

I. GENERAL

1. All our sales contracts are subject exclusively to the present General Terms and Conditions ("GTC"); the said shall apply, unless otherwise expressly agreed in writing. "In Writing" shall always mean communication by document signed by the parties, or by letter, fax or electronic mail.
2. In case of conflicts between our GTC and other special written agreements between the parties, the latter shall prevail. General Terms and Conditions or forms of Buyer shall by no means be accepted or become part of the contract, regardless whether we knew them or not, whether we have contradicted their validity or not and irrespective of whether they are in opposition to our GTC or not. In case of continuous business transactions, our GTC shall be applicable even without special reference to the said.
3. Quotations are always subject to change. A contract is not formed until our written order confirmation is sent to Buyer. Solely the order confirmation shall be decisive for the content and the scope of the contract. Buyer may declare its acceptance either explicitly or by conduct.
4. As far as quotations are based on the information issued by Buyer (e.g. technical data, drafts, drawings, plans, samples), we shall not be held liable with regard to accuracy and/or completeness of such information. Alterations after formation of the contract can only be accepted, if they are reasonable and only on the condition that all resulting consequences (in particular delivery time and price) are duly considered.

II. DOCUMENTATION AND PLANS

1. Any drawings or technical documents submitted to Buyer prior or subsequent to the formation of the Contract remain our exclusive property. They may not, without our written consent, be utilised by Buyer or copied, reproduced, transmitted or communicated to a third party. They are to be returned immediately on our request if the order is not carried out.
2. Any sales documents, specifications and price lists shall be strictly confidential and must not be made available to third parties.

III. OBLIGATIONS TO INFORM AND TO COOPERATE

1. Prior to the formation of the contract, Buyer shall inform us about statutory, official and other regulations which may affect the performance of the contract, such as those regarding delivery, assembly, operation, health protection and accident prevention, currency controls, and export and import restrictions. Buyer shall obtain all necessary official permits at its own cost and risk.
2. Buyer shall undertake all measures necessary to ensure that the work is started on time and performed without hindrance or interruption. Buyer shall particularly be responsible for performing any site and other preparatory work timely in a workmanlike manner at its own cost in accordance with the General Conditions for Erection and Start-up, which form an integrating part of the contract (available at our Website). Buyer shall compensate any extra costs (e.g. by dwell time) incurred by a breach of its obligation to cooperate.

IV. EQUIPMENT

1. The equipment delivered hereunder shall exclusively conform with the specifications of the order confirmation. The drawings, descriptions and other data included in catalogues, prospectuses, circulars, advertisements and other general information, whether in electronic or any other form, are only exemplary. These data shall not be binding, unless otherwise explicitly stated by us in writing.
2. The equipment shall be in accordance with the applicable mandatory safety laws and regulations of the Republic of Austria. Other laws and regulations, such as those applicable at the country of destination, shall not be binding for us, unless the said have been expressly declared as binding. We shall not be liable for the equipment being fit for a particular purpose supposed by Buyer, unless such purpose was explicitly defined in the order confirmation.
3. We shall be entitled to fully recognize and account the deliverables under the sales contract as expenditures for in-house research or contract research pursuant to national and/or international statutory research premiums or other similar subsidies in connection with research and development activities. Statutory notifications that may be required can be dispensed accordingly.

V. SOFTWARE

Buyer shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the delivered equipment; such licence shall be subject to our Software-Licence-Terms (available at our Website).

Buyer may make only one back-up copy without our express consent. Software that is not "embedded" in a hardware device delivered by us shall be subject to the General Terms & Conditions of the respective software provider.

VI. PRICES AND TERMS OF PAYMENT

1. Our prices apply, failing any agreement to the contrary, ex works, including an equipment-in-transit insurance, but exclusive of packing, loading, carriage and assembly; value added tax shall be added at the then applicable rate. Buyer shall provide us a valid VAT identification number (UID) prior to delivery (if applicable).
2. Our prices shall be fixed prices. In the event that after conclusion of the contract the net purchase prices to be paid by us for materials for the manufacture of the equipment increase by more than 10 percent up to the time of delivery of the equipment, we expressly reserve the right to increase the price accordingly.
3. If the rate of the invoice currency changes in relation to the EURO, particularly as a result of the devaluation or revaluation of one of the currencies, the purchase price charged is based on the exchange rate between the two currencies on the date of conclusion of contract.
4. Unless otherwise agreed upon by the parties in writing, Buyer shall pay 60% of the purchase price at purchase order, at the latest after 30 days and 40% of the purchase price with shipment ex works, at the latest after 30 days. All payment terms and/or any financing lines are contingent upon a positive credit check of the buyer by us. In the event of a negative check result, we reserve the right to withdraw from our offer or the respective order.
5. Payments are to be made by interbank payment without any kind of deduction and free of transaction charges to the designated bank account of ENGEL AUSTRIA GmbH in the currency specified in the invoice. No cheque or bill of exchange will be considered as fulfilment of the payment obligation. Payments made by persons other than the Buyer, which were not contractually agreed as paying agent or otherwise not authorized by us, shall not constitute fulfilment of the payment obligation.
6. A payment is held to have been made on the day we have it at our disposal. A possible acceptance of check or bank draft shall be only on account of payment ("zahlungshalber"). All interest and expenses associated with the aforesaid (for example collection and discount expenses) are at the expense of Buyer. Payments of Buyer – independent of the respective payment reference – are initially accounted for interests and collection costs and then for the respectively oldest debt of Buyer.
7. It may be agreed between the parties that Buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to us). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits in the current version at the date of formation of the contract (currently UCP 600). Unless otherwise agreed, the documentary credit shall be irrevocable and payable at sight and shall allow partial shipments and transshipments. Acceptance of letter of credits shall be only on account of payment [in German: "zahlungshalber"].
8. If the Buyer is in default with the payment of the agreed purchase price in whole or in part, the outstanding total amount is due immediately [in German: "Terminsverlust"] and interest on arrears will be charged at statutory rate. To the extent we have retained title to the Equipment under Section XII. of these GTC, we shall further be entitled to collect the Equipment without Buyer's consent but at the Buyer's expense. As compensation for the depreciation of the Equipment or the benefit derived from the Equipment, the Buyer shall pay to us 3% (three percent) of the net purchase price of the Equipment per each full month - commencing from delivery.
9. Notwithstanding the above point 8, we are entitled to withdraw from the contract without further notice and to claim damages for non-performance if the Buyer is more than 14 days in default with a payment, an obligation to cooperate or with the acceptance of the delivery. Without prejudice to further claims for damages, a CONTRACTUAL PENALTY EQUAL TO 1/2 (ONE-HALF) OF THE NET CONTRACT PRICE will become due. The same shall apply, if Buyer withdraws from the contract without cause in law.
10. Notwithstanding any provision contained herein, we reserve the right to exclude Buyer from using the Equipment if Buyer is in default of any payment due to us. The Equipment shall be shut down as long as Buyer is in default. We shall not be liable for any damages incurred by the Buyer as a result.
11. Buyer may invoke set-off or exercise a pledge or right to retain only, if its claims have been accepted by us in writing or have been adjudicated by court.

VII. DELIVERY TIME

1. Dates and deadlines set for contractual performance can only be observed if the order is clarified (clarification of all technical/commercial details) and if all documents to be supplied by Buyer, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of Buyer, including but not limited to obligations to inform and cooperate, are duly fulfilled.

2. The period or date of delivery is deemed to be met, if the equipment has left our factory or if we gave notice of our readiness for dispatch on time. If a formal acceptance is agreed upon by the parties, the acceptance shall be carried out at the assigned date, alternatively shortly after our notice of readiness for acceptance.
3. If the delivery or the acceptance is delayed or omitted due to circumstances we are not responsible for, all legal consequences arising out of or in connection with the delivery or acceptance (including but not limited to due dates for payment, passing of risk or start of warranty-period) will come into effect with the date of the notice of our readiness of dispatch resp. for acceptance. Acceptance must not be refused due to defects other than fundamental. If delivery or acceptance is delayed or omitted due to circumstances Buyer is responsible for, we will be entitled to claim the incurring costs (e.g. storage and financing costs) and/or exercise the rights in accordance with Article 6 para. 7.

VIII. THIRD PARTY FINANCING

1. At the latest 4 weeks before delivery, Buyer shall inform us of the financing third party (lessor or creditor; jointly referred to as the „Loaner“) and provide us with a draft of the respective transaction terms. We reserve the right to refuse such Loaner without giving any reason.
2. In case of a third party financed purchase the terms and conditions agreed upon by us and Buyer, including these GTC, shall also apply to the transaction entered into by and between us and Loaner, subject always to the specific provisions of this section and any other terms and conditions agreed with Buyer.
3. If Loaner assumes or joins the supply contract or enters into such a contract instead of Buyer, Loaner shall have the same rights and obligations as Buyer actually has (or would have had without third party financing), unless otherwise stated herein.
4. The equipment will be delivered directly to Buyer in accordance with the agreed upon terms, whereas Buyer takes possession of the equipment on behalf of Loaner. The transfer of risk and use shall be subject to the respective provision of the supply contract, irrespective of any other act, such as the transfer of title, a formal acceptance (if any) and the installation and commissioning. In all other respects Section X. of these GTC shall apply.
5. Notwithstanding Section XI. of these GTC (RETENTION OF TITLE), the title in the equipment shall not pass to Loaner before the purchase price has been fully paid.
6. If software is the subject matter of the supply contract, we will grant to Loaner the non-exclusive right to use the software upon full payment of the purchase price, subject always to the respective terms of use and any other applicable provision under the supply contract or at law, whereas it is understood and agreed that this right of use will be exercised by Buyer or, as the case may be, by its legal successor. If the software is delivered together with hardware, the right of use is restricted to the delivered hardware.
7. Unless otherwise stated herein to the contrary, any contractual obligations other than payment of the purchase price shall remain with Buyer without limiting any remedies that we may have hereunder or at law.
8. Claims or rights arising from or in connection with the supply contract, such as default, warranty, damages or tort, may be exercised by Buyer (on behalf or for the benefit of Loaner), except for the following rights/claims that shall exclusively remain with Loaner:
 - Avoidance or cancellation of the supply contract;
 - Transfer of property and any right of use;
 - Cancellation / reverse of the supply contract;
 - Full or partial refund of the purchase price.
9. Any additional agreements, amendments or alterations to the supply contract are only permissible with the agreement of the buyer and the financier and must be made in writing.
10. Unless expressly agreed otherwise with us, the financing contract concluded between the Buyer and Loaner shall have no legal effect on us.
11. The terms of Loaner regarding the entry into the supply contract and/or purchase and delivery of the goods shall only be binding to the extent that such terms are consistent with the terms and conditions of supply contract and these GTC or any of the other documents incorporated in and constituting the supply agreement. Any signature made by us on Loaner's documents and forms including or referring to terms and conditions not consistent herewith shall not be deemed an acceptance of such contradicting terms, unless otherwise explicitly stated by us.

IX. DELAY

1. If the parties have agreed upon a contractual penalty / liquidated damages, the following shall apply:

In case Buyer demonstrably suffered a loss by a delay in delivery due to reasons within our control and responsibility we shall pay to Buyer as liquidated damages zero point five percent (0,5%) of the part of the net contract price assigned to the respective equipment not delivered in time per each expired week of delay.

The maximum total amount of liquidated damages for delay shall be five percent (5 %) of the respective part of the net contract price. Buyer may not, as long as liquidated damages accrue, declare the contract formed hereunder avoided. In any case, payment of liquidated damages for delay shall constitute full and final settlement of all of Buyers claims possibly resulting from the delay.

2. Without prejudice to the aforesaid, Buyer shall only be entitled to declare a contract formed hereunder avoided if the delay is due to our fault and not before expiration of a reasonable period of grace without result, of which Buyer gave us notice in writing.

X. FORCE MAJEURE

If the delay is caused by circumstances beyond our control and cannot be overcome by using commercially reasonable efforts, in particular because of natural disasters or other cases of force majeure, governmental interference or employment conflicts, the delivery date shall be extended adequately. If such impediment exists for longer than three (3) months, the contract may be terminated by either party with immediate effect. If, for the above reasons or independently thereof, there is a delivery shortage at one of our suppliers through no fault of our own and if, as a result, delivery cannot be made by us on the agreed date, we shall be granted a reasonable grace period of 90 days. If delivery cannot be made within this period of grace either, both parties shall be entitled to withdraw from the contract. The contractual partner shall not be entitled to any claims for indemnification.

XI. TRANSFER OF RISK AND USE

1. Irrespective if the parties agreed upon a formal acceptance or erection and start-up of the equipment by us or not, the risk of loss or damage to the equipment (risk as to price and performance) shall pass to Buyer in accordance with the agreed trade term, which shall be construed in accordance with the INCOTERMS in force at the date of formation of the contract. Aberrant from the aforesaid risk of loss or damage to the equipment shall pass to Buyer, if Buyer is in default with the performance of its obligations [in German: "Gläubigerverzug"].
2. If the parties have agreed upon a formal acceptance, Buyer shall not be entitled to use the equipment or any part thereof before the acceptance-protocol is duly signed. If Buyer does so without our express consent, acceptance shall be deemed to be made without any reservation. Even without the formal requirement of an acceptance, Buyer's right to use the equipment is expressly conditioned upon handing-over said equipment in operable condition, to be evidenced by a hand-over-protocol.
3. Without prejudice to our other rights or remedies under the Agreement or at law, we shall have the right to (temporarily) deprive Buyer from the use of the equipment by shut down of the equipment as long as Buyer is in default.

XII. RETENTION OF TITLE

Notwithstanding passing of risk as to price and performance or any other provision herein, the property in the equipment shall not pass to Buyer until we have received payment in full of the price of the equipment. Until such time as the property in the equipment passes to Buyer, Buyer shall keep the equipment properly stored, protected, serviced, maintained and suitably insured. The equipment is to be labelled in order to be easily recognizable as our property to third parties. Buyer shall, at our request, assist us in taking any measures necessary to protect our title in the equipment in the country concerned by, as the case may be, registering or, if the title in the equipment can not be retained according to applicable mandatory statutory law, by granting us appropriate security rights. Save as otherwise provided herein to the contrary, Buyer shall already be entitled to make us of the equipment as an owner upon receipt or, as the case may be, upon acceptance of the equipment.

XIII. WARRANTY

1. Unless otherwise agreed by the parties in writing, the warranty period shall be twelve (12) months upon transfer of risk.
2. To the exclusion of any further claims, Buyer may exercise the following rights in case of any lack of conformity, which evidentially exists at the time of transfer of risk, even though the lack of conformity becomes apparent only after that time, provided that we were duly notified by Buyer in accordance with applicable law within the warranty period:
 - a. The remedy of defects may be, at our discretion, carried out by repair or replacement of the defective parts. Hereby incurring costs for material and labour shall be borne by us, other incurring costs to be borne by Buyer. The remedy shall have no effect on the expiration and the length of the warranty period.

- b. If the lack of conformity can not be remedied by us due to physical-technical reasons or if such remedy can not be considered as economically reasonable ("irremediable defect"), Buyer may, whether or not the price has already been paid, reduce the price in the same proportion as the value that the equipment actually delivered had at the time of transfer of risk bears to the value that a conforming equipment would have had at that time.
- c. In case of fundamental irremediable defects, Buyers' sole remedy shall be to declare the contract avoided, whereupon each party shall concurrently make restitution of whatever it has received from the other party under the contract. In the course of restitution Buyer shall in addition to the restoration of the equipment pay an appropriate usage fee equal to the depreciation of the equipment under due consideration of the concretely achievable utilisation degree. The basis for such calculation shall be a monthly depreciation equal to 3 % (three per cent) of the net contract price.
3. Buyer shall be entitled to claim for warranty only, if it demonstrates that it operated, maintained and serviced the equipment in keeping with the provided documentation and according to state-of-the-art and that the lack of conformity is not due to any cause other than ordinary use or conventional application. The application is considered to be non-conventional, especially when Buyer uses materials or additives or makes modifications in the equipment resp. in the machine settings, which have not been approved by us. The warranty shall not cover parts subject to normal wear and tear. We do not provide updates for digital services as well as for digital elements in connection with a delivery item.
4. The exclusive provisions of this Article shall be applicable irrespective of a certain wording in the order confirmation (e.g. "guarantee"), which shall by no means constitute further liabilities.

XIV. INTELLECTUAL PROPERTY RIGHTS

1. We warrant to the best of knowledge that the equipment does not infringe any right or claim of a third party based on industrial property or other intellectual property ("IPR") under the law of the State where Buyer has its place of business, of which at the time of the conclusion of the contract we knew or could not have been unaware.
2. Buyer loses the right to claim an infringement of IPR if it does not give us notice specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim. On request, Buyer shall give us authority to conduct negotiations or the legal dispute with the third party for our account and in our own responsibility.
3. In case of an infringement of IPR adjudicated by court, we will at our sole discretion either obtain free of charge the required permissions (licenses) or change the equipment in keeping with the contractual targets in such a way that an infringement is no longer given, provided that (i) we are responsible for the infringement of IPR and (ii) Buyer has duly observed its obligations under this Article.
4. Claims of Buyer based on an infringement of IPR shall not be admissible, if Buyer itself was responsible for such infringement. Neither shall claims of Buyer be admissible if the infringement of IPR is caused by (i) specifications made by Buyer, (ii) a type of use or process not foreseeable by us, (iii) a machine modification or settings made by Buyer or (iv) a combined use with products not provided by us. Buyer shall indemnify, defend, and hold us harmless against all third-party claims based on an infringement of IPR, for which we are not liable in accordance with this Article.

XV. LIMITATION OF LIABILITY

1. Buyer shall only be entitled to claim for damages, irrespective whether it concerns damages for breach of contract or ex delictu if Buyer can prove that we are guilty of gross negligence. Notwithstanding anything provided herein, we shall not be liable to the Buyer due to ordinary negligence, nor shall we be liable for any claims for loss of profit, loss of orders, loss of use, loss of production, stoppage, loss of (anticipated) savings and interest, penalties, recourse claims or any (other) indirect, incidental, special or consequential loss or damage. Mandatory statutory claims of Buyer are not affected hereby; this applies, above all, to claims due to harm done to a person's life, body or health and liability for defective products pursuant to the Austrian Product Liability Act [PHG]. However, claims for recourse resulting from such bodily injuries shall not be admissible, unless the claimant proves that the product defect is attributable to our performance and that we are guilty of gross negligence.
2. To the extent that Buyer is entitled to claim for damages hereunder, the said shall be time-barred upon expiration of 2 (two) years after transfer of risk.

XVI. APPLICABLE LAW / PLACE OF JURISDICTION / ARBITRATION CLAUSE

1. Our legal relationship with Buyer shall be subject to substantive Austrian law to the exclusion of the conflict of law rules of Austrian international private law as well as the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

2. Subject to the provisions of the next paragraph all disputes, disagreements or any claim arising out of or in connection with a sales contract formed hereunder including any issue regarding its existence or validity shall be referred to the competent court in Linz, Republic of Austria; independent thereof, we may also bring action against Buyer at the competent court of law at its principle place of business.
3. If, however, Buyer's principal place of business is outside the European Union, all disputes arising out of or in connection with a sales contract formed hereunder or related to its violation, termination or nullity shall be – to the exclusion of recourse to ordinary courts of law – finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with the said rules. The place of the arbitration shall be Vienna.

XVII. COMPLIANCE AND BUSINESS ETHICS

Prerequisite for any business cooperation shall be the unreserved compliance with our Code of Compliance as amended (available at our [Website](#)) as well as compliance with all relevant laws, regulations, directives, and similar rules with regard to the aforementioned Code of Compliance. Any breach of the obligations set forth in this Section shall be regarded as a material breach of contract, which shall entitle us to terminate all agreements not yet fulfilled with immediate effect and claim for all damages and losses incurred by such breach.

XVIII. EXPORTCONTROL

1. Buyer acknowledges that equipment may be subject to applicable statutory provisions and regulations regarding export control and may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon without export or re-export permits from the competent authorities. Buyer agrees to comply with such provisions and regulations. Buyer acknowledges that such provisions and regulations may change from time to time.
2. If Buyer intends to transfer equipment supplied by us to third parties, together with the pertinent documentation, regardless of the way they are provided or regardless of the services performed by the us, including technical support of any kind, Buyer must comply with the applicable provisions of the national and international (re-)export regulations. In any case, Buyer must comply with the (re-)export regulations applicable where we have our registered office, the European Union, the United Kingdom of Great Britain and Northern Ireland and the United States of America when transferring goods or services to third parties.
3. In particular, the Buyer shall not directly or indirectly sell, export or re-export to the Russian Federation or for use in the Russian Federation any goods falling within the scope of Article 12g of Council Regulation (EU) No 833/2014, which also applies to the territory of Belarus in accordance with Article 8g of Council Regulation (EU) No 765/2006. The Buyer shall use its best efforts to ensure that this purpose is not frustrated by third parties in the supply chain, including potential resellers. The Buyer shall establish and maintain an appropriate monitoring mechanism to detect any behaviour by third parties further down the supply chain, including potential resellers, that would frustrate the purpose.

Any breach shall constitute a material breach of an essential element of the Sales Contract and we shall be entitled to require appropriate remedial action including the possibility to terminate the Sales Contract with immediate effect.

The Buyer shall inform us immediately of any problems in complying with these provisions, including any relevant activities of third parties which could frustrate the purpose thereof. Upon simple request, the Buyer shall provide us with information on compliance with the obligations within two weeks.

4. If required for export control checks, Buyer must, upon request, immediately provide us with all necessary information, including information about the final recipient, destination and intended use of the goods or services.
5. Our obligation to fulfil our commitments under any agreement formed hereunder is subject to the proviso that it is not prevented by any impediments arising out of national or international foreign trade or customs requirements, including embargoes or other sanctions.
6. If the Buyer is directly or indirectly subject to national or international sanctions, we shall have the right to withdraw from the respective agreement at any time to the exclusion of any claims of the Buyer.

XIX. CUSTOMS

The Buyer shall use the MRN we provide for export. In accordance with Art. 267 UCC and Art. 331 para. 1 UCC-IA, the Buyer must duly present the goods at the customs office of exit. Improper completion can trigger a search procedure, leading to increased effort and possible sanctions by the customs authority. The Buyer shall indemnify us from any cost or damages incurred by us in this regard.

XX. MISCELLANEOUS

1. Place of performance for any obligation arising out of the sales contract shall be our principal place of business.
2. Messages sent to us shall be binding only, if they are written in German or English language. Messages may be transmitted by facsimile or by electronic means. They shall become effective at the point in time when they have reached the recipient or would have reached the said under normal circumstances with the type of transmission chosen. Messages which reach us on Saturdays, Sundays or one of our legal public holidays shall become effective only on the next working day.
3. The contract concluded subject to these delivery terms shall remain effective, even if one of the clauses is null and void or becomes null and void. In such a case, the void or ineffective clause shall be replaced by such a clause which comes closest in an effective manner to the economic purpose of the ineffective clause. The same applies, by analogy, to any gap in the contract.

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