conditions of this clause 10.
- 10.2. The Supplier is not responsible:
  - a) in the case of slight negligence of his executives, legal representatives, employees or other vicarious agents;
  - b) in the case of gross negligence of his non-executive employees or other vicarious agents if contractually significant duties are not neglected. Contractually significant are the duty to deliver and install on time and without defects as well as the duties for consulting,

protection and care, that enable the Customer to use the delivered goods as agreed upon and to protect the Customer or any third party or the Customer's employees from danger of life, body and health and protect the Customer's properties from significant damage.

- 10.3 In case the Supplier is liable for damages according to clause 10.2 the liability is limited to damages, that the Supplier did anticipate as possible consequence of a breach of contract when signing the contract or was obliged to anticipate them because of circumstances that he knew or that he was obliged to know when acting with due diligence. Collateral and subsequent damages that are caused by defects of the delivered goods are only accepted for compensation if such damages are typically predictable when using the delivered goods as intended.
- 10.4 In the case of liability for slight negligence the Supplier's obligation for compensation of property and personal damages is limited to an amount of EUR 2.5 millions per liability case also if contractually significant duties have been neglected.
- 10.5 The before mentioned exclusions and limitations of the Supplier's liability also apply to their full extent in the favour of his executives, legal representatives, employees and other vicarious agents.
- 10.6 If the Supplier provides technical information or does act as consultant and these services are not part of his contractually agreed duties, they are free of charge and any liability is excluded.
- 10.7 The limitations mentioned under this clause 10 do not apply for the Supplier's liability concerning deliberate acting, guaranteed product features, injury of body, life and health or concerning the Product Liability Act.

#### § 11. LIABILITY FOR DEFECTS .....

- 11.1. The Supplier's liability for defects is limited to his products or services and does not apply for entire facilities. The Supplier's liability is subject to the Customer's full compliance with his contractual commitments.

The Supplier's liability for defects does not apply for normal wear and tear and does not apply for damages that have been caused after the passage of risk by defective or negligent treatment, excessive strain and similar. The before mentioned also applies for alterations to the delivered goods that have been effected by the Customer or third parties as well as in the case of incorrect installation by the Customer or third parties.

#### § 12. SUPPLIER'S RIGHT FOR TERMINATION OF THE CONTRACT .....

- 12.1. In the case of unforeseen events, which essentially change the economic significance and the content of the service, or have considerable effects on the Supplier's factory, or in case it turns out later that the service cannot be provided in parts or as a whole, the contract shall be adjusted accordingly. Should this not be possible or economically justifiable, the Supplier reserves the right to terminate the contract in part or as a whole. The Supplier shall notify the Customer of such conditions for termination without delay after their occurrence.

#### § 13. RETENTION OF TITLE .....

- 13.1. The subsequently agreed retention of title serves as security for all existing and future claims of the Supplier against the Customer. The Supplier retains title of the delivered goods until the purchase price has been paid in full (including possible costs). The goods as well as their substitutes according to this clause that are covered by the retention of title are hereinafter referred to as retained goods.
- 13.2. The Customer stores the retained goods free of charge for the Supplier.
- 13.3 The Customer is authorised to process and re-sell the retained goods in the context of his normal business operations until the event of a contract termination occurs. The Customer is not entitled to pledge or assign the retained goods as security.
- 13.4. In case the retained goods are processed by the Customer it is agreed that the processing is effected under the name and in the favour of the Supplier as manufacturer and the Supplier acquires direct property or if the processing is effected with materials of several owners or if the value of the processed goods is higher than the value of the retained goods the Supplier acquires the joint-property (fractional property) of the newly manufactured goods proportionally to the value of the retained goods. In the case that the Supplier does not acquire property the Customer already now assigns his future property or - in the above-mentioned proportion - his joint property of the newly manufactured goods as security to the Supplier. If the retained goods are joint with other goods to a

unitary good or if they are inseparably mixed with other goods and if one of the other goods is deemed as main good the Customer - if the main good is his property - assigns the joint-property of the unitary good to the Supplier in the proportion mentioned under point 1.

- 13.5. In the case of re-selling of the retained goods the Customer already now assigns the herein emerging claim against the Buyer to the Supplier for security or in the case of the Supplier's joint property of the retained goods in the proportion to the joint property. The same applies for any other claims that replace the retained goods or in any other way emerge from the retained goods, as e.g. insurance claims or claims in tort for loss and destruction. The Supplier entitles the Customer until revoked to collect the claims that are assigned to the Supplier in his own name and in the Supplier's favour. The Supplier shall only revoke this authorisation to collect in case of a termination of the contract (13.8.).
- 13.6. In the case that third parties claim access to the retained goods, especially by garnishment, the Customer immediately informs them about the Supplier's property and also informs the Supplier in order to enable him to accomplish his property rights. If the third party is not able to reimburse the judicial and extra-judicial costs emerging in this context to the Supplier than the Customer shall be held liable for these costs from the Supplier.
- 13.7. The Supplier shall release the retained goods or the goods and claims, that emerge from them upon request at his own choice if their value exceeds the value of the secured claims by more than 50 %.
- 13.8. If the Supplier resigns from the contract (termination of the contract) due to non-contractual behaviour of the Customer - especially delay of payment - he is entitled to reclaim the retained goods.

#### § 14. PLACE OF PERFORMANCE AND JURISDICTION .....

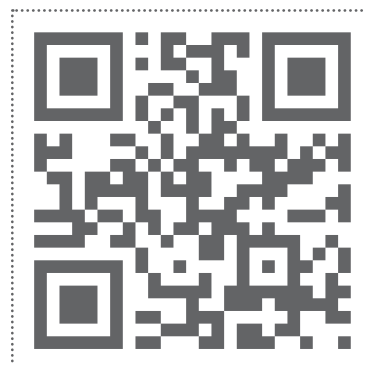
- 14.1. Place of performance and jurisdiction shall be the Supplier's headquarters. Compulsory legal provisions about exclusive places of jurisdiction are excluded from this clause.
- 14.2. The written notices mentioned within these General Terms and Conditions are to be addressed directly to the Supplier's headquarters. Notices addressed to representatives require a written confirmation of the Supplier's management.
- 14.3. The legal relation between the Supplier and the Customer is solely subject to the right of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) dated April 11th, 1980 is not applied.

#### § 15. SEVERABILITY .....

Should any provisions of this Contract become legally ineffective, the remaining provisions shall remain unaffected. Any ineffective provisions shall be replaced by effective ones in good faith and in the sense of the Contract.



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