

General Business Terms (GBT) of EST Engineering Systems Technologies GmbH & Co. KG

- Hereafter called: **EST** –

1. General information, scope of applicability

1.1. Sales and delivery are performed exclusively at the conditions listed hereafter; opposing or deviating conditions of the purchaser are not acknowledged, unless EST expressly agrees to their applicability in writing. The following conditions are also applicable if EST performs delivery and/or installation without reservations with the knowledge of opposing or deviating conditions of the purchaser.

1.2. The following conditions are exclusively valid towards companies in the sense of § 14 BGB.

1.3. The conditions are also valid for all future businesses with the customer.

2. Offer and contract conclusion

2.1. Offers of EST are to be handled confidentially and may not be disclosed to third parties.

2.2. The offers of EST are subject to confirmation unless the written offer says differently. Apart from that offers only gain binding character through written order confirmation on part of EST.

2.3. Content of the contractual relationship and scope of delivery results solely from the written order confirmation and these contract conditions.

2.4. Additional agreements, modifications and supplementations of these GBT and the other conditions of the contract require written form to become valid. This is also applicable for possible waiver of the written form requirement.

3. Payment conditions and price

3.1. Insofar the order confirmation contains no deviating statements, the prices are applicable as of business residence Kaiserslautern plus shipping and packaging costs.

3.2. For orders with a total below EUR 250,00 EST bills a processing lump sum of EUR 15,00 depending on the type of order.

3.3. All prices are stated net plus respectively legal sales tax.

3.4. Insofar nothing deviating is expressly stated in writing, invoice amounts are due for payment immediately after invoice receipt.

3.5. If the customer does not pay within five days of maturity, he is automatically in default of payments after expiration of this term without requiring a separate reminder. EST reserves the right to bill default interest at 8 percentage points over the respectively valid basic rate according to § 247 BGB. The enforcement of further/higher delay damages remains reserved.

3.6. EST is authorized at all times to examine the creditworthiness of the purchaser prior to the acceptance of the order resp. until the provision of the contractually agreed upon services. If there are doubts concerning the creditworthiness of the purchaser due to the examination, EST has the right to deny the offer in part or in whole, to change the payment conditions and/or to make them dependant on the provision of a security or to resign from the contract without setting up a grace period in case of denial. EST is not obliged to provide the contractually agreed upon services up to the provision of a security.

3.7. EST reserves the right to assign the demand to third parties.

4. Deliveries, delivery terms

4.1. In case of deliveries not performed by EST, the transfer of risk from EST to the customer takes place when the delivery leaves the business facilities of EST. Shipment can be done by mail, UPS, train or other forwarding companies. Shipping costs are billed separately and have to be paid by the customer.

4.2. Dates for delivery are non-binding dates insofar nothing else is expressly agreed upon; no guarantee for the duration of the transport and its timely arrival at the purchaser location is given.

4.3. Non-adherence of bindingly agreed upon delivery terms lead to delay if the non-adherence is based on circumstances in the liability of EST.

4.4. Open questions regarding technical configuration resp. software specification lead to an extension of existing binding delivery times by the time required to clarify these questions.

4.5. If EST is in delay of providing the due services the customer has the right to set an adequate time frame for service or supplementary performance. After unsuccessful expiration of this time frame the customer is authorized to resign from the contract or demand damage compensation. The customer is only entitled to damage compensation claims, if the damage is based on an intentional or a grossly negligent responsibility or based on a not only slightly negligent violation a responsibility developed from the acceptance of a procurement risk or a guarantee. The amount of the damage compensation claim is limited to damages that are typically foreseeable upon contract conclusion. The above limitation of liability is not applicable if a commercial firm deal was agreed upon.

4.6. If the purchaser comes under delay of acceptance, EST is entitled to enforce the occurred damage including possible additional expenses. As of acceptance delay, the risk of accidental loss or accidental deterioration of the purchase object is transferred to the customer.

5. Installation

5.1. If the agreement was made that the installation shall be done by EST, the installation is done in consultation with the customer. The customer shall examine and guarantees that the environment meets the technical, constructional and other requirements for the ideal usage of the purchase object.

5.2. The customer agrees to perform the necessary power supplies, lines, constructional changes, etc. properly prior to arrival of the delivery, or have this work done at his expense. Delay of this work does not release the customer of his obligation of contract fulfilment.

6. Delay of acceptance

6.1. If the customer denies the acceptance of the delivered goods, EST might give the customer a grace period of 14 days. If the customer does not accept the goods in spite of the grace period, EST is entitled to resign from the contract and demand damage compensation due to non-fulfilment. EST is especially entitled to demand a lump sum damage amount of 15% of the agreed net invoice amount; unless the customer proves that the damage occurred to EST is lower.

7. Warranty/Liability

7.1. The warranty rights of the customer require that he properly fulfilled his examination and complaint obligations owed pursuant to § 377 HGB.

7.2. The warranty term is 12 months. It commences with the delivery resp. the installation. In case of a granted guarantee, the guarantee terms granted separately therein are valid, supplemented by the legal conditions. Guarantees are only such agreements that are expressly termed „Guarantee“.

7.3. Defects resp. damages due to wear, improper usage, operating errors, operation with false current or voltage, fire, lightning, explosion or grid-caused overvoltages, moisture, loading faulty and/or false software are excluded from the warranty, as well as for the operation of the for research and development sector designated sales items outside their ideal environment. The customer is aware that the purchase object may not be used as a medical device and the purchase object also has no intended and/or required certification here for. The usage as medical device and/or for medical purposes is prohibited. If the customer still uses the device in such a manner this falls under improper usage and voids all warranty and/or liability of EST.

7.4. If the customer conducts modifications on the purchase object, the obligation for supplementary fulfilment becomes void; unless the customer proves in relation to the notification of defect that the action/modification did not cause the defect. Accordingly, a possible liability obligation for EST also becomes void.

7.5. Data of product features and specifications in documents, data sheets, illustrations, drawings and brochures or similar transferred to the customer are for the general information of the customer. These data constitute a concrete indication of properties and condition only if they are expressly indicated by EST or have been agreed upon as a condition in writing.

7.6. If the purchase object is defective due to a cause on part of EST, EST is authorized to conduct improvement or replacement delivery at its choice. EST takes over all labour and material costs accruing for the improvement. Improvement and/or replacement deliveries do not cause the warranty term to commence anew. If an improvement /replacement delivery fails or EST is not willing or not able to perform, the customer has the right to resign from the contract or demand a reduction of the purchase price.

7.7. Insofar nothing deviating is regulated hereafter, further claims of the customer, no matter for what legal reasons, are exempt. Specifically, EST is not liable for damages that did not occur on the delivery object itself; EST specifically is not liable for lost profit or other financial damage to the customer.

7.8. The previous liability limitations are not applicable insofar the damage is based on an intentional and/or grossly negligent violation of obligations or the damage was caused from the acceptance of a procurement risk or a guarantee in case of a not only slightly negligent violation of obligations or when damages from the violation of life, body or health are enforced. Liability limitations are further not applicable if the requirements in § 444 BGB are given.

7.9. If EST negligently violates a cardinal obligation (essential obligation of the contract), EST is obliged to compensate the foreseeable damage.

7.10. Should it be discovered that the purchase object is not defective or does not have a defect in the liability of EST, EST has the right to bill the customer for examination and freight costs.

8. Retention of title

8.1. All goods including software are delivered exclusively under the retention of title. The ownership is only transferred to the customer if all liabilities owed to EST are expired. This is also applicable if the customer makes payments on certain goods. In case of running accounts the conditional title is used as security for the current account claims.

8.2. The customer shall handle the purchase object with care; he has to take measures against possible damages, modifications and/or loss; and to insure the goods against fire, water and theft damages at his cost.

8.3. The customer has to inform EST immediately in writing in case of seizure or other actions of third parties.

8.4. The customer is authorized to resell the goods in proper business course. However, he already at this point in time assigns all receivables including the sales tax that he gains through reselling to his customers or third parties; regardless of whether the goods were sold without or after agreement. The customer keeps the right to collect claims also after demand assignment. EST itself is also authorized to collect the claim. As long as the customer fulfils his payment obligations towards EST, EST agrees to refrain from the option of collecting the claim.

8.5. If the customer does not fulfil his payment obligations towards EST, the customer is obliged to make all statements necessary collection (in particular name and addresses of customers, amount of claims, etc.) upon request of EST, and to hand over all associated documents to EST.

8.6. EST agrees to release securities EST is entitled to by request of the customer, insofar the value of the security exceeds the claims to be secured by more than 20%; the loss of the securities to be released lies at ESTs discretion.

9. Data backup

9.1. Prior to the performance of deliveries, be it for the fulfilment, defect elimination, replacement delivery and/or system services, the customer creates a backup of all programs and data he uses on an external data medium in own responsibility. EST assumes no liability for possible data loss and consequential damages.

9.2. There is no obligation for EST to make the customer aware of possible data loss or a backup to be made prior to the commencement of such work.

10. Right of retention, offsetting

10.1. The enforcement of a right of retention and/or offsetting with possibly counterclaims of the customer is exempt, insofar these counterclaims were not legally established or expressly acknowledged by EST.

11. Miscellaneous

11.1. Place of fulfilment and jurisdiction is Kaiserslautern, Germany, insofar the law does not require something else. EST is entitled to file a lawsuit against the customer also at his place of business.

11.2. German law is exclusively applicable under exemption of the German international private law.

11.3. Should a clause of these GBT be or become ineffective, this has no effect on the remaining conditions. The parties are obliged to replace the void clause with an agreement that is as similar to the ineffective clause in its commercial result as possible. If the contract contains a contractual gap the parties are obliged to make a regulation that corresponds to the commercial purpose of the contract.

- Translation End of the "AGB" from the German language -

EST Engineering Systems Technologies
GmbH & Co. KG
Sitz Kaiserslautern
Amtsgericht-Registergericht-Kaiserslautern
HRA 2564
UST.-ID-Nr. DE814116887
Steuer-Nr. 19/201/0067/7

Persoenlich haftende Gesellschafterin:
EST Engineering Systems Technologies
Verwaltungs GmbH
Sitz Kaiserslautern
Amtsgericht-Registergericht Kaiserslautern
HRB 4042
Geschäftsfuehrer Peter Gerhards

EST, Engineering Systems Technologies
GmbH & Co. KG
Postfach (P.O. Box) 16 50
67605 Kaiserslautern, Germany
Tel. +49 (631) 36644 10
Fax. +49 (631) 36644 11
Email info@est-kl.com