

Purchasing Conditions

These Purchase Conditions shall apply to all business relations with companies, legal persons or special funds under public law.

1. Application of these Purchase Conditions

1.1 These Purchase Conditions shall apply exclusively, unless amended by express agreement accepted in writing by both parties. No general terms and conditions other than these Purchase Conditions nor any general terms of any supplier shall be accepted unless expressly approved by EAS in writing. These Purchase Conditions shall nevertheless apply if deliveries of products or services of the Supplier (hereinafter referred to as "**Contractual Product(s)**") are accepted or paid by EAS despite its knowledge of terms and conditions of the Supplier which are contrary to or deviate from these Purchase Conditions.

1.2 Until any new terms and conditions of EAS enter into force, these Purchase Conditions shall also apply to all future deliveries of Contractual Products by the Supplier.

2. Conclusion and amendment of contracts

2.1 The placing of orders, entering into contracts and calling off of orders as well as any amendments thereof or supplements thereto shall be made in writing to become effective. The placing and calling off of orders may also be made by way of telecommunication, email or fax. The calling off of an order shall become binding if the Supplier does not object within two weeks from receipt.

2.2 Any oral agreements entered into prior to or at the same time as entering into a contract must be approved by EAS in writing to become effective. The provisions of Section 2.1, sentence 2 hereof shall remain unaffected.

2.3 Any oral agreements entered into after the conclusion of a contract, including but not limited to subsequent amendments of or supplements to these Purchase Conditions or any ancillary agreements of any kind shall also require EAS's written confirmation to become effective. The same shall apply to terminating this written form requirement.

2.4 Cost estimates shall be binding and no consideration shall be paid for such cost estimates unless expressly agreed.

2.5 If the Supplier fails to accept an order within two weeks from receipt EAS may withdraw such order.

3. Delivery

3.1 Deviations from EAS's contracts are permissible only with EAS's prior written approval. Such approval may not be withheld if such deviations are common practice.

3.2 The agreed delivery dates and deadlines are binding upon the Parties. A delivery or delivery date shall be deemed to have been fulfilled or complied with upon receipt of the Contractual Product. Unless DDU or DDP (according to the Incoterms 2010) has been agreed the Supplier shall provide the Contractual Product in due

time so that the terms for loading and shipment to be arranged with the carrier may be complied with.

3.3 If the Supplier agreed to attend to the installation or mounting, the Supplier shall, subject to any other provisions, bear all additional costs arising from such installation or mounting, e. g. travel expenses or costs of the provision of the necessary tools.

3.4 If the Supplier fails to comply with the agreed delivery dates the statutory provisions shall apply. If the Supplier foresees any difficulties with regard to the manufacture, the supply of material, the compliance with the delivery date or any other circumstances which might prevent him from delivering the Contractual Products on schedule or in the contractual quality, the Supplier shall immediately inform the department at EAS for which such delivery is meant.

3.5 If EAS accepts such delayed or deviating delivery or service without reservation, this shall not be deemed to be a waiver of any claims EAS may have for delays in delivery or delayed services; the foregoing shall apply until full payment of the invoice price owed by EAS for the affected delivery or service has been made.

3.6 No partial deliveries shall be made unless expressly approved by EAS. Such approval may not unreasonably be withheld.

3.7 As to quantities, weights and measures, any values determined by EAS in the course of the incoming goods inspection shall be binding, subject, however, to contrary evidence.

3.8 With respect to software included in any delivery, including the software documentation, EAS shall in addition to the right of use to the extent permitted by law (Sections 69a subseq. German Copyright Act) be entitled to the right of use with all of the agreed performance features, to the extent necessary for the agreed use of the Contractual Products. Furthermore, EAS shall be entitled to make back-up copies without express agreement.

3.9 If a Contractual Product contains any hazardous substances within the meaning of the German Ordinance on Hazardous Substances, the Supplier shall make available the relevant product information prior to the delivery without request, in particular safety data sheets. The Supplier shall also provide information on statutory restrictions of the distribution of products containing any hazardous substances, if any.

3.10 The Supplier warrants that the information and calculations prepared by him are complete and correct and are appropriate for the contractual purpose without any restrictions.

4. Force Majeure

In case of any acts of God, labour conflicts, operational breakdowns, for which EAS is not responsible, riots, government measures or any other inevitable events EAS shall – notwithstanding any other rights – be entitled to terminate a contract as a whole or parts thereof, as far as such events are not of insignificant duration, and do not

- only cause a delay but a significant reduction of EAS's demand.
- 5. Dispatch note and invoice**
- The information contained in EAS's orders or in the calling off of orders shall be binding. The invoice shall be sent (one copy only) to the address printed thereon stating the invoice-no. and any other allocation criteria; the invoice shall not be attached to or enclosed in the deliveries.
- 5.1 Shipment address:
EAS Batteries GmbH
Montaniestr. 17
D-99734 Nordhausen
- 5.2 Shipment instructions:
Shipment costs and/or packaging costs shall not be borne by EAS unless expressly agreed. Return of packaging materials requires express agreement.
- 5.3 Receipt of goods:
Mon - Thu from 8:00 a.m. – 4:00 p.m.
Fri from 8:00 a.m. – 1:30 p.m.
- 5.4 Invoice address:
EAS Batteries GmbH
Finance Dep.
Lokomotivenstrasse 21
D-99734 Nordhausen
- 6. Invoicing, passing of risk, export conditions**
- 6.1 Absent any other agreement prices shall be deemed to be DDP (delivery duty paid, pursuant to the Incoterms 2010), packaging included, VAT is not included. The Supplier shall bear the risk of damage to or loss of the Contractual Product until receipt at the contractual place of delivery by EAS or any of their representatives.
- 6.2 The Supplier warrants that the delivery of Contractual Products does not violate applicable law. To the extent necessary, the Supplier shall at his own expense and with EAS's cooperation comply with any export provisions, valid from time to time, and shall obtain any necessary licenses or permits.
- 7. Terms of payment**
- Payments for invoices/products received will be made, if nothing special is agreed, within 14 days from the date of delivery and invoice receipt with 3% cash discount or within 30 days without any deduction. In case of incorrect or defective deliveries we are entitled to withhold the payments pro rata until completion.
- 8. Claims for defects, recourse and indemnification**
- 8.1 When accepting the Contractual Products, EAS always reserves the right to examine whether the products are free from defects, in particular their accuracy, completeness and merchantability. EAS shall have the right to examine the Contractual Products as soon as and in as far as appropriate in due course of business; if EAS discovers any defects EAS shall give notice of defect to the Supplier without undue delay. For this case, the Supplier hereby waives the defense of a delayed notice of defect.
- 8.2 Subject to any other provisions contained herein, the statutory provisions, as valid from time to time, shall apply with regard to defects of the deliveries and legal defects of title. A Contractual Product shall also be deemed to be defective if the Supplier fails to observe generally accepted engineering rules or any applicable safety regulations.
- 8.3 EAS shall generally be entitled to determine the method of curing defects. The Supplier shall be entitled to reject the method of curing defects determined by EAS, if the requirements of Section 439 subpara. 3 German Civil Code are met.
- 8.4 If the Supplier fails to begin remedying the defect immediately upon EAS's request, EAS shall in urgent cases, in particular if necessary for mitigating an imminent danger of preventing a larger damage, be entitled at the Supplier's expense to carry out such remedies themselves or have such remedies carried out by a third party. Claims for defects of the deliveries shall be subject to a limitation period of 3 years unless the product was used according to its normal use as part of a building/construction and caused the defect of such building construction. The limitation period for claims for defects of the deliveries shall begin upon the arrival of the delivery of the Contractual Product (passing of risk).
- 8.5 In case of legal defects (defects of title) the Supplier shall indemnify EAS against all claims of third parties, if any. With respect to claims for damages arising from legal defects, the limitation period shall be 3 years if the defect consists of the non-existence of the right. For any other claims in such case the limitation period shall be 10 years. The limitation period shall be 30 years where the legal defect of title constitutes a right which entitles to the return of the product, otherwise 3 years.
- 8.6 For any parts of a delivery which have been refurbished, re-delivered or repaired within the limitation period applying to EAS's claims for defects, the limitation period shall begin to run again at the time such repair, re-delivery or refurbishment has been fully completed by the Supplier.
- 8.7 If a defective delivery of the Contractual Product causes EAS to incur costs, including but not limited to transport costs, tolls, labour costs, material costs or the costs of an incoming goods inspection which exceeds the usual scope of such inspections, including, if necessary, any expert examination, such costs shall be borne by the Supplier. The same shall apply to damages caused by a defective delivery.
- 8.8 If EAS takes back any products manufactured and/or sold by EAS, and if such taking back is due to defects of a Contractual Product delivered by the Supplier, or if the purchase price EAS receives was reduced due to such defects, or otherwise any claims were made against EAS for such defects, EAS shall have the right to take recourse against the Supplier, and no notice period shall be required with regard to EAS's rights.

- 8.9 The Supplier shall reimburse EAS for any expenses which EAS had to bear in relation to their customers due to the customers being entitled to claim compensation for their expenses in connection with the curing of a defect, in particular transport costs, travel costs, labour costs and costs for materials.
- 8.10 Notwithstanding the provisions of Sections 8.4 and 8.5 hereof, in cases of Sections 8.8 and 8.9 above, no claims become time-barred earlier than 2 months after the fulfilment of the claims made against EAS by their customers, however, no later than 5 years after delivery by the Supplier.
- 8.11 If within a period of 6 months from the passing of risk a defect shows, such defect shall be deemed to have already existed at the time of the passing of risk, unless such assumption is inconsistent with the nature of the product or the defect.
- 8.12 The Supplier shall be liable for any claims arising from a violation of industrial property rights or applications for industrial property rights, subject to the contractual use of the Contractual Products and if such rights or applications are published either in the home country of the Supplier or by the European Patent Office or in any one of the Federal Republic of Germany, France, United Kingdom, Austria or the United States. The Supplier shall indemnify EAS and their customers against any claims arising from the use of such industrial property rights. The Parties agree to forthwith inform each other of any risks of violations they become aware of or any alleged violations, and to give each other the opportunity to jointly defend against such claims.

9. Product Liability and Recall

If any product liability claims are made against EAS, the Supplier shall indemnify EAS against any such claims, provided that the damage is caused by a defect of the Contractual Product delivered by the Supplier. In case of liability based on fault the foregoing shall apply only if and to the extent the Supplier is at fault or the Supplier would also be directly liable. If and to the extent the cause for the damage lies within the sphere of responsibility of the Supplier, the Supplier shall bear the burden of proof. In any such case the Supplier shall bear all costs and expenses, including but not limited to the costs of legal proceedings or recalls, however, only if and to the extent that such costs are caused by a defect of the Contractual Product delivered by the Supplier. Subject to the foregoing, the statutory provisions apply.

10. Execution of works

Any persons carrying out any works under the Contract on the factory premises shall observe the provisions of the works regulations valid from time to time. EAS shall not be liable for any damage incurred by such persons on the factory premises. This exclusion of liability, however, shall not apply to wilful acts or gross negligence or in case of personal injury caused by the negligent behaviour of EAS or the wilful or negligent violation of duties by any of EAS's legal representatives or vicarious agents.

11. Provision of additional materials

Any substances, parts, containers or special packages made available by EAS to the Supplier shall remain the ownership of EAS and may only be used for the purposes for which they were provided. The processing of such substances and the assembly of such parts shall exclusively be made for EAS. EAS shall be the co-owner of the products manufactured with the substances and parts provided by them in the proportion of the value of such substances or parts to the value of the final products which the Supplier shall store on behalf of EAS. The same shall apply to combinations or mixtures.

12. Documents and confidentiality

- 12.1 All business or technical information, drawings, designs, models or similar things (including any features which may be discovered in the things or documents or software made available by EAS and any other know-how or experience) made available to the Supplier shall be treated as business secrets in relation to third parties to the extent they have not already become known to the public or the Supplier other than by violation of a contract. Any such things and information may only be disclosed by the Supplier to its employees or any other persons to which the disclosure is necessary in order to effect the deliveries to EAS, provided that they are bound by a confidentiality agreement; EAS shall remain the exclusive owner of the above things and information. They may not be reproduced or used for commercial purposes without EAS's prior written approval, unless for purposes of deliveries to be made to EAS. Upon request any information (including copies or other records, if appropriate) provided by EAS or lent by EAS shall immediately and completely be returned to EAS or destroyed. All rights in any such information (including copyrights and the right to file industrial property rights, such as patents, utility models etc.) shall be vested in EAS. To the extent EAS obtained such information from third parties the same shall apply for such third parties.
- 12.2 Products made on the basis of drafts prepared by EAS, such as drawings, models etc., or upon confidential information given by EAS, or with EAS's tools or reproduced tools, may not be used by the Supplier or offered or delivered to any third parties. The same shall correspondingly apply to EAS's print orders.
- 12.3 The provisions of this Section 12 must be equally imposed on sub-contractors.
- 12.4 If access to the production process is requested by any authorities in order for them to control the compliance with certain requirements, the Supplier shall upon request give the authorities the same access to the production process and shall reasonably support EAS.

13. Place of performance

Place of performance shall be such place to which the Contractual Products are delivered pursuant to the relating order.

14. General provisions

- 14.1 If any of the provisions of this Agreement or any other agreements are or become invalid, the remaining provisions hereof shall remain unaffected. The Parties shall replace such invalid provision by a provision which economically comes as close as possible to the invalid provision. The same shall apply if this Agreement contains a gap.
- 14.2 Place of jurisdiction for any disputes arising indirectly or directly from the contractual relationships to which these General Terms and Conditions apply shall be Nordhausen, Germany. Furthermore, EAS may at its sole discretion bring an action against the Supplier before the court at the Supplier's business seat or branch or before the court at the place of performance.
- 14.3 The contractual relationships shall exclusively be governed by German law. The application of the United Nations Convention of 11 April 1980 on the International Sale of Goods (CISG) shall be excluded.

EAS Batteries GmbH
Lokomotivenstrasse 21
99734 Nordhausen
Germany

Place of jurisdiction: Nordhausen
Registered Seat of the Company: Nordhausen
Registration Number: HRB 513686
Tax Number
Managing Director: Michael Deutmeyer