

## Splošni pogoji prodaje in dobave ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o.

### I. Splošno, področje uporabe

1. Ti pogoji prodaje in dobave družbe ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o., Šmartinska cesta 130, 1000 Ljubljana, registrska številka 7214723000 (v nadaljnjem besedilu: dobavitelj) veljajo za vsa sedanja in prihodnja poslovna razmerja dobavitelja s pravnimi osebami zasebnega prava, samostojnimi podjetniki, pravnimi osebami javnega prava ali posebnimi telesi ali skladi javnega prava, razen za potrošnike (v nadaljnjem besedilu: kupec).
2. Odstopajoči ali dopolnilni pogoji kupca postanejo del pogodbe z dobaviteljem le, če in kolikor se dobavitelj z njimi izrecno strinja.

### II. Ponudba in sklenitev pogodbe, specifikacije izdelka

1. Če ni izrecno določeno drugače, veljajo cene, ki jih navede dobavitelj, 30 dni. Razen tega, dobaviteljeve ponudbe niso zavezujoče. Za obseg dobaviteljeve obveznosti po pogodbi je odločilna pisna potrditev dobavitelja (vključno z e-pošto, faksom). Šteje se, da je naročilo dobavitelj sprejel po potrditvi naročila ali po odpremi blaga.
2. Kupec ne sme prenesti svojih pogodbenih pravic na tretje osebe brez predhodnega izrecnega soglasja dobavitelja.
3. Vzorci izdelkov so ne zavezujoči ilustrativni kosi in so namenjeni zgolj predstavitvi. Če se stranki pisno ne dogovorita drugače (vključno z e-pošto, faksom), se vse dobave opravijo na podlagi dokumenta s tehničnimi podatki zadevnega izdelka, veljavnega v času sklenitve pogodbe. Enako velja v primeru sprememb izdelka glede na specifikacije kupca, ob upoštevanju odstopajočih in/ali dodatnih informacij v dokumentu s tehničnimi podatki izdelka.
4. V primeru sprememb izdelka glede na specifikacije kupca ostanejo vse risbe in dokumenti, ki jih zagotovi kupec, last kupca. Vendar ima dobavitelj pravico dati risbe in dokumente, ki jih zagotovi kupec, na voljo tretjim osebam (zlasti proizvajalcem), katerim je dobavitelj dovoljeno prenesel dobave ali storitve. Poleg tega lahko dobavitelj hrani vse podatke, ki jih kupec predloži v elektronski obliki, v okviru svojega običajnega sistema za varnostno kopiranje podatkov.

### III. Cene in plačilni pogoji

1. Če ni dogovorjeno drugače, se uporabljajo cene dobavitelja, veljavne v času sklenitve pogodbe. Cene so v valuti, ki je navedena v potrditvi naročila ali na računu, in so "EXW/evropsko centralno skladišče ECOMAL, Ottenstrasse 1, 79199 Kirchzarten, Nemčija" INCOTERMS® 2020 plus DDV, stroški zavarovanja, prevoza in pakiranja ter drugi davki ali dajatve.
2. Računi se plačajo v valuti, ki je navedena na računu, v roku 30 koledarskih dni po dostavi in fakturiranju, brez odbitkov. Odločilen je datum prejema plačila. Vsi popusti odobreni kupcu, veljajo le pod pogojem kupčevega pravočasnega plačila.
3. Dobavitelj ima pravico, da kadarkoli določi, da so njegove dobave/storitve odvisne od sočasnega plačila kupca, ne da bi za to navedel razloge.
4. Če kupec ne plača v roku za plačilo, preide v zamudo, brez da bi bilo potreben opomin dobavitelja. V času zamude se na nakupno ceno obračunavajo obresti po zakonski obrestni meri. Dobavitelj si pridržuje pravico zahtevati nadaljnjo škodo, ki nastane zaradi zamude.
5. Kupec je upravičen do pobota svojih terjatev do dobavitelja pod pogojem, da sta terjatvi, ki sta predmet pobotanja vzajemni, se glasita na denar ali na druge nadomestne stvari iste vrste in iste kakovosti in če sta obe zapadli terjatvi ter nesporni.

### IV. Pridržek lastninske pravice

1. Dobavitelj si pridržuje lastninsko pravico na vseh dobavah (»blago s pridržano lastninsko pravico«) do popolne izpolnitve vseh sedanjih in prihodnjih zahtevkov iz celotnega poslovnega razmerja s kupcem (rezervacija transakcijskega računa). Pridržek lastninske pravice velja tudi za nadomestne dele, razen če ti deli postanejo bistveni deli drugega blaga.
2. Kupec blago s pridržano lastninsko pravico skrbno shrani na lastne stroške, ga vzdržuje in popravi ter zavaruje pred požarom, škodo, ki jo povzroči voda, vlomi in krajo.
3. Med trajanjem pridržka lastninske pravice na blagu kupec blaga ne sme zastaviti ali dati v zavarovanje. Kupec ima pravico blago s pridržano lastninsko pravico prodati v okviru rednega poslovanja, dokler kupec ni v zamudi s plačilom. Kupec s tem že sedaj dobavitelju odstopi svoje terjatve, ki izvirajo iz ponovne prodaje ali iz kakršnega koli drugega pravnega razloga (zlasti, a ne izključno v primeru kakršnega koli prenosa lastništva na končnega kupca, kakršnega koli zavarovalnega primera ali kakršnega koli nedovoljenega dejanja) v zvezi z blagom s pridržano lastninsko pravico v celoti kot zavarovanje; v primeru solastnine na blagu s pridržano lastninsko pravico pa sorazmerno glede na solastniški delež, brez kakršne koli posebne izjave, razen če tako določa veljavna zakonodaja. Dobavitelj sprejme naveden odstop terjatve. Pri nadaljnji prodaji blaga s pridržano lastninsko pravico skupaj z drugimi izdelki, brez da bi bila s kupčevo stranko dogovorjena posamezna cena za različne izdelke, kupec odstopi dobavitelju del skupne terjatve, ki ustreza ceni blaga s pridržano lastninsko pravico. V izogib dvomu, takšen odstop terjatev v zavarovanje ne pomeni, da se terjatve dobavitelja do kupca poplačane s samim odstopom, temveč le, da so terjatve dobavitelja do kupca zavarovane do zneska odstopljenih terjatev.
4. Dobavitelj preklicno pooblašča kupca, da izterja terjatve odstopljene dobavitelju v njegovem imenu in za njegov račun. Če kupec ravna v nasprotju s pogodbo, zlasti če zamuja s plačilom, lahko dobavitelj od kupca zahteva, da razkrije odstop terjatev in dobavitelju zagotovi informacije in dokumentacijo, ki je potrebna za izterjavo.

5. Kupec lahko blago s pridržano lastninsko pravico obdelava, predela ali združi z drugimi predmeti; taka obdelava, predelava ali združitev je izvedena v imenu dobavitelja. V tem primeru bo dobavitelj pridobil solastniški delež na novem predmetu v razmerju med vrednostjo blaga s pridržano lastninsko pravico (vrednost na računu) in vrednostjo novega predmeta. Če kupec pridobi izključno lastništvo novega blaga, kupec prenese na dobavitelja solastninsko pravico v razmerju med vrednostjo blaga s pridržano lastninsko pravico (vrednost na računu) in vrednostjo novega blaga, ustvarjenega z obdelavo, predelavo ali združitvijo.
  6. Kupec bo novo blago brezplačno hranil za dobavitelja s skrbnostjo dobrega gospodarstvenika glede solastninskega deleža dobavitelja. Obdelano, predelano ali združeno blago se šteje za blago s pridržano lastninsko pravico.
  7. Če se blago s pridržano lastninsko pravico nadalje proda kot sestavni del novega blaga, velja 3. člen IV. oddelka samo za terjatev v znesku vrednosti na računu za blago s pridržano lastninsko pravico. Del terjatve, odstopljen dobavitelju, ima prednost pred terjatvami kupca. V zvezi s pooblastilom za izterjavo odstopljenih terjatev in pogojev za njihov preklic se ustrezno uporablja 4. člen IV. oddelka.
  8. Če se blago s pridržano lastninsko pravico združi z nepremičninami ali premičninami, se glede terjatev ustrezno uporablja 7. člen IV. oddelka.
  9. V primeru zasega, zaplembe ali drugih oblik razpolaganja s strani tretjih oseb v zvezi z blagom s pridržano lastninsko pravico, mora kupec brez nepotrebnega odlašanja o tem obvestiti dobavitelja. V primeru kršitve pogodbe s strani kupca, zlasti če kupec zamuja s plačilom, ima dobavitelj pravico, da po določitvi razumnega roka odstopi od pogodbe in zahteva vrnitev blaga s pridržano lastninsko pravico na stroške kupca. Kupec je dolžan vrniti blago s pridržano lastninsko pravico. Zahteva dobavitelja za vrnitev blaga s pridržkom lastninske pravice se šteje za odstop od pogodbe, razen če je dobavitelj že odstopil od pogodbe. Dobavitelj ima pravico da po predhodnem obvestilu kupcu razpolaga z blagom s pridržano lastninsko pravico (ga na primer proda) in s pridobljenimi sredstvi poravnava neporavnane terjatve.
- v. Pogoji dobave in zamude, dokumentacija o transportni škodi**
1. Dobava se opravi EXW evropsko centralno skladišče ECOMAL, Ottenstrasse 1, 79199 Kirchzarten, Nemčija (INCOTERMS® 2020), brez embalaže. Na zahtevo in na stroške kupca bo blago poslano na drug cilj (nakup dostave) in zavarovano. Če je dogovorjen drug pogoj dobave, mora takšna dostava temeljiti na INCOTERMS® 2020.
  2. Datumi dobave, ki jih določi dobavitelj, niso zavezujoči, razen če so pisno izrecno določeni kot zavezujoči. Če je bila pošiljka dogovorjena na zahtevo in na stroške naročnika (nakup dostave), se dobavni roki in datumi dostave nanašajo na čas predaje prevozniku, špediterju ali drugi tretji osebi pooblaščen za prevoz.
  3. Če kupec po sklenitvi pogodbe predlaga poznejši datum dobave, kot sta se prvotno dogovorili stranki, se plačilo izvede, kot da bi bila dobava opravljena pravočasno na prvotni datum dobave.
  4. Delne dobave so dovoljene, če lahko delno dobavljeno blago kupec uporabi v okviru pogodbenega razloga, če je zagotovljena dobava preostalega naročenega blaga in če kupec ne povzroča večjih dodatnih odhodkov ali dodatnih stroškov. Če je kupec dolžan sprejeti blago ali storitve, mora to storiti takoj na dogovorjeni datum prevzema ali alternativno v enem tednu po obvestilu dobavitelja o pripravljenosti za sprejem. Kupec ne more zavrniti sprejema v primeru nematerialne napake.
  5. V primeru zunanje vidne poškodbe blaga ali embalaže (zlasti poškodbe pri transportu) kupec dokumentira škodo (zlasti s slikanjem poškodovane embalaže ali blaga) in poskrbi, da je škoda navedena na potrdilu ponudnika transportnih storitev. Ostale določbe Obligacijskega zakonika glede stvarnih napak v prodajnih pogodbah ostajajo nespremenjene.
  6. Skladnost kupca z dogovorjeni roki dobave velja v primeru pravočasnega prejema vseh dokumentov, ki jih mora zagotoviti kupec, zlasti, a ne izključno vsa potrebna dovoljenja (npr. odobritve tehničnih risb in načrtov) in druge obveznosti kupca po pogodbi, vključno z izpolnjevanjem vseh plačilnih pogojev. V nasprotnem primeru se rok ustrezno podaljša; to pa ne velja, če je za zamudo odgovoren dobavitelj.
  7. V primeru zamude pri dobavi iz razlogov, za katere je odgovoren kupec, se šteje, da je dobavni roki izpolnjeni, če je dobavitelj v dogovorjenem roku kupca obvestil, da je blago za dostavo pripravljeno za prevzem.
  8. Če kupec ne sprejme dobave ali če kupec iz malomarnosti ali namerno krši druge obveznosti, ki povzročijo zamudo pri dobavi, ima dobavitelj pravico zahtevati plačilo pogodbene odškodnine v višini 0,5% od zneska računa na koledarski teden, vendar ne več kot 5% zneska računa, z začetkom na datum dobave ali - če ni datuma dobave - po tem, ko je dobavitelj kupca obvestil, da je blago pripravljeno za prevzem. Dobavitelj si pridržuje pravico do dokazovanja večje škode.
  9. Dobavitelj v času sklenitve pogodbe ne odgovarja za nemožnost dostave ali zamude pri dostavi, če je to posledica višje sile (npr. naravne katastrofe, vojne, izgrediv, epidemije, pandemije) ali drugih dogodkov, ki so bili nepredvidljivi v času sklenitve pogodbe (npr. okvare vseh vrst (vključno z nedostopnostjo informacijskega sistema, npr. zaradi hekerskih napadov, virusov), zamude pri prevozu, stavke, zakonite blokade, pomanjkanja delovne sile, energije ali surovin, težav pri pridobivanju potrebnih regulativnih odobritev (vključno z licencami), regulativnih ukrepov ali pomanjkanja zaradi nepravilne ali nepravočasne dobave dobaviteljev v zgornjem delu nabavne verige) in za katere dobavitelj ni odgovoren. Če so zaradi takšnih dogodkov dostava ali opravljanje storitev za dobavitelja bistveno težji ali onemogočeni in ni verjetno, da bi lahko dobavitelj svoje storitve opravil v razumnem roku, tj. najpozneje v dveh mesecih, lahko dobavitelj odstopi od pogodbe. V primeru začasnih ovir se čas dobave ali drugih storitev podaljša ali pa se rok dobave ali storitve preloži za obdobje ovire, podaljššan za razumno obdobje.

10. Če je odprema ali dobava odložena na zahtevo kupca, se kupcu zaračunajo stroški skladiščenja v višini 0,5 % zneska računa na koledarski teden, vendar ne več kot 5 %, z začetkom prvi mesec po obvestilu o pripravljenosti za odpremo. Dobavitelj lahko dokaže, da so stroški zaradi prej omenjene zahteve kupca višji.

#### **VI. Odgovornost za stvarne napake**

1. Če ima dobavljeno blago ali storitve napako, ima kupec pravico izbire med odpravo napake, zahtevo za nadomestitev z brezhibnim izdelkom oziroma zahtevo za brezplačno storitev (nadomestna izpolnitev) ali znižanjem kupnine. Stroške, ki so potrebni za nadomestno izpolnitev, zlasti stroške prevoza, dela in materiala, krije dobavitelj; to pa ne velja, če se stroški povečajo, ker se dobavljeni predmet nahaja na kraju, ki ni kraj predvidene uporabe.
2. Za namen nadomestne izpolnitve kupec dobavitelju da na voljo razumno potreben čas.
3. Dobavitelj lahko določi, da je nadomestna izpolnitev odvisna od kupčevega plačila kupnine. Vendar pa ima kupec pravico zadržati del nabavne cene, ki je primeren glede na napako.
4. Če se obvestilo kupca o napakah izkaže za neupravičeno, ima dobavitelj pravico, da od kupca zahteva povračilo nastalih stroškov.
5. Na zahtevo dobavitelja mora kupec zavrnjeno blago - če je mogoče, vključno z originalno embalažo - brezplačno vrniti prodajalcu in/ali zavrnjeno blago brezplačno shraniti za morebiten pregled s strani strokovnjaka. V primeru upravičenega obvestila o napakah dobavitelj povrne stroške najugodnejše transportne poti in/ali običajne stroške skladiščenja; to ne velja, če se stroški skladiščenja in/ali odpreme povečajo, ker se dobavljeno blago nahaja na kraju, ki ni kraj predvidene uporabe.
6. Če napaka temelji na napaki izdelka tretje osebe, je dobavitelj upravičen, da kupcu odstopi garancijske zahtevke proti svojemu dobavitelju. V tem primeru lahko naročnik uveljavlja garancijske zahtevke do dobavitelja le, če je bila sodna izvršitev zgoraj omenjenih zahtevkov do dobaviteljevega dobavitelja ali proizvajalca izdelka z napako tretje osebe neuspešna ali pa je - na primer zaradi insolventnosti - brezupna.
7. Kupec brez nepotrebne odlašanja obvesti dobavitelja, če se odstopljeni zahtevki uveljavljajo na sodišču, in pridobi predhodno soglasje dobavitelja za vse sporazume, ki zadevajo odstopljene zahtevke.
8. Garancija ne velja, če kupec spremeni dobavljeni izdelek ali če ga tretja oseba spremeni brez soglasja dobavitelja in posledično odprava napake postane nemogoča ali nerazumno težja. V vsakem primeru mora kupec nositi dodatne stroške odprave napake, ki je nastala zaradi spremembe.

#### **VII. Odgovornost za napake, zastaranje**

1. Dobavitelj je skladno z zakonskimi določbami odgovoren za vsako malomarno ali namerno kršitev materialnih pogodbenih obveznosti s strani dobavitelja, tj. pogodbenih obveznosti, katerih izpolnitev je značilna za pogodbo, ki so potrebne za njeno pravilno izvajanje in na izpolnitev katerih se pogodbeni stranka lahko redno zanaša. Za vse druge kršitve pogodbe je dobavitelj odgovoren le, če je škodo namerno ali iz hude malomarnosti povzročil eden od njegovih zakonitih zastopnikov, zaposleni ali drug zastopnik.
2. Če dobavitelj ni ravnal namerno, je odgovoren le za tipično predvidljivo škodo.
3. Odgovornost po zakonu, ki ureja odgovornost za izdelke, ostaja nespremenjena; to velja tudi za odgovornost za malomarnost ali namerno poškodovanje življenja, telesa ali zdravja. Ko prevzame jamstvo, je dobavitelj odgovoren skladno s zakonskimi določbami.
4. Če ni zgoraj določeno drugače, so zahtevki za odškodnino proti dobavitelju zaradi kršitve odgovornosti izključeni.
5. V kolikor je odgovornost dobavitelja izključena in omejena, to velja tudi za osebno odgovornost dobaviteljevih zakonitih zastopnikov, zaposlenih in drugih zastopnikov.
6. Odškodninski zahtevki v skladu s 1. do 3. členom tega oddelka potečejo v zakonsko določenih rokih. Zastaralni rok za zahtevke za napake po prvem odstavku 480. člena Obligacijskega zakonika je - razen za primere navedene v 7. členu tega oddelka - 1 leto in začne teči od datuma, ko je kupec poslal obvestilo o napaki.
7. Odškodninski zahtevek zaradi kršitve obveznosti nadomestne izpolnitve, kot izhaja iz 1. točke 1. odstavka 468. člena Obligacijskega zakonika obstaja le, če v 12-mesečnem zastaralnem roku glede na 6. člen tega oddelka (i) kupec zahteva nadomestno izpolnitev in (ii) dobavitelj krši svojo obveznost nadomestne izpolnitve.
8. Odškodninski zahtevki obstajajo le v skladu z določbami oddelka VII. Nadaljnji odškodninski zahtevki kupca zoper dobavitelja zaradi napak so izključeni. Posebne zakonske določbe za dobavo blaga potrošniku ostajajo nespremenjene.

#### **VIII. Pravice intelektualne lastnine**

1. Če kupec zagotavlja specifikacije za dobave in storitve, kupec zagotovi, da blago, če ga dobavitelj dostavi v skladu s specifikacijami kupca, ne krši pravic tretjih oseb.
2. V vseh drugih pogledih velja naslednje: če tretja stranka uveljavlja upravičen zahtevek do kupca na podlagi kršitve pravic intelektualne lastnine tretjih oseb v zvezi z uporabo dobavljenega blaga s strani dobavitelja in ga kupec uporablja v skladu s pogodbo, je dobavitelj odgovoren kupcu v jamčevalnem roku (6. člen, VII. oddelek), kot sledi:
  - a) Dobavitelj pridobi pravico do izkoriščanja zadevnih dobavljenih artiklov ali če je predmet pogodbe istovrstno blago, ga spremeni ali nadomesti tako, da pravice tretjih oseb ne bodo več kršene, dobavljeni izdelek pa bo še naprej izpolnjeval pogodbeno dogovorjene funkcije. Dobavitelj navedeno poskuša izpolniti po svojih najboljših močeh, če le-to ni mogoče, lahko kupec odstopi od pogodbe ali zahteva znižanje kupnine v skladu z zakonskimi določbami.
  - b) Za obveznost dobavitelja v zvezi s plačilom odškodnine se uporabljajo določbe VII. oddelka.

- c) Če zakon ne določa drugače, se navedene obveznosti dobavitelja uporabljajo le, če in v kolikor, kupec tretji osebi ne prizna kršitve brez predhodnega izrecnega soglasja dobavitelja in dobavitelj ohrani pravico sprejeti vse obrambne ukrepe in se pogajati za poravnavo, ali v primeru pravnomočne sodbe.
3. Zahtevki kupca so izključeni v obsegu, v katerem je kupec odgovoren za kršitev pravic intelektualne lastnine tretjih oseb.
4. Zahtevki kupca so izključeni tudi, če je kršitev pravic intelektualne lastnine tretjih oseb povzročena:
- a) **z uporabo** blaga, ki je dobavitelj ni mogel predvideti ali če ni bila dogovorjena med strankama; ali
- b) če jo je povzročil kupec s spremembo dobavljenih izdelkov ali njihovo uporabo skupaj z izdelki, ki jih ni dobavil dobavitelj, razen če se je dobavitelj vnaprej strinjal.
5. V primeru kršitev pravic intelektualne lastnine tretjih oseb se za kupčeve terjatve v skladu z 2.a členom VII. oddelka ustrezno uporablja 3. do 6. člen VI. oddelka .
6. Kupec dobavitelja brez nepotrebne odlašanja pisno obvesti (vključno z elektronsko pošto, faksom) takoj, ko se zoper kupca in/ali dobavitelja uveljavljajo zahtevki zaradi kršitve pravic tretjih oseb in v vsakem primeru preden se kupec spusti v kakršne koli spore s tretjo osebo.

#### **IX. Nadzor izvoza**

1. Dobavitelj svojih izdelkov ne prodaja v države, za katere so EU ali ZDA uvedle embargo. Če se po sklenitvi pogodbe izkaže, da kupec prebiva ali ima sedež v državi, za katero je uvedle embargo ali je namenjen nadaljnji dostavi v to državo, ima dobavitelj pravico, da takoj odstopi iz pogodbe.
2. Dobavitelj je del ameriške skupine podjetij. Kot tak dobavitelj preveri, ali in v kolikšni meri je transakcija s kupcem dovoljena **ali podvržena odobritvi v skladu z zakonodajo ZDA** (v obsegu, ki velja za dobavitelja).
3. Kupec priznava, da so izdelki dobavitelja delno izdelani v ZDA in da lahko zanje veljajo izvozne omejitve ZDA. V primeru ponovne prodaje kupec zagotovi, da se poleg evropskih omejitev upoštevajo tudi te omejitve in to obveznost naloži tudi svojemu kupcu.

#### **X. Zaupnost**

1. Kupec mora vse informacije, ki postanejo znane v zvezi z izvajanjem pogodbe, hraniti kot zaupne in jih ne sme uporabljati za svoje namene ali namene tretjih strank izven te pogodbe ali jih dati na voljo tretjim osebam. Ta obveznost velja tako v času trajanja tega pogodbenega razmerja kot tudi po njegovem prenehanju. Kupec to obveznost zaupnosti, vključno s prepovedjo uporabe, naloži tudi svojim zaposlenim in drugim zastopnikom in agentom. Nadaljnje obveznosti glede zaupnosti katerega koli sporazuma o zaupnosti ali razvojne pogodbe, sklenjene med pogodbenicama, ostanejo nespremenjene.
2. Obveznost varovanja zaupnosti in prepoved uporabe ne veljata, če in v obsegu, v katerem so bile informacije (i) kupcu že znane, preden jih je dobavitelj razkril, (ii) na datum sklenitve pogodbe splošno dostopne ali bodo nato dostopne na splošno, (iii) dane na voljo kupcu s strani tretje osebe, ki je zakonito upravičena do tega, ali (iv) če morajo biti informacije razkrite katerim koli organom za namene pogodbe ali sodišču ali na podlagi kakršnih koli zakonskih obveznosti, pod pogojem, da kupec, če je to zakonsko dovoljeno, takoj obvesti dobavitelja, da mu dovoli, da tej zahtevi nasprotuje pred razkritjem. Pri tem pa ostaja 7. člen Zakona o poslovni skrivnosti nespremenjen.

#### **XI. Varstvo podatkov**

Dobavitelj upošteva veljavne določbe zakona o varstvu podatkov. Dodatne informacije so na voljo na <https://www.ecomal.com/en/data-privacy/>

#### **XII. Neodvisnost določb**

1. Če katera koli določba pogodbe ali katera koli določba, ki je bila pozneje dodana pogodbi, v celoti ali delno neveljavna ali neveljavna ali če pogodba vsebuje kakršno koli opustitev, to ne vpliva na veljavnost preostalih določb.
2. Stranki se dogovorita o veljavni nadomestni določbi, ki se po pomenu in učinkovitosti čim bolj približa prvotni določbi.

#### **XII. Pristojno sodišče in pravo**

1. Če je kupec pravna oseba zasebnega prava, samostojni podjetnik, pravna oseba javnega prava ali poseben organ ali sklad javnega prava ali če kupec nima splošnega mesta poslovanja v Sloveniji, se izključna pristojnost za vse spore, ki izhajajo iz neposredno ali posredno iz pogodbenega razmerja med strankama določi glede na registrirani sedež dobavitelja. Dobavitelj ima pravico uveljavljati svoje zahtevke na sodišču, ki je splošno pristojno glede na kraj kupca.
2. Za te splošne pogoje dobave in pogodbenega razmerja med dobaviteljem in kupcem veljajo zakoni Republike Slovenije, ne glede na kolizijska pravila. Konvencija Združenih narodov o pogodbah o mednarodni prodaji blaga (CISG) se ne uporablja.

**General Terms and Conditions of Sale and Delivery of  
ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o.**

**I. General, scope**

1. These General Terms and Conditions of Sale and Delivery of ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o., Šmartinska cesta 130, 1000 Ljubljana, registration number 7214723000 (hereinafter also "**Supplier**") apply to all present and future business relationships of the Supplier with private law legal entities, sole entrepreneurs, legal entities of public law or special bodies or funds under public law, excluding consumers (hereinafter referred to as "**Purchaser**").
2. Deviating or supplementary terms and conditions of the Purchaser shall only become part of the contract with the Supplier if and insofar as the Supplier has expressly agreed to their applicability.

**II. Offers and conclusion of the contract, product specifications**

1. Unless otherwise expressly stated, the prices indicated by the Supplier shall be valid for 30 days; apart from that, the Supplier's offers are non-binding. For the scope of the Supplier's obligation under the contract, the written order confirmation of the Supplier shall be decisive (incl. e-mail, fax). The order shall be deemed accepted by the Supplier upon the order confirmation or upon dispatch of the goods.
2. The Purchaser may not transfer his contractual rights to third parties without the prior express consent of the Supplier.
3. Product samples are considered as non-binding illustrative pieces and for demonstration purposes only. Unless otherwise agreed between the parties in writing (incl. e-mail, fax), all deliveries shall be made based on the technical data sheet of the respective product valid at the time of the conclusion of the contract. The same shall apply in the event of product modifications according to the Purchaser's specifications, considering deviating and/or supplementary information in the data sheet.
4. In the event of product modifications according to the Purchaser's specifications, any drawing and documents provided by the Purchaser shall remain the property of the Purchaser. However, the Supplier shall be entitled to make the drawings and documents provided by the Purchaser available to third parties (in particular manufacturers) to whom the Supplier has permissibly transferred supplies or services. Furthermore, the Supplier may store any data electronically provided by the Purchaser within the scope of his standard data backup system.

**III. Prices and Payment Terms**

1. Unless otherwise agreed, the Supplier's prices valid at the time of conclusion of the contract shall apply. The prices are made in the currency as stated in the order confirmation or invoice and are "EXW/European central warehouse ECOMAL, Ottenstrasse 1, 79199 Kirchzarten, Germany" INCOTERMS® 2020 plus VAT, any insurance, transport and packaging costs and any other taxes or duties.
2. Invoices are payable in the currency as indicated in the invoice within 30 calendar days after delivery and invoicing without any deductions. The date of receipt of payment shall be decisive. Any discounts granted to the Purchaser shall only apply subject to the timely payment of the Purchaser.
3. The Supplier shall be entitled at any time to make its deliveries/services dependent on concurrent payment by Purchaser without stating reasons.
4. If the Purchaser fails to meet the payment deadline, the Purchaser shall be in default without the need for a reminder from the Supplier. During the time of default, interest shall be charged on the purchase price at the statutory default rate. The Supplier reserves the right to claim further damages caused by default.
5. The Purchaser shall only be entitled to set-off its claims against the Supplier if the claims to be set-off are subject to reciprocity, refer to money or other supplementing things of the same type and quality, are due and undisputed.

**IV. Retention of Title**

1. The Supplier reserves title to all deliveries ("Reserved Goods") until full fulfilment of all current and future claims from the entire business relationship with the Purchaser (current account reservation). The retention of title shall also apply to replacement or exchange parts, unless those parts become essential parts of another good.
2. The Purchaser shall carefully store the Reserved Goods at his own expense, maintain and repair them and insure them against fire, water damage, burglary and theft.
3. During the period of retention of title, the Purchaser is not entitled to pledge the Reserved Goods or assign them as security. However, the Purchaser shall be entitled to sell the Reserved Goods in the ordinary course of business as long as the Purchaser is not in default of payment. The Purchaser hereby already assigns the accounts receivable that arise out of the re-sale or for any other legal reason (in particular but without limitation any transfer of title to the end customer, any insurance case or any tortious act) concerning the Reserved Goods to the Supplier in full as security – in the case of co-ownership of the Reserved Goods pro rata according to the co-ownership share, without the need for any special declaration, save as required by the applicable law. The Supplier accepts said assignment. In the event of resale of the Reserved Goods together with other items, without having agreed on an individual price for the different items with the Purchaser's customer, the Purchaser shall assign the Supplier such part of the total price agreed with the customer, which corresponds to the price of the Reserved Goods. For the avoidance of doubt, by such assignment of claims in security shall not mean that the claims of the Supplier against the Purchaser are repaid by the assignment itself, but only that such claims are secured to that amount of the assigned receivables.

4. The Supplier revocably authorizes the Purchaser to collect the claims assigned to the Supplier for its account in its own name. If the Purchaser acts in breach of the contract – in particular if he is in default of payment – the Supplier may request the Purchaser to disclose the assignment and to provide the Supplier with the information and documents necessary for the collection of the claim.
5. The Purchaser may process, rework or combine the Reserved Goods with other items; such processing, reworking or combining shall be carried out on behalf of the Supplier. In this case, the Supplier shall acquire a co-ownership share of the new item in the ratio of the value of the Reserved Goods (invoice value) to the value of the new item. Should the Purchaser acquire sole ownership of the new item, the Purchaser shall transfer to the Supplier co-ownership in the ratio of the value of the Reserved Goods (invoice value) to the value of the new item generated from processing, reworking or combination.
6. The Purchaser shall store the new item free of charge for the Supplier with the due care of a businessman with regard to the Supplier's co-ownership share. The processed, reworked or combined goods shall be deemed as Reserved Goods.
7. If the Reserved Goods are resold as a component of a new item, the advance assignment agreed pursuant to Sec. 3 of this Article IV shall apply only to the amount of the invoice value of the Reserved Goods. The share of the claim assigned to the Supplier shall be settled with priority over claims of the Purchaser. With regard to the authorization of the Purchaser to collect assigned claims and the conditions for the revocation thereof, Sec. 4 of this Article IV shall apply accordingly.
8. In case that the Reserved Goods are combined with real property or movable property, Section 7 of this Article IV shall apply accordingly with regard to the payment claim.
9. In the event of seizure, confiscation or other dispositions by third parties with regard to the Reserved Goods, the Purchaser shall notify the Supplier without undue delay. In case of breach of the contract by Purchaser, in particular if the Purchaser is in default of payment, the Supplier is entitled, after setting a reasonable deadline, to withdraw from the contract and demand the return of the Reserved Goods at the expense of the Purchaser. The Purchaser is obliged to return the Reserved Goods. The Supplier's request to return the Reserved Goods shall be considered as withdrawal from the contract unless the Supplier has declared the withdrawal already. Subject to a prior notification, the Supplier shall be entitled to use the Reserved Goods (e.g. to sell them) and to offset the proceeds thereof against the outstanding payments.

**V. Terms of Delivery and Delay, Documentation of Transport Damage**

1. Delivery shall be made EXW European central warehouse ECOMAL, Ottenstrasse 1, 79199 Kirchzarten, Germany (INCOTERMS® 2020) excluding packaging. Upon request and at the expense of the Purchaser, the goods will be sent to another destination (delivery purchase) and insured. If another delivery condition is agreed, such delivery shall be based on INCOTERMS® 2020 as well.
2. Unless expressly stated in writing as binding, delivery dates indicated by the Supplier are not binding. If shipment has been agreed upon request and expense of the Purchaser (delivery purchase), delivery periods and delivery dates shall refer to the time of transfer to the carrier, forwarder or other third party commissioned with the transport.
3. If, after conclusion of the contract, the Purchaser requests a later delivery date than originally agreed upon by the parties, payment shall be made as if the delivery was carried out on time on the original delivery date.
4. Partial deliveries are permissible if the partial delivery can be used by the Purchaser within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured, and the Purchaser incurs no significant additional expenses or additional costs. If the Purchaser is obliged to accept the goods or services, this must be done immediately on the agreed acceptance date, or alternatively within one week after notification of readiness for acceptance by the Supplier. The Purchaser may not refuse acceptance in case of a non-material defect.
5. In the event of externally visible damage to the goods or packaging (especially transportation damage), the Purchaser shall ensure that the damage is documented (in particular by taking pictures of the damaged packaging or good) and that the damage is noted on the receipt of the freight service provider. Other provisions of the Code of Obligations regarding material defects in sales agreements remain unaffected.
6. Compliance by the Supplier with any agreed delivery dates shall be subject to the timely receipt of all documents to be provided by the Purchaser, including but not limited to approvals and permits required (e.g. approvals of technical drawings and plans), as well as Purchaser's compliance with the agreed payment terms and other obligations of the Purchaser under the contract. Otherwise, the deadline shall be extended accordingly; this, however, shall not apply if the Supplier is responsible for the delay.
7. In case of delay in delivery for reasons for which the Purchaser is responsible, the delivery date shall be considered as met if the Supplier has notified the Purchaser within the agreed deadline that the goods to be delivered are ready for dispatch.
8. If the Purchaser is in default of acceptance or if the Purchaser negligently or intentionally breaches other obligations that result in a delay of the delivery, the Supplier shall be entitled to claim liquidated damages in the amount of 0.5% of the invoiced amount per calendar week, but no more than 5% of the invoiced amount, beginning at delivery date or – in the absence of a delivery date – after the Supplier has notified the Purchaser that the goods are ready for dispatch. The Supplier shall reserve the right to prove higher damages.

9. The Supplier is not liable for impossibility of delivery or delays in delivery, as far as they are due to force majeure (e.g. natural disasters, war, riots, epidemics, pandemics) or other unforeseeable events at the time of conclusion of the contract (e.g. breakdowns of all kinds (incl. unavailability of the IT system e.g. due to hacker attacks, viruses), delays in transport, strikes, legitimate lockouts, lack of manpower, energy or raw materials, difficulties in obtaining necessary regulatory approvals (incl. licenses), regulatory action or the lack of incorrect or untimely supply from upstream suppliers) which the Supplier is not responsible for. If such events make the delivery or service significantly more difficult or impossible for the Supplier and cannot be foreseen that the Supplier can provide its services within a reasonable period – at the latest within 2 months – the Supplier is entitled to withdraw from the contract. In the case of obstacles of a temporary duration, the delivery or service periods shall be extended, or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable ramp-up period.
10. If dispatch or delivery of the goods is delayed at the Purchaser's request, the Supplier is entitled to charge warehouse fees in the amount of 0.5% of the invoice amount per calendar week, but not more than 5%, beginning one month after notification of readiness for dispatch. The Supplier shall reserve the right to prove higher damages caused due to the aforementioned Purchaser's request.

#### **VI. Liability for Defects**

1. If the deliveries or services prove to be defective, the Purchaser shall be entitled to choose between remedying the defect, requesting a replacement for a flawless item or respectively by providing defect free service (supplementary performance), or decrease of the purchase price. The expenses required for the purpose of supplementary performance, in particular transport, labor and material costs, are borne by the Supplier; this, however, does not apply if the costs increase because the item delivered is located in a place other than the place of intended use.
2. For the purpose of supplementary performance, the Purchaser shall grant the Supplier the time and opportunity reasonably required.
3. The Supplier is entitled to make the supplementary performance owed by the Supplier dependent on the Purchaser paying the due purchase price. However, the Purchaser is entitled to retain a part of the purchase price that is appropriate in relation to the defect.
4. If the Purchaser's notification of defects proves to be unjustified, the Supplier shall be entitled to demand reimbursement from the Purchaser for the expenses incurred.
5. At the Supplier's request, the Purchaser shall return the rejected good – if possible including the original packaging – to the Seller free of charge and/or store the rejected good free of charge for possible inspection by an expert. In the event of a justified notification of defects, the Supplier shall reimburse the costs of the most favorable shipping route and/or the customary storage costs; this shall not apply if the storage and/or delivery costs increase because the delivered good is located at a place other than the place of intended use.
6. If the defect is based on a defect of a third-party product, the Supplier is entitled to assign its warranty claims against its supplier to the Purchaser. In this case, the Purchaser can only assert warranty claims against the Supplier if the judicial enforcement of the aforementioned claims against the supplier or manufacturer of the defective third-party product was unsuccessful or is – for example, due to insolvency – hopeless.
7. The Purchaser shall inform the Supplier without delay if the assigned claims are asserted in court and shall obtain the prior consent of the Supplier for all agreements concerning the assigned claims.
8. The warranty shall not apply if the Purchaser changes the delivered product, or has it altered by third parties without consent of the Supplier and as a result the elimination of the defect becomes impossible or unreasonably more difficult. In any case, the Purchaser shall bear the additional costs of remedying the defect incurred by the change.

#### **VII. Liability for Breach of Contract, Statute of Limitations**

1. The Supplier shall be liable in accordance with the statutory provisions for any negligent or intentional breach of material contractual obligations by the Supplier, i.e. contractual obligations, the performance of which characterize the contract, which are necessary for its proper performance and which the contracting party may regularly rely on being complied with. For all other breaches of contract, the Supplier shall only be liable if damage has been caused intentionally or through gross negligence by one of its legal representatives, an employee or another vicarious agent.
2. Insofar as the Supplier did not act intentionally, the Supplier shall only be liable for typically occurring foreseeable damage.
3. Liability under the law regulating product liability remains unaffected; this also applies to liability for negligent or intentional injury to life, body or health. When assuming a guarantee, the Supplier shall be liable in accordance with the statutory provisions.
4. Unless otherwise stipulated above, claims for damages against the Supplier for breaches of duty are excluded.
5. Insofar as the liability of the Supplier is excluded and limited, this also applies to the personal liability of the Supplier's legal representatives, employees and other vicarious agents.
6. Claims for damages according to the above Sec. 1 to 3 of this Article VII expire within the statutory periods. The limitation period for claims for defects according to Article 480 par. 1 Code of Obligations is – except for intent and subject to Sec. 7 of this Article VII – 1 year and starts from the date the Purchaser sent the notification about the defect.

7. A claim for damages for breach of the obligation to supplementary performance according to point 1 of para. 1 of Article 468 of the Code of Obligations exists only if, during the 12-month limitation period acc. to section 6 of this Article VII both (i) the Purchaser demands supplementary performance, and (ii) the Supplier has violated its supplementary performance obligation.
8. Claims for damages shall only persist under the provisions in Article VII. Further claims for damages of the Purchaser against the Supplier due to a defect are excluded. The special statutory provisions for the delivery of the goods to a consumer shall remain unaffected.

#### **VIII. Intellectual Property Rights**

1. Insofar as the Purchaser provides specifications for deliveries and services, the Purchaser shall ensure that the goods, insofar as the Supplier delivers them in accordance with the Purchaser's specifications, do not infringe third-party rights.
2. In all other respects, the following shall apply: If a third party asserts a justified claim against the Purchaser based on an infringement of third-party intellectual property rights by deliveries made by the Supplier and used by the Purchaser in accordance with the contract, the Supplier shall be liable to the Purchaser within the warranty period (Article VII Sec. 6) as follow:
  - a) The Supplier shall obtain a right of use for the respective delivery item or if the object of the agreement are items of the same type modify or replace it in such a way that no third-party rights are infringed anymore, and the delivery item continues to fulfill its contractually agreed functions. However, if this is not possible for the Supplier with reasonable effort, the Purchaser shall be entitled to withdraw from the contract or to demand a reduction of the purchase price in accordance with the statutory provisions.
  - b) The Supplier's obligation to pay compensation for damages shall be subject to the provisions of Article VII.
  - c) Unless otherwise provided by the law, the aforementioned obligations of the Supplier shall only apply if and to the extent the Purchaser does not acknowledge a breach to a third party without the prior express consent of the Supplier and the Supplier retains the right to take all defense measures and negotiate a settlement, or in case of a final judgement
3. Claims of the Purchaser are excluded to the extent he is responsible for the infringement of the third-party intellectual property rights.
4. Claims of the Purchaser shall also be excluded if the infringement of the third-party intellectual property rights was caused
  - a) by an application or use of the respective good not foreseeable for the Supplier or not agreed by the parties or
  - b) by the Purchaser modifying the delivered good or using it together with products that were not delivered by the Supplier, unless the Supplier has agreed in advance.
5. In case of infringements of the third-party intellectual property rights, the provisions of Article VI Sec. 3 to 6 shall apply accordingly to the Purchaser's claims pursuant to Sec. 2 a) of this Article VIII.
6. The Purchaser shall inform the Supplier without undue delay in writing (incl. e-mail, fax) as soon as claims regarding the infringement of third-party rights are asserted against the Purchaser and/or the Supplier and, in any case, prior to the Purchaser engaging in any disputes with the third-party.

#### **IX. Export Control**

1. The Supplier does not sell its products to countries for which the EU or the USA have issued an embargo. Therefore, if, after the conclusion of the contract, it turns out that the Purchaser resides or is based in a country for which an embargo is issued or intends to make a further delivery to such country, the Supplier is entitled to immediately withdraw from the contract.
2. The Supplier is part of a US group of companies. As such, the Supplier verifies whether and to what extent a transaction with the Purchaser is permissible or subject to approval under US sanctions law (to the extent applicable to the Supplier).
3. The Purchaser acknowledges that the products of the Supplier are partly manufactured in the USA and may be subject to export restrictions of the USA. In the event of a resale, the Purchaser shall ensure that, in addition to European restrictions, these restrictions are also complied with and shall also impose this obligation on its purchaser.

#### **X. Confidentiality**

1. The Purchaser is obliged to keep all information that become known in connection with the performance of the contract as confidential, neither to use it for his own or third parties' purposes outside of this contract nor to make it available to third parties. This obligation applies for the duration of this contractual relationship as well as after its termination. The Purchaser shall impose this obligation of confidentiality, including the prohibition of use, on his employees and other representatives and agents. Further confidentiality obligations of any confidentiality agreement or development contract concluded between the parties shall remain unaffected.
2. The obligation to maintain confidentiality and the prohibition of use shall not apply if and to the extent that the information (i) was already known to the Purchaser before disclosure by the Supplier, (ii) is, at the date of conclusion of the contract, generally available or will thereafter be made generally available, (iii) is made available to the Purchaser from a third party lawfully entitled to do so or (iv) is required to be disclosed to any authorities for the purposes of the contract, or to a court, or on the basis of any statutory obligations, provided that, if legally permissible, the Purchaser first gives prompt notice to the Supplier to permit him to oppose such requirement prior to disclosure. Article 7 of the Slovenian Trade Secrets Act remains unaffected.



**XI. Data Protection**

The Supplier complies with the applicable provisions of the data protection law. Further information is available at <https://www.ecomal.com/en/data-privacy> .

**XII. Severability**

1. If any provision of the contract or any provision subsequently added to the contract is or becomes invalid or void in whole or in part, or if the contract contains any omission, the validity of the remaining provisions shall not be affected thereby.
2. The parties shall agree on a valid substitute provision that comes as close as possible in meaning and effectiveness to the original provision.

**XIII. Jurisdiction, Applicable Law**

1. If the Purchaser is a private law legal entity, sole entrepreneur, legal entity of public law or special body or fund under public law or has the Purchaser no general venue in Slovenia, the sole place of jurisdiction for all disputes derived directly or indirectly from the contractual relationship between the parties shall be the registered seat of the Supplier. The Supplier is also entitled to assert its claims at the general place of jurisdiction of the Purchaser.
2. These General Terms and Conditions for Deliveries and contractual relations between the Supplier and the Purchaser shall be subject to the laws of Slovenia without regard to its conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

July 2021