I. Scope

(1) In addition to other contractual agreements, these general terms of purchase (GTP) shall exclusively apply to all transactions between us and the vendor, supplier, contractor and service provider, hereinafter known as the supplier. We do not acknowledge other terms and conditions unless we expressly agree to them. These GTP shall apply even if we accept the goods or services when we are aware of the existence of other terms and conditions.
(2) The conclusion of a contract shall not fail due to contradictory general terms of business. Insofar as colliding general terms of business are identical, the mutually agreed terms shall apply. In addition, the provisions set out in our GTP shall be deemed agreed if they contradict non-colliding provisions in the supplier's general terms of business.
On the other hand those provisions in the general terms of business of the supplier which do not agree with the contents of our GTP shall not be part of the contract.
Dispositive law shall apply in all other cases.
(3) These GTP shall also apply to all future contracts without having to be expressly included. They shall continue to apply until we issue new general terms of purchase.
(4) These GTP only apply to enterprises in the sense of § 14 of the German Civil Code [BGB].
(5) Side-agreements and subsequent amendments of the contract by persons without rights of representation must be made in writing.

II. Quotations

(1) Quotations and samples shall be free of charge for us. Any discrepancies from our inquiry must be clearly mentioned in the quotation. The supplier shall be bound to the quotation for at least one month.
(2) Our documents must be returned to us without delay and free of charge for us if they are no longer needed for fulfilling the contract.
(3) Orders must be accepted in writing by the supplier quoting our purchase order number within 5 days of the purchase order date.
The supplier shall confirm the order in writing. We shall be entitled to cancel the order until such time as we receive the acceptance confirmation.
(4) Confirmed prices shall be regarded as fixed prices.
(5) Call orders shall become binding if they are not revoked by the supplier within one week of receipt.
(6) Blanket orders shall only entitle you to purchase raw materials in the required quantities.
(7) The production of parts for call orders shall not be permitted until the call order has been received.

III. Amendments

(1) We may demand that the contract be amended before the order is fulfilled. The amendments shall be agreed by mutual consent. We must be notified without delay of any reservations concerning the amendments demanded by us.
(2) If it is not possible to reach agreement, we shall be entitled to cancel the contract; in this case the supplier shall be paid reasonable compensation for its costs.
(3) The supplier shall not be entitled to amend the order without prior written consent.

IV. Prices, invoices, payment

(1) The goods shall be delivered on the basis of the DDP (*Delivered Duty Paid*) clause set out in INCOTERMS 2020.
(2) A price shown in the order shall be regarded as the maximum price. The actual price may be below but not above it. Unilateral price increases shall not be possible.
Value-added tax must be shown separately. The costs of packaging and insurance shall be included in the price.
(3) The supplier shall not charge us any higher prices or grant us any worse terms than those used for other comparable customers.
(4) Separate invoices for each purchase order are to be supplied immediately on delivery of the goods to the e-mail address invoice@etm-dynamics.com. They must contain the order reference, order number and part number. If available, the person or department who placed the order and the intended application shall also be quoted.
(5) Unless otherwise agreed, payments shall be made by us in euros to the German bank account of the supplier at no charge to it.
(6) Payments shall be made when the invoice is due, the goods have been received in full and in perfect condition or the service has been completed in perfect form. This shall apply as and where applicable if part consignments have been agreed.
The payment period shall start on the day on which the goods or services are supplied in perfect condition, the date of the acceptance procedure or the date on which the invoice is due, with the later date taking precedence.
Payment shall be made subject to an invoice review and correct fulfilment of the contract.
(7) Delays caused by incorrect invoices shall not adversely affect the agreed discount periods. If discount has been agreed, payment shall be made as agreed but at least within 14 days minus 3% or within 60 days net from the date of the invoice.
(8) We shall not be held in default in the event of slight negligence. Our duty to compensate for default damages shall be restricted to typical damages.
(9) If advance payments have been agreed, an unlimited fulfilment guarantee from a German bank or insurance company shall be provided in return for the payment by the supplier for the amount of the advance payment. In the event of delays in delivery, default interest at a rate of 8 percentage points above the base rate shall be deducted in accordance with § 247 of the Civil Code. The supplier shall be permitted to provide evidence that the actual damages were lower.
Claims of default damages by us shall not be affected by this provision.
(10) We shall be entitled to cancel the contract if the solvency of the supplier deteriorates to an extent that jeopardises the fulfilment of the contract or if the supplier ceases making deliveries or if insolvency proceedings are opened against its assets. This right to cancel may also be exercised in part.
(11) The supplier shall not be entitled to assign accounts receivable from us to third parties without our consent or to allow third parties to collect them. If an extended reservation of title is agreed, this consent shall be deemed to have been granted. If the supplier nevertheless assigns accounts receivable from us to a third party without our consent, we may make payment to either the supplier or the third party to exempt ourselves from this obligation.
(12) We shall be entitled to refuse performance, set off and exercise retention rights within the statutory limits.
The supplier shall only be entitled to set-off and retention rights if the counter claim on which the right to refuse performance or the offsetting and withholding right is based is undisputed or has been finally confirmed by a court of law decision.

V. Duty to inspect and complain

(1) Goods supplied to us will be inspected for obvious defects by us. A complaint shall be prompt if it is made within 10 working days of the discovery of a defect. To this extent the supplier waives its right to claim that a complaint was made late. A complaint by our customer shall be decisive for goods which are sold on by us.

(2) In the event that a justified complaint is made, we reserve the right to charge the supplier with the costs of the inspection and complaint. The supplier shall bear the costs and risk of the return transport of defective goods.

VI. Delivery, default, contract penalty

(1) The deadlines and periods specified in the order or call order shall be binding. We shall not be obliged to accept the goods or services before the delivery date.

For the delivery of goods the receipt of the goods at the agreed plant by us or the place or receipt of use specified by us shall decide on whether the periods and deadlines have been met.

The receiving times are valid for all receipt or use places in accordance with the respective individual order.

The prompt and complete provision of the service shall be decisive for deadlines for services.

The timing of the acceptance procedure shall be decisive for contract services.

(2) Part consignments and part services shall only be permitted with our written consent.

(3) The supplier must notify us without delay of any difficulties which prevent it from making the delivery on schedule in the specified quantity and quality and obtain a decision on whether we wish to continue with the order. It shall be liable for any failures to make such notification or if notification is made late.

(4) If the goods are delivered earlier than agreed, we reserve the right to return them at the expense of the supplier or to place them in temporary storage with third parties at the expense of the supplier. If the goods are not returned or placed in temporary storage with third parties after being delivered early, the goods shall be stored by us at the expense and risk of the supplier until the delivery date. In the event of early delivery, we reserve the right not to make payment until the agreed due date. For early delivery the calculation of the discount period shall commence on the agreed delivery date or the date of receipt of the invoice by us, depending on which occurs later.

(5) In the event of the supplier being in default, we shall be entitled to our statutory rights. The exclusion or limitation of liability by the supplier shall be excluded.

(6) In the event of cancellation, we may retain part consignments if we pay for them.

In the event of repeated or permanent late deliveries by the supplier, we shall be entitled to cancel the contract or to terminate it without notice. In the event of a deadline being missed without fault, we shall be entitled to cancel the contract if missing the deadline is significant and the urgency of the delivery so requires as a result of a deadline we are facing.

(7) If the supplier is in default, it shall be obliged to comply with a request by us to ship the goods urgently (express courier, overnight courier, express parcel, air freight, etc.) at its expense.

(8) No reminder or the setting of a deadline shall be required if a “fixed” delivery date has been agreed or if the supplier states that it will be unable to supply the goods within the lead time.

(9) If the supplier is in default, after providing a reminder we shall be entitled to demand a contract penalty of 10% of the net value of the goods or services per complete week but not exceeding a total of 50% of the net value of the goods or services and to cancel the contract. We reserve the right to demand higher compensation. The supplier shall be permitted to provide evidence that the actual damages were lower. The contract penalty shall be set off against any claim for compensation. The right to demand payment of a contract penalty shall not be forfeited by the fact that the contract penalty was not expressly reserved during the acceptance of the late delivery as long as it is claimed before the final payment is made.

(10) If the supplier is in default, we shall be entitled to purchase goods or services from another supplier to cover our needs if such purchases make sense in the circumstances to prevent the threat of consequential damages. The additional costs we incur as a result of this must be paid by the supplier.

(11) The supplier can only claim that a delay is due to the lack of documentation to be supplied by us if it has sent a written reminder about the documents and has not received them within a reasonable period of time.

(12) In the event of a delayed acceptance procedure, we shall only be liable for compensation if we were to blame.

(13) A delivery note in duplicate must accompany every consignment giving details of all the identifiers specified in the order, particularly the name of the person who placed the order, the order number, part number, batch number and item number.

Part and residual consignments must be specially marked.

The delivery note shall be affixed to the outside of the goods either under a sticker or under packing paper with the note “Delivery note here”.

All the documents which must accompany the goods for import consignments must be included with the consignment in particular goods movement certificates, express notes, customs consignment notes, certificates or origin and invoices (depending on the shipment method and country of destination).

(14) We shall be notified in advance of all deliveries. This notification shall include information about our order number, quantity, dimensions, weights, special regulations for handling the goods, unloading, transport and storage.

Delays, additional costs and damage which result from a failure to comply with the shipment instructions shall be charged to the supplier.

We reserve the right to return packaging materials to the supplier.

(15) The risk shall not be transferred after delivery until after the goods have been unloaded by the supplier or forwarding contractor at the consignee address specified by us or after the acceptance procedure. This shall apply even if our personnel helps with the unloading.

VII. Forces majeures

In cases of forces majeures, we shall be exempted from our duty to accept the goods or contract services and from the duty to accept the services. This shall also apply to other cooperation action required to fulfil the contract. If the prompt acceptance of the goods or services by us is not possible due to forces majeures or other unforeseen events which are beyond our control and which have an effect on the acceptance of the goods, the acceptance period shall be reasonably extended and no acceptance default shall occur.

We shall be exempted in part or in full from our duty to accept the ordered goods or services if the goods or services are no longer useful from a commercial point of view as a result of the delay suffered by us caused by the force majeure. This is particularly the case if our needs are reduced by more than 30%.

VIII. Product safety

(1) The supplier shall assure that its products, services and contract services are free from defects.

(2) The supplier shall gather information about the purpose of its products, services and contract services.

(3) The supplier shall mark its goods so that they can be identified as its products.

(4) The supplier shall attach factory inspection certificate 3.1 and safety data sheets with its goods.

IX. Defects and compensation claims

(1) Complaints result in additional costs. For this reason we reserve the right to charge a damages lump sum of EUR 150 per justified complaint.

The supplier shall be entitled to provide evidence that we incurred lower expenditure and we shall be entitled to provide evidence that we incurred higher expenditure.

(2) We shall be entitled, at our discretion, to demand re-fulfilment from the supplier, withdraw from the contract or reduce the purchase price and demand compensation or reimbursement of our costs in accordance with the statutory regulations.

As part of subsequent fulfilment procedure we shall be entitled to demand at our discretion either rectification of the defect or delivery of goods free from defects.
The supplier undertakes to bear all the expenses for the purposes of defect rectification, replacement delivery or damage rectification, in particular transport, travel, labour and material costs.
(3) If the supplier does not complete the rectification work or replacement delivery by a reasonable deadline set by us or if rectification is impossible or fails, we shall be entitled to cancel the contract and demand compensation instead of fulfilment.
If, due to special urgency, it is no longer possible to notify the supplier of the defect and the threatened losses and to set it a deadline for this work, albeit a short one, we shall be entitled to rectify the defect at the expense of the supplier ourselves or by a third party.
(4) If the same goods are supplied repeatedly in defective form, we shall be entitled to cancel the contract, even for the non-fulfilled package of goods, after giving a written warning if further defective goods are supplied.
(5) Our defects and compensation claims shall become statute-barred after a period of 36 months after the date of delivery of the ETM products manufactured using the goods supplied by the supplier, but at the latest after a period of 60 months from the date of delivery to us and, for services and contract services, after a period of 60 months after the acceptance of the services and contract services.
This shall only apply if the law does not specify a longer statute of limitations or one which starts at a later date.
If the acceptance procedure is delayed at no fault of the supplier, the warranty period shall be a maximum of 60 months from the date on which the goods were ready for the acceptance procedure.
The warranty period for buildings and defects on spare parts for buildings shall be 60 months from the date on which they were accepted or commissioned.
For components which do not remain operational during the period of supplementary performance or damage rectification work or otherwise cannot be used for their intended purpose, the warranty period shall be extended by the period of the break in operation or use.
The statute of limitations set out above shall apply even in the event that the supplier has accepted a guarantee for its products, work or services.
(6) Claims against the supplier for defect in title concerning the products, services or contract services shall become statute-barred five years after delivery to us or acceptance by us.
This shall only apply if the law does not specify a longer statute of limitations or one which starts at a later date.
(7) If the supplier is clearly not only acting with goodwill or with the intent of finding an amicable settlement of a dispute but also in the knowledge that it has a duty to rectify the defect wherein the scope, duration and costs of the defect rectification work must be given particular consideration, the statute of limitations shall restart for components supplied during the statute of limitations period when the supplier has completed the services required for re-fulfilment or after the acceptance procedure.
(8) The supplier shall hold us harmless from compensation claims by third parties based on defects in the goods or services if the supplier is responsible for the damage.
In case we are liable under law without any fault on our part, and liability cannot be excluded with regard to third party claimants, then the supplier shall hold us free and harmless of any claim to the extent the supplier would himself be liable directly. Compensation between us and the supplier shall be settled by applying the principles of § 254 German Civil Code correspondingly. This shall also apply in case the supplier is held liable directly.
(9) The Supplier shall hold us harmless from any third party claims for defects in title if the supplier is responsible for them.
(10) The supplier undertakes to indemnify us from any costs and damages caused by a recall or return action completed to prevent personal injury and property damage as a result of the goods, the service or the contract service being defective.

X. Insurance cover

(1) The supplier undertakes to take out and maintain commercial and product liability insurance cover with an insured sum of at least € 2.5 million each for personal injury and for property and product damage as well as general recall cost insurance cover with an insured sum of at least € 1 million.
(2) The scope of product liability insurance must extend to the forms of cover for the so-called extended Product Liability Insurance including the insurance of personal injury and property damage due to the lack of agreed qualities of the delivered products to damage on account of incorporating, mixing or processing the supplied product, to damage on account of the further processing of the supplied product, costs of dismantling and installation, reject products by machines, together with inspection and sorting costs.
(3) The cover must also extend to claims in other countries.
(4) The supplier must submit the provisions for the modification of the inspection and complaint duties set out in clause V of these GTP and for extending the statutory statute of limitations set out in clause IX, Para.. 5 of these GTP and the provision relating to the hold harmless agreement set out in clause IX, Para. 8 of these GTP to its commercial and product liability insurer for insurance under its commercial and product liability policy and for confirmation of the continuation of cover.
(5) The supplier shall agree joint coverage of the recall costs set out in clause 9, Para. 10 of these GTP in addition to its commercial and product liability insurance policy.
(6) The supplier shall provide us with a certificate of insurance for the above scope of cover at the latest on delivery of the first consignment of goods or the provision of the first service.

XI. Confidentiality

(1) The parties to the contract undertake to treat all aspects of the business relationship in confidence. In particular they shall treat all commercial and technical details which are not part of the public domain and which come to their attention as a result of the business relationship as confidential. Information or aspects of the business relationship which were already part of the public domain at the time of their disclosure shall not come under the confidentiality obligation nor shall information or aspects of the business relationship for which the supplier can provide evidence to the effect that it already knew the information before the disclosure of it by us.
(2) We reserve title and copyright to illustrations, drawings, calculations and other documents. Our documents may only be supplied to those persons who complete our order. The supplier shall ensure that its personnel also take care of our justified confidentiality interests.
(3) The supplier undertakes to maintain this confidentiality even after the end of the business relationship.
All items provided by us shall be returned to us after the rejection or completion of the order.
(4) The documents and information provided to the supplier may only be copied if required for operational requirements and in accordance with copyright regulations.
(5) All information relating to our business relationship is not destined for third parties.
The disclosure even in part of our order to third parties shall only be possible with our prior written consent; the supplier shall subject the third parties to a confidentiality agreement of the same type and scope.
(6) The supplier may only advertise this business relationship with our prior written consent.
(7) Items which we provide to the supplier shall remain our property.
Items manufactured on our behalf shall become our property. Such items may only be supplied to third parties with our express prior written consent.
(8) The order may not be transferred to a third party without our consent. This shall entitle us to cancel the order and to claim compensation.
(9) The supplier undertakes not to conduct business similar to the subject of our order with our customers either directly or indirectly.
(10) Products which comply with our purchase order and are not manufactured to a general specification but for a specific application must not be supplied to third parties.

XII. Production equipment, reservation of title

(1) Production equipment provided, planned or paid for by us such as models, dies, templates, samples and tools shall remain or shall become our property.
It may not be used for goods supplied to third parties, copied, sold, title to it transferred by way of security, pledged or disposed of by other means. The same shall apply to goods manufactured using this production equipment.
The supplier undertakes only to use this production equipment for the production of contract goods ordered by us.
(2) If items owned by us are seized by third parties, the supplier undertakes to notify us in writing without delay. During the actual seizure process the supplier must notify the enforcement body of the ownership situation relating to the items.
(3) The supplier undertakes to insure items owned by us at new value at its (the supplier's) expense with property insurance with as wide-ranging cover as possible (all-risk coverage, extended coverage).
The supplier hereby assigns its compensation claims from this insurance policy to us. We hereby accept this assignment.
(4) The supplier shall be obliged to conduct any servicing and inspection work required on the goods provided by us and all maintenance and repair work on them promptly and at its own expense.
(5) If we provide items ourselves, we reserve title to them. Contractually agreed processing or modification work by the supplier shall be carried out on our behalf. If the reserved title goods are processed, connected or mixed with other items which do not belong to us, we shall acquire co-title to the new item proportionate to the value of our reserved title items to the other items at the time of the processing, connection or mixing procedure. If the processing, connection or mixing procedure takes place in such a way that the supplier's item must be regarded as the main item, it is hereby agreed that the supplier shall transfer proportionate co-title to us.
This provision shall apply even if we refuse to accept goods because they are late or defective or if we do not place any further orders.
In these cases the items customer-supplied must be made available to us free of charge. Setting off shall not be possible.
(6) Additional costs due to defects of the material and dimension inaccuracies on the customer-supplied raw materials may only be charged to us with our prior written consent for these costs.
(7) The supplier undertakes to inspect the customer-supplied goods for obvious defects, such as identity, quantity and transport damage when they are received and to notify us of any discovered defects without delay. We must be notified of any defects discovered when working on the provided items without delay after their discovery.
(8) If the secured rights exceed the purchase price of all unpaid reserved title goods by more than 15%, we shall release an appropriate part of the security rights at the request of the supplier.
(9) We shall not recognise any extension of a reservation of title which goes beyond the simple reservation of title of the supplier to an unprocessed supplier's product stored at our premises, in particular after its processing, connection or mixing with other goods, and after the sale of the supplier's product.

XIII. EU REACH Regulation
The supplier shall ensure that all the substances used which are covered by the EU REACH chemicals regulation comply with this regulation and are registered and approved by us for the type of use intended by this contract. This shall also apply to suppliers located outside the EU. At our request the supplier shall provide suitable evidence to show compliance with this obligation.

XIV. Export and customs regulations
(1) The supplier undertakes to notify us of any licensing obligations for (re)exports of its goods pursuant to German, European and US export and customs regulations as well as the customer and export regulations of the country of origin of its products in its business documents. The supplier shall provide at least the following information for the relevant goods in its quotations, order confirmations and invoices:
- Export list numbers pursuant to Annex AL to the German Foreign Trade Regulation or equivalent list items on relevant export lists;
- The ECCN (Export Control Classification Number) for US goods pursuant to the US Export Administration Regulations (EAR);
- The trading policy origin of its goods and the components of its goods, including technology and software;
- Whether the goods have been transported through the USA, manufactured or stored in the USA or manufactured with the help of US technology;
- The statistical goods number (HS code) of its goods;
- The name of a contact in its company who is responsible for clarifying any inquiries from us.

(2) At our request the supplier undertakes to notify us in writing of all other foreign trade data relating to its goods and their components and to notify us without delay before the delivery of any products affected by this of all modifications to the existing data.

XV. Environmental protection – occupational health and safety - sustainability
(1) When sourcing materials, we value the responsible use of water and land as well as sustainable waste and water management. We expect our suppliers to take responsibility for sustainable production and supply chain management as well as ecological and social responsibility.
(2) With the aim of using resources efficiently and the sustained protection of the environment, we regards it as a duty to include our suppliers in our environmental policy objectives and to motivate and promote them accordingly. In terms of product environmental compatibility and occupational health and safety we demand that our supplier comply with and observe the statutory regulations, official guidelines and standards that are relevant to him.
(3) Our corporate policy must be observed when entering into an agreement to supply goods.
(4) Emissions protection, the protection of water and soil, recycling and green-based management are a central concern for the companies. Manufacturing-based environmental protection avoids relocation effects by taking a holistic view of all environmental influences.
(5) We expect our Supplier to be responsible in how he treats common property and the employees to use a positive, proactive attitude to environmental topics.
(6) The Supplier's strategies to improve environmental aspects should include the following areas:
- Manufacturing process
- Reduction of energy use
- Labelling and packaging
- Recycling and reuse
- Waste disposal

(7) We recommend that the Supplier obtains and maintains certification pursuant to the latest version of DIN EN ISO 14001, DIN EN ISO 50001 und DIN EN ISO 45001.

XVI. Place of jurisdiction and fulfilment, applicable law
(1) The place of jurisdiction shall be the court with jurisdiction for our registered office in Waldkraiburg or the place of jurisdiction of the supplier at our discretion.
(2) The place of fulfilment shall be the place to which the goods must be supplied as set out in the order. The place of fulfilment for payments shall be our registered office in Waldkraiburg.
(3) The law of the Federal Republic of Germany shall be exclusively applicable to business relationships between us and our suppliers.
The law of conflict and the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1990 shall not apply.
(4) If individual parts of these GTP are invalid, this shall not affect the validity of the other provisions. The parties to the contract shall make every effort to replace the invalid provision with another provision which comes as close as possible to the commercial aim and legal sense of the original formulation and complies with the relevant statutory regulation.

XVII. Contact data
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