Terms and Conditions of Purchase
Edition March 2013

The following purchasing terms and conditions apply to all business relationships unless expressly agreed otherwise in writing. Business terms and conditions that deviate from, conflict with, or are not confirmed or rejected in writing are excluded. The present terms and conditions also apply to all further legal transactions between EBNER and the Supplier.

1. GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDERS

Orders and amendments or additions to orders are only legally binding if they are confirmed in writing by the authorized Purchasing Department. Agreements made with other persons are not valid, unless the Purchasing Department is informed immediately and their written approval is obtained. The present terms and conditions are effective at the time by the time the Supplier starts processing the order. Verbal agreements are not valid unless confirmed in writing by the responsible purchasing department. The order date is the date the order is dispatched to the Supplier. The order is to be confirmed or rejected immediately in writing. If the Supplier should decide to reject the order, the Supplier will be bound by contract and responsible for the proper processing of the order. Before an order acknowledgment is received, EBNER has the right to cancel the order at any time free of charge, without specifying a reason. A cancellation is considered valid, if the order is withdrawn before the order acknowledgment is received. Deviations in order content are to be clearly highlighted and require the express written approval of EBNER before being executed. The Supplier must inform EBNER immediately and their written approval is obtained. Orders and amendments or additions to orders are only legally binding if they are confirmed in writing. The Supplier must inform EBNER immediately in writing as to the reasons for and estimated duration of any delay. The Supplier ensures that the scope of supply and services is entirely in line with the latest technical standards and state-of-the-art technology, and that all conditions specified in the order have been met, and proper documentation has been supplied. If there is a problem with the equipment or the services supplied, EBNER may withdraw outstanding payments. Payment does not imply acknowledgment of the correctness of the goods or services received, nor does it imply EBNER's waiver of completion of the order, warranty, or any other claim as to performance or price. In case of a defect or any other complaint, the entire payment may be withheld by EBNER. Invoices issued must include the order number, delivery note number, as well as EBNER's taxation identification number (UID). The VAT amount must be listed separately. Invoices must not be enclosed in shipments.

2. PRICES

The agreed upon prices are fixed prices including all fees and taxes (except for VAT). Provided that nothing else is specified in the order, the price is based on the latest INCOTERMS 2010. If VAT is included, the price includes the cost of documentation, technical testing, packaging, markings, labels, etc. For shipments abroad, the Supplier's scope of supply includes export customs clearance, incl. all related costs, charges and fees.

3. PAYMENT AND INVOICING

Unless agreed otherwise, EBNER will settle payment within 14 days of the invoice being submitted, minus a 3% discount, or within 60 days net, provided that all conditions specified in the order have been met, and proper documentation has been supplied. If there is a problem with the equipment or the services supplied, EBNER may withhold outstanding payments. Payment does not imply acknowledgment of the correctness of the goods or services received, nor does it imply EBNER's waiver of completion of the order, warranty, or any other claim as to performance or price. In case of a defect or any other complaint, the entire payment may be withheld by EBNER. Invoices issued must include the order number, delivery note number, as well as EBNER's taxation identification number (UID). The VAT amount must be listed separately. Invoices must not be enclosed in shipments.

4. PACKAGING AND SHIPPING

All shipments are subject to EBNER's terms of shipment and packaging guidelines. These must be requested from EBNER if not available to the Supplier. The Supplier must ensure that the partial delivery rate is in line with the agreed order. The Supplier must provide a certificate confirming the preferential origin of the supplied goods (e.g. EUR-1 certificates or other movement certificates, certificates of origin, etc.). Any additional documents issued by EBNER must be complied with. Unless otherwise specified in EBNER's shipping terms, the shipping documents may not include the order value. EBNER will only pay for transport insurance if this has been agreed on in writing. The Supplier is liable for risks, damages and costs incurred should the Supplier not confirm to EBNER's shipping terms. EBNER reserves the right to withhold any payments that may be outstanding, as all material, personnel and other costs that can be categorized as wasted expenditure as a result of a defect. The Supplier is responsible for the performance of his contractors and must be held liable in the event of any shortcomings or defects caused by them. If a product liability claim is made against EBNER by the end user as a result of damage, the Supplier must indemnify EBNER for all expenses resulting from such a claim. In this case, the Supplier bears all costs and responsibilities, including costs in connection with any legal procedures and recall of equipment.

5. DEADLINES

Time is of essence. The deadlines and delivery dates set in the order are binding and refer to the arrival at the location of fulfillment. Should the Supplier fail to meet the deadlines cannot be met, EBNER must be informed immediately in writing as to the reasons for and estimated duration of the delay. Should the Supplier not meet the agreed upon deadlines, the following contractual penalties shall be applied based on the total order value:

- The contractual penalties will be subtracted from the outstanding invoices issued by the Supplier. The Supplier waives the right of having these penalties reduced by court.
- 1% per started week up to a maximum of 10% of the total order value - Documentation
- 1% per started week up to a maximum of 10% of the total order value

The Supplier's obligation to pay the contractual penalty begins as soon as the deadline has expired. Payment of such penalties does not release the Supplier from his obligation to execute the order, nor does it release him from any of his resulting liabilities.

6. GUARANTEE AND EXCLUSION FROM THE DUTY TO REPORT DEFECTS

The Supplier ensures that the scope of supply and services is entirely in line with the latest technical standards and state-of-the-art technology, and that all applicable technical regulations are complied with. The Supplier guarantees for a period of 36 months from the date of acceptance by the end user (EBNER's customer), that the equipment is free of defects and that EBNER will be indemnified for any disadvantages, claims or costs attributable to defective supply or inadequate service. EBNER has no obligation to carry out inspection or give notification of faults as defined in section 377 ff UGB (Austrian “Unternehmensgesetzbuch”), which, however, shall not limit any of EBNER's legal rights regarding warranty (warranty periods, claims for damages and the right of rescission on the grounds of mistake), in case of replacement delivery and repair the guarantee period begins again.

7. WARRANTY, DAMAGES AND PRODUCT LIABILITY

If there are any defects or problems with the supplied equipment or the provided services, EBNER will choose the type of warranty to be provided by the Supplier (e.g. repair, improvement, replacement, price reduction). If the defect is not a minor one, EBNER is entitled to revoke the contract instead of merely having the matter remedied. EBNER reserves the right to make improvements or repairs on the equipment or the parts, or have a third party carry out the necessary work. The Supplier bears all related costs. Until the Supplier proves otherwise, it is assumed that the defect was present already at the time of the delivery. If the defect is noticed after the six months period from the date of take-over, the Supplier indemnifies EBNER entirely for any and all disadvantages that are encountered as a direct or indirect result of a defective supply or inadequate service, a violation of official safety regulations, delayed deliveries and deadlines, incomplete delivery, and/or any other legal issues caused by or attributable to the Supplier. The Supplier is obliged to fully compensate EBNER for all damages occurring as a result of the above. This also applies to any costs incurred by EBNER or a third party (including material and personnel costs) in connection with assessing and remedying defects, as well as any material, personnel and other costs that can be categorized as wasted expenditure as a result of a defect. The Supplier is responsible for the performance of his contractors and will be held liable in the event of any shortcomings or defects caused by them. If a product liability claim is made against EBNER by the end user as a result of damage, the Supplier must indemnify EBNER for all expenses resulting from such a claim. In this case, the Supplier bears all costs and responsibilities, including costs in connection with any legal procedures and recall of equipment.

8. EXPORT LICENSES

It is the Supplier's responsibility to obtain, at his own expense, all necessary export licenses in connection with the scope of supply and services, especially those required in the end user's country (EBNER's customer). By accepting the order, the Supplier guarantees that the entire order can be executed in full and that no limitations exist in connection with the export license or that the order is not restricted in any manner, and will not interfere with the complete supply of goods and services. The Supplier shall be liable for any damages EBNER may suffer as a result of such limitations.

9. THIRD PARTY RIGHTS

The Supplier guarantees that no legal rights stand in the way of the intended use of the equipment, especially in terms of infringement of patents or other third-party rights.

10. CONFIDENTIALITY

Drawings, documents and other information required for executing the order and submitted to the Supplier by EBNER, as well as all experience and know-how gained during the course of processing the contract (“confidential information”), remain the exclusive property of EBNER. All drawings and documents are to be treated as strictly confidential, must not be passed on to third parties, and may not be otherwise utilized, analyzed reproduced or made available to third parties without EBNER's written permission. As soon as the order has been completed, all confidential information must be returned to EBNER. It is strictly prohibited to pass confidential information on to third parties, especially to companies that manufacture or operate identical or similar equipment. In the event of a violation of this secrecy agreement, EBNER reserves the right to withdraw the contract or claim damages in accordance with the circumstances, interfere with the complete supply of goods and services. The Supplier shall be liable for any damages EBNER may suffer as a result of such limitations.

11. DRAWINGS, DOCUMENTATION AND SUPPLIED MATERIALS

The drawings, information and know-how made available to the Supplier by EBNER remain the property of EBNER, and EBNER retains the right to the exclusive use of such drawings, information and know-how. The Supplier acknowledges that only EBNER holds the copyright on the above. Material made available by EBNER remains EBNER's property, must be labeled as such and stored separately. The Supplier is liable for loss or damage to such material, even if not at fault. After the order has been completed, materials supplied by EBNER are to be returned immediately.

12. SUSPENSION AND CANCELLATION

(1) EBNER reserves the right to suspend the project schedule (delivery time etc.) at any time without specifying reasons. This may result in changed deadlines, especially regarding delivery periods, receipt and acceptance of goods, and payment terms. EBNER is entitled to notify the Supplier of such changes in writing. EBNER has no obligation to indicate the expected extent of the suspension.

The Supplier is obliged to make appropriate arrangements upon receipt of the written notification to minimize the costs related to the suspension. If the schedule is suspended by up to six months, the Supplier must invoice EBNER for all direct costs charged to them by a third party (e.g. for storage costs with corresponding storage certificates or other movement certificates, certificates of origin, etc.). Any additional costs that may result from a suspended schedule are reasonable and unavoidable, and were not incurred before the end of the above stated six-month period. However, the Supplier bears all other extra costs that may result from a suspended schedule (e.g. the Supplier’s own personnel costs, price increases by contractors and sub-suppliers, interest accrued, and other expenses). In such cases, the Supplier must notify EBNER in writing. The original order value (sales price) shall stay the same in any case. In the event of a suspension, all deadlines, especially with regard to the execution of the contract, the acceptance of the delivery and the payment schedule, are postponed accordingly.

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Deadline extensions are always indefinite, even if the expected duration of the suspension is known. However, deadlines cannot be postponed by more than 24 months; at any time during this 24-month period, EBNER can demand in writing that the project be continued. The delivery periods start running again 14 days after the Supplier receives the written notification about the continuation of the project. If EBNER sends no notification, the contract schedule is automatically continued after a period of 24 months; in this case, the deadlines and delivery periods start running again immediately.

(2) EBNER reserves the right to cancel the entire contract or parts of the contract at any time and without specifying reasons. EBNER is to notify the Supplier accordingly in writing. The Supplier is obliged to stop all work related to the order at their own expense and immediately upon receipt of the written notification from EBNER. EBNER shall pay the manufacturing cost for those parts affected by the cancellation and which were verifiably finished by the Supplier prior to the written cancellation of EBNER. Such parts as well as any and all other rights shall become the property of EBNER. EBNER shall not pay for those parts that can be used by the Supplier for other purposes, especially for other orders and contracts. All other costs related to the cancellation of the contract are to be borne by the Supplier.

Other contractually agreed or legal regulations regarding the cancellation of the contract, especially concerning the immediate termination for important reasons, remain unaffected.

(3) The contents of any contracts the Supplier may have entered with sub-suppliers and contractors shall be adjusted to match the Supplier’s agreement with EBNER regarding suspension (see item 1) and cancellation (see item 2). (4) EBNER may terminate the contract or parts of it, if the Supplier breaches the contract and fails to correct the situation after a reasonable extension has been granted (usually 14 days). A notification sent to the Supplier to remind him to fulfill his contractual responsibilities is considered the same as setting an extension. Changes of final and intermediate deadlines, unauthorized subcontracting, defects or other causes that may jeopardize the fulfillment of the contract between EBNER and their contract partners, are some of the reasons that constitute a breach of contract. In these cases, missing or incomplete supplies and services may be completed by EBNER or by a third party commissioned by EBNER, the costs of which will be borne by the Supplier. Any costs incurred this way are invoiced by EBNER directly to the Supplier or deducted from EBNER’s next due payments.

Any further claims for damages which EBNER may have remain unaffected by this clause.

13. FORCE MAJEURE

The contract parties are relieved of their contractual obligations in full or in part if the non-fulfillment is due to force majeure. The following is referred to as force majeure:

- Fire, war, general mobilization, riots, acts of nature, embargoes and government sanctions.
- Strike or lockout at the Seller’s works or at the works of the Seller’s contractors, as well as material and raw material shortages are expressly excluded from force majeure.

The party prevented from or delayed in performing its obligations under the contract due to force majeure is to notify the other party within five working days of the circumstances constituting force majeure with adequate evidence thereof. Both parties are released from their contractual obligations for the duration of the force majeure. If the case of force majeure lasts for longer than three months, EBNER reserves the right to agree on a new delivery period with the Supplier or to declare the contract void.

Cases of force majeure in the country of EBNER’s end-customer are considered force majeure under this contract.

14. MICELLENIOUS

The Supplier shall have no right of retention.

The Supplier may charge interest on late payments at a rate of 5% per annum. EBNER and/or third party inspection agencies are allowed to check the progress of the work and carry out technical interim and final inspections (which includes wrapping, packaging for transport etc.) at any time at the offices, production facilities and warehouses of the Supplier and the Supplier’s contractors during the various stages of designing, scheduling, manufacturing and delivery, and may reject incorrect documentation and defective material. These checks and inspections do not absolve the Supplier from his responsibilities.

All of the Supplier’s subcontractors, with the exception of suppliers of standard parts, must be approved by EBNER in writing. Transfer of title to EBNER shall take place together with risk transfer. Persons communicating with EBNER on behalf of the Supplier are considered to be fully authorized. The Supplier is liable for all additional expenses and extra costs incurred while completing the order. If the allocation of such costs is regulated neither by agreement nor by INCOTERMS 2010.

If the deadlines agreed on in the order should change, the Supplier provides and accepts all costs and risks for the storage of equipment for a maximum of six months. This also applies if the delay is beyond the Supplier’s control. All deliveries made to EBNER must be without reservation of ownership or rights of third parties. Such reservations are invalid even without EBNER’s explicit objection.

The Supplier is responsible for his contractors and their compliance with the present terms and conditions. Notwithstanding the present terms and conditions, all of EBNER’s legal rights shall remain intact. EBNER reserves the right to withdraw from the unfulfilled part of the contract should the Supplier become insolvent, default on payment, or apply for or declare bankruptcy.

The Supplier shall maintain a product and general liability insurance with an insured sum reasonably applicable to the respective order and the Supplier shall present to EBNER upon EBNER’s demand the cover note.

15. LOCATION OF FULFILLMENT, JURISDICTION, APPLICABLE LAW

Location of fulfillment is the delivery address given in our order. If individual terms of the present document should be ineffective or unenforceable, all other terms remain binding (“Severability Clause”).

The provisions in the present terms and conditions shall be governed by Austrian law. UN Sales Law does not apply.

The place of jurisdiction is Linz (location of Buyer’s offices).