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**General purchasing terms and conditions**

**Eisenbeiss GmbH**

**(Status 15 April 2022)**

**1 Validity of the general purchasing terms and conditions**

1.1 For all business transactions conducted with Eisenbeiss GmbH, Lauriacumstraße 2, A-4470 Enns, FN 104370k (hereinafter: Eisenbeiss, we or us), only the following general purchasing terms and conditions apply. Our contract partner is referred to hereinafter as the contractor or contract partner. These general purchasing terms and conditions shall become part of the contract in their entirety and shall be binding for all current and future business transactions conducted with Eisenbeiss for purchasing goods and services, even if they are not expressly referred to.

1.2 Contractual clauses that deviate from or supplement these general purchasing terms and conditions - in particular general sales/delivery terms and conditions of the contract partner - will only apply if they have been explicitly confirmed in writing by Eisenbeiss.

**2 Proposal / Signing the contract / Written Form**

2.1 Unless specified otherwise by Eisenbeiss, the offer must be binding for at least three months. Orders from Eisenbeiss are only legally binding if they are made in writing and signed by the company.

The conclusion of the contract itself, amendments or supplements to the contract and / or these general purchasing terms and conditions, ancillary agreements and other declarations must be made in writing (e-mails without electronic signature do not fulfill this written form requirement). This shall also apply to any amendment of the written form requirement. Verbal collateral agreements do not exist.

Any amendments or supplements to the contract can only be agreed with legal effect by the authorized representatives of Eisenbeiss in the number authorized to represent the company.

The preparation of offers submitted to Eisenbeiss is free of charge, regardless of the preparatory work required.

2.2 If the contractor does not accept the order within 5 days of receipt, Eisenbeiss is entitled to withdraw the order. A delivery "on call" becomes binding if the contractor does not contradict it within 5 days after receipt.

**3 Scope of the order**

Eisenbeiss may, within the bounds of reason for the contractor, demand changes to the object of the contract in design and implementation. The effects of this, in particular with regard to additional and reduced costs as well as delivery dates, shall be agreed appropriately and amicably. Indivisible total benefits will be agreed.

**4 Obligation of the contractor**

4.1 The contractor must ensure that without having to make a request Eisenbeiss is presented with all the information required to perform and complete the order and will inform us of all procedures and circumstances that have an influence on the implementation of the contract. This also applies to all documentation, procedures

and circumstances that come to light during the contractor's activities. The contractor must warn Eisenbeiss of the unsuitability of the materials provided or of the incorrectness of the instructions or order and must also point out the possible consequences of disregarding the warning. In the event of ambiguities, the contractor is obliged to consult Eisenbeiss and to clarify these beyond doubt.

4.2 The contractor must inform Eisenbeiss in writing within 3 working days of the initiation of restructuring proceedings and / or the ordering of an enforcement freeze. In this information, the contractor must explain with reasonable justification whether, and if so, why the maintenance of the contract concluded with Eisenbeiss is absolutely necessary for the continuation of the contractor's daily operations.

## **5 Confidentiality / Intellectual property / Proprietary rights / Data protection / Models**

5.1 The contractor hereby undertakes irrevocably to keep strict confidential all operating and business secrets made available by Eisenbeiss in the course of a business relationship or as a result of any other contact to Eisenbeiss and must not make these available in any way whatsoever to third parties without prior permission from Eisenbeiss. In addition the contractor undertakes to use the information on a "need to know" basis and only for the purposes of the signed contract. The obligation to maintain secrecy applies for 5 years after completion of the business relationship with Eisenbeiss or independently of a business relationship 3 years after the proposal was submitted.

5.2 The contractor does not acquire ownership or usage rights of any kind for the information received from Eisenbeiss. All intellectual property rights or copyrights remain with Eisenbeiss. The contractor is obliged not to make information received the subject of an application for industrial property rights or to have one applied for by third parties.

5.3 The contractor shall be liable for claims arising from the infringement of industrial property rights and applications for industrial property rights when the delivery items are used in accordance with the contract. The contractor shall indemnify Eisenbeiss and its clients against all claims arising from the use of such property rights and shall indemnify and hold them harmless in this respect. The contract partners are obliged to inform each other immediately of any infringement risks and alleged cases of infringement that become known and to give each other the opportunity to counteract such claims by mutual agreement.

5.4 Advertising and publications about orders from Eisenbeiss, as well as the inclusion of Eisenbeiss in the reference list of the contractor require prior written consent.

5.5 All models, tools, casting moulds and the like manufactured on behalf of Eisenbeiss remain the property of Eisenbeiss and may under no circumstances be passed on to third parties, even if they are in the custody of the contractor.

5.6 If the contractor does not comply with these terms, Eisenbeiss is entitled to immediately terminate the contractual relationship and claim special reimbursement as well as other legally justified claims, especially in terms of any default and/or compensation .

## **6 Remuneration / Payment**

6.1 All services of the contractor are remunerated at fixed prices, including VAT. The agreed fixed prices include all services necessary for the proper implementation of the contract, in particular installation and

documentation costs, the costs for initial training, any licence fees, packaging, transport, insurance and unloading costs, public fees and charges, as well as any social benefits and expenses.

6.2 The prices shall apply free place of installation or use or place of delivery of the Incoterms ("DDP") in force at the time, unloaded.

6.3 In all documents concerning the order, especially invoices, the Eisenbeiss order number is to be quoted, otherwise we are entitled to return them without processing and in case of doubt they will be deemed to have not arrived at Eisenbeiss.

6.4 Payment shall be made at our discretion within 30 days after complete delivery and receipt of a proper invoice with 3% discount or within 90 days without deduction. If deliveries are accepted any earlier, the due date for payment shall be based on the agreed delivery date. If acceptance of the deliveries and services of the contractor has been agreed, the contractor shall be entitled to invoice after successful acceptance, or - in the case of pure delivery transactions - after complete delivery.

6.5 In the event of defective delivery, Eisenbeiss is entitled to withhold payment until proper and complete fulfilment of the contract, to assign it or to have it collected by third parties.

6.6 The contractor is not entitled without prior written consent to transfer their existing rights and/or obligations towards Eisenbeiss, in particular to assign their claims against Eisenbeiss or have them collected by third parties.

## **7 Place of fulfilment / Assumption of risk**

7.1 The place of fulfilment for all services of the contract partners is the registered headquarters of Eisenbeiss

7.2 Unless otherwise agreed in writing, the point in time that risk is transferred - both in cross-border transactions as well as in non-cross-border transactions - is determined by the relevant INCOTERMS clause. Unless agreed otherwise, the delivery terms DDP Eisenbeiss GmbH, Lauriacumstraße 2, A-4470 Enns apply in accordance with the current Incoterms.

7.3 When sending or transmitting data via the Internet, the contractor shall bear the risk of loss or alteration of such data.

## **8 Delivery date / Delay to delivery**

8.1 Delivery shall be made on the date or at the latest on the last day of the period specified in the contract or order. Delivery periods start on the date the order takes effect. The arrival of the complete shipment ordered, including documentation, at Eisenbeiss, is decisive for compliance with the delivery date or the delivery period. If the shipping terms agreed are not "DDP" Eisenbeiss in accordance with the Incoterms in force at the time, the contractor shall make the goods available in good time, taking into account the usual time for loading and shipping. The deliveries are to be processed according to Eisenbeiss's instructions.

8.1 The contractor is obliged to inform Eisenbeiss immediately in writing if a delay in delivery occurs and the contractor must state the expected duration of the delay to the delivery. Providing this information shall not exempt the contractor from the penalty specified below. In the event of a delay in delivery, Eisenbeiss is entitled, irrespective of fault, to demand from the contractor a penalty of 1% of the total contract value per calendar week

started, but not more than 10% of the total contract value in total. Eisenbeiss reserves the right to assert claims for further damages and other claims.

8.3 In the event of a delay in delivery, Eisenbeiss is entitled to withdraw from the contract without setting a grace period. If the contractor is responsible for the delay in delivery, Eisenbeiss shall also be entitled to withdraw from all contracts concerning goods not yet delivered or delivered which cannot be used appropriately without the goods affected by the delay in delivery.

## **9 Acceptance**

After delivery, installation and successful carrying out of all necessary tests of the object of the contract, as well as after written notification of readiness for acceptance by Eisenbeiss and upon presentation of the complete documentation, Eisenbeiss shall carry out an acceptance test, if such a test has been agreed. Unless otherwise contractually agreed, an acceptance date shall be set by Eisenbeiss within four weeks of notification of completion. The operational use or resale of the object of the contract prior to the formal acceptance shall in no case replace it and shall not constitute a conclusive declaration of acceptance. After successful completion of the acceptance test and its confirmation by Eisenbeiss in the form of a written acceptance declaration signed by the company, the object of the contract is deemed to have been accepted.

## **10 Quality and documentation**

10.1 The contractor's goods shall comply with the recognised rules and the latest state of the art, the safety regulations and the agreed technical data. Changes to the goods supplied require the prior written consent of Eisenbeiss. The contractor must constantly check the quality of the goods supplied. The contracting parties shall inform each other about the possibilities of improving quality.

10.2 The contractor is obliged to systematically plan, define, implement and monitor measures to ensure the highest level of quality while taking cost effectiveness into account. The quality management system to be maintained by the contractor must comply with the requirements of Austrian ÖNORM EN ISO 9001 in its current edition or with a similar quality management system. If required by Eisenbeiss, an initial sample test shall be carried out separately for material, dimensions, functions and reliability in order to demonstrate that the planned and applied manufacturing and testing procedures are capable of achieving consistent quality even under series operating conditions. On request, the contractor will give Eisenbeiss the opportunity at any time to obtain information about the contractor's quality management system at the contractor's premises in order to ensure the compliance and effectiveness of the measures mentioned. Any additional quality assurance requirements for the contractor must be strictly adhered to. The contractor must oblige subcontractors to the same extent or ensure compliance with the corresponding quality by their own means.

10.3 Insofar as authorities require Eisenbeiss to inspect the production process and the inspection documents in order to verify specific requirements, the contractor agrees, at Eisenbeiss's request, to grant them the same rights at their company and to give them every reasonable support in doing so.

## 11 Withdrawal

11.1 Eisenbeiss has the right to withdraw from the contract against payment of a penalty fee (as per clause of ABGB (Austrian Civil Code)) to the amount of 10% of the contract sum excluding VAT without giving reasons. If, however, the actual loss incurred is less, only this amount shall be reimbursed.

11.2 Independently of its other rights, Eisenbeiss is permitted to withdraw from the contract if

- a) there is concern about the contractor's ability to pay and despite requests from Eisenbeiss the contractor does not pay in advance, nor are they able to provide security before delivery, or
- b) insolvency proceedings concerning the contractor's assets are opened or a request to open such proceedings is rejected due to insufficient financial means or the conditions for opening such proceedings or the rejection of such a request are evident or the contractor stops their deliveries;
- c) the contractor violates official regulations or the provisions of these purchasing regulations;
- d) the contractor has committed adverse acts against Eisenbeiss, in particular if they have entered into agreements with other companies that are contrary to accepted ways of doing business or contravene the principles of competition;
- e) the contractor directly or indirectly promised or gave advantages to employees of Eisenbeiss who are involved in the signing or implementation of the contract, or threatened or applied disadvantages,
- f) restructuring proceedings have been initiated against the contractor at the contractor's request or a stay of execution has been ordered and the client has not informed Eisenbeiss of this in due time or has not provided sufficient justification as to why the maintenance of the contract is absolutely necessary for the continuation of daily operations ( refer to 4.2).

Eisenbeiss is entitled to withdraw from the contract in regard to either the entire not yet fulfilled contract or only with regard to individual parts of the contract if one of the above mentioned reasons exists.

11.3 Eisenbeiss has the right, in the event of the existence of any of those reasons which entitle us to withdraw from the contract, to carry out a substitute performance at the risk and expense of the contractor after a single written request to the contractor and after setting a grace period of 14 days. We are permitted to do this immediately, however, in the event of imminent danger of arrears. All costs and damages arising as a result of substitute performance shall be borne by the contractor. Eisenbeiss can offset such amounts against the contractor's claims.

11.4 In the event of ongoing obligations, Eisenbeiss may terminate the contract with 30 days' notice and the contractor with 90 days' notice taking effect from the end of the month. A waiver of termination by Eisenbeiss requires express written confirmation by Eisenbeiss, otherwise this shall be deemed to have not been agreed. Eisenbeiss may terminate a contract at any time without notice for an important reason. An important reason is in particular any of those mentioned in paragraph 11.2, or if the contractor dies or, in the case of a legal entity, is liquidated.

## **12 Warranty**

12.1 The contractor warrants that the goods delivered by them are free of defects or deficiencies, are delivered with the warranted characteristics and correspond to the contractually agreed requirements and specifications. Eisenbeiss must notify the contractor in writing within 14 days of any defects in the delivery as soon as they are discovered during the ordinary course of business. The warranty period is 24 months from transfer of risk or acceptance. Hidden defects and defects of title can be asserted up to 24 months after the defect has become apparent.

The contractor waives objection to the delayed notification of defects (clause 377 of Austrian Commercial Code (UGB) is not applicable). Eisenbeiss is entitled to choose to demand from the contractor at its expense and risk that the defects be remedied at short notice by improvement (repair, retrofit of missing parts) and/or replacement or to claim a price reduction or to return the goods to the contractor at its expense and request a change or to remedy or have remedied defects themselves, or by third parties, at the expense and risk of the contractor. The contractor warrants that the carrying out of the individual supply contracts will not result in any infringement of rights, in particular with regard to compliance with laws, regulations or other provisions of any official body.

12.2 The contractor warrants that all items subject to the delivery contracts are fully owned by them and that no other rights of third parties are contravened.

## **13 Liability / Compensation**

13.1 Exclusions of liability as well as limitations of liability of the contractor, for whatever reason, shall not be accepted.

13.2 In the event that a claim is made against Eisenbeiss due to a defect in a product supplied by the contractor, the contractor is obliged to indemnify Eisenbeiss against all claims by third parties and to compensate us for all services which we had to render to third parties under this title. The contractor is obliged to provide Eisenbeiss with the best possible support in any legal dispute with third parties. If the contractor claims that there is no defect in the product delivered by them, they must provide proof of this.

## **14 Force majeure**

In the event that either party is prevented from performing its obligations in the course of this contract due to force majeure, such as war, fire, storm, earthquake, flooding, pandemic, epidemic or, in particular, industrial action, the affected party shall notify the other party of the occurrence of such event as soon as possible by fax or e-mail, indicating as far as possible the expected duration of this event and the extent to which fulfilment of the contractual obligations is affected.

In the event of force majeure, the party concerned shall not be liable for any delay or error in the performance of its obligations, but shall make all reasonable efforts to resume performance of the contract as soon as possible.

Both contracting parties shall continue with their obligations immediately after the case of force majeure has ended, or after elimination of the effects, and the dates specified in the contract shall be extended accordingly.

Eisenbeiss is entitled, for the duration of the disruption, to purchase the goods covered by the supply contract from other sources and accordingly to reduce the contractually agreed delivery quantity without any obligation towards the contractor.

Should the effect of the case of force majeure last longer than 50 days, Eisenbeiss shall be entitled to terminate the contract prematurely; the contractor shall not be entitled to any claims for damages as a result of this termination of the contract.

## **15 Court of jurisdiction / Choice of law**

### 15.1 Court of jurisdiction

For all disputes arising from or in connection with the contract, it is agreed that the exclusive place of jurisdiction shall be the court having subject-matter and local jurisdiction for the registered office of Eisenbeiss. However, if the contracting parties separately agree in writing on the applicability of the Arbitration Rules (Vienna Rules) of the International Arbitral Institution of the Austrian Federal Economic Chamber (VIAC), the arbitral tribunal shall have exclusive jurisdiction, which shall take precedence over the general agreement on the place of jurisdiction.

### 15.2 Governing law

The relevant contractual relationship is governed by Austrian law excluding the UN Convention on the International Sale of Goods and the provisions of Austrian Private International Law as well as other conflict of law rules.

## **16 Other provisions**

### 16.1 Severability clause / Reduction in Validity

Should a provision of these purchasing terms and conditions be or become legally invalid or unenforceable in whole or in part, this does not affect the legal validity of all other business terms and conditions. The contract partners will replace this invalid or unenforceable provision with a valid and enforceable provision which comes closest to the content and purpose of the invalid or unenforceable provision.

If a provision of these general purchasing terms and conditions is (partially) void or (partially) ineffective, this shall not lead to its complete omission. Rather, the provision concerned shall be reduced in a manner that preserves its validity and shall in any case remain valid and effective to the extent that it is not objectionable.

### 16.2 Language deviations

Insofar as these general purchasing terms and conditions are also provided in whole or in part in other languages, Eisenbeiss assumes no warranty or liability for the translation of these general purchasing terms and conditions into other languages. In the event of linguistic deviations in the general purchasing terms and condition written in other languages, the German language version shall take precedence over the other language versions.

### 16.3 Offsetting

Offsetting our claims with counter claims of any kind is excluded.

### 16.4 Subcontractors

The order placed may not be passed on to subcontractors in whole or in part without our consent.

## **17 Declaration of consent for data processing**

Eisenbeiss is entitled to process personal data entrusted to us (e.g. names, addresses, dates of birth, etc.) within the framework of the purpose of the contractual relationship and to use them to send information, to establish contact by telephone and for marketing activities. The contractual partner can revoke their agreement to this declaration of consent at any time in writing by e-mail or letter to the Eisenbeiss contact data and demand its erasure - as far as legally permissible.