

EnviroFALK GmbH General Terms and Conditions General Terms and Conditions of Purchase as of 01.01.2020

Convenience Translation – the German version is authoritative

Terms and Conditions of Purchase of EnviroFALK GmbH (hereinafter „EF“)

I. Applicable conditions

1. The legal relationship between the Contractor and EF with regard to the purchase of goods („delivery items“) and work or services („services“) shall be governed by these General Terms and Conditions of Purchase (the „Terms and Conditions of Purchase“). Amendments and supplements must be made in writing.
2. These Terms and Conditions of Purchase shall apply exclusively. Conflicting, deviating or supplementary General Terms and Conditions of Business of the Contractor are hereby rejected and shall not become part of the contract unless EF expressly agrees to their validity. This consent requirement shall apply in all cases, for example also if EF accepts the Contractor’s delivery items or services without reservation in the knowledge of the Contractor’s general terms and conditions of business.
3. These Terms and Conditions of Purchase shall also apply in the version current at the time of EF’s order as a framework agreement (§ 305 para. 3 German Civil Code (BGB)) for similar subsequent contracts with the same contractor, without EF having to refer to them again.

II. Ordering

1. The supplier must confirm orders in writing. If the supplier changes the scope of the order, EF shall have the right to refuse the shipment and withdraw from the contract. Invoicing shall be based on the quantities, weights and dimensions verified by EF after receipt.
2. The Contractor can only accept orders from EF within any binding period that may be specified in the order, otherwise within 10 working days (Monday to Friday) from the order date specified therein. Delivery schedules shall become binding at the latest if the Contractor does not raise an objection within 10 working days of receipt.

III. Price and payment

1. The agreed prices are fixed prices and include – plus the applicable value added tax – all services and ancillary services of the Contractor (e.g. assembly/fitting, mounting, installation, commissioning, setup/setting work) as well as the shipping and transport services, packaging, insurance and other ancillary costs agreed in VI.1 or elsewhere. If a price has been agreed „ex works“ or „ex warehouse“, EF shall reimburse the Contractor only the most cost-effective freight costs. The type of pricing shall not affect the agreement on the place of performance.
2. EF shall pay within 14 days of receipt of the complete delivery or service and receipt of invoice with 3% discount or within 30 days net. In case of acceptance of early deliveries or services, the due date shall be determined by the agreed delivery or service date.
3. In the event of faulty delivery or service, EF is entitled to withhold payment proportionately to the value of the goods or service until the order has been correctly fulfilled. The Contractor shall only have a right of set-off or retention on the basis of legally established or undisputed counterclaims.
4. EF shall not owe any interest on overdue payments (§§ 352, 353 German Commercial Code (HGB)). The statutory provisions shall apply to late payment by EF.

IV. Obligation to inspect and give notice of defects

The statutory provisions (§§ 377, 381 HGB) and the regulations in this section IV shall apply to the commercial obligation of EF to inspect and give notice of defects. IV. EF’s obligation to inspect is limited to defects which become apparent during the incoming goods inspection on external inspection including the delivery documents (e.g. transport damage, incorrect and short deliveries). Insofar as acceptance has been agreed, there is no obligation to inspect. EF’s obligation to give notice of defects discovered at a later date remains unaffected. In the cases of clause 2 (obvious defects; sampling procedure), a complaint (notification of defects) from EF shall be deemed immediate if EF sends it within eight (8) working days of receipt of goods. In the cases of clause 4 (subsequent discovery), this period shall be three (3) working days from discovery.

V. Retention of rights; confidentiality

1. EF reserves all property rights, copyrights and industrial property rights to all documents, materials and other objects (e.g. order documents, plans, drawings, illustrations, calculations, product descriptions and specifications, manuals, samples, models and other physical and/or electronic documents, information and objects) provided to the Contractor.
2. The Contractor is obliged to keep the above-mentioned documents, materials and other items strictly confidential and only to disclose them to third parties, to use, modify, copy or make them accessible or communicate them to third parties with the express consent of EF. He must use them exclusively for the contractual purposes and, at the request of EF, return them in full to EF and destroy (or delete) any existing (including electronic) copies insofar as they are no longer required by him in the ordinary course of business and in accordance with statutory storage obligations. On request, the Contractor shall confirm to EF the completeness of the return and destruction/deletion or indicate which of the above-mentioned documents, materials or other items he believes are required to be retained for the above-mentioned reasons. The duty of confidentiality, including after expiry of the Contract, shall not expire until the knowledge included in the documents, materials and other items is in the public domain. The Contractor shall oblige its subcontractors accordingly.

3. The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which EF provides to the contractor for production purposes. Such objects – assuming they are not processed – are to be stored separately at the expense of the Contractor and insured against destruction and loss to a reasonable level.
4. Marketing activities involving the business relationship of the contractual partners are only permitted with the written consent of the parties.

VI. Delivery dates and delivery periods

1. DDP Incoterms (2020) shall apply to all deliveries (with reference to the delivery address stated in EF’s order or, if no such address is stated, the respective ordering location), unless expressly agreed otherwise.
2. Agreed delivery and performance times are binding. If the time of delivery or performance is not specified in the order and has not been agreed otherwise, it shall be two (2) weeks from conclusion of the contract. The Contractor shall be obliged to inform EF immediately in writing if he is unlikely to be able to meet agreed delivery or performance times, regardless of reason. The receipt of the delivery items together with the delivery note at EF or the completion of the services shall be decisive for compliance with delivery or service dates and delivery or service deadlines.
3. If the day on which the delivery or service is to be carried out at the latest can be determined on the basis of the Contract, the Contractor shall automatically be in default at the end of that day without the need for a reminder from EF; the statutory requirement to set a deadline before withdrawal or a claim for damages instead of performance shall, however, remain unaffected.
4. The risk of accidental loss and accidental deterioration of the delivery items shall pass to EF upon delivery at the place of performance. If acceptance has been agreed, the risk shall not pass to EF until successful acceptance; the statutory provisions of the law on contracts for work and services shall apply accordingly to acceptance.

VII. Third party participation and assignment of claims

1. Deliveries of delivery items to third parties must be carried out by the Contractor on behalf of EF, provided EF has noted this on the order.
2. Subcontracting of essential service or delivery parts based on technology or value requires the prior express consent of EF.
3. Assignments of claims from orders placed with EF are only permitted with the prior written consent of EF.

VIII. Contractual penalty and damage due to delay

1. If the contractor fails to meet an agreed delivery or service date, EF shall be entitled to a contractual penalty of 0.2% of the net price of the delayed delivery or service per working day, but not exceeding 5% of the total order value.
2. The claim shall be due immediately.
3. EF reserves the right to prove higher damages and the Contractor reserves the right to prove that EF has incurred no damages at all or substantially lower damages only.

IX. Force majeure

Force majeure, industrial disputes, riots, measures by the authorities and other unforeseeable, unavoidable and major events shall release the contracting parties from their performance obligations for the duration of the disturbance and to the extent of their effect. This also applies if these events occur at a time when the affected contractual partner is in default. The contractual partners are obliged to provide the necessary information immediately within the scope of what is reasonable and to adjust their obligations to the changed circumstances in good faith.

X. Quality of the delivery items and performance

The implementation of the delivery items and services must correspond to the state of the art. The Contractor must comply with the applicable safety, occupational safety and environmental protection regulations. Changes to the delivery item or the services to be provided require the written consent of EF.

XI. Warranty

1. All defects in the delivery items or services notified within the warranty period must be remedied by the Contractor at the request and at the discretion of EF either by rectification or replacement delivery. Subsequent performance shall also include the removal of the defective delivery items and the installation of defect-free delivery items if the delivery items have been installed into another object in accordance with their intended purpose. The Contractor shall remedy the defect at the place where the delivery item is located at the time the defect is discovered, unless the contracting parties agree that due to the nature and extent of the defect, remedy at the supplying plant is necessary. The expenses necessary for the purpose of inspection and subsequent performance shall be borne by the Contractor even if it is subsequently determined that no defect was actually present.

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EF's liability for damages in the event of an unjustified demand for the rectification of defects shall remain unaffected; however, EF shall only be liable in this respect if EF has noticed or has not noticed due to gross negligence that there was no defect present.

2. If the Contractor does not fulfil the obligation of subsequent performance within a reasonable period of time set by EF, EF may rectify the defect itself or have it rectified (self-remedy) and demand compensation from the Contractor for the necessary expenses or a corresponding advance payment. If subsequent performance by the Contractor has failed or is unreasonable for EF due to special circumstances (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionately high damages), it shall not be necessary to set a new deadline; EF shall inform the Contractor of such circumstances without delay, if possible before EF undertakes the work itself.

3. The Contractor shall bear the purchasing risk for his delivery items and services, unless expressly agreed otherwise (e.g. a stock debt).

4. EF shall make the parts replaced by the Contractor available to the Contractor at his request and at the Contractor's expense.

5. Unless otherwise agreed above, the warranty shall be governed by the statutory provisions.

XII. Producer liability

1. Insofar as the Contractor is responsible for product damage, he is obliged to indemnify EF from claims for damages by third parties insofar as the cause lies within the Contractor's sphere of control and organisation and he himself is liable in the third party relationship.

2. Within the scope of his obligation to indemnify, the Contractor must reimburse expenses in accordance with §§ 683, 670 BGB resulting from or in connection with a claim by third parties, including recall actions carried out by EF. EF shall inform the Contractor – as far as possible and reasonable – of the content and scope of recall measures and give him the opportunity to comment. Further statutory claims shall remain unaffected.

3. The Contractor shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage incident.

XIII. Recourse against suppliers

1. EF shall be entitled to the legally determined recourse claims within a supply chain (supplier recourse according to §§ 445a, 445b, 478 BGB) without restriction in addition to the claims for defects. In particular, EF shall be entitled to demand from the Contractor exactly the type of subsequent performance (rectification or replacement delivery) that EF owes to its customer in the individual case. The statutory right of choice (§ 439 Para. 1 BGB) of EF shall not be restricted by this.

2. Before EF recognises or fulfils a claim for defects asserted by its customer (including reimbursement of expenses in accordance with §§ 445a Para. 1, 439 Paras. 2 and 3 BGB), EF shall notify the Contractor and, giving a brief account of the facts, request a written statement. If a substantiated statement is not made within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by EF shall be deemed to be owed by the customer of EF. In this case, the Contractor shall be responsible for proving the contrary.

3. EF's claims from supplier recourse shall also apply if the defective delivery items have been further processed by EF or another firm, e.g. via installation into another product.

XIV. Limitation period

1. The limitation period shall be based on the statutory provisions, subject to the following paragraphs.

2. Notwithstanding § 438 para. 1 no. 3 BGB and § 634a para. 1 no. 1 BGB, the general limitation period for contractual claims based on defects of quality and title shall be three (3) years from delivery. For delivery, the transfer of risk is not relevant, but rather the fact that the delivery items come under the control of EF or that EF can take them over without further ado or at least examine them in full. If acceptance has been agreed or work services are provided, the limitation period shall not commence until acceptance.

3. Notwithstanding the preceding paragraph, claims arising from defects of title shall not become limited as long as the third party who is the owner of the claim or right giving rise to the defect is able to assert this/these claim(s) or right(s) against EF, in particular in the absence of a limitation period.

4. Upon elimination of a defect or subsequent delivery of a defect-free item or production of a new defect-free work, the limitation period for EF's warranty claims with regard to the repaired or previously defective, replaced parts/work shall begin anew, unless EF had to assume, based on the behaviour of the Contractor, that the Contractor did not feel obliged to eliminate the defect or make subsequent delivery, but only did so as a gesture of goodwill or for similar reasons.

XV. Reservation of title; onward processing

1. The transfer of ownership of the delivery items to EF shall take place unconditionally and without regard to the payment of the purchase price by EF upon transfer of the delivery items. If, however, a retention of title of the Contractor should be agreed in individual cases, all forms of (a) expanded, (b) extended to resale, processing or transformation or (c) forwarded retention of title are excluded in any case, so that the retention of title shall only apply until payment of the respective delivery items delivered to EF and only for those respective delivery items.

2. In the event of processing or transformation as well as connection, mixing or blending of the delivery items delivered to EF, EF shall be deemed to be the manufacturer and shall acquire co-ownership or, if applicable, full ownership of the end product in accordance with the statutory provisions at the latest with the aforementioned actions.

XVI. Intellectual property rights

1.1. The Contractor warrants that the delivery items delivered by him and the services rendered by him do not infringe any intellectual property rights of third parties

in countries of the European Union (EU) and the European Economic Area (EEA), in Switzerland, the USA, Canada or other countries in which he manufactures the delivery items or has them manufactured.

2. The Contractor shall indemnify EF against all claims which third parties make against EF on account of the infringement of industrial property rights referred to in the above paragraph and shall reimburse EF for all necessary expenses in connection with such claims. This shall not apply insofar as the Contractor proves that he is neither responsible for the infringement of industrial property rights nor should have been aware of it at the time of delivery or provision of service if he had exercised commercial diligence. The obligation to indemnify shall also not apply if the Contractor has manufactured the delivery items or services according to drawings, models or other equivalent descriptions or information provided by EF and does not know and need not know that industrial property rights have been infringed as a result.

3. The Contractor undertakes to inform EF without delay of any risks of infringement that become known and alleged cases of infringement.

4. At EF's request, the Contractor shall inform EF of the use of published and unpublished own and licensed industrial property rights and industrial property right applications for the delivery items and services.

5. By sending the technical documents (in particular the operating instructions, the risk assessment and other documents required for the integration of the delivery item into other products), the Contractor shall grant EF the economic right of use for the further use of the technical documents, insofar as this is necessary for the creation of documentation in connection with machines and systems sold by EF.

XVII. Special provisions for service provision / safety regulations

1. The Contractor shall provide his services independently and on his own responsibility. He shall not be subject to any technical and/or disciplinary instructions from EF. The Contractor as well as the personnel employed by him are neither in a working or employment relationship with EF nor in a relationship similar to that of an employee. EF is solely entitled to the right under the contract for work or service to specify the respective service to the Contractor.

2. The Contractor must provide the material required for the performance of the services as well as any tools and other aids himself. The Contractor is obliged to ensure careful and safe storage of the property, materials or other equipment brought in by his personnel and to insure it against loss or damage. Any liability of EF for loss or damage is excluded except in the case of intent or gross negligence.

3. After completion of the service provision, the Contractor shall clean the workplace and remove and take away all materials, including dismantled materials, with him and, if necessary, dispose of it correctly at his own expense.

4. The Contractor undertakes to observe the usual safety regulations and any safety regulations notified or specified by EF and to ensure that his employees and any subcontractors employed in individual cases also observe these regulations.

XVIII. Minimum wage law / law on the posting of workers

1. The contractor guarantees to fulfil his obligations according to the law on the posting of employees (Arbeitnehmerentsendegesetz; AEntG) and the minimum wage law (Mindestlohngesetz; MiLoG). The Contractor shall also provide a corresponding guarantee for any subcontractors he may employ with the prior written consent of EF.

2. The Contractor shall indemnify EF against all claims asserted against EF by employees of the Contractor or by employees of any subcontractors employed in individual cases on the basis of MiLoG or AEntG, and shall be liable for damages and costs resulting from disputes in this connection. The claims pursuant to sentence 1 shall not apply if the Contractor proves that he is not responsible for the infringement. § 774 BGB (statutory transfer of claims) remains unaffected.

3. The Contractor undertakes to immediately submit to EF records on wages (documents according to § 17 MiLoG) in compliance with the relevant data protection regulations, i.e. if necessary in (partially) anonymised and/or (partially) redacted form and/or a declaration by a tax advisor on the payment of the minimum wage upon request. In addition, the Contractor undertakes, at the request of EF, to provide information without delay and to submit proof of reliability tests and extracts from the German Central Trade Register (Gewerbezentralregister) as well as non-objection certificates from the social insurance institutions.

4. If the Contractor violates the obligations incumbent upon him according to this clause XVIII, and if such a violation is suitable to justify claims by employees of the Contractor or by employees of any subcontractors employed in individual cases or the initiation of administrative offence proceedings against EF, EF shall be entitled to withdraw from the respective individual contract.

XIX. General provisions

1. The invalidity or ineffectiveness of a provision of these Terms and Conditions of Purchase and the other agreements made shall not affect the validity of the remainder of the contract. Insofar as provisions of these Terms and Conditions of Purchase do not become part of the contract or are void or ineffective, the content of the contract shall be governed by the statutory provisions (§ 306 para. 2 BGB). If, however, there are no legal provisions suitable for filling the gap and if no supplementary interpretation of the contract has priority or is possible, the parties shall replace the void or ineffective provision that has not become part of the contract by an effective provision that comes as close as possible to the economic purpose of the void or ineffective provision.

2. The law of the Federal Republic of Germany shall apply, excluding the Convention on Contracts for the International Sale of Goods (CISG).

3. The place of performance for deliveries and services is the respective delivery address, for payments it is Westerbürg.

4. The exclusive – including internationally – place of jurisdiction for all disputes arising from or in connection with these Terms and Conditions of Purchase or the contractual relationship between EF and the Contractor shall be Westerbürg, Germany.