

# General Terms of Supply of EN ElectronicNetwork AG and affiliated companies

This version is just for information a translation of the solely binded most actual German version "Allgemeine Lieferbedingungen der EN ElectronicNetwork AG und verbundene Unternehmen".

## I. General Terms

1. These general terms of supply exclusively apply to the legal relationship between supplier (EN) and buyer in relation to deliveries and/or services (subsequently referred to as deliveries). However, the buyer's general terms and conditions only apply to the extent that the supplier or service provider (subsequently referred to as supplier) expressly agreed to them in writing. The mutually agreed upon written declarations determine the scope of delivery.
2. The supplier retains full right of retention and proprietary patent rights for all estimates, drawings and other documents (subsequently referred to as documents). Documents may only be made available to third parties after the supplier's prior agreement. If a contract is not awarded to the supplier, the documents must be returned to supplier immediately on demand. Sentence 1 and 2 apply to buyer's documents accordingly. However, documents may be made available to third parties, which the supplier had permission to subcontract deliveries to.
3. The buyer does not have an exclusive right of use on standard software and firmware with agreed-upon performance features, provided it has been installed without alteration on agreed-upon devices. The buyer may make a backup copy of standard software without requiring express agreement.
4. Partial deliveries are permissible, provided they are reasonable to the buyer.
5. The term "claim for damages" as used in these general terms of supply also includes damages for expenses in vain.
3. In case of delayed deliveries the buyer may claim damages for every full week of delay at 0.5% and a total of no more than 5% of the price of the part of the delivery that could not be used as intended because of the delay, provided the buyer provides evidence of damages suffered.
4. The buyer cannot claim damages because of delayed deliveries, or damages instead of the delivery, beyond the limits specified in Article IV No. 3 above. This applies to all cases of delayed delivery, even if an additional time limit set by the buyer for a delivery has been missed. This does not apply in case of mandatory statutory liability because of intentional or gross negligence or damage to life, body or health. The buyer may legally withdraw from a contract only if the supplier is responsible for the delay. The above regulations do not change the burden of proof to the buyer's disadvantage.
5. The buyer is obliged to declare on supplier's request and within a reasonable time limit set whether he or she wishes to withdraw from the contract because of a delay or insists on delivery.
6. If shipment or delivery is delayed on buyer's request for more than one month after notification of readiness for shipment, the supplier is entitled to charge storage charges at 0.5% but not more than 5% of the price of goods concerned for every month begun. The parties to the contract may provide evidence of higher or lower storage charges.

## V. Transfer of Risk

1. Prices are defined ex work and exclude packaging and with legally applicable VAT added.
2. The buyer is to cover any auxiliary expenses necessary such as travel expenses, transportation costs for tools, personal gear and daily allowance if the supplier is to install or construct and no special agreements have been made.
3. The buyer is to cover any bank charges for all payments.
4. The buyer may only offset undisputed or legally binding receivables.
5. Unless agreed otherwise, EN reserves the right to adjust prices in case of currency fluctuations of 3% or more in relation to the market value of the currency used in the bid to designate the price of material on the day of making the offer (European Central Bank – ECB – at 12 noon CET).
1. The risk is transferred to buyer (also in case of transportation free of charge) as follows:
  - a) in case of deliveries without installation or assembly: as soon as goods are ready for shipment or the goods are picked up; the supplier insures goods against usual risks in transportation on the request and account of the buyer;
  - b) in case of delivery with installation or assembly: on the day of commissioning by the buyer or, if agreed, after a flawless test run.
2. The risk is transferred to the buyer if the buyer is responsible for delays in shipment, delivery, the beginning and/or performance of installations or assemblies, commissioning of the delivery by the buyer, test runs or in acceptance for other reasons.

## VI. Tools and Jigs

1. The customer proportionally pays tools and jigs developed to perform customer's orders. The customer pays 100% of the costs if metal templates have to be newly manufactured because of wear and tear. Metal templates and jigs as well as set-up costs depend on batch size. We reserve the right to charge for repeated manufacturing of metal templates, which may be advisable in high-quantity production runs.

## VII. Installation and Assembly

The following terms apply for installation and assembly, provided no other terms have been agreed upon in writing:

1. The supplier retains the title in the goods delivered (goods subject to retention of title) until the buyer satisfied all claims the supplier has against the buyer because of this business relation. On buyer's demand, the supplier will release the appropriate portion of securities, if the total value of securities held by the supplier exceeds the total value of secured claims by more than 10%. The supplier may choose which type of security to release.
2. While the right of retention is in force, the buyer is forbidden to mortgage securities provided or to use them again as securities. The buyer is allowed to sell securities provided only in the usual course of business and with the provision, that the reseller obtains payment from its customers or to sell these under the provision, that the title in the goods is transferred to its customers only after full payment has been made.
3. The buyer is to inform the supplier immediately in case of garnishment, seizure or other court orders or interventions by third parties.
4. The supplier is entitled to take back goods delivered or to cancel the contract if the buyer neglects duties, particularly is in default with payments, and does not satisfy claims within a reasonable time set by the supplier. Legal regulations on the dispensability of setting a time limit are not affected by this. The buyer is obliged to release goods. The fact that the supplier takes back goods and/or claims retention of title or seizes goods subject to retention of title does not constitute a cancellation of the contract, unless the supplier explicitly declares that this the case.
1. The buyer must timely provide all documents, required permissions and clearances (particularly drawings) and observe agreed-upon terms of payment as well as other buyer obligations for terms of delivery to take effect. These terms extend accordingly if these requirements have not been fulfilled on time. This does not apply if the supplier is responsible for delays.
2. These terms are reasonably extended if the default is caused by acts of god, e.g. mobilisation, war, unrest or similar events (strike, lockout). The same applies for delayed or improper deliveries to the supplier.
1. The buyer is to cover the costs and provide funds on time for:
  - a) all excavations, constructions and other auxiliary work outside our particular sector of industry, including needed experts and helpers, construction material and tools,
  - b) utensils and material needed for assembly and commissioning, such as scaffolding, lifting gear and other devices, fuel and lubrication,
  - c) power and water at the location of usage, including connections, heating and lighting,
  - d) sufficiently large, appropriate, dry and lockable rooms at the construction site for machine parts, valves, materials, tools etc. as well as working, recreational and sanitary facilities appropriate to the circumstances for the assembly personnel; additionally, the buyer is to take those safety measures at the construction site for the protection of supplier and his or her assembly personnel, buyer would take for the safety of him- or herself.
  - e) protective clothing and protective devices required due to special circumstances at the construction site.
2. Prior to the beginning of assembly work the buyer is to provide, without being requested to do so, necessary information on the location of covered power, gas and water lines and similar facilities as well as necessary static details.
3. All provisions and devices necessary to begin a task must be at the installation or assembly location before installation and assembly work are begun and all preparatory work must have advanced to a point, prior to the beginning of installation work, that the installation or assembly can be performed, according to the contractual agreements, without interruptions. Access roads and installation or assembly location must have been levelled off and cleared.



# General Terms of Supply of EN ElectronicNetwork AG and affiliated companies

4. The buyer is to adequately cover costs for waiting periods and additionally required travels of supplier and assembly personnel if the installation, assembly or commissioning is delayed for reasons outside the supplier's scope of influence.
5. The buyer is to attest promptly to the supplier weekly working hours of assembly personnel as well as the end of installation, assembly or commissioning.
6. The buyer is to perform acceptance procedures within two weeks if requested by supplier at the completion of services. Acceptance is assumed to have been granted if this procedure is not being followed. Acceptance is also assumed of having been granted if the delivery is being used – or used after a possibly agreed upon test period.

## VIII. Acceptance

The buyer must not refuse acceptance of the delivery for irrelevant defects.

## IX. Material Defects

The supplier is liable for material defects as follows:

1. The supplier, on his or her own discretion, is to remedy, newly deliver or newly provide those parts or services without charge that have a material defect, provided the reason for the defect occurred before the transfer of risk. The supplier's warranties for defects concerning electrical functionalities of the module/device are excluded if defects concern the electrical functionality of the module/device and it has been agreed that EN does not perform electrical tests.
2. Any claims for remedy become time-barred after 12 months from the beginning of the statutory limitation period for warranty claims. The equivalent regulation applies for the termination of the contract and the reduction of prices. This time period does not apply if longer time periods are mandated by law for intent, fraudulent concealment of defects and non-delivery of guaranteed properties according to Sections 438 Para 1 No. 2 (buildings and material for buildings), Section 479 Para 1 (recourse action) and Section 643a Para 1 No. 2 (defects in buildings) (all German Civil Code). Legal regulations concerning the suspension, interruption and resumption of time limits remain unaffected.
3. The buyer has to submit notices of defect in writing promptly.
4. In case of a notice of defect, the buyer may withhold payments in accordance to the extent of the material defects found. In case a notice of defect has been served, the buyer may withhold payments only if there is no doubt about the notice's validity. The buyer does not have a right of retention if claims from defects have become time-barred. The supplier is entitled to claim compensation from the buyer for expenses incurred because of illegitimate claims on the basis of defects.
5. The supplier must be given a reasonable time limit to remedy defects.
6. The buyer may withdraw from the contract or reduce the payment – without affecting damage claims according to Section XI – if the remedy is of no avail.
7. Claims for remedy of defects are excluded if deviations from contractually agreed properties are insignificant, if usability is affected only slightly, in case of normal wear and tear or in case of damages that have occurred after the transfer of risk due to incorrect or improper treatment, excessive use, unsuitable operating fluids, faulty construction of buildings, unsuitable building ground or due to special, external influences that have not been envisioned in the contract as well as in case of non-reproducible software errors. Claims from defects are excluded for unprofessional changes or maintenance work (and its consequences) performed by the buyer or third parties.
8. The buyer cannot derive claims for compensation because of expenses necessary in performing remedies (particularly costs for transportation, travel, work and material) if these expenses have increased because the delivery's subject matter (object) subsequently has been relocated to another location than the buyer's subsidiary (unless the relocation is in line with the intended use of the object).
9. The buyer may initiate recourse actions against the supplier according to Section 478 German Civil Code (recourse actions of a businessperson) only if the buyer did not agree with his or her own buyer on regulations exceeding the statutory regulations on claims from defects. Additionally, Article IX No. 8 applies accordingly to buyer's recourse actions against the supplier according to Section 478 Para 2 German Civil Code.
10. The buyer has no claim for damages because of material defects. This does not apply in case of fraudulent concealment of defects, non-delivery of guaranteed properties, in case of violation of life, body, health or freedom and in case the supplier violated its duties intentionally or with gross negligence. The above regulations do not change the burden of proof to the buyer's disadvantage. Any further or other claims than those agreed in Section IX (because of material defects) are excluded.

## X. Industrial Property Rights and Copyrights; Defects of Title

1. Unless specified otherwise, the supplier is obliged to provide the delivery free of industrial property rights and copyrights (subsequently called proprietary rights) only within the country of the place of delivery. The supplier is liable to the buyer (within the term specified in Article IX No. 2) when a third party raises valid claims against the buyer (because of violations of proprietary rights in regards to deliveries provided by the supplier that were used within the contractual limitations) as follows:
  - a) On its own discretion and costs, the supplier will, in regards to the delivery concerned, either obtain usage rights, modify the item delivered so that proprietary rights are not being violated or exchange it for another item. If the supplier cannot achieve this at reasonable conditions, the buyer is entitled to terminate the contract or to lower the price.
  - b) The supplier's obligation to pay damages is determined by Article XII.
  - c) The supplier's above-mentioned obligation only exists if the buyer promptly notified the supplier in writing about claims raised by third parties, if the buyer did not recognize the claim and reserved the supplier's rights for all defensive actions and settlement talks. The buyer is obliged to notify the third party that a cessation of use does not mean recognition of violations of proprietary rights (if the buyer ceased to use the delivery to minimize the damage or for other important reasons).
2. The buyer's claims become invalid if he or she is responsible for the violation of proprietary rights.
3. The buyer's claims are debarred if the violation of proprietary rights was caused by specific instructions of the buyer, because of usages of the delivery the supplier could not anticipate or because the buyer modified the delivery or used it in connection with other items not delivered by the supplier.
4. In case of violations of proprietary rights, the regulations of Article IX No. 4, 5 and 9 apply accordingly to claims of the buyer regulated in No. 1 a).
5. The regulations of Article IX apply accordingly to other defects of title.
6. Any additional or other claims of the buyer against the supplier and its assistants for defects of title not regulated in Article X are excluded.

## XI. Impossibility, Adjustment of Contract

1. The buyer is entitled to claim damages if a delivery is impossible unless however, the supplier is not responsible for the impossibility of the delivery. However, the buyer's damage claim is limited to 10% of the value of that part of the delivery that could not be used as intended due to the impossibility to deliver. This limitation does not apply in case of mandatory statutory liability because of intentional or gross negligence or damage to life, body or health. This regulation does not change the burden of proof to the buyer's disadvantage. The buyer's right to withdraw from the contract is not affected.
2. The contract will be adjusted appropriately and in good faith if the economic significance or the content of the delivery is changed considerably by unexpected events in the meaning of Article IV No. 2 or if these events have a considerable impact on the buyer's operation. The supplier has a right to withdraw from the contract if such adjustments would be economically unreasonable. In case the supplier intends to withdraw from the contract, the supplier is to notify promptly the buyer of this fact as soon as the consequences of events become clear. This applies even if a temporary extension of the delivery term has been agreed with the buyer.

## XII. Other Claims for Damages

1. Any damage claims or claims to compensate expenses on the part of the buyer are excluded, regardless of the legal reason and particularly for violations of contractual obligations or unlawful acts.
2. This does not apply in case of mandatory statutory liability, e.g. because of the Product Liability Act, intentional or gross negligence or damage to life, body or health or because of violations of important contractual obligations. However, a claim for damages because of violations of important contractual obligations is limited to predictable damages that are characteristic to the contract, provided liability is not excluded because of intentional or gross negligence or damage to life, body or health. The above regulations do not change the burden of proof to the buyer's disadvantage.
3. The buyer's claims for damages according to Article XII become time-barred according to the statutory limitation periods regulated in Article IX No. 2. The same applies to buyer's claims in regards to measures to avoid damages (e.g. recalling items). The statutory limitation periods apply to damage claims based on the Product Liability Act.



# General Terms of Supply of EN ElectronicNetwork AG and affiliated companies

## **XIII. Legal Jurisdiction and Applicable Law**

1. The supplier's residence is the exclusive place of jurisdiction for all disputes directly or indirectly arising from this contractual relationship, provided the buyer is a businessperson in the legal sense. However, the supplier is entitled to sue at the buyer's residence too.
2. The German substantive law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG), applies to the legal relationship in connection with this contract.

## **XIV. Binding Qualities of this Contract**

This contract remains valid in all remaining parts, even if some regulations are legally unenforceable. This does not apply if holding on to this contract would result in unreasonable hardship for one of the parties.



# General Terms of Supply of EN ElectronicNetwork AG and affiliated companies

## Amendments Extended Retention of Title

The following simple and extended retention of title is agreed:

1. The supplier retains the title in the goods delivered (goods subject to retention of title) until the buyer satisfied all claims the supplier has against the buyer because of this business relation. On buyer's demand, the supplier will release the appropriate portion of securities, if the total value of securities held by the supplier exceeds the total value of secured claims by more than 10%. The supplier may choose which type of security to release.
2. While the right of retention is in force, the buyer is forbidden to mortgage securities provided or to use them again as securities. The buyer is allowed to sell securities provided only in the usual course of business and with the provision, that the reseller obtains payment from his or her customers or to sell these under the provision, that the title in the goods is transferred to his or her customers only after full payment has been made.
3. The buyer assigns with this regulation future receivables from a resale of the goods to the supplier as security – including possible claims on outstanding balances – in case the buyer resells goods subject to retention of title. No additional declarations are necessary for this regulation to take effect. The buyer assigns that part of total receivables to the supplier that equals the amount charged by the supplier for goods subject to retention of title, if a resale of goods subject to retention of title occurs in combination with other goods and no individual price is demanded for the goods subject to retention of title.
- 4.a) The buyer is entitled to process goods subject to retention of title or to mix or combine these with other items. Processing, mixing or combination (subsequently called processing) occurs on behalf of the supplier. The buyer keeps the new item on behalf of the supplier with the care of a prudent businessperson. The new items are considered as goods subject to retention of title.
- 4.b) By way of this regulation, supplier and buyer agree, that the supplier – in any event – becomes a co-owner in the new item formed by the combination or mixing with items that do not belong to the supplier. The supplier is entitled to co-ownership in the new item to the degree which results from the relationship of the value of the combined or mixed good subject to retention of title and the value of the remaining goods at the point in time when the items were combined or mixed. To that degree, the new item is considered a good subject to retention of title.
- 4.c) The regulations on the assignment of receivables according to No. 3 apply to the new item accordingly. However, the assignment only applies to the value of the processed, combined or mixed item subject to retention of title billed by the supplier.
- 4.d) With this regulation, the buyer assigns receivables and any ancillary rights for combined items as security to the supplier, if the buyer combines goods subject to retention with land or mobile items. No additional declaration is necessary for this to take effect. The amount assigned as security is determined by the relationship of the value of the combined item subject to retention of title with the remaining value of the combined item at the point in time of combination.
5. Unless revoked, the buyer is entitled to collect assigned book accounts from a resale. The supplier is entitled to revoke the buyer's right to collect assigned book accounts if important reasons exist on the part of the buyer, particularly delays of payment, cessation of payment, opening of insolvency proceedings, protest of a bill or reasonable indication of an indebtedness or threatened impossibility to pay. After warning and observing a reasonable term, the supplier is entitled to disclose the buyer's security assignment, to utilize the disclosed assigned book account or demand that the buyer discloses the security assignment to the supplier's customer.
6. The buyer is to inform the supplier immediately in case of garnishment, seizure or other court orders or interventions by third parties. The buyer is to provide the supplier with any documents necessary for the supplier to enforce his or her rights in regards to his or her customers, provided prima facie evidence is provided for a legitimate interest.
7. The supplier is entitled to take back goods delivered and to cancel the contract if the buyer neglects his or her duties, particularly is in default with payments, and does not satisfy claims within a reasonable time set by the supplier. Legal regulations on the dispensability of setting a time limit are not affected by this. The buyer is obliged to release goods. The fact that the supplier takes back goods and/or claims retention of title or seizes goods subject to retention of title does not constitute a cancellation of the contract, unless the supplier explicitly declares this the case.

# General Terms of Supply of EN ElectronicNetwork AG and affiliated companies

## Amendments Special Characteristics of Material

### Material

To be able to calculate delivery times and forecasts according to delivery schedules of material, EN is entitled to order, as necessary, material on account of the customer as soon as the customer has accepted and ordered the project/products. This authorization includes, without limitations, additional material necessary in EN's opinion, provided this can be evidenced with due consideration of any minimum requirements by suppliers for orders and/or minimum order quantities of suppliers, dimensions of packaging and the most economical order quantities. EN is entitled and authorized, without restricting the before-mentioned regulations, to order necessary material at any time, provided the delivery schedule for this material is longer in general than orders, liabilities and/or customer orders used in the forecast. Provided such a list has been provided, EN will procure material only according to the customer's list of approved suppliers. EN will request the customer's prior, written approval for any other supplier. Approval is deemed to have been given if the customer does not respond to a request within 14 days.

According to this contract and to the extent of contradictions between regulations of this contract and conditions negotiated between customer and his or her suppliers, EN is released from any liability in regards to the customer. The customer bears the main responsibility to instruct his or her supplier to provide services in agreement with this contract (including solving any quality problems) and to compensate EN for expenses reasonably incurred in connection with quality tests of material, if the customer instructs EN to purchase material according to contracts negotiated by the customer.

### Material Provided by Customer

Material provided is delivered by the customer free of charge to EN no later than one week prior to the beginning of manufacturing. EN usually triggers orders of material provided. Otherwise the customer is to monitor the timely delivery if this is not the case. The material provided is added to EN's warehouse, specifically labelled and managed such as EN's own material and subject to inventory. Additional customer-ordered inventories are separately billed. The manufacturing costs include expenses for warehousing and handling material provided.

The material provided must be of the same quality as material purchased by EN (delivery quantities, schedules, packaging etc.). The customer is separately billed for additional expenses caused by improper material, particularly if packaging is not suitable for machine processing, insufficient quality or delayed delivery. Excess quantities required because of technical procedures used must be observed and taken into account. EN cannot guarantee a certain delivery quantity if this is not observed.

### Obsolete and/or Excess Material

If the total quantity of any part of any material necessary for the production of customer products (which is held by EN or that has been ordered or manufactured or bought with mutual agreement) is at any point in time greater than the sum of: (I) the volume of such material used up by EN in the prior thirty (30) days in manufacturing products for the customer according to this contract and (II) the volume of such material that will be used up by EN (according to the forecast) in manufacturing products for the customer in the next fifteen (15) days, such quantities of material will be considered "excess material".

EN will notify the customer on or before the fifteenth (15<sup>th</sup>) day of every month of the volume and value of excess material available at the end of the previous month. The customer is to provide the following notice to EN within sixty (60) days after receipt of such a notification of EN (date stamp of receipt of notice): (I) an order for the delivery of warehoused excess material (according to the definition below) and (II) a reservation of warehousing fees ("reservation of warehousing fees") at two (2) percent of the average value of excess material concerned per month, calculated from the day of receipt of the notice until that day the customer issues a request for the delivery of warehoused material and the reservation of warehousing fees. Unless agreed otherwise in writing, the average value is calculated based on the inventory at the end of the month.

The customer will inform EN's purchasing department of any material bought by the customer from EN that still is suitable for the manufacturing of customer products. The intention for EN's purchasing department is to buy material (preferably) from the customer rather than on the free market. The purchase price of such material is the cost of the material as used in the currently valid calculation.

Excess material is considered material that is no longer needed for the manufacturing of products in the next six (6) months (or that no longer is suitable for the manufacturing of products due to time that has passed). This applies to the manufacturing of complete or partial products, rescheduling or cancellations of orders or the reduction of quantities specified in a forecast or the termination of this contract or parts thereof or any other event, including changes in specifications or construction modifications, resulting in material bought by EN or orders placed with suppliers of materials no longer needed or usable as described above. The customer will issue an order for the delivery of warehoused material to EN concerning obsolete material within seven (7) working days after receipt of such a notification. In case of excess material, the order price is the price as expressed by the current costs of such products. In case of obsolete material, the order price is the price paid by EN for such outdated material specified in the product-price determination. Any excess or obsolete material bought by the customer from EN by way of an order to deliver warehoused material is considered a part of the inventory owned by the customer. The order for the delivery of warehoused material should compensate lower prices, including deficits, resulting from the sale of material at lower prices than originally paid by EN for such material as well as costs in relation to restocking and fees for returning goods.

If at any time any material becomes surplus or outdated, EN will apply appropriate efforts to (a) cancel outstanding orders for material, (b) return material to the original supplier or return or sell it at conditions determined at the discretion of EN and, (c) to use excess material and material deliveries that cannot be cancelled for the manufacturing of other products.

The attempts to lower the costs should continue for a period of up to fourteen (14) days. Any invoices relating to surplus or outdated material are to be paid to EN in Euro (immediately and without deductions) within seven (7) days of invoice date.



**ElectronicNetwork**  
SYNERGIE IN KOMPETENZ

# General Terms of Supply of EN ElectronicNetwork AG and affiliated companies

## **Cancellation/Rescheduling**

If a customer cancels an order or a part thereof:

- (a) the customer must pay EN the full price for such a cancelled order (or a part thereof) if it concerns prototypes, pilot series, preproduction series, semi-finished goods (provided EN was entitled to manufacture and deliver these to the customer) and end products;
- (b) the customer must pay EN the added value for all cancelled products of order(s) (or a part thereof), if EN has not started yet with the manufacturing process at the time of cancellation and the order (or part thereof) has been cancelled within thirty (30) days of the planned delivery schedule specified in the original order. "Added value" is defined as the full product price minus material costs for EN.
- (c) the customer pays all costs for no longer needed material and/or surplus stock created by the cancellation.
- (d) the customer pays any other expenses demonstrably connected with or caused by the cancellation. This also applies to missing amortisation of tools, NRE and other means factored in.

EN may bill the customer for costs demonstrably caused to EN because the customer rescheduled agreed-upon fixed schedules.

EN must be consulted in advance regarding postponements. At the most, three months of postponements are permissible. If a postponement is greater than three months, a postponement will be treated the same as a cancellation.

Within its own discretion, EN may consider an order cancelled by the customer (or the relevant part thereof) if a customer refuses or misses to accept a delivery from EN made according to an order or this contract.

