

## GENERAL TERMS AND CONDITIONS

of the company "EVK DI Kerschhagl GmbH  
Josef-Krainer-Straße 35, A-8074 Raaba, Austria, Europe

### 1. Scope:

1.1 These General Terms and Conditions shall apply to all the business transactions of the company "EVK DI Kerschhagl GmbH", following briefly referred to as EVK. This refers to the delivery of products and, in analogy, to service provision.

These General Terms and Conditions shall also apply to software developed or distributed by EVK. "Software" denotes computer programs distributed in their standard versions or customized or personalized programs, i.e. programs specifically developed or adapted to the user's needs and requirements, as specified in § 40 a of the Austrian Copyright Act, which regulates the use of such programs on electrotechnical and/or electronic equipment and systems and the operation or control of such equipment and systems, including documents delivered with such equipment and systems. However, Article 7, Warranty, shall not apply to standard software purchased and sold by EVK both in terms of operating systems and application software.

In this case, the legal provisions shall be applicable.

1.2 Deviations from the conditions stated above shall only be effective if they are accepted by EVK in writing.

1.3 All the orders and agreements shall only be legally binding if they are duly signed by EVK and shall commit EVK only to the extent stated in the Acknowledgement of Order.

1.4 The present General Terms and Conditions shall not apply to development or engineering contracts placed with EVK. This is true for the software and for electrotechnical and/or electronic equipment and systems and their control. Only if a development or engineering contract is carried out without a written order, shall the present General Terms and Conditions become effective in a subsidiary way.

### 2. Offer:

2.1. Offers made by EVK basically are subject to change.

2.2. All the tendering and project documentation must neither be duplicated nor made accessible to third parties without written consent given by EVK. Their return can be requested at any time, and they shall be returned to EVK immediately if the order is placed with another party.

### 3. Rights (of use and enjoyment):

3.1. Except for the products intended for resale, the purchaser shall get the non-assignable and non-exclusive right to use the software on the agreed place of installation while complying with the contractual specification. If the software is delivered with hardware, this right shall exclusively be limited to the use of software on this hardware. If software is delivered independently, the right shall exclusively be limited to the hardware whose type, number and place of installation are defined in the contract. All the other rights on hardware and software shall be reserved to EVK. It particularly is prohibited to duplicate or copy the software, to reproduce the hardware and/or to modify software and/or hardware, make it accessible to third parties or to use software on hardware other than the hardware that is delivered by EVK and is subject of the contract if hardware is used in conjunction with software. EVK pledges to deliver its products/provide its services without granting rights to third parties.

3.2. This shall also be particularly applicable to the use of software for operating or controlling electrotechnical and/or electronic equipment and systems.

3.3. If the use of software for the specified purpose is to imply the simultaneous use on more than one workstation, this requires the explicit written consent given by EVK.

### 4. Prices, taxes and fees:

4.1 All the prices and remunerations agreed upon are exclusive of VAT, which shall be charged separately.

4.2. If fees, taxes or other duties become due in connection with the assignment of the subject of the contract, they shall be borne by the purchaser.

4.3. All the prices agreed upon are stated in Euro.

### 5. Date of Delivery:

5.1. The prices are understood ex works or ex store EVK, exclusive of packaging, shipping and VAT. If postal delivery is agreed for the individual order, this delivery and a transport insurance that may be desired by the purchaser shall be charged separately. However, the pertaining costs shall not cover unloading and transporting. Packaging material shall only be taken back upon express agreement.

5.2. Additional services and deliveries as well as repairs shall be charged separately. This includes the analysis and elimination of errors and malfunctions that are caused by improper handling or faulty operation or use of the hardware/software or other circumstances for which EVK is not responsible. The training in the products delivered by EVK that may be necessary shall also be charged separately and is not included in the prices offered.

5.3. The place of performance is the registered office of EVK.

5.4. Third parties' authorizations and permits required by public authorities and possibly for export shall be obtained by the purchaser. If such authorizations and permits are not given in time, the delivery period agreed upon shall be prolonged accordingly.

5.5. EVK shall be entitled to perform and charge partial or preliminary deliveries. If delivery upon call-off is agreed, the products shall be deemed called off no later than one year after the order has been passed.

### 6. Payment:

6.1. Unless otherwise agreed the invoices issued by EVK shall be paid within 30 days.

As for partial invoices, the terms of payment defined for the overall contract shall apply in analogy.

6.2. As for orders comprising several units or services, EVK shall be entitled to issue an invoice upon delivery of each unit or provision of each service.

6.3. Compliance with the agreed payment dates is a basic requirement for EVK performing the delivery or fulfilling the contract. Non-fulfilment of the agreed payments shall entitle EVK to stop ongoing work and repudiate the contract. All the commensurate costs as well as lost profit shall be borne by the purchaser.

6.4. In the event of undue delay in payment, interest on arrears shall be charged according to § 1333, sec. 2 of ABGB and applies to business relations between companies.

- 6.5. If two instalments are not kept in case of partial payments, this shall be deemed as undue delay in payment.
- 6.6. The purchaser shall not be entitled to withhold payments because the overall delivery is not complete or there are guarantee or warranty claims or complaints.
- 6.7. Rebates or other discounts that are granted require the timely receipt of the complete payment. This shall also particularly apply to rebates for partial invoices.
- 6.8. EVK reserves the ownership of all the products delivered until the invoiced amounts plus interest and costs are fully paid.

#### **7. Warranty:**

- 7.1. If the agreed terms of payment are complied with, EVK shall, subject to the following provisions, be obliged to eliminate any defect that exists at the moment of handing-over if it is due to faulty design, material or workmanship or the software has errors that impair the function and are traceable and reproducible.
- 7.2. The warranty period amounts to 24 months unless special warranty periods are agreed for individual delivery items. The warranty period shall start upon delivery.  
  
If products made by external manufacturers are resold by EVK, the duration of the warranty period shall depend on the warranty period granted by the manufacturer.
- 7.3. The warranty claim can only be put forward if the purchaser has immediately reported the defects in writing. The purchaser shall make all the documents and data necessary for assessing the defect and its causes available to EVK.
- 7.4. All the costs and expenses arising in connection with the elimination of defects (e.g. mounting and dismounting, transport, waste disposal, travelling expenses and mileage allowance) shall be borne by the purchaser. As for warranty work on the purchaser's premises, the required personnel, lifting gear, scaffolds, small material, hardware and times for using the equipment shall be provided free of charge.
- 7.5. The warranty excludes defects caused by installation and erection work not done or ordered by EVK, insufficient equipment, non-fulfilment of the installation requirements and conditions for use, overloading the parts beyond the power and performance admitted by EVK, negligent or incorrect handling and use of unsuitable operating materials. This shall also apply to defects that are due to purchaser-supplied material. Nor shall EVK be liable for damage caused by acts of third parties, atmospheric discharge, overvoltage and chemical influence. The warranty does not refer to the replacement of parts subject to natural wear and tear either.
- 7.6. The warranty will expire immediately if the purchaser modifies or repairs hardware or software or has it done by a third party that is not explicitly authorized by EVK without the written consent of EVK. Costs accruing due to invoices for this will not be remunerated. The elimination of defects does not prolong the original warranty period.

#### **8. Liability:**

- 8.1. EVK shall only be liable for damage outside the scope of the Product Liability Act in the event of intent or gross negligence in compliance with the legal regulations. Liability for slight negligence, compensation of consecutive damage and property loss, savings not achieved, interest losses and damage resulting from claims put against the purchaser by third parties shall be excluded. The purchaser's claims for damages shall be limited to the amount of the respective contract value.
- 8.2. If any conditions for assembly, commissioning and use (e.g. those stated in Operating Instructions) or regulatory authorization conditions are not fulfilled, any damages shall be excluded. As for all the Assembly

Instructions and hints for commissioning and use, the version written in German shall be legally binding.

- 8.3. This shall also apply to the use of software and the results achieved by using this software.
- 8.4. All the purchaser's claims shall be put forward before the court within three years unless legal provisions specify shorter periods. Otherwise the claims shall expire.

#### **9. Final clauses:**

- 9.1. If individual clauses of this contract are or become ineffective, the rest of the contents shall remain unaffected.
- 9.2. Collateral agreements and amendments relating to these conditions require written form to become effective.
- 9.3. Unless agreed differently, the legal provisions that are applicable to the business relations between full merchants according to Austrian law shall exclusively apply. This shall also be true if the order is carried out abroad. As for possible disputes, the technically competent court for the registered office of EVK shall exclusively be responsible. As for sales to consumers in the sense of the Consumer Protection Act, the clauses above shall only apply to the extent the Consumer Protection Act does not absolutely specify other clauses.
- 9.4. Furthermore, the application of the UNCITRAL Convention, which regulates contracts relating to international purchasing of goods, shall be excluded unanimously.

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