

# General Terms and Conditions of Purchase of esmo group (GT&CsP)

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## 1 General Information, Scope of Application

Present General Terms and Conditions of Purchase of esmo group (GT&CsP) shall apply for esmo AG, all companies/subsidiaries of the esmo group of companies, and/or any mandated company of the esmo group of companies – hereinafter referred to as esmo –, unless otherwise agreed in individual cases. In addition and supplementary to present General Terms and Conditions of Purchase of esmo group (GT&CsP), the General Terms and Conditions of Sale and Delivery of esmo group (GT&Cs S&D) shall apply as amended/applicable at the time of contract conclusion.

- 1.1 All deliveries, services, and offers/quotations of our suppliers shall be based exclusively on present General Terms and Conditions of Purchase. Thus, they shall be part of any contracts we may conclude with suppliers for deliveries or services offered by them.  
Without having to refer to present GT&CsP again in each individual case, they shall be deemed as agreed and apply to all future deliveries, services, and offers of the respective supplier.
- 1.2 Any terms and conditions of business of our suppliers or third parties shall not apply, even if we do not separately object to their application in the individual case concerned.

## 2 Orders

Insofar as our offers do not expressly specify a period of commitment/a deadline, we shall commit to a period of three (3) days, from the date of the offer. The date of the receipt of the statement of acceptance shall be authoritative for the prerequisite of timely acceptance.

## 3 Prices, Payment Terms, Invoice Details

- 3.1 The price specified in the purchase order shall be binding.
- 3.2 Unless otherwise agreed in writing, the price shall include delivery and transportation to the shipment address, as specified in the contract, as well as packaging. The cost of transportation insurance shall only be borne by us if this has been agreed upon in writing.
- 3.3 Unless otherwise agreed, we shall pay the purchase price within fourteen (14) days upon delivery of the goods/services and receipt of invoice, with a cash discount of three percent (3%), or within thirty (30) days net.
- 3.4 Our purchase order number, the article number(s), the delivery quantity/quantities, as well as all identifiers quoted in the purchase order, shall be stated in any order confirmations, delivery documents, and invoices.

## 4 Delivery Period, Passage of Risk

- 4.1 The delivery period (delivery date or period) specified in our purchase order, or otherwise applicable under present GT&CsP, shall be binding. Premature deliveries shall only be permitted upon our express consent.
- 4.2 The supplier shall promptly inform us in writing, if circumstances arise or become apparent, under which the delivery period cannot be met.
- 4.3 If the date, on which delivery has to be effected at the latest, may be determined on the basis of the contract, the supplier shall, without the requirement of a reminder on our part, enter into default upon expiration of this respective date.
- 4.4 In the event of a default in delivery, we shall be entitled to all applicable statutory claims without any limitation.
- 4.5 In the event of delays in delivery, we shall, subject to a prior written warning issued to the supplier, be entitled to demand a contractual penalty at the rate of 0.5% – yet at a maximum 5% – of the respective order value for every commenced week of default in delivery. The contractual penalty shall be credited against the default-related loss to be compensated for by the supplier.
- 4.6 The supplier shall not be entitled to effect partial deliveries without our prior, express consent.

- 4.7 Even if shipment of the goods has been agreed upon, the risk shall not pass to us until the goods have been handed over to us at the respective, contractually agreed destination.

## 5 Proprietary Rights and Copyrights

- 5.1 We shall retain title or copyright to orders placed by us, as well as to any drawings, illustrations, calculations and other documents provided to the supplier. Without our express consent, the supplier shall not make them accessible to third parties, or use or copy them, neither her-/himself nor have and/or grant third parties to use and/or copy them. Upon our request, the supplier shall return all these documents to us, if they are no longer required in the proper/regular course of business, or if negotiations do not lead to the conclusion of a contract. In such cases, the supplier shall destroy any copies thereof – excepted from this, however, shall be retention within the scope of statutory retention requirements as well as data storage for backup purposes within the scope of customary data security provisions.
- 5.2 Any tools, equipment, and models we have provided to the supplier, or that have been manufactured for contractual purposes and are separately charged to us by the supplier, shall remain or become our property. The supplier shall commit to mark these items as our property, to store/keep them in safe place, to properly secure them against any damage, as well as to exclusively use them for the intended purpose of the respective contract. The supplier shall promptly notify us of all (significant) damage to these items. Upon our request, the supplier shall return all items to us in proper condition, if they are no longer required for the performance of the contracts concluded with us.
- 5.3 Retentions of title by the supplier shall apply only insofar as these relate to our payment obligations for the respective products to which the supplier retains title. In particular, extended or prolonged retentions of title shall be inadmissible.

## 6 Warranty Claims

In the event of defects, we shall be entitled to statutory claims without any limitations. Contrary hereto, however, the warranty period shall be thirty-six (36) months.

## 7 Product Liability

- 7.1 The supplier shall be liable for any claims asserted by third parties on account of personal injury or property damage due to a defective product delivered by the supplier, and shall furthermore commit to indemnify us against any liability resulting thereof. In case we are obliged to conduct a recall campaign in relation to third parties, on account of a defective product delivered by the supplier, the supplier shall bear all costs associated with such recall campaign measure.
- 7.2 The supplier shall, at her/his own expense, maintain product liability insurance with an appropriate amount of coverage. Unless otherwise agreed in individual cases, this coverage shall not need to include the recall risk, or comprise punitive and/or similar damages. The supplier shall send us a copy of the liability policy at any time, upon request.

## 8 Spare Parts

- 8.1 The supplier shall commit to stock spare parts for the products delivered to us for a period of at least ten (10) years after delivery.
- 8.2 In case the supplier intends to discontinue the production of spare parts for products delivered to us, she/he shall notify us, after such decision to discontinue production has been made, without any undue delay. Subject to subsection 1, this decision will have to precede the intended discontinuation of production by at least six (6) months.

## 9 Confidentiality, Secrecy

- 9.1 The supplier shall commit to maintain secrecy in respect of the terms and conditions of the purchase order, as well as of all information and documents made available for the contractual purpose (except for information accessible to the public), and to use them only for carrying out the purchase order. The supplier shall immediately return them to us after inquiries have been settled and/or purchase orders have been carried out, upon our request.
- 9.2 Without our prior written consent, the supplier shall not make reference to our business relationship in her/his advertising materials, brochures etc., and shall not exhibit any delivery items manufactured for us.
- 9.3 The supplier shall commit any of her/his sub-suppliers pursuant to all provisions of present section 9.

## 10 Assignment

The supplier shall not be entitled to assign her/his claims arising from present contractual relationship to third parties. This provision, however, shall not apply to monetary claims.

## 11 Reference/Information Requirement

11.1 If we have informed the supplier of the intended purpose of the delivery, or if this purpose of use is evident to the supplier even without having explicitly been pointed out, the supplier shall commit to promptly inform us in case the delivery is unsuitable for fulfilling this intended purpose.

11.2 The supplier shall give us prompt written notification of any changes to the type of composition of the material processed, and/or to the designs, compared to deliveries of the same kind of product effected to us hitherto.

11.3 The supplier shall ensure that all deliveries satisfy any all environmental protection, accident prevention, and other health and safety regulations, all safety-related provisions as well as any legal requirements applicable in the Federal Republic of Germany. Any existing, not generally known requirements regarding treatment and waste disposal shall be expressly communicated and pointed out to us.

11.4 The supplier shall, even after the warranty period has expired, notify us of her/his own accord of any safety-related defects, subsequently detected in the delivered products as a result of production observations/evaluations.

## 12 Place of Performance, Place of Jurisdiction, Applicable Law

12.1 The laws of the Federal Republic of Germany, excluding UN sales law, shall apply to present GT&CsP as well as to all legal relations between us and the supplier.

12.2 We shall make present GT&CsP available to our suppliers in German and/or English. In the event of linguistic deviations, the German version shall be deemed authoritative.

12.3 Rosenheim shall be the place of performance for delivery and payment.

12.4 Munich shall be the exclusive place of jurisdiction, and also the international place of jurisdiction, for all disputes directly or indirectly ensuing from present contractual relationship. However, we shall also be entitled to take legal action at the supplier's place of general jurisdiction.