

General Terms and Conditions

EngRoTec GmbH – Solutions GmbH

1. Applicability

These General Terms and Conditions are applicable to all business relationships of

EngRoTec – Solutions GmbH or
EngRoTec USA Inc.

hereinafter also referred to either individually or jointly as 'Contractor' with their customer hereinafter referred to as 'Client'.

The legal relationships between the contract partner and the Contractor are governed solely by these terms and conditions and thus form part of the contracts entered into. Any amendments, deviations or additions shall become part of the contract only when explicitly recognised in writing by the Contractor. The provision of services or the commencement of deliveries and the receipt of payments shall not represent acceptance of the contract partner's conditions of business. These terms and conditions shall also apply to all future legal relationships between the contract partners, including if in the individual case concerned no reference is explicitly made to them.

Insofar as the relationship concerned is mutual commercial trade, these conditions of sale and supply shall also apply to all future legal relationships between the Contractor and the Client, including if in the individual case concerned no reference is explicitly made to them.

2. Quotations and Quotation Documents

Any verbal quotations are always non-binding and subject to confirmation. Only upon written confirmation do they become binding. Unless explicitly stated otherwise in the quotation, quotations remain binding for 30 days from date of issue.

The details and information contained in the accompanying quotation documents, such as technical descriptions, drawings, illustrations, data, programmes, and details of the Contractor's services, are non-binding. The information provided in the quotation and associated quotation documents is exclusively the intellectual property of the Contractor. The recipient is not allowed to use it for any purpose beyond the contractually agreed use. During the quotation period, the recipient is to check that the information contained in the quotation documents can be implemented within the scope of the intended project. In the event to any discrepancies, the Contractor must be notified within 10 days of receipt of the documents, failing which the Client shall be responsible for any resulting deficiencies or deviations.

3. Contract Conclusion and Written Form

Declarations from the Contractor of intent to enter into a contract shall be valid only in written form. Verbal declarations shall become valid only when confirmed in writing by the Contractor. The requirement for the written form applies also to any side agreements or agreements to amendments. The conclusion of a contract cannot be brought about by a contract partner's unilateral written reference to any contract negotiations that have taken place. In no case does silence on the part of the Contractor count as agreement. The content becomes recognised solely through written counter-confirmation on the part of the Contractor.

4. Transfer of Risk

The risk of non-fulfilment of the order transfers to the contract partner as soon as the Contractor has handed over the task of fulfilment to a haulier or any other person for the purposes of transportation or, in the case of data transfer, upon the sending of the data.

5. Retention of Title

Until all the Contractor's claims arising from the business relationship with the contract partner are settled, the delivery remains the Contractor's property. If the delivery is modified or processed by the Client, the Contractor's right of retained title shall extend to the entire new item. In the event of the Client processing, combining or mixing the delivery with other items, the Contractor shall acquire joint title in such proportion as corresponds to the invoice value of the delivery related to that of the other item used by the Client at the time of the processing, combining or mixing. If the item to which title retention applies is combined or mixed with any main item of the Client or third parties, then over and above this the Client transfers to the Contractor even now its rights to the new item.

If the Client combines or mixes the item to which title retention applies on a paid-for basis with a main item of any third party, then the Client herewith assigns to the Contractor even now its claims for payment against said party. The Client is entitled within the ordinary course of business to sell on the deliveries that are subject to title retention. If for its part the Client sells the goods without receiving the full purchase price in advance or in instalments against handover of the purchased goods, the Client must agree with its customer title retention matching these terms. The Client assigns to the Contractor even now its claims arising from this selling on and the rights arising from the title retention it has agreed. Upon request from the Contractor, the Client shall be obliged to notify the purchasers of the assignment and give the Contractor any and all information and paperwork necessary for enforcing its rights in relation to the purchasers. Despite the assignment, the Client shall be authorised to collect the debts arising from the selling on only if it properly

fulfils its obligations towards the Contractor. If the value of the securities provided by the Contractor exceeds its claims by more than 10%, the Contractor shall be obliged upon request from the Client to release such securities as it chooses. In the event of the Contractor enforcing title retention this shall not also constitute contract cancellation unless the Contractor has explicitly declared this in advance in writing. In the event of a breach of contract by the contract partner, especially in the event of defaulting on payment, of an application being made to commence insolvency proceedings over the contract partner's assets or of such an application being rejected due to lack of assets, the contract partner shall upon request from the Contractor be obliged, without any right to hold onto them, to return the retained title items. The Contractor shall then be freely entitled to make commercial use of said items. In the case of software licensing, all the contract partner's rights to utilisation and commercial use granted as part of the contract become void in such event.

6. Tools

The guide models, tools, models, moulds etc. made by the Contractor as part of the commissioned work (hereinafter 'Tools') do not form part of the commission and remain the property of the Contractor. Following acceptance of the parts by the contract partner, the tools shall be kept by the Contractor for a period of 6 months without recognition of any legal obligation. At the end of this period, the Contractor shall destroy the tools unless further storage of them or transfer of ownership in return for payment has been agreed with the contract partner.

7. Delivery Deadlines and Delays

Adherence to agreed deadlines for deliveries requires the timely receipt of all documents to be supplied by the contract partner, the necessary permits and approvals, especially of plans, and the adherence by the contract partner to agreed payment terms and other obligations. If these requirements are not fulfilled on time, the deadlines shall be extended commensurately. This shall not apply if the Contractor is responsible for the delay. If the Contractor falls behind, the contract partner shall be able, as long as it can credibly show that it has suffered a loss as a result of this, to demand compensation for each completed week of the delay of in each instance 0.5% and in total however at most 5% of the agreed remuneration for the service that is behind schedule. In all cases of late delivery, including after expiry of any revised deadline set by the Contractor, the contract partner shall have no right to claim compensation above the aforementioned limits. Mandatory legal liability provisions, such as liability in the event of taking on a guarantee, liability for wilful or grossly negligent conduct, for injury to life, body or health, for breach of material contractual duties and liability pursuant to the German Product Liability Act, and the regulations on the purchase of consumer goods remains unaffected.

8. Force Majeure

Acts of God of any kind, unforeseeable business, transport or shipping disruptions, fire damage, floods, unforeseeable shortages of personnel, power, raw materials or resources, strikes, lock-outs, official decrees or other obstacles for which the party obliged to provide the service is not responsible and that delay, prevent or make non-viable the manufacture, shipping or formal acceptance shall for the duration and scope of the disruption exempt the relevant party from the obligation to perform the delivery or acceptance process. If as a consequence of the disruption there is a delay to the delivery and/or formal acceptance of more than eight weeks, both parties shall have the right to cancel.

9. Payment Terms

The prices are ex-works, exclusive of all ancillary costs, such as statutory value added tax, packaging, customs duty, freight, insurance, etc. Unless otherwise agreed, payment is due in full upon contract conclusion. The Contractor is entitled to credit the contract partner's payments initially against the latter's older debts and to allocate incoming payments first to costs and interest and then to the main service provided. In the event of legitimate doubt arising post contract conclusion as to the contract partner's ability to pay, the Contractor shall be able to demand prepayment or the provision of securities. If the contract partner does not comply with such demand, the Contractor shall be entitled via withholding its services to cancel the contract. The contract partner shall be entitled to offsetting, withholding or reducing payments only in cases of legally determined or undisputed claims.

10. Invoicing

Invoices can be sent by post or e-mail, as the Contractor chooses. The Client agrees to receiving invoices electronically. In relation to this the Client shall give the Contractor an e-mail address, to which the Contractor can send electronic invoices. The Client must notify the Contractor without delay of any change to the e-mail address to which invoices are to be sent.

The Client must ensure as the receiving party that the electronic invoices can be properly sent to the specified e-mail address and must set any relevant filter programmes and firewalls accordingly. Any automated electronic replies (e.g. 'Out of office' responses) cannot be taken into account and do not prevent any sending of an invoice. If the Client specifically wishes it, invoicing can be switched to sending by post.

11. Formal Acceptance

If the type of service being provided (work being performed) requires a formal acceptance process, this is to be done with no culpable delay on the part of the Client and with a written acceptance report being produced. If, despite being obliged to do so, the contract partner fails to formally accept the service/work within 14 days of notification of completion or delivery and if during this time no complaints are raised about deficiencies preventing acceptance, the service/work shall be deemed acknowledged and accepted in accordance with contract. For stand-alone partial delivery of services, a partial acceptance can be demanded in line with the above rulings. If the contract partner falls behind with the acceptance, the Contractor shall after expiry of an appropriate new deadline be entitled to demand compensation for breach of contract or in lieu of performance and to cancel the contract.

12. Warranty

The Client's rights in relation to any deficiencies are limited to the right to rectification (through at the Contractor's discretion either repair or replacement). If the rectification by the Contractor does not work, the Client shall be able to reduce the price commensurately or, if preferred, to cancel the contract. Compensation rights remain unaffected by this. Any claims from Client pursuant to expenditure necessary for the purpose of making good a defect, especially transportation, travel, labour and material costs, will not be accepted if such expenditure goes up because the item being delivered has been subsequently moved to a place other than the Client's site, unless such movement is in line with its normal use. If the warranty concerns a recourse of the Client, after the latter has had a claim successfully made against it in accordance with the consumer goods purchasing conditions, the recourse rights shall remain unaffected due to the regulations on the purchase of consumer goods. For compensation claims clause 15 (Compensation) shall apply. The Client shall have an obligation to notify the Contractor without delay of any recourse case arising in the supply chain as soon the former becomes aware of this. Statutory rights of the Client to claim recourse against the Contractor shall exist only insofar as the Client has not made any agreements with its customer that go beyond the statutory rights to claim for defects. The agreeing of any guarantee must be in writing. A guarantee statement is valid only if it adequately defines the guarantee cover and the duration and geographical applicability of the guarantee protection. No right to make a warranty claim shall exist in cases of only minor deviation from the agreed properties, of only minor impairment of the usability or of non-reproducible software faults. Any more far-reaching claims or any claims other than those governed in this clause 12 that the Client may make against the Contractor, its internal bodies, its employees or agents for any deficiency shall not be entertained.

13. Breach of Third-Party Rights

Unless otherwise agreed, the Contractor's duty shall be to render the delivery solely in the country of the delivery location free of any industrial property rights or copyrights of any third party (hereinafter protective rights). If, due to the infringement of protective rights caused by deliveries made by the Contractor and used in line with the contract, a third party makes any legitimate claim against the contract partner, the Contractor shall be liable to the contract partner within the period specified in clause 14 as follows:

the Contractor shall at its discretion and own expense either obtain a right of usage for the deliveries concerned, alter them such that the protective right is not infringed or replace them. If it is not possible for the Contractor to do this on reasonable terms, the Client shall have the legal right to cancel or to pay a reduced sum. The purchaser shall not be able to claim any reimbursement for any expenditure made in vain. The Contractor's obligation in relation to paying compensation shall be based on clause 15. The aforementioned Contractor's obligations shall exist only if the Client informs the Contractor without delay and in writing of the claims made by the third party, does not acknowledge any infringement and all defence measures and settlement negotiations remain open to the Contractor. If for reasons of mitigating damages or other good cause the Client discontinues use of the delivery, it shall be obliged to point out to the third party that the discontinuation of use is not in any way linked to any acknowledgement of an infringement of protective rights. No claims by the Client shall be entertained insofar as it is responsible for the protective rights infringement.

14. Complaints of Defects

All complaints, especially of any defects, must be raised in writing without delay and must in any case arrive at the Contractor's premises within 10 days of receipt of the delivery (in the case of hidden defects without delay and in any case within 10 days of their discovery). If the Client does not submit any complaints or notices of defects on time or in the agreed written form, the delivery shall, with regard to the unmade, incorrectly made or late complaint or notice of defect, be deemed free of defects.

If the Client accepts the delivery while being aware of a defect, it shall be entitled to the rights derivable from the deficiency only if it explicitly reserves its rights due to this defect in writing. The period of limitation does not get curbed by the reporting of a defect. The period of limitation only gets curbed through judicial enforcement of claims.

15. Compensation

No claims from the Client for compensation or reimbursement of expenses (hereinafter: compensation claims) will be entertained, no matter on what legal grounds they are made. This shall apply in particular to claims made due to any breach of duty arising from financial obligations or from any unlawful act. This shall not apply where mandatory liability exists, e.g. pursuant to the German Product Liability Act, in cases of wilful intent or gross negligence, due to injury to life, body or health or due to breach of material contractual obligations. The right to claim compensation for the breach of material contractual obligations shall in any case be limited to such losses as could be anticipated

and are typical in contracts of this kind, save only if there has been wilful intent or gross negligence, or if any liability exists due to injury to life, body or health. The above ruling is not linked to any change in the burden of proof to the disadvantage of the Client. Compensation claims for the loss of saved data will not be entertained if the loss would not have arisen had the data been properly backed up.

16. Lapsing of Rights

The Client's rights to claim for defects lapse 12 months after the start of the statutory period of limitation. This shall not apply in relation to a structure or anything that has been used for a structure in accordance with its normal method of use and has caused its deficiency or to a piece of work, the success of which lies in the provision of planning or monitoring services for a structure. In such cases the period of limitation is 24 months. Mandatory legal liability provisions, such as liability in the event of taking on a guarantee, liability for wilful or grossly negligent conduct, for injury to life, body or health, for breach of material contractual duties, liability pursuant to the German Product Liability Act, and the regulations on the purchase of consumer goods remain unaffected.

17. Impossibility

If the Contractor declines to make the delivery because at the time of contract conclusion it was already impossible or required a level of expenditure grossly disproportionate to the Client's interest in carrying it out, the Contractor shall, if it is responsible for the impossibility, be liable to the Client for compensation in lieu of performance. The Contractor shall not have to bear responsibility if it neither knew nor ought to have known of the impossibility of making the delivery. The Client's claim to compensation shall be limited to 10% of the value of that part of the delivery that cannot be used for the intended purpose due to impossibility. This limitation shall not apply if in cases of wilful intent or gross negligence or due to injury to life, body or health any mandatory liability exists; there is no change in the burden of proof to the disadvantage of the Client associated with this. The Client's right to cancel the contract remains unaffected. If the impossibility or the disproportionate level of expenditure in carrying out the work arises only after contract conclusion, the Contractor shall be liable to pay compensation unless the arising of said impossibility or expenditure was neither foreseeable nor preventable.

18. Inventions

Should any inventions be made as part of the contractual collaboration that could lead to industrial property rights, the sole party entitled to register protective rights shall be the party whose employees or contractors made the invention. The parties shall mutually inform each other of any such reports of inventions and planned registrations of property rights. If the party holding the rights to an invention does not plan to make any registration of its own, the parties shall reach an agreement on a potential transfer of the invention rights. If in the course of the contractual collaboration inventions are made in which employees or contractors of multiple parties are involved (joint invention), it shall be separately agreed on a case-by-case basis as to which of these and where any registrations of protective rights should be made. The registration can also be jointly made, and in that case the costs shall be borne by the respective parties in line with their share in the invention. In the case of joint inventions or joint protective rights and/or copyright, each party shall be entitled at any time to forgo its share in favour of the other party. The party forgoing such rights shall in a timely fashion take all precautions and measures to enable the other party to protect its interest. If any party intends to let its protective right lapse or to transfer it to a third party, it must inform the other parties of this without delay. The respective other party shall be entitled to the right.

19. Transfer of Rights and Obligations

Except as per any legal provisions on the permissibility of prohibiting assignment, the transfer of rights and obligations arising from the contract shall require the Contractor's consent to be valid.

20. Applicable Law, Interpretation of Clauses etc.

Supplementary to these terms and conditions the applicable law shall be solely the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (UN sales law) and the conflict provisions of German international private law shall not apply. Standard clauses are to be interpreted as per the Incoterms 2010 applicable at the given time. Any customs and import duties charged by the destination country shall be borne by the Client. All other fees, taxes and costs associated with the purchase contract shall be borne by the Client.

21. Place of execution and jurisdiction

Place of performance for all obligations arising from the contractual relationship shall be the Contractor's registered office. Sole jurisdiction for any and all disputes arising from or in connection with an order shall lie with the locally responsible court at the location of the Contractor's registered office. The Contractor shall also be entitled to lodge its claims in the courts with general jurisdiction for the Client's location.

21. Severability

Should any individual clauses of these terms and conditions infringe wholly or partially against mandatory law or be for any other reasons void or unenforceable, the validity of the other clauses shall remain unaffected. The void or unenforceable provision is to be replaced by one that comes as close as possible to the desired commercial intent.

Last revised: 25 September 2024