

# Standard Terms and Conditions of Business of EUROGATE Technical Services GmbH

Dated: 1 January 2020

## 1. Scope of application

- 1.1. The following Standard Terms and Conditions of Business apply to all legal transactions of the company EUROGATE Technical Services GmbH (hereinafter referred to as "TS") with the contracting party or client (hereinafter referred to as the "Client").
- 1.2. These Standard Terms and Conditions of Business apply exclusively. The standard terms and conditions of the Client apply only if and insofar as TS expressly accepts them in writing. In particular, if TS remains silent concerning any deviating conditions proposed by the Client, this shall not be interpreted as acknowledgment or approval of them, not even in future agreements. These Standard Terms and Conditions of Business of TS shall apply instead of any other general terms and conditions of the Client, even if unconditional acceptance of the Client's general terms and conditions is stipulated as a consequence of order acceptance.
- 1.3. Whenever there are individual contractual provisions that deviate from or contradict the provisions of these Standard Terms and Conditions of Business, the individual contractual provisions shall take precedence.
- 1.4. Verbal agreements of any kind, including any subsequent changes to or amendments of these Standard Terms and Conditions of Business, require the written confirmation of TS to be effective.

## 2. Conclusion of the contract

- 2.1. All orders, placing of orders and order confirmations as well as any changes and additions to orders must be made in writing and signed.
- 2.2. Any order that is placed by the Client is a binding offer.
- 2.3. If an order is placed with TS by email or made orally, it is considered a binding offer if the following conditions are met:
  - 2.3.1. The order must be placed by an authorized representative of the Client;
  - 2.3.2. The order must be confirmed in writing at the request of TS.
- 2.4. Contracts with TS are only concluded when TS has received a corresponding written order confirmation or when TS begins to perform the service.
- 2.5. If the Client requests a binding price quotation, then TS must issue a written offer. TS is bound to honour this offer up to 30 days after it is received by the Client. TS may make the issuance of an offer conditional on the Client's acceptance of the resulting costs.
- 2.6. The subject of the agreement or the exact service scope is described in the written order confirmation or the written offer of TS.

## 3. Goods and services, sub-contractors

- 3.1. TS is obliged to provide the contractually agreed goods and services in compliance with good engineering practice.
- 3.2. TS is obliged to observe any standards or similar published rules that are specified in the agreement. These apply in the version that is valid when the agreement is concluded. Changes to such standards and publications that cause TS to incur increased costs authorize TS to adjust the prices and/or the performance deadlines.
- 3.3. Each of the contracting parties may request changes to the agreed service scope by submitting a corresponding request to the other contracting party in writing. After receiving a change request, the recipient shall check whether and under what conditions the change may be carried out and shall notify the requesting party immediately in writing of whether it approves or rejects the proposal, and, if necessary, it shall provide supporting reasons for its decision. If a change request that is submitted by the Client requires a comprehensive review, the amount of effort that is required to perform said review may, after prior notice, be invoiced by TS if the Client still insists on conducting the review of the change request. If necessary, the contractual adjustments to the agreed terms and services required for the performance of a review and/or a change shall be stipulated in a written change agreement and concluded subject to these Standard Terms and Conditions of Business.
- 3.4. TS may engage sub-contractors as vicarious agents in accordance with its quality standards.

## 4. Prices, changes to prices

- 4.1. The contract prices apply to the services and scope of service and delivery terms listed in the order confirmation or in the offer by TS. Additional or special services shall be charged separately.
- 4.2. All contract prices are net prices ex works or warehouse plus the applicable VAT.
- 4.3. If the Client bears the costs for the preparation of the offer by TS and if the contract with TS is concluded on the basis of this offer, the costs incurred by TS for the preparation of the offer shall be offset against the contract price.
- 4.4. Price changes are permitted if more than four months have elapsed between the conclusion of the contract and the agreed delivery or completion date. If wages, material costs or market prices are increased before the completion of the contractually rendered service or delivery of goods, TS is entitled to increase the price correspondingly in accordance with the cost increases. The Client shall only be entitled to terminate the contract if the price increase considerably exceeds the increase in the general cost of living between the time the order was placed and the delivery/completion of the order.

## **5. Delivery dates**

- 5.1. The agreed delivery dates and deadlines are binding.
- 5.2. After consultation with and approval by the Client, TS may make reasonable partial deliveries of goods and/or undertake partial performance of the service and invoice for these deliveries or services separately.
- 5.3. If the scope of delivery or work is changed or expanded beyond the original service scope at the request or with the consent of the Client or due to subsequent changes or the introduction of standards or similar published rules that must be observed by TS, the contractually agreed delivery or completion date must be adjusted accordingly. TS shall name a new delivery or completion date.
- 5.4. If a delivery or service provision date cannot be met due to force majeure circumstances or operational disruptions for which TS is not responsible, these deadlines must be extended accordingly.
- 5.5. If a delivery or service provision date cannot be met due to a circumstance for which the Client is responsible, the Client is obliged to provide compensation for any damage that is incurred.

## **6. Acceptance**

- 6.1. If the contracting parties agree to conduct a formal acceptance of the contractual services, they shall jointly determine the date of such formal acceptance. The result of the acceptance shall be recorded in an acceptance report that must be signed by both parties. Both contracting parties are obliged to cooperate in this respect.
- 6.2. The formal acceptance is also deemed to have taken place if TS has granted the Client a reasonable period for acceptance and the Client has failed to refuse its acceptance during this period by naming at least one defect.
- 6.3. The Client shall bear the material costs of the formal acceptance. Each contractual partner shall bear its own personnel-related acceptance costs. Any costs of third parties (e.g. government agency fees) shall be borne by the Client.
- 6.4. If there is no formal acceptance, the acceptance is deemed to have taken place when the contractually rendered service or delivery of goods is provided to the Client, the equipment is returned to an operational state after a repair or when a written notice is sent to the Client that the service has been performed in full by TS.

## **7. Place of performance and transfer of risk**

- 7.1. The place of performance for the deliveries and service performance by TS shall be the one that has been stipulated in the agreement. Otherwise, the place of performance shall be the seat of the business division of TS providing the service in Bremerhaven, Hamburg or Wilhelmshaven, Germany.
- 7.2. The price and property risk is transferred to the Client in accordance with the contractual agreement. In all other cases it is transferred with the acceptance of the Client.

## **8. Invoices and payments**

- 8.1. TS invoices are due without deduction within 14 days of receipt.
- 8.2. If the Client does not meet its payment obligations on time or if the Client suspends making payments or becomes insolvent, all outstanding invoice amounts will become due immediately regardless of any other agreed payment dates.
- 8.3. TS is entitled to request a reasonable advance payment when the orders are placed.
- 8.4. Set-offs against the Client's counterclaims or the withholding of payments due to such claims is only permitted if the counterclaims are undisputed or have been legally established.

## **9. Retention of title**

- 9.1. TS retains ownership of all installed or delivered objects until all current and future claims arising from the business relationship with the Client have been paid in full (hereinafter referred to as "Reserved Goods").
- 9.2. The Client is obliged to keep the Reserved Goods safe at its own expense and with due diligence until the complete transfer of ownership.
- 9.3. If third parties compromise the property rights of TS, in particular by seizing its property, the Client shall immediately provide notice that the goods are the property of TS and shall immediately inform TS of such action. The Client shall support TS in asserting its rights in accordance with Section 771 German Code of Civil Procedure (ZPO) to the extent that is appropriate.
- 9.4. The Client is entitled to resell and/or process the Reserved Goods in the ordinary course of business.
- 9.5. The retention of title extends to the full value of the products resulting from the processing, mixing or combination of the TS' products, and TS is deemed the manufacturer of such products. If third parties retain title to goods that are processed, mixed or combined with the goods of TS to make a new product, TS shall obtain joint title to the new product in relationship to the invoiced value of the goods processed, mixed or combined to make the new product. In all other cases the same provisions that govern products delivered under retention of title shall apply to the resulting product.
- 9.6. The Client hereby assigns to TS as security all claims against third parties arising from the resale of the products or in the amount of any co-ownership share of TS. The Client remains authorized to collect these claims in addition to TS. TS undertakes not to collect the claims so long as the Client meets its payment obligations to TS, does not default, no insolvency proceedings are opened against the Client and there are no other defects in the Client's ability to perform.
- 9.7. TS shall release the security to which it is entitled at the request of the Client insofar as the value of the security exceeds the claims to be secured by more than ten percent. TS is responsible for selecting the securities to be released.
- 9.8. Parts that are replaced and removed as part of the provision of service become the property of TS.

## **10. Documents and confidentiality**

- 10.1. TS reserves the sole ownership right and copyright to cost estimates, drawings and other documents unless the contracting parties expressly agree otherwise. Unless the Client obtains prior written consent from TS, these documents must be kept secret from third parties, and they may not be made accessible to third parties or used in any other way. Copying is also prohibited without the express consent of TS.

- 10.2. TS assumes no liability for the violation of any patent or other proprietary rights of third parties. However, TS declares that it is not aware of any such rights.
- 10.3. The contractual goods and services may not be reproduced by the Client itself or by third parties without the express written consent of TS.

## **11. Warranty for defects**

- 11.1. Insofar as TS provides services to the Client under a contract of sale or a contract for services, the following warranty provisions apply.
- 11.2. If the Client accepts the agreed service or goods despite knowing about the existence of a defect, it is only entitled to claims for defects if it reserves such right upon acceptance. Furthermore, the Client is only entitled to claim for defects if it has complied with its obligation to examine and give notice of defects in accordance with Section 377 German Commercial Code (HGB).
- 11.3. The warranty for defects provided by TS is initially limited to subsequent performance (Nacherfüllung), meaning that TS must either repair the defective good or deliver a replacement good. The Client shall establish a reasonable period for TS to accomplish this repair or replacement. The place of the subsequent performance is, at the option of TS, the location of the good at the time of notification of the defect or the seat of the business division of TS providing the service.
- 11.4. If it is unreasonable for the Client to accept subsequent performance or TS refuses both types of subsequent performance or the subsequent performance has failed to repair or replace the good, the Client may rescind the contract or reduce the purchase price.
- 11.5. Claims for damages due to a defect may only be asserted by the Client under the provisions laid out in Section 12 if the subsequent performance is unreasonable for the Client or TS refuses both types of subsequent performance or the subsequent performance has failed to repair or replace the good.
- 11.6. The warranty for defects by TS is nullified if changes are made to the contractual goods without the written consent of TS, the contractual goods are damaged or defective as the result of circumstances for which TS is not responsible or third parties work on the contractual goods without the consent of TS, including in an attempt to repair the defect, unless the Client proves that the impact produced on the goods was not the cause of the defect.
- 11.7. The warranty for defects does not cover the natural wear and tear to the goods and defects that occur as a result of improper or negligent handling or operation, excessive use, unsuitable equipment or as a result of causes that originate on the part of the Client.
- 11.8. With regard to defective parts that are not manufactured by TS itself, but are procured by TS at the request of the Client from sub-contractors or suppliers, TS fulfils the warranty for defects by assigning its own defect claims against the sub-contractor or supplier it has engaged. If it is impossible to assert such claims against the sub-contractor or supplier or such assertion of claims offers no prospects of success, the warranty for defects of TS will again apply within the framework of these terms and conditions. The same terms apply to other services rendered by the sub-contractor.
- 11.9. The limitation period for claims for defects is 1 (one) year from the transfer of risk. This does not apply insofar as the law prescribes longer periods in accordance with Sections 438 (1) No. 2, 445 b and 634a German Civil Code (BGB) and for claims for damages by the Client resulting from injury to life, limb or health, in the event of an intentional or grossly negligent breach of duty that can be attributed to TS and if a defect is fraudulently concealed.

## **12. Liability**

- 12.1. TS is liable for damages that are caused intentionally and that are the result of gross negligence and injuries to life, limb or health, and TS is also liable for claims under the German Product Liability Act (ProdHaftG) in accordance with the statutory provisions.
- 12.2. TS is only liable for cases of ordinary negligence if the damage has resulted from a breach of essential contractual obligations. However, in this case, the amount of its liability is limited to the foreseeable damage typical for the agreement when the agreement was concluded. Essential contractual duties are those that are essential to the performance of the contract and on whose observance the Client may rely.
- 12.3. Any further liability for damages is excluded.
- 12.4. If damage has been caused by the actions or omissions of sub-contractors or suppliers of TS, which TS has used at the request of the Client, TS may free itself from any obligation to pay compensation vis-à-vis the Client by transferring any claims it may have against the sub-contractor or supplier to the Client. If it is impossible to assert such claims against the sub-contractor or supplier or such assertion of claims offers no prospects of success, TS will become liable again.
- 12.5. The above exclusions and limitations of liability apply regardless of the legal basis on which the claims may be made.
- 12.6. TS assumes no liability if damage is caused by improper use of the goods by the Client and/or by third parties that are commissioned by the Client.
- 12.7. Insofar as the liability of TS is excluded or limited in accordance with the above provisions, this also applies to its board members, employees, legal representatives and other vicarious agents. In this respect, this provision acts as a contract in favour of third parties.

## **13. Place of jurisdiction, applicable law**

- 13.1. The place of jurisdiction is Bremerhaven, Germany.
- 13.2. German law applies. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.