

# E-T-A

## Purchasing Terms

### 1. General

- 1.1 Our terms of purchase shall apply to all present and future contracts and other relations of the parties in connection with our purchasing activities.
- 1.2 Diverging, adverse or additional terms and conditions of our partners shall only become part of the contract as long as they comply with our purchasing terms or if we have expressly acknowledged the conditions of the contracting partner in writing.
- 1.3 Subsidiary agreements made orally or by phone shall only come into effect on our written confirmation.

### 2. Conclusion of the Contract

- 2.1 Quotations from the contracting party are free of charge unless otherwise agreed.
- 2.2 Contracts are concluded by means of our ordering forms. The supplier has to send us an order confirmation within 7 days (date of receipt) from the ordering date.
- 2.3 Negotiations or conclusions made orally or by phone require our written confirmation. This is also valid for electronic orders.
- 2.4 Orders covering an order value of more than EUR 1,000.00 are only legally valid when countersigned by an authorised second person.
- 2.5 Callings from skeleton contracts are valid without signature.

### 3. Prices

- 3.1 In the event of orders without price indication, the conclusion of the contract has to be expressly agreed upon by both parties and requires our written confirmation of the price.
- 3.2 Prices are fixed prices. Price increases or other changes shall only be permitted with our express consent. Price increases owing to ex post increases of list prices, cost increases etc. are excluded.

### 4. Delivery Dates

- 4.1 Stipulated dates are binding. Unilateral changes are not permissible. Transactions for delivery on a fixed date are referred to as such.
- 4.2 In the event of unfulfilled deadlines we are entitled to claim damages unless the contracting party can prove absence of fault.
- 4.3 Upon default and after granting an adequate period of grace and expiration, we are entitled to claim damages for non-performance or to withdraw from the contract. We may assert these rights without notice if the contracting party should definitely and seriously refuse performance or in the event of special circumstances which justify the immediate assertion of the damage claims under due consideration of mutual interests.
- 4.4 Dates are considered as kept if the shipment is received by the indicated consignee on time. For deliveries including assembly or mounting, timeliness requires on time assembly or mounting and our acceptance.
- 4.5 The contracting party must inform us in writing of any expected delays in delivery and their reasons and of the estimated endurance of the delay.
- 4.6 If the ordered shipment or performance can no longer be accepted or used due to force majeure or industrial conflicts such as strikes or lock-out, etc. we are entitled to refuse acceptance and will only reimburse futile expenses excluding any further claims.

### 5. Consignment, Risk of Loss

- 5.1 The correct consignee is indicated in our order unless otherwise agreed in writing. In general, shipments are to be delivered to the following address:

E-T-A Elektrotechnische Apparate GmbH  
Wareneingang  
Industriestraße 2-8  
90518 Altdorf  
Germany

- 5.2 Delivery documents and delivery notes etc. must show the order number, the date of order and the contact person in charge of the order as well as the supplied quantity and part number of every single item, individually.
- 5.3 Goods Receiving is open Monday through Thursday from 06:00 a.m. to 06:00 p.m. and Friday from 06:00 a.m. to 03.00 p.m.
- 5.4 Shipment is effected at supplier's risk and expense (free Reception Desk) unless otherwise expressly agreed in writing.
- 5.5 Transport insurance will be covered by E-T-A. The agent has to issue a forwarding agent's and cartage insurance certificate ban.
- 5.6 In case we explicitly bear shipping and handling, the supplier must choose one of the forwarders listed in the E-T-A logistics guidelines.

### 6. Packaging

- 6.1 Packaging must be purpose-selected to eliminate the risk of damage or loss.
- 6.2 Packaging costs will be paid by the supplier unless otherwise expressly agreed in writing.
- 6.3 Packaging instructions must be observed according to the E-T-A logistics guidelines.

### 7. Invoicing and Payment

- 7.1 The supplier is to provide a copy of the invoice; VAT is to be separately shown. All invoices have to include the complete order number, date of order and name of contact as well as the supplied quantity and part number of every item individually. Orderly invoices are the precondition for maturity.
- 7.2 Unless otherwise agreed, invoices for impeccable, faultless and complete deliveries and services will be settled under either of the following schemes: within 14 days upon receipt of invoice and goods in good order less 3 % discount; within 30 days less 2 % discount; net within 60 days.
- 7.3 Deduction of discount is also permissible in case of set-off or assertion of a right of retention.
- 7.4 Payments do not represent an acknowledgment of impeccability, timeliness or completeness of deliveries or services unless we expressly state so in writing.

### 8. Warranty

- 8.1 We will give notice of any obvious defects or deviations in quantity or quality within two weeks upon receipt of the goods. Any defects or deviations in quantity or quality discovered at a later date will be given notice of within 14 days after discovery. This applies in particular to deliveries of goods subject to further treatment or processing, or not taken in use at the date of acceptance. Technical installations are not considered accepted before their functional fitness and performance have been mutually determined.
- 8.2 In the event of a faulty delivery or performance the contracting party is to remedy the deficiency or to make a faultless delivery within a reasonable term set by us (post-compliance). The contracting party bears the associated expenses.
- 8.3 If post-compliance is not or cannot be met within the allotted period, we may, upon our discretion, completely or partially withdraw from the contract without payment of compensation, reduce the stipulated price, or claim damages instead of performance including compensation for secondary

and/or consequential losses. We are entitled to these rights without appointment of a date if the contracting party denies post-compliance or if post-compliance is unacceptable for us.

- 8.4 If the contracting party is behind the schedule with post-compliance, we may also have the defect remedied at the contracting party's expense, provided the defect has been indicated and a grace period has been set in vain. We may take matters in our hands without prior notice if post-compliance is impossible or denied by the contracting party or if this action is justified by our particular interests.
- 8.5 In urgent cases and where damages of considerable extent are to be expected, we may remedy the defect ourselves or have the defect remedied or stock up at the contracting party's expense after prior notice.
- 8.6 The warranty period is at least two years from delivery.
- 8.7 We are entitled to recourse according to German Civil Code § 478 even if the ultimate buyer of the product is an entrepreneur in each case, provided that the warranty period starts only upon the transfer of risk on the processor or other end-consumer. German Civil Code § 479, section 2, shall apply accordingly.
- 8.8 The statute of limitation begins anew after the remedy of defects or other post-compliance.
- 8.9 The contracting party guarantees to comply with all technical standards, in particular with the laws and regulations for accident prevention and machine safety (such as CE, GS, VDE/IEC). Furthermore the contracting party guarantees the faultlessness in the meaning of the applicable product liability regulations and/or legislation. The contracting party also guarantees the compliance of the product(s) with the material regulations of product safety legislation irrespective of the scope of application in individual cases. The contracting party further guarantees to comply with all relevant technical and safety standards for each purpose and field of use, provided the latter have been communicated to or are known to the contracting party.
- 8.10 The contracting party is to indemnify us from all claims including claims emerging from secondary or consequential losses as well as claims according to product liability regulations and legislation asserted against us by any third party and based on the product or on the behaviour of the contracting party (warranty claims, product liability etc.). The contracting party has to conclude and furnish proof of sufficient product liability insurance at its own expense. This applies in particular for imports from non-EU countries.
- 8.11 Unless otherwise agreed in writing, the contracting party undertakes to only deliver goods originating in the EU which meet the legal requirements of origin. The necessary papers are to be enclosed with the invoice.
- 8.12 In order to ensure the quality and timely delivery of ordered products, our authorised representatives as well as any harmed customer shall be entitled to visit the production administrative and storage facilities of the contracting party at any time and without prior announcement during the regular trading hours, unless there should be any urgent adverse operational reasons.
- 8.13 Unless otherwise agreed in writing, the contracting party bears the costs for all material testing required or to be certified. Should the contracting party fail to perform respective testing and/or not be able to furnish an appropriate certification, we will decide, upon our discretion and after notifying the contracting party, whether the contracting party will be given the opportunity of post-compliance or whether we will perform or have the testing performed by a third party at the contracting party's expense. If the intended testing cannot be performed anymore, the contracting party bears the costs for surrogate testing.
- 8.14 All products are to be marked with the manufacturer's and/or manufacturing code, the material designation and the order number, unless otherwise agreed in writing.
- 8.15 Faulty deliveries are returned at the contracting party's risk and expense.

## 9. Passing of Ownership

- 9.1 The supplied goods shall pass into E-T-A's unlimited ownership upon payment. Further reservation of title, in particular the extended reservation of title, shall be excluded.

## 10. Drawings, Samples, Tools/Moulds

- 10.1 Drawings, samples, models, data or any other documents made available to the contracting party remain our property, unless otherwise agreed in writing. All further existing rights, in particular copyrights, remain with us. Should any tools/moulds or other parts etc. be passed on to a third party upon our prior consent, the third party is to be informed of our property right in writing.
- 10.2 All drawings, samples, models, data or documents must be returned to us immediately after fulfilment of the order, unless otherwise agreed in writing. This applies also in the event of premature termination of business relations or of partial or complete non-execution of the order for whatever reasons.
- 10.3 Without our explicit prior written consent, no copies may be made or kept of any documents mentioned in 10.1. The documents may not be used for any proprietary or similar purposes of the contracting or any third party, and may not be disclosed or handed over to any third party.
- 10.4 Order fulfilment requires mutual support, advice and collaborative development. This applies also in cases where we provide corresponding guidelines. The contracting party must review our documents and communicate their clearance in writing. Any concerns must be communicated to us immediately before execution of the order. Series production must not be started, before we have informed the contracting party in writing accordingly. Basically, our drawings, samples, models as well as all other documents for the execution of the order shall prevail in these cases, unless otherwise agreed in writing. In cases where we requested reference samples, series production must not be started until we have explicitly approved these samples in writing.
- 10.5 Inasmuch as protective rights are concerned in relation to the order the contracting party agrees to use these rights only internally within the framework of this contract and its purposes. In any case, the contracting party is only entitled to a simple, non-exclusive right of use limited to the duration of this contract. In cases of joint copyright, the contracting party refrains from all corresponding rights. The payment according to the contract compensates for all claims.
- 10.6 The contracting party is responsible to ensure that none of the delivered goods or services violates any patent, utility model, trademark, license or any other rights. To this effect, the contracting party agrees to indemnify us from any third party claims. Any damages or charges incurred in this respect must be compensated by the contracting party.
- 10.7 Tools, moulds etc. completely or partially manufactured by us remain our property. Furthermore, the parties agree that, after placing an order and after partial or final manufacture of the tools, moulds etc., E-T-A shall be the owner of any tools, moulds, etc. ordered by us or purpose-built for deliveries to us, and that the contracting party shall only be the holder of these tools, moulds, etc., irrespective of their state of design or manufacture. Such tools, moulds, etc. must be marked as our property, separately stored and administered free of charge as well as insured at the contracting party's expense against lack of usability, damage, and destruction.
- 10.8 After termination of the contract, all tools, moulds etc. are to be returned to us upon request, immediately. Tools, moulds etc. fully paid must be surrendered to us. Non-paid tools, moulds etc. must be offered to us against adequate payment or final payment, respectively.
- 10.9 If there is no request for return according to para. 10.8, the tools, moulds, etc. must be stored for us free of charge for a period of five years from the execution of the last order. This applies also in cases where no production or supply order has become effective. Any scrapping or other utilisation requires our prior written consent.
- 10.10 If the contracting party should apply for the opening of insolvency proceedings with effect on its assets, or if such proceedings should be opened, or if the contracting party, through its own fault, should fail to fulfil its contractual obligations for any other reasons, we may demand the surrender of the tools, moulds etc. which are used for the production of the goods delivered to us, provided that we have made or will make a proportional payment for their manufacture according to the contract. In such cases, the contracting party is obliged to surrender the tools etc. without delay. Any right to payment remains unaffected and does not justify retention.

10.11 In all cases, the contracting party is obliged to properly maintain, service and store said tools, moulds etc. at its expense, unless otherwise agreed in writing.

#### **11. Provision of Material**

11.1 Any material or parts provided by us remain our property, irrelevant of the state of production. Products manufactured therewith by the contracting party are our property which is kept for us and stored exempt from charges by the contracting party. Upon request, the contracting party must surrender the products against proper equalisation of value. Provided material must be marked as our property, separately stored and administered free of charge.

11.2 Provided material must only be used for our orders.

11.3 The parties agree that E-T-A shall in all cases be the immediate owner of new or remodelled, processed or mixed/blended goods originating from material owned by us.

11.4 The contracting party shall store all our property exempt from charges and bear all associated risks of destruction, loss, and damage.

#### **12. Subcontracting of Orders**

12.1 Orders may not be subcontracted to any third party without our prior written consent. We will give our consent provided that there are not relevant adverse reasons.

12.2 In the event of any unauthorised subcontracting of orders, E-T-A is entitled to claim compensation instead of performance or to completely or partially withdraw from the contract.

#### **13. Retention, Set-off**

13.1 Retention rights can only be claimed if based on non-appealable or undisputed demands. The same applies for set-offs claimed by the contracting party. In particular, stipulated deliveries must not be retained due to other claims in dispute.

#### **14. Secrecy**

14.1 The contracting party is obliged to consider all orders and the particulars linked thereto as a business secret, unless otherwise agreed in writing. This applies also to the time after termination of the business relations.

14.2 The contracting party is only authorised to reference to the existing business relations with us in advertising or public relations material etc. upon our explicit prior written consent.

#### **15. Place of Fulfilment**

15.1 Unless otherwise agreed in writing the place of fulfilment of all obligations arising from the contract shall be 90518 Altdorf, Germany.

#### **16. Law of the Federal Republic of Germany**

16.1 This contract including any future privity of contract is subject exclusively to the Law of the Federal Republic of Germany, excluding the UN Sales Convention.

#### **17. Court of Jurisdiction**

17.1 The courts of Nuremberg are responsible for all disputes arising from the contract or in connection with its conclusion and effectiveness.

#### **18. Salvatorian Clause**

18.1 Should any provision in this contract be or become legally void, whether in total or partially, this shall not impair the effectiveness of the remaining contract. In such case, however, the void provision shall be replaced by a legally admissible provision which corresponds to or comes as near as possible to the originally intended economic purpose.

E-T-A Elektrotechnische Apparate GmbH  
90518 Altdorf · Industriestraße 2-8  
Phone +49 (0 91 87)10-0 · Fax +49 (0 91 87)10-378  
E-Mail: info@e-t-a.de · www.e-t-a.com  
supplierportal@e-t-a.de

Rev. date: October 2007

This is only a non-authorized translation.  
In case of doubt, the German version shall be exclusively binding.