

## **General Terms of Purchase of eucatech AG**

### **As of: June 2015**

#### **I. Scope**

1. These General Terms of Purchase apply only toward entrepreneurs for the purposes of § 14 BGB (German Civil Code), legal entities under public law, or special funds under public law ("Customer").
2. Unless agreed otherwise, all deliveries (including future deliveries) will be subject exclusively to the following conditions. We will not be subject to any deviating business conditions of the Customer even if we do not object to those conditions explicitly.

#### **II. Contract conclusion**

1. Our offers are non-binding unless they indicate otherwise. Contracts will not be formed until we have confirmed the order in writing or made a delivery.
2. Our employees are particularly obligated to confirm in writing any oral side agreements or promises that exceed the content of the written contract or alter these General Terms of Purchase to our detriment.
3. The illustrations and the information on weight and dimensions constitute approximate values unless they are expressly designated as binding.
4. Unless the Customer expressly indicates in the order that it desires exclusively a particular version of the ordered goods, or that no deviation should be made from its information and specifications, we may deliver modified versions as part of constant technical refinements, provided this is agreeable to the Customer under consideration of our mutual legitimate interests.

#### **III. Copyright and exploitation rights**

1. We retain all copyrights to illustrations, drawings, calculations, cost estimates and our other documents.
2. Unless these documents belong to the delivery contents, they will remain our property, may not be made available to third parties without our express consent, and must be returned completely without undue delay at our request, especially if the offer in question will not lead to an order.
3. If the Customer submits workshop drawings to us, the Customer ensures that those drawings will not encroach on any third-party proprietary rights. We are not obligated to check whether the use of the workshop drawings submitted to us will breach any third-party proprietary rights.

### III. Prices and payments

1. Our prices are EXW from our delivery warehouse in Weil am Rhein (Baden), Germany, Incoterms 2010, in euros, plus packaging and any valid VAT.

2. For orders with delivery periods of more than two months, annual contracts, other framework contracts, or pricing agreements with a duration of more than two months, we may increase the agreed price if significant changes for which we are not responsible occur to the costs for salaries, materials, energy or raw materials. *If prices increase by more than 5%, the Customer may withdraw from the contract.*

3. Unless otherwise agreed, payment must be transferred into our account, without deductions or fees, within 14 days after delivery has been made and the receipt received. The timeliness of the payment will be determined by the date of receipt. The Customer shall bear the bank charges. They are due immediately. Payments will be deemed made only to the extent to which we can have free disposal over them at our bank.

4. If the Customer is notified during the collaboration that our account details have changed or will change, the Customer shall verify that change by sending a written inquiry (not an email) to our head of accounting before transferring anything into a new account. If the Customer neglects that verification and transfers the invoiced amount into an account not belonging to us, that transfer will not release the Customer from its payment obligation.

5. If the payment periods are exceeded, we will charge default interest amounting to 9 percentage points above the base interest rate, but at least 10% a year. If we can prove that we suffered greater damage due to delay, we may assert that damage.

6. If the customer is in arrears with a payment obligation, all outstanding payments are due immediately.

7. The Customer may set off or assert a right of retention only to the extent to which its counterclaims are uncontested, have become res judicata, or are ready for a decision. Furthermore, the Customer may assert a right of retention only if its counterclaims are based on the same contractual relationship.

8. We are entitled to assign or sell entitlement of payments from the business with our customers to third parties.

### V. Delivery periods; Transfer of risk; Delivery

1. The delivery period will begin when the order confirmation is received, but not before all documents and information necessary for the order, and the agreed advance payment or payment security, have been received as well. Subsequent requests from the Customer for modifications or supplements will extend the delivery time to a reasonable extent. The delivery period is deemed complied with if the goods are made ready for shipment by the expiry of that period. If a delivery date has been agreed instead of a delivery period, this paragraph will apply mutatis mutandis.

2. Our obligation to deliver is subject to the proviso that the necessary export permits are granted and there are no other obstacles based on export regulations that must be observed.

3. It is also subject to correct and prompt self-delivery by our suppliers.

If an obstacle in accordance with V.2 or V.3 arises for which we are not responsible, we will be released from our obligation to deliver.

4. Delivery will be made EXW from our delivery warehouse in Weil am Rhein (Baden), Germany, Incoterms 2010. If the shipment is delayed and we are not to blame, risk will be transferred as soon as we have notified the Customer of the readiness for shipment, even if we have assumed other services, such as the shipping costs or shipment, including through our own transport personnel, by way of exception.

5. If delivery is delayed, our liability in the event of ordinary negligence will be limited to 0.5% per completed week of the default, but to a maximum total of 5% of the net invoiced amount of the part of the delivery affected by the delay. This will not affect the claim to damages in lieu of performance in accordance with item IX. The Customer shall inform us on contract conclusion at the latest about contract penalties it has agreed with its buyers.

6. If events arise that are unforeseeable, unavoidable and not our fault (such as force majeure, war, blockade, fire, natural catastrophes, riots, staff shortages due to illness, strikes, or lockouts; interruptions of operations, transport, material procurement, or energy supply; or official interventions), the delivery period will be extended by the duration of the interruption and its effects. This also applies if the interruption occurs with our upstream suppliers or during an existing delay. If the interruption is more than temporary, either contract partner may withdraw. In the aforementioned cases, claims for damages are excluded.

7. We may make partial deliveries to the extent agreeable to the Customer. We may charge separately for such deliveries. If the Customer defaults with the payment for a partial delivery, we may suspend further contract fulfilment.

8. If shipping is delayed by circumstances that are not our fault and we must store the shipment in our delivery warehouse, we will charge at least 5% of the net invoiced amount of the stored delivery.

## **VI. Retention of title**

1. Delivered goods will remain our property until we receive all payments from the business relationship with the Customer (those goods, the "Retained Goods"). If there is a current account relationship, the retention of title will extend to the acknowledged account balance.

2. The Customer shall treat the Retained Goods with care and maintain them. In particular, the Customer shall at its expense adequately insure those goods against loss or damage, at their re-acquisition value. At our request, the Customer shall show us the insurance policy and verify that the premiums have been paid. The Customer hereby assigns to us the claims from the insurance relationship. We accept this assignment.

3. Any reworking or processing of the Retained Goods will always be deemed to have been done on our behalf, without obligating us in any way. If the Retained Goods are mixed or combined with other goods, we will acquire co-ownership of the new goods in the ratio of the net invoice value of the Retained Goods to that of the processing and the other materials.

4. The Customer may resell the Retained Goods or the new goods in the ordinary course of business. However, the Customer hereby assigns to us in advance all claims that arise for the Customer from the resale or further use, according to the ratio of the new invoice value of the retained Goods to that of the processing and the other materials. We accept this assignment.

5. The Customer may collect the claims it has assigned to us if the Customer complies with its payment obligation arising out of the proceeds collected. If the Customer fails to meet its payment obligations, the authorisation to collect the claims will be forfeited. If this is the case, we may revoke the authorisation for resale and re-use and demand that the Customer disclose the assigned claims and their debtors to us, give us all information necessary to collect, hand over the associated documents, and notify its debtors of the assignment.

6. Taking back the Retained Goods will not constitute withdrawal from the contract. If we declare our withdrawal, we may sell the goods in the open market.

7. In the event of seizure or other interventions by third parties affecting the Retained Goods, the Customer shall notify us in writing without undue delay so that we can assert our rights. The Customer shall assume any costs incurred by defending against any such intervention, unless they can be recovered from the third party.

8. We shall release the securities at the Customer's request insofar as the value of our securities exceeds the claims to be secured by more than 10%. We shall choose the securities to be released.

## **VII. Goods relinquished on approval, for testing, or by way of rent or loan**

1. The Customer shall insure any goods ordered or relinquished on approval, for testing, or by way of rent or loan, during the relinquishment period, against normal risks (at least against fire, water, burglaries and theft) and shall return those goods to us at the Customer's expense and risk if they are not accepted, or at the end of the rental or lending relationship.

2. The Customer shall bear the risk of accidental loss or deterioration until the goods arrive in our warehouse again.

## **VIII. Incoming goods inspection; Liability for defects**

1. The Customer may assert rights due to material defects only if the customer has properly complied with its statutory obligations to inspect the delivered goods and give notice of affect.

2. If and to the extent that a defect exists, we shall cure the defect or deliver a new item, at our discretion. Replaced goods will become our property. We will assume no costs for supplementary performance incurred because the goods were moved to a location other than the Customer's commercial branch after they were delivered.

3. If we refuse to cure the defect or deliver a new item, if those options are unacceptable to the Customer or if they fail, the Customer may after expiry of a reasonable grace period reduce the purchase price or, if there are material defects, withdraw from the contract and demand damages in lieu of performance under item IX.

4. If the defect arose due to an essential third-party product, we may initially limit our liability to assigning the claims based on liability for defects to which we are entitled against the supplier of the third-party product, unless the satisfaction from the assigned claim or right fails or cannot be enforced due to other reasons. In this case, the Customer will once again be entitled to the rights under VIII. 2. and 3.

5. The breach of third-party rights will constitute a defect only if those proprietary rights exist in the Federal Republic of Germany.

6. Claims due to defects become time-barred in the time limits named in item XI.3.

7. If a notice of defects is unwarranted, we may invoice the Customer for the costs incurred.

## **IX. Liability**

1. We shall be liable in accordance with the legal statutes for intent or gross negligence, the fraudulent concealment of a defect, injury to life, limb or health, or for claims based on the Product Liability Act. If we have issued a guarantee, we shall be liable to the scope of the guarantee promise.

2. In the event of ordinary negligence, we shall be liable only for breach of a material contractual obligation, limited to compensating for foreseeable and typical damage, unless otherwise regulated in item V (a contractual obligation is “material” if it makes proper contract execution possible in the first place and the ordering party normally relies and may normally rely on its being complied with). In all other cases, our liability is excluded.

3. Claims of the ordering party due to defects become time-barred 12 months after risk is transferred; other claims become time-barred 12 months after the statutory commencement of the limitation period. In contrast to sentence 1 of this item XI.3, if we are liable due to the assumption of a guarantee, the scope of the guarantee promise will apply, and the statutory limitation periods will apply if a defect is fraudulently concealed; or if claims for damages exist under the Product Liability Act, or due to injury to life, limb or health, or due to an intentional or grossly negligent breach of obligations.

## **X. Place of fulfilment, Applicable law; Venue**

1. Unless otherwise indicated in the order confirmation, the place of fulfilment for all claims arising from the business relationship with the Customer (especially for deliveries and services) is Weil am Rhein, Germany.

2. All legal relationships between the parties are subject to German law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11 April 1980 is excluded.

3. The venue for all disputes arising from the business relationship with the Customer is Weil am Rhein, Germany. However, we may also bring an action before the court having jurisdiction for the Customer's registered office.

4. Finding individual provisions of these conditions to be fully or partially invalid will not invalidate its remaining provisions.