

# General Terms and Conditions of Purchasing and Ordering of ESCHA Bauelemente GmbH in Halver/Germany

Our General Terms and Conditions of Purchasing and Ordering apply to all contracts concluded between ESCHA Bauelemente GmbH and a contracting party (contractor) for the delivery of goods, services and other contracting-out agreements. They expressly apply identically for all future business relations, also if these Terms and Conditions of Purchasing and Ordering are not again agreed to additionally.

Our conditions are therefore binding, even if you yourselves display terms of business which differ from ours. Your conditions apply only if we confirm to you the differing terms of business in writing.

Fundamentally, it is deemed as agreed that the conditions of purchase and ordering, as well as the terms of business of both contractual parties become contractual components only when they agree with each other. If individual provisions contradict each other, then these do not become part of the contract. Instead of this, the legal provisions apply.

## § 1 Orders

1. Orders of ESCHA Bauelemente GmbH are binding only if they are submitted on our standard order forms in electronic form or via fax and with reference to these Terms and Conditions. Verbal agreements, promises and declarations of any type must be in written form in order to be legally valid; this also applies to this written form requirement.
2. The orders placed by us must be confirmed without delay – within three work days at the latest – together with the announcement of the binding date of delivery/service.
3. All metal supplements and finishing costs must be listed separately, and confirmed and calculated at the current day's rate (DEL notice).
4. We do not acknowledge any terms and conditions that contradict or deviate from our Terms and Conditions. This also applies in the event that an order confirmation based on terms and conditions that deviate from these Terms and Conditions is not expressly objected to. These General Terms and Conditions apply also if we accept or pay for the service or delivery without

reservation and being aware of terms and conditions that contradict or deviate from our General Terms and Condition of Purchasing and Ordering. Anything to the contrary applies only if this has been confirmed by us expressly in writing.

5. All bases of a contract, notifications, explanations and technical documentation to be considered in connection with the order process must be in writing.

## § 2 Acceptance of goods

1. Only such deliveries will be acknowledged as being in conformity with the contract that conform in type, quality and design with our drawings, samples and specifications provided for the order. Deviations from our orders are permitted only with our written approval.
2. If reference samples or approval samples are requested by us, the production delivery may begin only after our written approval of the first sample or reference sample.
3. Any reservations that the contractor may have concerning the design intended by us must be reported to us immediately in writing prior to execution of the order. In such cases, the execution of the order requires an additional written approval by the purchaser.
4. Notification of every delivery must be made by the contractor immediately after dispatch and must specify the type, quality, design, quantity and receiving agency.  
We expressly reserve the right to inspect the goods or materials delivered in accordance with this contract at the plant of the contractor and/or at the destination. This will in no way affect the liability and the statutory guarantee of the contractor.
5. Incoming goods from suppliers who have concluded quality assurance agreements and/or blanket orders will be inspected and approved only according to the individual conditions specified in the signed contract documents.
6. Partial deliveries are not permitted, unless expressly approved by us.

### § 3 Confidentiality, drawings and samples

1. All business and technical information made available by us, as long as and insofar as it is not demonstrably known to the general public, must be treated as confidential with respect to third parties and may be made available within the contractor's own plant only to such persons who must necessarily use it for the purpose of the delivery to us and who likewise are bound to secrecy. The data remains our exclusive property. Drawings, data sheets, factory data sheets, models, samples, etc. likewise remain our exclusive property. They must be returned to us in proper condition upon request together with the last delivery from our order and may not be disclosed to unauthorized third parties or used for third parties without our express written permission.
2. The publication and/or disclosure of our specifications, project documents, drawings, approval samples, models or manufactured parts to third parties, service providers, job shops and sub-contractors not designated as authorized by us requires our prior written permission. The same applies if production facilities, equipment, molds, devices, tools, etc. (production means) are provided at the cost and request of the purchaser.
3. The contractor and his sub-contractors must assure that all products manufactured for the purchaser are unencumbered by third-party rights according to the latest information of the contractor. If license and patent infringements in this regard become known, the contractor must notify the purchaser in writing without delay. The purchaser expressly reserves the right of further examination and to decide whether patents pending are approved or if legal action should be taken to preserve the business interests.
4. The contractor will store and safeguard all data required for processing of the purchaser's orders in electronic form in his computer system. The transmitted data will be handled in accordance with the Federal Data Protection Act (BDSchG) and in compliance with the applicable EU legislation.
5. Upon the written request of the purchaser, all information, documents, production means, etc. belonging to him must be returned by the contractor immediately and at no charge or must be destroyed with proof of destruction at the separate request of the purchaser.

### § 4 Delivery dates

1. Stipulated deadlines and periods are binding. The contractor is obligated to strictly comply with the delivery dates specified in the written order. For punctual compliance with the confirmed delivery date, it is crucial that goods are received in full and without defect at the agreed destination (acknowledged receipt of goods).
2. If the contractor is in delay, then we are entitled to all statutory claims, with no restrictions. In particular, we are entitled without further notice to procure replacement of the goods or materials either ourselves or through third parties at the expense of the contractor. The contractor will also bear all additional costs incurred as a result and due to non-performance of the order.
3. Expected delays in delivery must be reported in writing to the purchasing department immediately as soon as they become known, stating the reason and the new, binding delivery date.
4. The unconditional acceptance of the delayed delivery or service in no way implies a renunciation of the claims for damages to which we are entitled due to the delayed delivery or service. This applies up until the full payment of the remuneration owed by us for the respective delivery or service.

### § 5 Blanket orders and release orders

1. Delivery schedules as part of an order or release order planning become binding if the contractor does not object within three (3) work days of orders received.
2. We are entitled to define the time of our release orders and the amount of the delivery quantity to be released based on our production and operating processes, unless otherwise stipulated in writing. The contractor hereby gains neither an entitlement for delivery of the open blanket orders, nor does he have the right to charge us for deferred quantities without our approval.

### § 6 Force majeure

1. All circumstances of force majeure, the occurrence of unforeseeable, inevitable and/or extraordinary events and operational disruptions, strikes and labor disputes

of all types for which we are not responsible exempt us from the obligation of acceptance.

2. We are entitled to cancel the contract if an event described in paragraph 1 continues for more than one month. The contractor cannot derive any claims for damages from such a cancellation. In all cases, the contractual obligations are extended accordingly.

## § 7 Guarantee

1. Deliveries and services, such as delivered goods, systems and documents, must be free of defects, conform to the specifications and regulations communicated by us and suitable for the intended purpose according to the order. Further, they must comply with the applicable versions of the relevant statutory and governmental regulations and directives. Quality certificates must be enclosed. The contractor guarantees the usefulness of the respective design according to the recognized rules of technology.
2. The goods or materials delivered to us or to a receiving point specified by us will be examined for quality, for externally visible defects and for excess or short shipping quantities. Quantities, weights, metric specifications, etc., will be based on the numbers and values determined by us upon receipt and inspection of the goods. Notifications of defects are deemed in due time if they are sent by us to the contractor within three days of discovery of the defect in writing or on data carriers. In this respect, the contractor waives the objection to late notification of defects.
3. We are entitled to all statutory claims based on defects, with no restrictions. In every case, we are entitled to request from the contractor at our option either rectification of the defect or delivery of a new item. In the case of commercial merchandise, we can request delivery of a replacement part at no charge. The right to assert claims for damages, in particular the right to damages in lieu of performance, remains expressly unaffected.
4. If we incur costs as a result of the defective delivery of the object of performance (goods/materials), in particular transport, travel, work and material costs, the contractor must bear these costs.
5. Unless otherwise stipulated in the individual contract, the contractor offers no extended periods of limitation for his products and/or if no extended statutory peri-

ods of limitation apply, the contractor gives a guarantee of two (2) years. The period begins upon receipt of the goods at the destination. The limitation period for commercial merchandise that is specially designated as such in the order, is two (2) years after commissioning or delivery to the end customer and ends no later than thirty six (36) months after delivery to the purchaser.

6. The guarantee extends to parts manufactured by the contractor's suppliers (third parties) and to service provided by them (surface treatment, finishing, and other commission work ordered by the customer).
7. If material defects are discovered that are not detected until the time of processing, we will charge the contractor in particular for the loss of wages, materials already processed, other material finishing and the operational overhead costs. The purchaser's statutory entitlement to further claims for damages remains unaffected by this clause.
8. For new parts delivered within the scope of the contractor's obligation of subsequent performance, the period of limitation begins anew upon delivery and acceptance, unless the contractor expressly and appropriately makes the proviso at the time of the replacement delivery that this is only a gesture of goodwill or to avoid legal disputes.
9. If it should be necessary based on the type and cost to have reworking necessary for on-time elimination of defects performed wholly or partially by third parties, the purchaser is so entitled in urgent cases, in particular to prevent critical risks (production standstill) or to prevent liability for defects as to quality (delayed delivery, cancellation of the contract). The contractor will be charged forthwith for the documented costs.

## § 8 Product liability

1. Insofar as the contractor is responsible for product damage, he is obligated to release us from third-party claims for damages at the first request insofar as the cause is within his territory and area of organization and he himself is liable vis-à-vis third parties.
2. In this respect the contractor is also obligated to reimburse any expenses resulting from or in connection with a recall (e.g. automotive) carried out by us. We will inform the contractor of the content and scope of the recall when this becomes known and will give him

the opportunity to present observations. Other statutory entitlements remain unaffected by this clause.

3. The contractor is obligated to take out and maintain an insurance policy with a suitable coverage amount of at least 1.0 mill. € (one million Euros) for each case of personal injury/material damage, incl. extended coverage for financial loss, recall costs, retail chain clause, and for the delivery of commercial merchandise. Upon request, the contractor will send the purchaser copies of the insurance certificate and an annual payment confirmation from the insurance company.

### § 9 Transfer of risk / default of acceptance

1. The risk is transferred to us when the goods/materials have been delivered to us or to a recipient designated by us.
2. If the acceptance is delayed for reasons within our control, then we are not in default of acceptance until the contractor has granted us a grace period suitable to the circumstances, however at least four (4) weeks.
3. If third-party claims are asserted against the purchaser because the deliveries of the contractor violate a statutory property right of the third party, the contractor is obligated to release the purchaser of all claims at the first request to do so. The limitation period for all claims for release is thirty six (36) months starting from the transfer of risk.

### § 10 Industrial property rights

1. The contractor must ensure that the use or resale of the ordered goods is permissible without infringement of third-party industrial property rights. He releases us from all claims in the event of infringement of third-party property rights, insofar as he is responsible for the infringement. In this case, we are additionally entitled to cancel the contract.
2. In the event of legal proceedings due to infringement of industrial property rights, the contractor must provide securities for the full amount of the proven or impending damage.
3. The contractor will also bear all legal costs and expenses, including out-of-court costs, incurred in connection with a lawsuit due to violation of industrial property rights.

4. If our utilization of the delivery is impeded by existing third-party property rights, then the contractor must either acquire the required approval at his expense or modify or replace the affected parts of the delivery so that the utilization of the delivery no longer violates property rights and also conforms to the contractual agreements.

### § 11 Price, freight and packaging

1. The prices stated by the purchaser in his order, incl. metal and processing surcharges, are fixed and binding. Deviating prices of the contractor are valid only with the separate written approval of the purchaser. The prices do not include the applicable statutory value added tax.
2. All deliveries to us are franco domicile, incl. packaging.
3. Each shipment must be accompanied by a packing list that indicates the order number, the article or drawing number, type, quality and quantity of the goods or materials.
4. The consignment note with the order number must accompany the goods; the dispatch note must be sent separately.
5. All shipments destined for us must be packed securely and weather-safe and in compliance with the general regulations of the respective carrier. Packing units with a gross weight of more than fifteen (15) kg require special approval by the purchaser/customer.
6. Special packages as agreed, as well as replacement and exchange containers must be provided by the contractor in due time and in sufficient quantity.

### § 12 Invoices, payments, retention of title

1. All invoices of the contractor must state our order number, the order date, our article and drawing number and the consignment mark. In addition, the delivery address (shipping address) must be indicated if different from the billing address. Invoices that do not conform to our requirements will be returned in the original within three (3) days to the contractor; this does not constitute any claims from delayed payment.
2. Our payments will be made on the 15th or 30th day of the month following the delivery, depending on the

receipt of the invoice or the goods, less three (3%) discount or within sixty (60) days on net terms.

3. Payment will be made only in EUROS (€). Settlements in foreign currencies require our special approval.
4. We are entitled to rights of setoff and retention, with no restrictions.
5. The assignment of claims of the contractor against us to third parties, in any form whatsoever, will not be acknowledged in any case. All payments are made with debt-discharging effect. Special provisions require our written approval.
6. We allow a simple retention of title against us. We do not agree to an extended or prolonged retention of title. We are entitled to set off counterclaims also if the contractor has contested their justification. In the event of faulty deliveries by the contractor, we are entitled to withhold the payments in proportion to the value up until the time of proper performance. The quantities and weights determined by us or other units on which this determination is based are decisive for calculating the invoice amount.

If the value of our security claims exceeds all secured claims by more than twenty (20%), at your written request we will separately release a corresponding portion of the securities subject to our written agreement.

### § 13 Final provisions

1. If individual parts of our general conditions of purchase are ineffective, then the effectiveness of the other provisions remains unchanged.
2. It is permitted to store and save the data required for the preparation, execution, and processing of transactions electronically in the supplier's IT system. The data transferred must be handled in compliance with the German Act on Data Protection and in compliance with applicable EU law. It must be used only for the purposes of the production process, unless we expressly agree otherwise. The information must not be passed on to third parties without our written agreement.
3. Subsidiary agreements, provisos, modifications, or additions to the agreed contracts are valid only if they have been recognised by us in writing. Suspension of the requirement for the written form must take place in writing.

4. The place of performance and the exclusive place of jurisdiction for both contractual parties is our company headquarters in Halver, or optionally the competent district court in Hagen/Westphalia. For all transactions, deliveries, and performances, these general terms of business apply exclusively, together with the Allgemeine Lieferbedingungen für Erzeugnisse der Elektroindustrie (General Conditions of Delivery for Products in the Electrical Industry) in their current version, and in conformance with the extended Bedingungen zur Softwareklausel und den Ergänzungsklauseln zum erweiterten Eigentumsvorbehalt des ZVEI (Conditions of the Software Clause of the Central Federation of Electrotechnology and Industry), in their current version.
5. The law of the Federal Republic of Germany is agreed to apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
6. It is permitted to store and save the data required for the preparation, execution, and processing of transactions electronically in the supplier's IT and communication system. The data transferred must be handled in compliance with the German Act on Data Protection and in compliance with applicable EU law. It must be used only for the purposes of the production process, unless we expressly agree otherwise. The information must not be passed on to third parties without our written agreement (see Software Clause of the Central Federation of Electrotechnology and Industry (ZVEI)).
7. Supplementary to our general conditions of purchase and ordering, we refer to our applicable general terms of business, version: August 2011, which are binding for all business transactions of ESCHA Bauelemente GmbH.