

I. Scope of application, general

1. These General Terms and Conditions of Delivery and Service apply only for the relationships of E.P. Elektro-Projekt GmbH & Co. KG (hereinafter: E.P.) with customers, which are companies in terms of § 310 (1) in connection with § 14 BGB (German Civil Code) or legal persons under public law and/or a special fund under public law in terms of § 310 (1) BGB; they also apply if no further reference is made to them in individual transactions and unless explicitly otherwise agreed in writing.
2. The General Terms and Conditions of Delivery and Service apply exclusively even if the customer refers to differently worded or supplemental business conditions in his order or a letter of confirmation. Deviating, opposing or supplemental general conditions of our customers become a component of the agreement only and to the extent as we have explicitly agreed to in writing. This requirement for consent applies in any case, for example also if we have executed the delivery or service for the customer without reservation with knowledge of the general terms and conditions of the customer.
3. The inclusion and interpretation of these General Conditions of Delivery and Service as well as conclusion and interpretation of legal businesses with the customer are exclusively regulated according to the laws of the Federal Republic of Germany. The application of the uniform laws regarding the international purchase of movable objects (UN Convention on Contracts for the International Sale of Goods) is excluded.
4. References to the application of legal regulations have merely a clarifying significance. Therefore, the legal regulations apply also without such prior clarification, unless they are directly altered by our General Terms and Conditions of Delivery and Service.

II. Conclusion of the Contract

1. Unless a commitment is explicitly made in writing the offers of E.P. are subject to change and non-binding. This also applies if we have provided the customer with catalogues, product descriptions and technical documentation (e.g. drawings, plans, evaluations, calculations) prior to the formation of a contract.
2. The order of the delivery or service by the customer is deemed a binding offer of contract, unless the order or the other agreements state differently. A contract is formed only through the order confirmation of E.P. or a tacit execution of the order. The extent of the contractually owed service is exclusively determined by the order confirmation of E.P.
3. Insignificant changes or commercially customary changes, in particular of a technical or optical nature, remain reserved and do not constitute a deviation from the order if they are reasonable for the customer and/or do not entail an impairment of the functionality. The makes or brands mentioned in the performance description are not binding in case of doubt, but are only examples and may be replaced by products of equal technical value.
4. All subsidiary agreements and alterations to the purchasing agreement require the written confirmation of E.P. to be effective.

III. Prices and payments

1. The prices are subject to change. In case of the delivery of goods the respectively valid prices are - unless otherwise agreed - ex works plus legal VAT, therefore do not include the costs for transport, packaging or other ancillary services such as loading, transfer, transport insurance, customs- and registration costs and their respective VAT. We do not take back transport- and all other packaging material according to the stipulations of the Packaging Ordinance; they become the property of the customer. Excepted here from are exchangeable reusable pallets.
2. An assembly or an installation desired by the customer requires a separate remuneration agreement; in absence of such a separate remuneration agreement E.P. is entitled to charge according to the effort at the general rates of E.P.
3. E.P. reserves the right to adjust prices appropriately if cost decreases or cost increases occur after the conclusion of the contract, particularly due to tariff agreements or price changes for material. Upon request E.P. will verify these to the customer.
4. All claims of E.P. are due immediately and payable immediately upon receipt of invoice and delivery of the goods and/or provision of service. Entitlement exists to partial payments in case of work performance and work supply performances, whereby the provided services are to be verified. Unless otherwise agreed the following regulation applies:
 - an amount of 30% of the gross invoice amount confirmed with the order confirmation is due and payable upon order confirmation by E.P.;
 - the following instalment payments are due under consideration of the respective level of performance in appropriate instalments. Up to the final approval E.P. is entitled to claim a total of 95% of the anticipated gross invoice amount in instalments;
 - the remaining 5% are due and payable upon final approval and/or upon complete remedy of the defects possibly recorded during the final approval.
5. The customer is in default of payment if he does not pay within 14 days from receipt of the invoice. The assertion of default interest (§ 353 German Commercial Code) remains unaffected. In case of default of payment E.P. may charge interest in the amount of 8 percentage points above the respective base interest rate of the European Central Bank; the assertion of further damage caused by default remains reserved.
6. The customer may only offset claims of E.P. and assert a right of retention based on other claims if these are uncontested, final and conclusively determined or recognised by E.P. The customer may furthermore only exercise a right of retention if this is based on the same contractual relationship.

7. The non-compliance with agreed payment conditions or other circumstances, which indicate a significant deterioration of the financial circumstances of the customer by applying standard banking practice benchmarks results in all claims, including bill- and cheque claims of E.P., which are based on the same legal relationship, becoming due immediately. E.P. is not obligated to further delivery prior to the complete payment of due invoice amounts.
8. If payment by bill of exchange is agreed upon the customer has to pay all bill of exchange- and processing expenses. E.P. only accepts cheques on account of performance and under the reservation of honouring upon presentation. All expenses, fees and costs arising here from are to be borne by the customer.
9. Deductions of discounts from invoices of E.P. are not permissible.

IV. Annulment expenses

If the customer unjustified withdraws from a granted order E.P. may, irrespective of the option to assert a greater actual damage, demand 10% of the agreed price for the costs incurred for the processing of the order and for the lost profit. The customer has the right to prove a lesser damage.

V. Scope of supply and service

1. The extent of the supply and service is determined by the written order confirmation of E.P.
2. Unless the customer provides explicit instructions E.P. will ensure the sensible and effective packaging of the goods. Place of fulfilment for all obligations arising from this contract is the place of the factory of E.P. and/or the place of the manufacturer or the respective trading branch.
3. Unless explicitly otherwise agreed in writing the customer bears the packaging-, dispatch- and transport costs for deliveries.
4. The customer is responsible for the procurement of possibly necessary official permits. The effectiveness of the contract remains unaffected by the granting of such permits.
5. Unless stated differently in the order confirmation of E.P. for the supply and assembly of equipment, measures of employee training for the equipment to be delivered, the delivery of additional aggregates and devices, which are not immediately necessary for the provision of the functional performance as well as the maintenance and service of installed equipment are not part of the scope of service.

Furthermore, all devices and tools such as cranes, forklifts, operating platforms, scaffolds as well as the usual sanitary facilities necessary for the installation are to be provided by the customer. The costs for energy consumption during the installation are not included in the scope of service and are borne by the customer.

Furthermore, excluded from the scope of service are the travelling costs and the accommodation of the employees of E.P. as well as transport costs. These are to be separately remunerated by the customer.
6. E.P. is - if feasible according to the type of the subject of purchase- and/or contract- entitled to partial deliveries and/or partial services. The objects not supplied during the partial deliveries will be held in arrears by E.P. and delivered as soon as they become available. If the customer does not desire partial deliveries or arrears acquisition, he has to explicitly state this in writing. Unless specifically agreed the customer principally accepts the delivery of his orders in partial deliveries and/or the performance in partial services.
7. E.P. explicitly reserves the right of direct-deliveries to the customer by third parties.
8. During the term of delivery amendments to the scope of supply remain reserved, if the amendments are reasonable for the customer under consideration of the interests of E.P.
9. All drawings, drafts, models and other documentation of any kind as well as all relevant documentation, which was provided by E.P. during the offer phase, remain the sole property of E.P. They have to be returned to E.P. upon demand at any time unless explicitly agreed otherwise. The property rights, copyrights and other rights of E.P. to the documentation mentioned in the above paragraph remain also after the conclusion of the contract. The customer receives usage- and utilisation rights hereto only to the extent as is necessary for the purpose of fulfilling the contract and if these are explicitly contractually granted to him. The copying and passing on of project-specific documentation is prohibited.
10. As far as contained within the scope of supply the customer is granted a non-exclusive right to use the supplied software including their documentation. The software will be provided for the usage on the intended object of supply. The usage of the software on more than one system is prohibited.

The delivery of development environment and software rights of third parties is not a component of the contract, unless explicitly identified as subjects of delivery.

The provision of software occurs exclusively in machine-readable form (object code). The customer may only copy, edit and translate or transform from the object code into the source code to the legally permissible extent (§§ 69a cont. German Copyright Act). The customer is obligated to not remove manufacturer's instructions - in particular copyright information - or alter them without the prior written consent of E.P.

All other rights to the software and the documentation including the copies remain with E.P. The customer is not permitted to issue sub-licenses.

VI. Term of deliver and default in delivery

1. Delivery deadlines and delivery terms, which are bindingly or non-bindingly agreed upon, are to be determined in writing. Delivery terms commence with the conclusion of the contract. If the knowledge of essential technical detail is necessary for

the delivery, the delivery terms only commence when E.P. has been completely provided with all essential details necessary for the planning and execution ("deadline").

2. Delivery obligations are subject to self-supply. This also applies regarding raw materials and technical equipment. The legal rights and obligations of the contractual parties remain unaffected.
3. The compliance with agreed delivery terms is subject to the customer fulfilling his contractual cooperation obligations in due time, in particular that all documents to be supplied by the customer, the necessary permits and releases to be procured by him as well as necessary clarifications and approval of the plans are available in due time and the advance performances to be provided by the customer and/or a third party commissioned by the customer were performed properly and in due time. The stated delivery terms are respectively moved as long as one of the above mentioned prerequisites on the part of the customer is not fulfilled. The delivery term is adhered to if the customer has received notification of readiness for dispatch by the time of expiration of the delivery term, unless the dispatch is delayed for reasons due to E.P. If additional costs occur due to the non-compliance of cooperation obligations on the part of the customer, e.g. due to extended project delay, the customer is immediately responsible for these if applicable, even if a fault here for can solely be determined with the contractual partner concerned.
4. The customer is responsible for the supply (personnel, material etc.) in due time and according to the contract. E.P. is only responsible for faulty work of supplied personnel in case of faulty instructions. The customer is liable and carries the risk for the quality and suitability of the provided material.
5. Four weeks after exceeding a non-binding delivery deadline or a non-binding delivery term the customer can request E.P. to deliver. E.P. will be in default with receipt of this notice. If the customer is entitled to damage caused by default, it is limited to a maximum of 5% of the agreed purchase price in case of slight negligence on the part of E.P.

If the customer furthermore wishes to withdraw from the contract and/or demands compensation instead of service, he has to allow a suitable term for E.P. for the delivery upon expiration of the four-week-term according to sentence 1.

If by coincidence the delivery becomes impossible for E.P. while in default, E.P. is liable according to the above liability limitations. E.P. is not liable if the damage would have occurred also in the event of a timely delivery.

6. Without the notice from the customer E.P. is also not in default in the event of exceeding the delivery terms, even if delivery terms were bindingly agreed upon.

VII. Assembly at the customer

1. Unless otherwise agreed the assembly occurs at the operation of the customer by E.P. or their representatives following the respective coordination between the contractual partners.
2. Prior to the assembly the customer has to fulfil all requirements, which ensure a trouble-free progress of the assembly. In particular necessary equipment and tools have to be provided by the customer in time and the construction site is to be kept accessible for the employees and representatives of E.P. during the time of the assembly.

In as far as the assembly occurring in existing production sites, the customer has to ensure that the ongoing production in his business operation does not impair the assembly of the equipment to be supplied by E.P.

3. E.P. is not responsible for impairments during the assembly, which are due to the influence of the customer. The customer has to reimburse E.P. for additional costs incurred here from, in particular additional travelling expenses, accommodation costs for employees and representatives, waiting times etc.
4. Impairments to the operation of the customer can occur during the assembly at the business of the customer. The customer agrees to such disruptions of operation unless they are absolutely avoidable impairments to the operational process of the customer.

If an absolutely avoidable impairment occurs to the operational process of the customer during the assembly the onus of proof lies with the customer that it actually was an avoidable impairment in terms of this regulation and that the responsibility for this impairment lies with E.P.

5. If a liability of E.P. is still considered for the impairment to the operational process according to the above regulations, the liability of E.P. - as well as for its vicarious agents - for damages incurred hereby is limited to the intentional and gross negligent violation of obligations by E.P. or its vicarious agents regardless of the legal reasons. This does not apply in case of violation of life, body and health.

VIII. Non-availability of performance, force majeure

1. If E.P. is not able to comply with delivery terms due to reasons, for which it is not responsible (non-availability of the performances), E.P. will notify the customer without undue delay and simultaneously determine an appropriate, new delivery term. If the performance is not available also within the new delivery term, E.P. is entitled to completely or partially withdraw from the contract based on the not yet fulfilled component. E.P. will immediately reimburse an already provided consideration of the customer.
2. War, terror, strike, lock-out, raw material- and energy shortage, transport- and unavoidable operational impairments, interventions of force majeure - also if they render the execution of the concerned business uneconomical for a foreseeable period of time -, lack of transport options as well as all other cases of force majeure also at suppliers of E.P. exempt E.P. from its obligation of delivery for the duration of the impairment and the extent of their effect. These events also entitle E.P. to completely

or partially withdraw from the contract without the customer being entitled to compensation. Item 1 sentence 3 applies accordingly.

IX. Transfer of risk, acceptance

1. The customer is obligated to accept the delivery and/or service within fourteen days from receipt of the notice of readiness. In case of non-acceptance E.P. may assert its legal rights.

If E.P. demands compensation, it is 15% of the gross invoice value. The compensation is to be assessed higher or lower if E.P. proves a higher or the customer a lower damage.

2. The risk of accidental destruction and the accidental deterioration at deliveries is transferred to the customer as follows:
 - with the loading onto the means of transport selected by E.P. at the registered business address of E.P., when the subject of purchase is to be dispatched by E.P., regardless of the recourse against the commissioned carrier; this also applies if E.P. has taken over e.g. the dispatch costs and other costs of the delivery and assembly;
 - with the proper notified provision at the registered business address of E.P. for subjects of purchase, which are to be collected by the customer from E.P. The same applies, if the delivery is postponed by the customer, for the point in time at which E.P. has given notification regarding the readiness for dispatch.
3. The customer himself has to perform unloading in case of "carriage paid" deliveries. Damages to the subject of delivery incurred during the unloading are then the sole responsibility of the customer.
4. If the customer detects a deviation between the delivered subject of purchase and the subject of purchase stipulated in the transport documents or obvious transport damages to the subject of purchase at the receipt of the subject of purchase, he has to immediately assert all necessary reservation toward the carrier and simultaneously inform E.P. of the matter.

5. In as far as the provision of services instead of the sale of goods is the subject of the contract, the acceptance of the service replaces the handover of the goods. In case of installations of equipment and equipment parts at the customer by employees and/or representatives of E.P. the risk of loss, damage or demise is transferred to the customer at the latest when he has obtained ownership of the subject of performance e.g. through installation as essential component in objects of the customer, otherwise with the acceptance or partial acceptance.

6. The acceptance of an installation and/or service occurs directly upon start-up by way of a jointly to be established and signed protocol, in which determined defects and residual work are recorded. The acceptance is also deemed concluded if and in as far as E.P. commits to the immediate remedy of the determined defects. The acceptance does not exclude a subsequent optimisation of the process and does not constitute the total provision of the contractual services.

The subsequent assertion of defects and residual work which are not recorded in the acceptance protocol is only possible if these were not detectable during the acceptance. The onus of proof hereto rests with the customer.

E.P. may demand partial acceptance according to the above regulations for self-contained units.

7. If the customer does not comply with his obligation of cooperation during the acceptance or partial acceptance, E.P. can set an appropriate deadline for the acceptance for the customer. If the acceptance/partial acceptance does not occur within this term according to the regulation in item 6, the performance is deemed accepted when E.P. has issued the customer with an acceptance protocol established by E.P. and if the customer has not objected in writing under statement of reasons within one week.
8. If the customer utilises the supplied equipment and/or the subject of purchase according to its intended purpose, it is deemed as an acceptance of the delivery.

X. Reservation of title

1. The subject of purchase remains the property of E.P. until the complete payment of claims (including future claims), regardless of their kind, owed to E.P. based on the purchasing agreement. Acceptance of a bill is not considered a payment prior to it being honoured upon presentation.
2. The reservation of title also applies for claims by E.P. against the purchaser from the ongoing business relationship until the settlement of claims in connection with the purchase.
3. In case of default of payment or at the occurrence of events, which indicate a significant deterioration of the financial circumstances of the customer by applying standard banking practices, E.P. is entitled, also without the right of withdrawal being exercised and without giving a period of grace, to the retraction of the subject of purchase at the expense of the customer and the customer is obligated to surrender the subject of purchase.
4. If E.P. furthermore has a right of compensation instead of service and if it retracts the subject of purchase, E.P. and the customer agree that E.P. will reimburse the usual sales value of the subject of purchase at the time of the retraction. At the customer's request, which may only be made immediately upon retraction of the subject of purchase, a publicly appointed and sworn expert will determine the sales value at the customer's choice.

The customer bears all costs of the retraction and the utilisation of the subject of purchase. The utilisation costs amount to 5% of the usual sales price without evidence. They are to be assessed higher or lower if E.P. proves higher or the customer lower costs.

5. The assertion of the reservation of title as well as the levy of execution of the supplied subjects of purchase by E.P. does not constitute a withdrawal from the contract unless explicitly declared in writing by E.P.
6. The customer may neither pawn nor pledge as security the objects of delivery. In case of levy of execution as well as seizure or other directions by third parties the customer has to notify E.P. in writing immediately and provide E.P. with all information and documentation necessary for the protection of its rights. The bailiff and/or a third party is to be notified of the property of E.P.
7. For the duration of the reservation of title the customer is only permitted to on-sell the goods in the usual course of business and only under the condition that the customer as the re-seller receives payment from his customer or makes the reservation that the property is only transferred to the customer once he has fulfilled his payment obligations. The reserved goods may furthermore only be sold as long as the customer is not yet in default. The on-seller furthermore has to agree with his customer that the claim from the on-selling is transferred to E.P. according to the following conditions. The on-selling also includes the dispatch of the reserved goods for the fulfilment of work- and work supply contracts.

If the customer on-sells reserved goods he now assigns his future claims from the on-selling against his customers together with all ancillary rights - including any payment balances - to E.P. for security reasons without requiring specific explanation at a later point in time. If the reserved goods are on-sold together with other objects without an individual price having been negotiated for the reserved goods, the customer, with priority over the remaining claim, assigns the part of the total remaining claim to E.P., which corresponds to the price of the reserved goods invoiced by E.P.

The claims assigned to E.P. for security reasons serve as security for E.P. to the same extent as the reserved goods in terms of item 1.

Upon proof of a legitimate interest the customer has to provide E.P. with the information and hand over the documentation necessary for the assertion of its rights against the customer. The customer is entitled to collect the assigned claims from the on-selling until revocation. At the existence of an important reason, in particular de-fault of payment, suspension of payment, initiation of insolvency proceedings, bill protest or justified indications for over-indebtedness or pending inability to pay on the part of the customer E.P. is entitled to revoke the customer's authority to collect. Following prior warning under observation of an appropriate term E.P. may also disclose the security assignment, utilise the assigned claims as well as demand the disclosure of the security assignment by the customer to his customers in turn.

In no case is the customer authorised to assign the claim; this also applies for factoring businesses, to which the customer is also not permitted based on the granted authority to collect.

8. The customer is not permitted to process the reserved goods or to mix or connect it with other objects. The processing, mixing or connecting (hereinafter referred to as: processing) occurs for E.P. however without obligating E.P. The customer stores the new item for E.P. with the care of a proper merchant. The new item is deemed reserved goods in terms of item 1.

At the processing with other objects, which are not the property of E.P., E.P. is entitled to co-ownership to the new item in the amount of the proportion, which results from the ratio of the value of the processed, mixed or connected (hereinafter referred to as: processed) reserved goods to the value of the remaining processed goods at the time of the processing. If the customer obtains sole ownership to the new item the customer now assigns to E.P. the ownership- and contingent rights to the extent of the invoice value in case of processing at the ratio of the value of the processed reserved goods to the remaining processed goods at the point in time of the processing. The co-ownership rights of E.P. are deemed reserved goods in terms of the above regulations.

If the customer on-sells the new goods he hereby assigns his claims from the on-selling against his customers together with all ancillary rights to E.P. for security reasons without requiring specific explanation at a later point in time. However the assignment applies only in the amount of the sum, which corresponds with the value of the processed reserved goods invoiced by the customer. The proportion of the claim assigned to E.P. is to be satisfied by prior ranking. Item 7 (4) applies accordingly regarding the authority to collect as well as the prerequisite of any revocation.

9. In as far as the supplied equipment of E.P. is to become an essential component of a property and/or building in terms of § 94 (2) German Civil Code (§ 946 German Civil Code), E.P. is entitled to completely or partially remove the equipment delivered by E.P. as far as on its part justified payment claims from the contractual relationship are not fulfilled by the customer. In so far E.P. or a company commissioned by E.P. and their respective employees are entitled to enter the business property of the customer and to remove the equipment or parts of the equipment. In the same manner E.P. is entitled to inhibit the operations software in the event of unfulfilled payment claims.

If a removal is not considered the customer, without requiring further particular explanations, assigns his claim, to which he is entitled as remuneration for the connection together with all ancillary rights in the amount of the ratio of the value of the connected reserved goods to the remaining connected goods and/or the connected property at the point in time of the connection to the purchaser for security purposes.

10. If the value of all realisable securities owed to E.P. exceeds their as yet unpaid claims in total by more than 10%, E.P. is obligated - upon the request by the customer or a third party affected by the over-securing - to the release of securities at E.P.'s choice to that extent. However, this only applies if a significant risk of assessment or realisation does not exist.
11. If the reservation of title and/or the other security rights granted to E.P. mentioned in paragraph 1 to 10 should be ineffective due to legal reasons or if their effectiveness or validity toward third parties should be subject to prerequisites, which are impossi-

ble, unreasonable or uneconomical for E.P. or the customer, E.P. may demand the granting of other securities standard to banking practice and make the delivery of the object of purchase subject to the provision of such securities. The customer is obligated to cooperate in all measures necessary for the granting of such securities. The regulations mentioned in section 1 to 10 then apply analogously.

XI. Warranty, complaint, chains of supply

1. Unless otherwise determined hereinafter, the legal regulations apply for the customer's rights in case of defects (warranty claims).
2. The respective performance descriptions of E.P. accompanying the offer, which were provided to the customer prior to his order or are a component of the contract in the same manner as these General Terms and Conditions of Delivery and Service, apply as an agreement regarding the quality of the goods and services.
3. In as far as the quality not being agreed upon and/or a performance description accompanying the offer is not available, E.P. warrants a performance according to the recognised rules of technology. E.P. is not liable for public announcements of third parties (e.g. advertising statements and markings), in particular not those of the manufacturer in case of deliveries of goods. A liability for faulty assembly instructions is excluded.
4. In case of deliveries the customer is obligated to inspect the goods immediately and to report any defects in writing, per fax or via electronic data transfer without undue delay. The regulations of §§ 377, 378 German Commercial Code apply.

In case of partial performance the defect must be objected to within 2 weeks from the acceptance of the performance of a further subsection, however at the latest 2 weeks after the (partial) acceptance.

The timely dispatch of the notice of defect suffices to comply with the deadline in the above mentioned cases.

If the customer omits the above stipulated objections E.P.'s liability for the un-objected defect is excluded. The onus of proof for the compliance and timeliness of the obligation to give notice of defect as well as the existence and the time of the detection of the defect lies with the customer.

5. If the supplied item or performance is defect, E.P. may initially choose whether it remedies the defect through subsequent improvement or replacement delivery according to the legal regulations. E.P.'s right to refuse the chosen type of subsequent fulfilment under legal prerequisites remains unaffected.

The remedy of defect occurs according to the choice of E.P. at the registered address of the customer or at another place within Germany to be determined by E.P. The expenses necessary for the purpose of subsequent fulfilment, in particular transport-, road-, labour- and material costs necessary for the subsequent fulfilment are borne by E.P.

If the equipment and/or the subject of supply is not (no longer) at the national registered address of the customer but abroad, the customer has to reimburse E.P. with the incurred additional costs, so for example travelling expenses.

6. If the subsequent fulfilment has failed or is impossible, if the subsequent fulfilment is unreasonable for the customer or if E.P. refuses the subsequent fulfilment - rightly or wrongly - seriously and finally or if the deadline set by the customer for E.P. has expired unsuccessfully and/or is not necessary according to the legal regulations, the customer may, at his choice, reduce the purchase price or withdraw from the contract. However, the right to withdrawal does not exist in case of an insignificant defect. The customer's claim for delivery of a defect-free item and/or provision of a defect-free service is forfeited with the declaration of withdrawal and/or reduction.

The liability for compensation is limited according to the stipulations of item XII; it is excluded for the remainder. This also applies for the claim of reimbursement for expenses.

7. E.P. is not liable for defects of a matter or any subsequent damages as far as the defect and/or subsequent damage arose due to improper storage or processing of the subject of delivery.
8. If the customer performs alterations or repairs to the rejected subject of delivery himself, his warranty claim expires.
9. If the customer is entitled to remedy of defects the following applies for the process:
 - a) The customer may only assert claims for remedy of defect against E.P.; the notification has to be in writing. However, E.P. is at liberty to commission third parties with the remedy of defects and/or engage them for the remedy of defect.
 - b) If the subject of purchase becomes unserviceable due to a material defect the customer also has to initially contact E.P. without undue delay. Sentence 2 a) applies accordingly.
 - c) Replaced parts become the property of E.P.
 - d) Up to the expiration of the statute of limitation of the subject of purchase the customer may assert material damage claims based on the purchase agreement for parts installed for the purpose of remedy of defects.

10. If the newly manufactured goods supplied by E.P. to the customer are on-sold to a consumer, in addition to the regulations above the following regulations apply for warranty claims of the customer:

Except for legally regulated cases the legal alleviation of the burden of proof in favour of the customer regarding the existence of the defect (§§ 478 (3), 476 German Civil Code) also does not apply if more than 6 months have passed between the transfer of risk to the customer and the transfer of risk to the purchaser of the customer.

The customer's rights to subsequent fulfilment according to item 5 apply with the following stipulation: The customer may demand from E.P. the type of subsequent fulfilment which he owes to his purchaser - under consideration of the legal and

contractual rights of refusal of the customer. The right of choice of E.P. according to item 5 does insofar not apply. The customer is entitled to assign this claim for subsequent fulfilment to his purchaser, however only for purposes of fulfilment and/or security, meaning notwithstanding his own continued liability toward the purchaser. An assignment instead of fulfilment is ineffective. E.P.'s right to refuse this subsequent fulfilment under legal prerequisites remains unaffected.

If E.P. has agreed to a compensation of equal value in terms of § 478 (4) German Civil Code with the customer, the claim for compensation of expenses which he had to bear in relationship to his purchaser (§ 478 (2) German Civil Code) is excluded.

XII. Liability

- E.P. is liable for compensation regardless of the legal reason only in case of intent or gross negligence of its organs or assistants. The above exclusion of liability for simple negligence does not apply for the violation of essential contractual obligations, unless it concerns the liability for material defects. The liability is limited to the typical damages foreseeable at the time of conclusion of contract in case of violation of essential contractual obligations.
- The liability of E.P. is excluded - regardless of the legal reason - for aggregates, machines, soft- and hardware as well as equipment components provided by the customer. This also and in particular applies if the customer has given instructions to E.P. regarding the execution of the service, unless E.P. has not refrained from an execution despite concerns. The onus of proof hereto lies with the customer.
- A liability for compensation due to a guarantee assumed by E.P. as well as a liability according to the Product Liability Act remains unaffected by the above conditions. The same applies in case of causing damage as a result of the violation of life, body or health.
- E.P. is liable according to the legal regulations for damages incurred to the customer or third parties due to errors or defects on a product of E.P., however E.P. is not liable
 - for pure pecuniary losses, which are not material- or personal injury (e.g. for loss of profit, loss of orders, interruptions of business),
 - for claims from damages which are the responsibility of the customer or a third person removed from E.P.'s sphere of influence,
 - for risks which are not insurable.

The liability in total is limited to the amount of 10% of the net delivery value.
- In as far as the damage is covered by an insurance (excluding endowment insurance) taken out by the customer for the claim concerned, E.P. is only liable for possibly connected disadvantages of the customer, e.g. a higher insurance premium or interest disadvantages up to the settlement of the claim by the insurance company.
- The liability due to default in delivery is conclusively regulated in item VI.
- The personal liability of the legal representatives, vicarious agents and employees of E.P. is excluded for damages caused by these entities based on slight negligence.

XIII. Statute of limitation

- For performances in buildings and delivery of items, which were utilised for a building according to their usual type of usage and which have caused the defect of the building the period of limitation for warranty claims is 5 years from acceptance and/or transfer of performance or -risk according to item IX.

For performances or deliveries for automated or electro-technical/electronic equipment as well as maintenance- and/or servicing works to such equipment the period of limitation is one year.

If an acceptance or delivery did not occur the statute of limitation commences with the conclusion of the year, during which the claim occurred. The above mentioned periods of limitation apply also for competing claims from unauthorised acts.
- Furthermore the legally stipulated period of limitation applies in the following cases:
 - for warranty claims if the purchaser has maliciously kept secret the defect or has assumed a guarantee for the quality,
 - for claims of recourse of the customer in the context of a chain of supply (item XI.9),
 - for compensation claims from the violation of life, body or health,
 - for other compensation claims based on an intentional or gross negligent violation of obligation,
 - for claims according to the Product Liability Act,
 - for compensation claims from the violation of other essential contractual obligations.
- All other claims and rights of the customer not mentioned in the above items 1 and 2 - regardless of the legal reason - become statute barred within one year from delivery and/or acceptance. If delivery or acceptance did not occur the statute of limitation commences with the conclusion of the year, during which the claim occurred. Shorter legal periods of limitation have precedence.

XIV. Miscellaneous

- Generally, there is no right to exchange a delivery. The agreement to an exchange in an individual case requires the written form. Any costs incurred due to the exchange for freight, packaging and re-booking are borne by the customer. E.P. is entitled to charge handling expenses in the amount of 10% of the net value of the exchanged subject of purchase above the actually incurred costs plus the legally applicable VAT. These costs are due immediately without deduction.
- The transfer of the customer's rights and obligations from contracts concluded with E.P. requires the written approval of E.P. to be effective.

- Upon the conclusion of a project E.P. is entitled to nominate it as a reference project and to conduct inspection with interested parties also after the conclusion of the project upon timely coordination of an appointment.

XV. Place of fulfilment

Place of fulfilment for deliveries and payments is the registered seat of E.P. in Weingarten.

XVI. Place of jurisdiction and applicable law

Place of jurisdiction – also for bills and cheques - is the court factually and locally responsible for the registered business address of E.P. in Weingarten. E.P. is further-more entitled to sue the customer at any other legal place of jurisdiction. The same applies if the customer does not have a general place of jurisdiction in Germany or if the place of abode or usual whereabouts is unknown at the time of the claim.

XVII. Severability clause

If individual conditions of these General Terms and Conditions of Delivery and Service are or become ineffective, the effectiveness of the remaining clauses remains unaffected. The ineffective clause is to be replaced by an effective clause, which as closely as possible realises the economic purpose of the ineffective clause. Alternately the legal regulations replace the ineffective regulation.

