



**Version dated 30.09.2008**  
**EVAC GmbH's General Terms and Conditions of Business**  
**in respect of ordering products and rendering services**

**§ 1 Scope of General Terms and Conditions of Business**

The deliveries, services and offers of the Supplier and Seller (hereinafter referred to as the Contractor) apply solely on the basis of the purchasing conditions of the company EVAC GmbH set out below and/or enclosed in the capacity of Buyer and Principal (hereinafter referred to as the Principal).

These General Terms and Conditions of Business of EVAC GmbH are deemed agreed upon and accepted with binding force even without the necessity of an express confirmation of acceptance, if the Contractor renders services on the basis of orders placed by the Principal. Counter confirmation on the part of the Contractor given to the Principal, with reference to its Business and Sales Conditions, are hereby expressly rejected.

**§ 2 Offers and conclusion of contract**

**1.**

In the capacity of delivery company/Seller, the Contractor undertakes to make its offers solely on the basis of orders placed by the Principal by telephone, verbally and/or in the form of written requests for offers and /or placed orders and in accordance with the conditions set out below. Conditions to the contrary, including those of the Principal, shall only be deemed binding if they have been expressly acknowledged in writing by both parties.

In addition to the Principal's General Terms and Conditions of Business set out below, including the product descriptions/specifications incorporated in the offers, and the business/delivery/payment conditions, the regulations and level of technology at the time at which the offers are submitted are deemed applicable as the minimum quality standard.

The regulations and level of technology are, for example, the EU Directives on Technology, the EU Machine Directive, the EU Directives on Marketing Technical Equipment, and the description and specification requirements for the ordered products in accordance with the Principal's order letter about series parts with or without additional quality requirements, including the Principal's general assembly and service conditions for prototype products incorporated in the orders. Furthermore, the EMV Guidelines, the machine guideline, the low voltage guidelines and the printing equipment guidelines that correspond with the products apply as minimum quality standards of the ordered products as stated in the respective latest version.

Furthermore, the regulations and level of technology include the regulations of the set of agreements AD 2000 regarding welding technology for metals and all norms of relevance to the ordered standard products. The Contractor undertakes to keep its products at all times, and at its own cost, in line with the current valid norm levels, and to supply these products to the Principal in accordance with the current valid norm levels supported by the respective certificates.

Furthermore, technical drawings, descriptions and standards that may be enclosed with the orders are deemed assured characteristics of the ordered products that apply, above and beyond the description and specification characteristics set out in the Principal's written orders, to all offers of normal standard ordered products, including those with additional systems and prototype products.

A QSV (quality assurance agreement) is entered into. It is basis on which the order is entered into. The quality requirements that are to be met are stated in the agreed product descriptions/specifications.

As a general rule, the availability of spare parts is to be stated in the offer. Unless otherwise agreed in the order / in the assignment, this shall be 10 years. In the capacity of Contractor, the Supplier shall provide notification without delay of amendments (discontinuation of parts). The Contractor guarantees that the spare parts are compatible in terms of

installation and function with the original parts it supplies, and that they comply with the current norms. The further procedure regarding these parts shall be agreed upon between the Principal and Contractor.

**2.**

The Supplier/Seller as the Contractor undertakes to make binding price offers for the ordered and specified item numbers in its offers made to the Principal regarding the supply of series parts and series products.

**3.**

The stated prices must be fixed prices, and be stated in euros. The stated prices must simultaneously be legally binding up until the acceptance declaration by the Principal.

**4.**

The Supplier/Seller as Contractor states that all type descriptions, drawings, measurements, weights and other performance data and testing reports are legally binding for the order and are simultaneously deemed quality descriptions warranted characteristics of the series products/series aggregates within the meaning of the warranty law.

**5.**

The Principal is to be informed of the Principal's orders / assignments, or considerable parts thereof, that are forwarded to sub-contractors, and the change of sub-contractors by the Contractor, which may only occur following approval by the Principal. The Contractor is to ensure that all the Principal's requests (e.g. regarding quality management and the requested tests, proof and documentation ) are forwarded to the sub-contractors commissioned by the Principal and are honoured by such sub-contractors.

### **§ 3 Acceptance of the delivered products**

**1.**

The Principal reserves the right to inspect the Contractor's delivered series aggregates / series products within 4 weeks from delivery to the Principal's works as to whether they are free of defects, and to take a decision on the acceptance only even if the products, and the delivered quantity, subsequently prove to contain obvious faults.

A fiction of the acceptance of the supplied products shall only apply following expiry of the four-week period following delivery/receipt, even in the case of obvious faults, wrong deliveries and quantity errors. The periods stated in the QSV shall apply irrespective of this.

Upon written request by the Contractor, the Principal may amend the above-mentioned periods by way of mutual consent in the form of a written agreement.

**2.**

If quality and/or quantity defects are identified within the four-week inspection period, the Principal reserves the right, at its own discretion, to either rectify the defect by returning the supplied products at the Supplier's cost as the Contractor, or a reduction of the agreed purchase considerations or subsequent performance or claims for damages.

In the event of subsequent improvement or replacement, a decision shall be taken by the Principal, within an additional 4-week period from receipt of the subsequently improved products at the Principal's works, about the acceptance in accordance with the above sub-section 1.

The above-mentioned periods may be amended by way of the written, mutual, advance agreement (see above Section 3, sub-section 1.)

**3.**

The Contractor grants the Principal a building inspection right. The Principal and the Principal's customer are entitled, in the company of the Contractor's representative, in conjunction with the deliveries and services state in the order to inspect the work at the Contractor's premises, at their own cost, on an ongoing basis by way of their own or commissioned personnel. The Contractor shall ensure that the commissioned persons are granted access to the production facilities in question at customer business hours, following an announcement made in good time, and enable them to inspect the necessary documents and provide full support for the correct assessment of the quality.

The Contractor shall inform the Principal's employees/commissioned persons and the end customers of existing safety regulations at its premises. The Principal and end customer are to ensure that their employees/commissioned persons comply with these regulations while they perform monitoring tasks or are present in the case of tests.

The Contractor undertakes to rectify the variations identified by the Principal, and to carry out detailed tests to furnish proof that the agreed services / warranted characteristics have been honoured without additional costs for the Principal.

All materials and work rejected by the Principal are to be replaced by the Contractor by such that comply with the agreed conditions and quality standards.

The Contractor's responsibility for honouring its obligations resulting from orders / assignments / delivery agreements shall not be excluded because the Principal's employees inspect or authorise work.

## **§ 4 Prices, packaging**

**1.**

The prices of the Supplier as the Contractor stated in the offer in accordance with Section 2, sub-section 3, of the above-mentioned conditions are fixed prices and are legally binding up until acceptance of the offer. Following an initial acceptance of an offer, the prices may not be altered for the period of such acceptance (assignment/order). The contractor is to announce price increases as soon as possible, at least, however, by way of 3 months' prior notice.

**2.**

The prices are to be construed as ex the Principal's works including costs, insurance and freight in accordance with the DDP clause of Incoterms 2000 of the International Chamber of Commerce. The value added tax is to be calculated separately in the respective, statutory, form, and is not to be included in the offer prices.

**3.**

The packaging is to be designed such that damage to the products during the transport between the Principal and the Contract is excluded, and in the case of storage at the Principal's works.

In addition the Contractor guarantees that the packed products can be individually removed with the risk for the person removing them or risk to the products.

**4.**

The packaging and products shall not contain any labeling that points to the Contractor.

As a general rule, invoices must contain the Principal's order number and product number and a description of the products and additionally the transport weight on all accompanying documents.

**5.**

If the products that are to be delivered are limited in respect of their storage capability, notification of the special storage conditions is to be provided. It is absolutely necessary that the special storage conditions are to be enclosed with the delivery documents.

**§ 5 Delivery dates and delivery times and regulations on damage caused by delay****1.**

Delivery dates and periods that are specified in terms of the date are legally binding for the Contractor. In the case of stating calendar weeks, the Friday of the stated week, 12.00 midday, is deemed applicable. The Contractor may only amend the delivery dates and delivery periods on the grounds of an important reason following written approval by the Principal. Even in the event of an amendment by way of mutual consent, the Principal reserves the right to claim for damages in accordance with the following sub-sections 5 and 6.

With the exception of products or services ordered or rendered expressly on fixed dates, as a general rule the Principal permits early deliveries of a maximum of 3 workdays.

**2.**

The Contractor is to confirm the Principal's orders in writing within 1 week. Delivery dates shall be agreed upon by way of the order / acceptance confirmation. The Contractor is to notify the Principal in writing of any pending delivery delay without delay once knowledge of such a delay is gained by way of precise details of the reasons and the instituted set of measures, irrespective of the cause of such a delay, by way of details of the expected new delivery date. The Principal shall take note irrespective of the rights to which the Principal is entitled in the event of delay.

**3.**

Delivery and performance delays due to force majeure for which the Contractor has furnished proof, and/or due to proven events beyond the Contractor's direct sphere of influence (such as strikes and administrative orders), are not the Contractor's responsibility, even in the event of legally binding agreed periods and dates.

**4.**

Delivery delays that are not based on force majeure but are nevertheless attributable to circumstances for which none of the parties is responsible because they are beyond the area of responsibility of both parties, or such that are the Contractor's responsibility, shall entitle the Principal, at its own discretion, to either withdrawn wholly or in part from the contract including regarding the part that has not yet been honoured if the hindrance lasts longer than 3 months, or lodge claims for damages due to delays in accordance with the following sub-sections 5 and 6.

**5.**

Insofar as the Contractor is responsible for the full quantity or partial non-adherence to binding assured periods and dates, including as a result of general negligence in accordance with Sections 276, 278, 323 of BGB<sup>1</sup>, a conventional penalty shall be deemed agreed upon. This penalty shall be 0.2% of the delivery part, for each workday, up to maximum amount of 10% of the delivery part. If the Contractor fails to provide notification in accordance with Section 5, sub-section 2, or if it is in default or arrears with a delivery for more than two weeks following a period set in writing by the Principal following the occurrence of default, the values shall be increased and the Principal shall be entitled to a flat-rate compensation for delay, for each week of the delay, in the sum of 1.5% of the value of the delivery affected by the delay, at most, however, up to 15% of the total order amount.

Wrong deliveries and / or faulty deliveries are deemed non deliveries.

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<sup>1</sup> German Civil Code

**6.**

The Principal furthermore reserves the right to lodge further-reaching, specific, own claims for damages or its customers' claims for damages as third party damage if such damage occurs on the basis of delivery delays caused by the Contractor and suffered by the Principal or its customers/end customers.

**7.**

For specifying and the justified notification of defects, the Principal shall be entitled to charge the Contractor a flat-rate administration cost compensation of € 30.00 (thirty) for each case.

**§ 6 Passing of risk**

The risk of accidental loss and accidental deterioration of the supplied aggregates/products shall only pass to the Principal at the time at which the delivery is received at the warehouse/the Principal's works in Wedel.

**§ 7 Warranty and guarantee liability for defects****1.**

The Contractor guarantees that the offered products are free from manufacturing and material defects, and have undergone extensive manufacturing controls prior to shipping (documented outgoing goods check) and comply with the minimum quality requirements in accordance with Section 2, sub-section 1.

The Contractor therefore provides the Principal with a guarantee regarding the warranted technical characteristics of the aggregates/products in accordance with the offer requirements of Section 2, sub-section 1, of the Principal's General Terms and Conditions of Business set out here.

**2.**

The Contractor undertakes in dealings with the Principal in the event of a faulty delivery, at the Principal's discretion, to reduce the purchase price or provide compensation or replacement or subsequent improvement. In the event of replacement or subsequent improvement are chosen, the Contractor undertakes in dealings with the Principal, irrespective of claims for damages, to provide a replacement/subsequent improvement free to the Wedel works at the latest within one month after the Principal has provided notification of defects.

**3.**

The Contractor undertakes in dealings with the Principal only to cite impossibility or partial impossibility, and withdraw from the contract, on condition that it furnishes the Principal with proof that the aggregates/products to be supplied by the Contractor are faulty, or cannot be supplied, for reasons that are proven not to be within the Contractor's area of responsibility.

The Principal may also lodge claims for damages in the event of withdrawing from the contract in the amount that the Principal proves it has suffered. The Contractor may furnish proof that it would also have been impossible or partially impossible for any other supplier.

**4.**

The warranty period for compensatory damages and/or claims for a reduction of the purchase price regarding faulty deliveries and/or delayed deliveries is three years, for serial defects five years. Serial defects are those in which the identified fault applies to a share in excess of 10% of the supplies quantities / items.

The statute of limitations does not commence upon offloading/delivery of the deliveries at the Principal's works, but at the time in accordance with Section 2, 3 and 4 of the Principal's General Terms and Conditions of Business and Contract at which the delivery has been accepted following conclusion of the own inspection and goods control

measures by way of written notification given to the Supplier as the Contractor or, at the latest, after 4 weeks following the fictitious acceptance in accordance with Section 3, sub-section 1 of these General Terms and Conditions of Business.

## 5.

The Principal's direct customers are also entitled to its warranty conditions as customers. The Principal simultaneously in general assigns to its end customers the third parties' warranty rights, following approval of the Supplier as the Contractor, to cover the event of permitted further sale on the part of the Principal to third parties.

## 6.

The Contractor provides the Principal with a guarantee, irrespective of the warranty claims, for the subsequent delivery with the quality of the aggregates and products and in respect of their functionality and conformity and that they are fault free in accordance with the offer assurances in accordance with Section 2 of these General Terms and Conditions of Business for a period of 10 years from the guarantee activating event.

The guarantee activating event shall occur irrespective of claims that may apply resulting from the warranty in accordance with Section 7, sub-sections 1 to 5, of these General Terms and Conditions of Business at the time at which the purchasing company lodges claims against the Principal resulting from a warranty and/or guarantee.

### **§ 8 Onus of presentation and proof for defects and faults**

In the event of a legal dispute, the onus of presentation and proof shall be on the Contractor to show the Principal that defects and faults occurred due to unsuitable and/or inappropriate use, faulty assembly and/or putting into operation by the Principal, or by natural wear-and-tear, faulty or careless handling, inappropriate operating resources or replacement substances following the delivery and acceptance within the meaning of Section 2 of the above General Terms and Conditions of Business by the Principal.

This onus of presentation and proof applies in full to the guarantee liability too in accordance with Section 7, sub-section 6.

### **§ 9 Reservation of title and rights of EVAC GmbH**

If the Contractor makes use of reservation of title in its offer letters forwarded to the Principal, the Contractor grants the Principal the right to process and/or resell the reserved goods during the course of ordinary business transactions.

The extended reservation of title applies, in other respects, in the event that the agreement involving the reservation of title up to the purchase price of the reserved goods based on the offer prices.

Any reservation of title on the part of the Contract that applies to the Principal shall expire as soon as the Principal has paid the agreed purchase price.

### **§ 10 Payment**

Unless otherwise agreed, the Contractor's invoices shall fall due for payment 120 days following acceptance and inspection of the supplied products by the Principal in accordance with Section 3 of these General Terms and Conditions of Business.

## § 11 Provisions

Insofar as the Principal provides the Contractor with components (parts) to manufacture an entire product, the Principal shall carry all costs in that respect including free delivery to the Contractor's premises. These parts shall remain the Principal's property. The Contractor undertakes to carry out incoming goods controls, proper and separate storage (marked as the Principal's property) and to keep a record of use.

The stock of all provided parts is to be forwarded to the Principal as an e-mail with an attached .XLS file each month on the last workdays for each part by way of such utilisation book with the initial inventories, additions and retirements (use products, Contractor's order number) and the Principal's final balances.

## § 12 Applicable law, place of jurisdiction

1.

The contract law, including the Principal's contractual language, applies to these General Terms and Conditions of Purchase and Business, and to the entire legal relations between the Principal and the Contractor. Furthermore, in accordance with Section 27 EGBGB<sup>2</sup>, and by way of elimination of the "Treaty of Rome on the Law that Applies to Contractual Obligations" (EVÜ) that may have been agreed between the parties and may be given consideration, or the "Vienna United Nations Convention on Contracts for the International Sale of Goods" (WKR), these General Terms and Conditions of Purchase and Business are solely subject to German law.

2.

In accordance with Sections 269, 270 BGB, in conjunction with Section 29 of ZPO<sup>3</sup> and Article 5 of the Brussels Convention on Court Jurisdiction in Civil and Commercial Matters ("EuGVÜ), the Principal's administrative headquarters in Wedel, Germany, is deemed the sole place of jurisdiction for all the parties' counter and mutual claims. The place of jurisdiction has exclusive jurisdiction for all disputes directly and indirectly resulting from the contractual relationship between the contracting parties in accordance with Article 17 of the Brussels Convention on Court Jurisdiction in Civil and Commercial Matters ("EuGVÜ) in conjunction with Article 27, sub-section 1, of EGBGB in conjunction with Section 269, sub-section 1, sentence 1, first alternative, of BGB and Section 29, sub-section 2, of ZPO.

## § 13 Safeguarding clause

In the event that one or more of these business provisions is wholly or partially invalid in accordance with Sections 305 et seq. of BGB, the remaining part of the General Terms and Conditions of Business shall remain legally valid as shall the contract that was entered into on the basis of such terms and conditions. The statutory regulations in accordance with Section 306 of BGB shall take the place the legally invalid clause(s).

End of the General Terms and Conditions of Business

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<sup>2</sup> Introductory Law of the German Civil Code

<sup>3</sup> German Code of Civil Procedure