

Splošni pogoji dobave

držbe **ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o.**, z registriranim sedežem v Ljubljani, Slovenija, na poslovnem naslovu Šmartinska cesta 130, 1000 Ljubljana, registrirano pri Okrožnem sodišču v Ljubljani z matično številko 7214723000, z davčno številko 11536624 in z osnovnim kapitalom v višini 7.500 EUR

I. Splošno

1. Sledeči pogoji urejajo vse prodaje, dobave, storitve in predhodne ponudbe družbe **ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o.** (v nadaljnjem besedilu: dobavitelj) gospodarski družbi, samostojnemu podjetniku, drugim poslovnim subjektom, pravnici osebi javnega prava ali posebnemu premoženju v javni lasti (v nadaljnjem besedilu: kupec). Sledeči pogoji so kupcu na voljo tudi na dobaviteljevem spletnem mestu, tj. www.ecomal.com. Dobavitelj ne sprejema in ne sprejme splošnih pogojev poslovanja kupca (prav tako se nobeno dejanje dobavitelja ne šteje kot sprejetje splošnih pogojev poslovanja kupca) ter se splošni pogoji poslovanja kupca ne uporabljajo, tudi če jim dobavitelj izrecno ne ugovarja oziroma ne nasprotuje. Kupec s sklenitvijo pogodbe z dobaviteljem sprejema in sprejme te splošne pogoje brez kakršnihkoli sprememb in se z njimi v celoti strinja ter se odpoveduje in odpove uporabi svojih splošnih pogojev poslovanja.

2. Če dobavitelj ne navede drugače, veljajo cene in podrobnosti o cenah 30 dni od datuma ponudbe, medtem ko se v preostalih delih ponudba dobavitelja lahko spremeni in se sme spremeniti. Obveznost dobave je potrjena in opredeljena z dobaviteljevim potrdilom naročila. Šteje se, da je dobavitelj potrdil naročilo šele, ko se pošlje potrditev naročila ali odporni naročilno blogo.

3. Opisi dela ali storitev, brošure ali podobno gradivo, na katerih temelji pogodba, dogovorjene mere in teža ne pomenijo nobenega jamstva glede kakovosti ali stabilnosti, razen če so bili v zvezi s tem sklenjeni pisni in izrecni dogovori, ampak so samo nezavezujoči opisi izdelkov. Če se dajo jamstva glede kakovosti ali stabilnosti, lahko ta zagotovi samo dobavitelj na podlagi svojih certifikatov.

4. Varnost vseh dobav ali storitev je predmet relevantne zakonodaje in, kjer se to uporablja oziroma velja, tudi predmet relevantnih pravil združenja „Verband Deutscher Elektrotechniker“ (VDE – Združenje za električne, elektronske in informacijske tehnologije) terlari drugih primerljivih nacionalnih pravil, če se enaka raven varnosti ne zagotavlja drugače.

5. Ocene stroškov, skice in risbe in drugi dokumenti ter kakršnakoli intelektualna lastnina, ki jo slednji vsebujejo, ostanejo last dobavitelja ter se v dovoljenem in mogočem obsegu obravnavajo zaupno ter jih mora kupec hraniti v tajnosti. Kupec brez predhodnega soglasja dobavitelja risb in drugih dokumentov ter informacij, ki jih slednji vsebujejo, ne sme razkriti tretjim osebam in/ali imi omogočiti dostop do njih. Če se naročilo ne izda, mora kupec risbe in dokumente, ki so sestavni deli ponudbe, na zahtevo dobavitelja takoj vrniti. To se ustrezno uporablja tudi za dokumente kupca; vendar je mogoče zagotavljati dostop do teh dokumentov tretjim osebam, na katere mora dobavitelj prenesti dobave ali storitve ali na katere je dobave ali storitve z dovoljenjem prenesel. Kupec dobavitelju tudi dovoljuje uporabo vseh informacij in/ali intelektualne lastnine, ki izhajajo iz oziroma so v povezavi z dokumenti kupca z namenom, da dobavitelj sprejme in izpolni naročilo.

II. Cene

Cene in honorarji so predmet davka na dodano vrednost in veljajo za dobavo brez montaže ali namestitve, incoterms ključula ex works franko tovarna evropsko centralno skladišče ECOMAL Kirchzarten, Offenstraße, Nemčija (INCOTERMS® 2010). Ne vključujejo embalaže oziroma pakiranja.

III. Pridržek lastninske pravice

1. Dobavitelj si pridrži lastninsko pravico na vseh dobavah (blago s pridržano lastninsko pravico), dokler niso v celoti poravnane vse sedanje in prihodnje terjatve v zvezi z zadanimi dobavami. Pridržek lastninske pravice velja tudi za nadomestne dele, razen če po in zaradi namestitve ne postanejo večji sestavni deli.

2. Med pridržano lastninsko pravico na blagu kupca blaga ne sme zastaviti ali dati v zavarovanje ali na drug podoban način razpolagati z blagom; lahko ga samo prodaja naprej v okviru in med rednim poslovanjem ter samo pod pogojem, da kupec kot preprodajalec prejme predhodno plačilo od svoje stranke ali, če zase ali, če je to mogoče, v imenu dobavitelja dogovori pridržek lastninske pravice.

3. a) Če kupec prodaja blago, na katerem je pridržek lastninske pravice, kupec na tem mestu in s tem trenutkom dobavitelju (fiduciarno) odstopi svoje prihodnje terjatve na plačilo iz nadaljnjih prodaj dobaviteljevega blaga svojim kupcem z vsemi stranskimi pravicami, vključno z zahtevki za plačilo razlike, kot zavarovanje za plačilo terjatve dobavitelja do kupca, za kar se ne zahtevajo nobene posebne naknadne izjave, razen če tako določa veljavna zakonodaja. Pri nadaljnjih prodaj, ki vključujejo tudi druge izdelke, za katere ni bila dogovorjena cena enote, kupec odstopi dobavitelju tisti del skupne cene, ki ustreza ceni blaga, na katerem je pridržek lastninske pravice, ki jo je zaračunal dobavitelj, in ima prednost pred preostalimi terjatvijo, ki ni bila odstopljena.

b) Kupec mora pri dobaviteljevem utemeljevanju upravičenih interesov do terjatve dobavitelju zagotoviti informacije in dokumente, ki se zahtevajo za uveljavljanje njegovih pravic do kupčevih strank. Kupec mora zagotoviti dobavitelju dokaz o takih odstopljenih terjatah (npr. račune itd.). c) Do nadaljnega obvestila je kupec pooblaščen za izterjavo odstopljenih terjatve iz nadaljnje prodaje. Dobavitelj lahko kupcu v upravičenem primeru prekliče pooblastilo kupca za izterjavo plačila. Poleg tega dobavitelj lahko in sme odstop razkriti kupčevim strankam z obvestilom o takem odstopu, v ustrezno določenem roku plačila odstopljenih terjatve unovčiti (npr. izterjati/prodati odstopljene terjatve)

in/ali od kupca zahtevati, da svoji stranki razkrije odstop zavarovanja.

4. a) Če ni bilo drugače dogovorjeno, lahko kupec na svoje stroške blago, na katerem je pridržek lastninske pravice, prepelja, spremeni ali združi z drugimi izdelki. To se izvede v imenu dobavitelja. Kupec novi izdelek za dobavitelja brezplačno varuje s preudarnostjo in skrbnostjo dobrega gospodarstvenika. Tudi za predelane, spremenjene ali združene izdelke se šteje, da je na njih pridržek lastninske pravice.

b) V primeru iz točke 4 a) je dobavitelj upravičen do solastništva novega izdelka v vrednosti predelane, spremenjenega ali združena blaga, na katerem je pridržek lastninske pravice, sorazmerno z vrednostjo preostalega predelane blaga ob predelavi, spremembi ali združitvi. Če kupec pridobi izključno lastništvo novega izdelka, kupec dobavitelju za pridržek lastninske pravice dodeli solastništvo novega izdelka, ki je rezultat predelave, spremembe ali združitve, v vrednosti predelane, spremenjenega ali združena blaga, na katerem je pridržek lastninske pravice, sorazmerno z vrednostjo preostalega predelane blaga ob predelavi, spremembi ali združitvi.

c) V primeru nadaljnje prodaje novega izdelka kupec na tem mestu in s tem trenutkom (fiduciarno) odstopa svoje terjatve do svojih kupcev v zvezi z nadaljnjo prodajo takega blaga kot zavarovanje za plačilo terjatve dobavitelja do kupca, vključno z vsemi stranskimi pravicami, za kar se ne zahteva nobena posebna naknadna izjava, razen če tako določa veljavna zakonodaja. Vendar se odstop izvede samo v vrednosti, ki ustreza vrednosti predelane, spremenjenega ali združena blaga, na katerem je pridržek lastninske pravice, kot jo je zaračunal dobavitelj. Del terjatve za plačilo, odstopljen dobavitelju, ima prednost pred terjatvami kupca na plačilo. V zvezi s pooblastilom za izterjavo plačila in pogoji za njegov pretek se ustrezno uporablja točka 3 c) zgoraj.

d) Točka 4 c) se ustrezno uporablja za terjatve v zvezi z združenim blagom, če se blago, na katerem je bila pridržana lastninska pravica, združi z nepremičnosti ali premičnino.

5. Pri zasedu, rubežu ali drugih oblikah razpolaganja z blagom ali posredovanja tretjih oseb in/ali javnih organov ter v primeru postopkov insolventnosti zoper kupec, mora kupec o tem takoj obvestiti dobavitelja ter v obsegu, ki je mogoč in dovoljen v skladu z zakonodajo, zavarovati pridržek lastninske pravice in lastništvo dobavitelja ter katekolni interese pri (fiduciarno) odstopljenih terjatah. Kupec mora po potrebi in v skladu s presjo dobavitelja izpolniti pridržek lastninske pravice in lastništvo dobavitelja ter vseh (fiduciarno) odstopljenih terjatve (npr. notarsko overiti vse pogodb, ki jih kupec sklene s svojim kupcem).

6. Če kupec krši pogodbo, zlasti če kupec ne izpolnjuje plačilnih obveznosti, ima dobavitelj pravico, da blago vzame nazaj ter obenem od pogodbe odstopi ali pri pogodbi ostane. Kupec se zavezuje, da bo predal blago. Če dobavitelj vzame blago nazaj, to pomeni odstop od pogodbe samo, če dobavitelj to izrecno izjavi. Če dobavitelj ne odstopi od pogodbe in vzame blago nazaj, s tem ne krši pogodbenih obveznosti (zlasti mu ni treba dostaviti blaga), dokler kupec ne odpravi kršitve pogodbe (zlasti dokler kupec ne izvede plačila). Dobavitelj lahko na podlagi predhodnega opozorila, ki ga izda kupcu, blago, na katerem je pridržal lastninsko pravico unovči (na primer prodaj) in s pridobljenimi sredstvi poravnava neporavnane terjatve.

IV. Plačilni in dobavni pogoji

1. Dostava ex works franko tovarna evropsko centralno skladišče ECOMAL Kirchzarten, Offenstraße, Nemčija (INCOTERMS® 2010), brez embalaže oziroma pakiranja.

2. Računi zapadejo v plačilo v 30 dneh neto od datuma računa.

3. Pobot plačil in terjatev dobavitelja ali uveljavitev pravice do zadržanja plačila so mogoči samo, če so nasprotno terjatve nespornе ali če so bile ugotovljene kot končne in brezpogojne.

4. Plačilne odredbe ali nalogi, čeki in menice (so dovoljeni pod pogojem predhodnega dogovora z dobaviteljem) se sprejmejo kot plačilo samo, če kupec niso vse stroške izterjave in diskontne stroške. Kupec je lahko upravičen do danih popustov, ki jih dobavitelj da po lastni presoji, zgoji, če je bilo naročilo v celoti in pravilno prevzeto in pravočasno plačano.

V. Roki za dobave ali storitve

1. Za zagotovitev izpolnitve dogovorjenih dobavnih rokov se zahteva pravočasen in ustrezen prejem vseh dokumentov, ki jih mora zagotoviti kupec, vseh potrebnih odobritev in dovoljenj, in zlasti časovnih načrtov, ter spoštovanje dogovorjenih plačilnih pogojev in rokov ter drugih obveznosti kupca. Drugače se šteje, da je zamudo povzročil kupec in se rok ustrezno podaljša, razen če je za zamudo odgovoren dobavitelj.

2. Šteje se, da je rok izpolnjen:

a) ob dobavi brez namestitve ali montaže, če je bila v roku dogovorjenem za dostavo ali izvedbo storitve, odposlana ali prevzeta v celoti delujoča pošiljka. Če se v dostavo zamuja iz razlogov, za katere je kriv kupec, se šteje, da je rok izpolnjen, če je bil kupec v dogovorjenem roku obveščen, da je blago pripravljeno za odpremo.

b) ob dobavi z namestitvijo ali montažo, takoj ob dostavi v dogovorjenem roku.

3. Če se dokaže, da je neizpolnjen rok za dostavo ali storitve mogoče pripisati mobilizaciji, vojni, vsajti, stvki, blokadi ali nastanku nepredvidenih okoliščin, se rok ustrezno podaljša in dobavitelj ni odgovoren za takšno neizpolnitve.

Enako velja, če dobavitelj iz podobnih razlogov ne prejme pravočasno dobav od svojih podjemnikov oziroma izvajalcev, čeprav je sprejel vse ukrepe za zagotovitev takih dobav. Kupec lahko odstopi od pogodbe samo v skladu z zakonskimi določbami in po predhodnem obvestilu dobavitelja, ki vsebuje zahtevo za naknadno izpolnitev pogodbe, če je zamudo mogoče pripisati dobavitelju.

4. Če je odprema ali storitev odložena na zahtevo kupca ali po njegovi krivdi, se kupcu zaračunajo stroški skladiščenja v višini 0,5 %, vendar ne več kot 5 %, zaračunanega zneska za vsak začeti mesec, z začetkom prvi mesec po obvestilu o pripravljenosti za odpremo, razen če kupec zagotovi dokazilo o manjših stroških ali dobavitelj o večjih stroških.

VI. Prenos tveganja

Tveganje se prenese na kupca, kot sledi, tudi če je bila dogovorjena dobava »prevoz plačan«:

a) ob dobavi brez namestitve ali montaže, če je bila odpremljena ali prevzeta pošiljka, ki je pripravljena za uporabo. Dobavitelj na zahtevo in stroške kupca pošiljko zavaruje za primer razbijanja in poškodbe med prevozom ter za primer požara, tudi če dobavitelj sam opravi prevoz ali nosi stroške prevoza;

b) če se odprema, dostava, začetek ali izvedba namestitve ali montaže odloži na zahtevo kupca ali iz razlogov, za katere je odgovoren kupec, se tveganje prenese na kupca za obdobje odložitve; kljub temu se dobavitelj zavezuje, da bo na zahtevo in stroške kupca priskrbel zavarovalno kritje, ki ga bo potreboval kupec.

VII. Prevzem

1. Kupec mora prevzeti dostavljene izdelke tudi v primeru neznanjih stvarnih napak in/ali neznanjih pritožb.

2. Dobavitelj lahko dostavlja po delih, če lahko kupec posamezni del uporabi za pogodbeno določeni predvideni namen, če je dostava preostalega izdelka zagotovljena in če zaradi tega kupec nima bistveno večjih ali dodatnih stroškov (razen če dobavitelj izjavi, da je pripravljen nositi navedene stroške). Dobavitelj lahko dostavlja po delih tudi, če narava obveznosti zahteva dostavo po delih.

VIII. Odgovornost za napake

Dobavitelj je odgovoren za napake, ne pa tudi za neznamne napake, kot sledi:

1. Kupec mora skrbno, kot se pričakuje od skrbnega človeka v skladu z njegovim poklicem in izkušnjami, pregledati dostavljene izdelke ali izvedeno storitev takoj po prevzemu in dobavitelja takoj in čim natančneje pisno obvestiti o vsaki napaki, najpozneje pa v 8 (osmih) dneh po prevzemu. Če kupec navedenega obvestila ne da, se za dostavljeno blago ali izvedeno storitev šteje, da sta sprejeta in odobrena, razen če je napaka skrita. Če taka skrita napaka obstaja ob dostavi, ampak se odkrije šele pozneje, vendar najpozneje v šestih mesecih po dostavi, je treba o tem takoj pisno obvestiti dobavitelja, najpozneje pa v 8 (osmih) dneh po njenem odkritju; sicer se za dostavljeni izdelek ali opravljeno storitev šteje, da sta bila sprejeta in odobrena, tudi glede napake.

2. Kupec se pri večji napaki v dobavi ali storitvi lahko odloči, da se napaka odpravi ali pa zagotovi brezhiben izdelek ali storitev (nadomestna izpolnitev). Če ima dobavitelj v skladu z zakonskimi določbami pravico do zavrnitve ene od obeh ali obe vrsti nadomestne izpolnitve, to na to pravico dobavitelja ne vpliva. Kupec odobri dobavitelju določen čas in priročnost, ki sta potrebna za naknadno izpolnitev obveznosti. Dobavitelj lahko zavrne zagotovitev nadomestne izpolnitve, dokler kupec ne izpolni odgovornosti in obveznosti iz točke 3 spodaj.

3. Kupec mora izpolniti pogodbene obveznosti, za katere je odgovoren, zlasti v zvezi z dogovorjenimi plačilnimi pogoji. Če je bilo izdano obvestilo o napaki, lahko kupec zadržati plačilo v sorazmerni višini glede na zadevno napako. Če se obvestilo o napakah da neupravičeno, lahko dobavitelj od kupca zahteva povračilo stroškov, ki so nastali zaradi tega.

4. Če dobavitelj dopusti, da poteče ustrezen rok, določen za odpravo napake, vendar napake ne odpravi, in/ali se naknadna izpolnitev izjalovi ali ni mogoča, pogodba ostane v veljavi, vendar lahko kupec odstopi od pogodbe ali zahteva znižanje plačila. Pri neznanji napaki pa od pogodbe ni mogoče odstopiti.

5. Terjatve kupca, ki izhajajo iz napak, zastarajo eno leto po ustreznem in pravočasnem obvestilu, ki ga kupec pošlje dobavitelju v zvezi z zadevno napako. Vsi zahtevki v zvezi z napakami, o katerih kupec dobavitelja ni obvestil v rokih iz člena VIII. 1 (ki sta 8 (osem) dni po dostavi ali, pri skritih napakah, ki se odkrijejo v šestih (6) mesecih po dostavi, pa osem (8) dni po odkritju), so prekludirani in prenehajo.

6. Če kupec sprejme zagotovljeni izdelek ali storitev brez soglasja dobavitelja ali izvede spremembo preko tretjih oseb, tako da je nemogoče ali neupravičeno pričakovati, da bo napaka odpravljena, kupec izgubi pravico v zvezi z zadevno napako v obsegu, ki je dovoljen v skladu z zakonodajo. Kupec v vsakem primeru nosi dodatne stroške, ki nastanejo pri odpravi napake, ki jo je povzročila sprememba.

7. Zahtevki kupca za povračilo stroškov zaradi nadomestne izpolnitve, zlasti prevoznih in potnih stroškov ter stroškov dela in materiala, so izključeni, če ti stroški nastanejo zaradi preemestive dostavljene izdelka na lokacijo, ki ni podružnica kupca in ta preemestitev ni bila izvedena zaradi občajne uporabe – razen če se pogodbena stranka izrecno ne dogovorita drugače.

8. Zahtevki za nadomestilo škode se sprejmejo samo v skladu in pod pogoj iz razdelka X spodaj. Vsi presegajoči zahtevki kupca zoper dobavitelja v zvezi z napako so izključeni. Če obstajajo posebne zakonite določbe, ki urejajo končno dostavo blaga kupcu, to na njih, če in v obsegu, v katerem se uporabljajo, ne vpliva.

9. Točke od 1 do 9 se ustrezno uporabljajo za terjatve kupca v zvezi z naknadno spremembo, nadomestitvijo ali nadomestilom v skladu s predlogi in nasveti, zagotovljenimi na podlagi pogodbe, ali s kritivju sekundarnih pogodbenih obveznosti.

IX. Pravice industrijske lastnine in avtorske pravice

1. Dobavitelj se zavezuje, da bo izvedel dostavo samo v namembno državo, kjer je dostava prosta pravic industrijske lastnine in avtorskih pravic tretje osebe (v nadaljnjem besedilu: pravice industrijske lastnine). Če tretja oseba zoper kupca vloži utemeljene zahteve zaradi kršitve pravic industrijske lastnine in avtorskih pravic v zvezi z uporabo dobav, ki je v skladu s pogodbo, je dobavitelj v obdobju iz točke 5 člena VIII kupcu odgovoren kot sledi.

a) Dobavitelj se lahko odloči za pridobitev pravice do izkoreninjanja zadevnih dobav ali za spremembo ali zamenjavo navedenih dobav na tak način, da pravice tretjih oseb ne bodo več kršene, dobavljeni izdelek pa bo še naprej izpolnjeval pogodbeno dogovorjene funkcije. Če to po mnenju dobavitelja ni mogoče, lahko kupec odstopi od pogodbe ali zahteva znižanje plačila v skladu z zakonskimi določbami.

b) Za obveznost dobavitelja v zvezi s plačilom odškodnine se uporabljajo omejitve iz člena X.

c) Navedene obveznosti dobavitelja se uporabljajo samo, če kupec tretji osebi ne prizna kršitve (razen, če prizna s privojenjem dobavitelja) in dobavitelj obdrži pravico do pravočasnega in ustreznega sprejetja vseh ukrepov obrambe in/ali sklenitve dogovora o poravnavi. Če kupec preneha uporabljati dobavljeni izdelek, da bi omejil škodo ali iz drugega upravičenega razloga, se kupec zavezuje, da bo tretjo osebo obvestil, da takšno prenehanje uporabe ne pomeni priznanja kršitve lastninskih pravic.

2. Zahtevki kupca so izključeni v obsegu v katerem je kupec odgovoren za kršitev pravic industrijske lastnine.

3. Zahtevki kupca so izključeni tudi, če je kršitev lastninskih pravic posledica posebnih specifikacij kupca z uporabo (dobavljени izdelkov), ki je dobavitelj ni mogli predvideti, ali če jo je povzročil kupec s spremembo dobavljени izdelkov ali njihovo uporabo skupaj z izdelki, ki jih ni dobavlil dobavitelj.

4. Pri kršitvah pravic industrijske lastnine se določbe iz točk št. 3 in 9 člena VIII ustrezno uporabljajo tudi za zahtevke kupca iz točke 1. a).

5. Kupec mora takoj pisno obvestiti dobavitelja, če so bili zoper njega (kupca) vložen zahtevki zaradi kršitve pravic tretjih oseb.

X. Drugi zahtevki za nadomestilo škode

Dobavitelj ni odgovoren za kršitev pogodbenih obveznosti zgolj iz malomarnosti, kar pa ne velja za glavne pogodbenne obveznosti. Glavne pogodbene obveznosti so obveznosti, katerih izpolnitev je bistvena za pogodbo in dejansko omogočajo ustrezno izvedbo pogodbe. Prav tako dobavitelj ni odgovoren za kršitve pogodbenih obveznosti, ki jih zagrešijo njegovi zastopniki iz lahke malomarnosti.

Če dobavitelj ni mogoče pripisati namere, goljufije ali velike malomarnosti, je dobavitelj odgovoren samo za predvidljivo škodo, ki je značilna za takšno pogodbo. V kateremkoli primeru se dobavitelj in kupec strinjata, da v obsegu, ki ga dopušča veljavna zakonodaja, dobavitelj ni odgovoren za škodo, ki presega vrednosti pogodbe in/ali dela pogodbe, na katerega se odškodnina nanaša, razen če je ta znesek v očitnem nesorazmerju s škodo ali je drugače določen z zakonodajo.

Izuzeta je odgovornost v skladu z zakonodajo o odgovornosti in telesne poškodbe, za katere je odgovorna katera koli pogodbeni stranka. Če je bilo sprejeto jamstvo, je dobavitelj odgovoren v skladu z zakonskimi določbami. Katerikoli obstoječi odškodninski zahtevki, ki preostanejo, zastarajo v zakonskih rokih.

Nobena določba tega ali katerega koli drugega člena ne izključuje zakonskih obveznosti ali odgovornosti kupca za škodo in/ali v zvezi s škodo, razen če je taka izključitev dovoljena v skladu z zakonodajo ter v tem obsegu (kot so, obveznost dobavitelja glede omejitve škode, upoštevanje drugih koristi dobavitelja, odgovornost dobavitelja za škodo itd.) in/ali zakonih pravic dobavitelja v zvezi s škodo (kot so, zakonski razlogi za izključitev in/ali omejitve odškodninske odgovornosti).

XI. Pristojno sodišče in merodajno pravo

1. Če je kupec gospodarska družba, podjetnik, drugi poslovni subjekti, pravna oseba javnega prava ali posebno premoženje v javni lasti, je za vse spore, ki izhajajo neposredno ali posredno iz pogodbenih razmerij ali z njimi povezanih razmerij, izključno pristojno sodišče v Ljubljani.

2. Pogodbena razmerja ali z njimi povezana razmerja ureja slovenska zakonodaja; uporaba mednarodnega zasebnega prava in Konvencije ZN o pogodbah o mednarodni prodaji blaga (CISG) je izključena.

XII. Zavezujoč učinek pogodbe

Tudi če se izkaže, da so posamezni deli pogodbe neveljavni, preostali deli pogodbe ostanejo še naprej v veljavi in so zavezujoči.

General Terms and Conditions for Deliveries

of ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o.,

with a registered seat in Ljubljana, Slovenia, at the business address Šmartinska cesta 130, 1000 Ljubljana, a company incorporated at the District Court in Ljubljana under reg. no. 7214723000, tax no. 11536624, having a share capital in the amount of EUR 7,500

I. General

1. The following terms and conditions govern all sales, deliveries, services and precursory offers of ECOMAL, ELEKTRONSKE KOMPONENTE, d.o.o. (the "Supplier") to a company, sole entrepreneur, other business persons, a legal entity under public law, or a publicly owned special asset (the "Purchaser"). The following terms and conditions are made available to the Purchaser also on the Supplier's website, i.e. www.ecomal.com. General terms of business of the Purchaser are not accepted by the Supplier (and none of the actions of the Supplier shall be considered as acceptance of the Purchaser's general terms of business) and they shall not apply, even if the Supplier do not expressly contradict or objects to them. By conclusion of a contract with the Supplier, the Purchaser accepts and agrees with these general terms and conditions, without any modifications, and waives application of its own general terms of business.

2. If not otherwise indicated by the Supplier, the Supplier's prices and details of such prices shall apply for 30 days as of the date of the offer; whereby, in other respects the Supplier's offer may and shall be subject to any change. The obligation to deliver shall be confirmed and defined by the Supplier's order confirmation. The order shall only be deemed accepted by the Supplier upon dispatch of the confirmation of the order or upon dispatch of the ordered goods.

3. Descriptions of work or services, brochures or similar articles on which the contract is based, agreed measurements and weights shall not constitute any guarantees of quality or stability in the absence of any written and explicit agreements in this respect but shall be merely unbinding descriptions of the products. If guarantees are given for quality or stability, these is and shall be provided by the Supplier only with its own certificates.

4. The safety of all deliveries or services shall be subject to compliance with the relevant laws and, where applicable, also in compliance with the respective regulations of the "Verband Deutscher Elektrotechniker" [VDE - Association for Electrical, Electronic & Information Technologies] and/or any other comparable national regulations, unless an identical level of safety is otherwise guaranteed.

5. Cost estimates, drawings and other documents and any therein contained intellectual property shall remain the property of the Supplier and shall, to the extent allowed and possible, be considered confidential and must be kept in secrecy by the Purchaser. Drawings and other documents as well as information therein may not be revealed and/or made accessible to third parties by the Purchaser without a prior consent of the Supplier. Drawings and other documents that are integral parts of the offer shall be returned by the Purchaser upon request of the Supplier immediately if no order is placed. This shall apply accordingly to the documents of the Purchaser; however, it shall be possible to render these documents accessible to third parties on whom the Supplier is required and/or has permissibly conferred deliveries or services. The Purchaser also allows the Supplier to use any information and/or intellectual property deriving from and/or in connection with the documents of the Purchaser with the purpose for the Supplier to accept and fulfil the order.

II. Prices

Prices and fees shall be subject to the addition of value added tax and apply upon delivery without assembly or installation, ex-works European central warehouse ECOMAL Kirchzarten, Ottenstraße, Germany (INCOTERMS® 2010). They shall not include packaging.

III. Retention of Title

1. The Supplier shall retain title to all deliveries (goods to which title is retained) until all present and future claims to payment with regard to the respective deliveries have been fully satisfied. The retention of title shall also apply to replacement or exchange parts unless they become major components as a result of installation.

2. Whilst title to the goods is retained, the Purchaser shall be prohibited from pledging or from assigning the goods by way of security or in any other similar disposal of the goods and shall only be entitled to resell during the course of regular business transactions and only on condition that the Purchaser as a reseller receives a prior payment from its own customer or, for its part or, if possible, on behalf of the Supplier, contracts the retention of title.

3. a) If the Purchaser sells goods to which the title is retained, the Purchaser shall herewith now (fiduciary) assign its future claims to payment from the resale of Supplier's goods in respect of its own customers with all secondary rights – including payment balance requests – to the Supplier as a security for payment of claims of the Supplier towards the Purchaser and without any specific declarations being required at a later date, save as required by the applicable law. In the event of resale together with other items without any unit price agreement, the Purchaser shall assign the Supplier that part of the total price corresponding to the price of the goods to which title is retained charged by the Supplier, with priority over the rest of the claim to payment that has not been assigned.

b) When substantiating justified interests, the Purchaser shall provide the Supplier with the information and documents required to assert its rights against the Purchaser's customers. The Purchaser shall provide for the Supplier any evidence of such assigned claims (e.g. invoices, etc.).

c) Until further notice, the Purchaser shall be authorized to collect the assigned payments from the resale. In the event of good cause, the Supplier shall be entitled to revoke the authority of the Purchaser to collect payment. Moreover, the Supplier may and shall be able to disclose the assignment to the Purchaser's customers, by notifying them about such assignment, within an appropriate set period of time, turn the assigned payments to account (e.g. to collect to commercialize assigned payments) and/or require the Purchaser to disclose the assignment of security to its own customer.

4. a) The Purchaser shall, at its own costs – unless otherwise agreed – be permitted to process, rework or combine the goods to which title is retained with other items. This shall be carried out on behalf of the Supplier. The Purchaser shall safeguard the new item free of charge for the Supplier and, in so doing, show the prudence of a diligent business person. The processed, reworked or combined articles shall be deemed to be subject to the retention of title.

b) In the case of 4.a), the Supplier shall be entitled to co-ownership of the new item to the extent of the value of the processed, reworked or goods, to which title is retained, in proportion to the value of the remaining processed goods at the time of processing, reworking or combination. Should the Purchaser acquire exclusive ownership of the new item, the Purchaser shall, for the purpose of the retention of title, grant the Supplier co-ownership of the new item generated from processing, reworking or combination to the value of the processed, reworked or combined goods, title to which is retained, in proportion to the remaining processed, reworked or combined goods at the time of processing, reworking or combination.

c) In respect of the resale of the new item, the Purchaser herewith now (fiduciary) assigns its claim to payment from its customer in relation to the resale of such goods as security for payment of claims of the Supplier towards the Purchaser with all incidental rights, without this necessitating any further declaration, save as required by the applicable law. The assignment, however, shall only be to an amount corresponding to the value of the processed, reworked or combined goods to which title is retained as billed by the Supplier. The fraction of the claim to payment assigned to the Supplier shall have priority over the Purchaser's claims to payment. In terms of the authorization to collect payment and the conditions for the revocation thereof, No. 3.c) shall apply accordingly.

d) 4. c) shall apply accordingly to the claim to payment for combining the goods if the goods to which title is retained are combined with real estate or moveable assets.

5. In the event of attachment, confiscation or other dispositions or intervention on the part of third parties and/or by public authorities, and in the event of any insolvency proceedings against the Purchaser, the Purchaser shall immediately inform the Supplier thereof and shall, to the extent possible and permissible under the law, protect the retention of title and ownership of the Supplier as well as any interest in the (fiduciary) assigned claims. If required and upon the Supplier's own discretion, the Purchaser is obliged to perfect any retention of title and ownership of the Supplier as well as any (fiduciary) assigned claims (e.g. notarization of the any Purchaser's contracts with its buyer's).

6. Should the Purchaser act in breach of contract, in particular if the Purchaser defaults on payment, the Supplier shall be entitled to take back the goods and either withdraw from or remain with the contract. The Purchaser undertakes to surrender them. The taking back of the goods shall only signify a withdrawal from the contract if the Supplier explicitly declares so. If the Supplier does not withdraw from the contract and takes back the goods, the Supplier is not in default with its obligations (in particular, it is not obliged to deliver the goods) until the Purchaser remedies its breach of contract (in particular, until the Purchaser makes payments). Subject to a prior caution issued to the Purchaser, the Supplier shall be able to turn the goods to which title is retained to account (e.g. to commercialize) and offset the proceeds thereof against the outstanding claims to payment.

IV. Terms of Payment and Delivery

1. Delivery ex-works European central warehouse ECOMAL Kirchzarten, Ottenstraße, Germany (INCOTERMS® 2010) excluding packaging.

2. Invoices due for payment inside 30 days net after the date of invoice.

3. It shall only be possible to offset payments and claims of the Supplier or to exercise a right to withhold payment if counterclaims are uncontested or have been established as final and absolute.

4. Payment instructions, cheques and bills of exchange (are allowed only subject to prior agreement with the Supplier) shall only be accepted as payment if the Purchaser bears all expenses of collection and discount charges. The Purchaser shall, at the Supplier's own discretion, only be entitled to granted discounts subject to full and correct acceptance of the order and timely payment.

V. Deadlines for Deliveries or Services

1. Compliance with agreed delivery deadlines shall require the timely and due receipt of all documents to be provided by the Purchaser, any approvals and permits necessitated, in particular schedules and compliance with the agreed terms of payment and other obligations of the Purchaser. Otherwise, it shall be considered that the delay has been caused by the Purchaser and the deadline shall be duly prolonged, unless the Supplier is responsible for the delay.

2. Compliance with the deadline shall be deemed given:

a) upon delivery without installation or assembly if the fully operational consignment has been despatched or collected inside the agreed delivery or service deadline. If delivery is delayed for reasons for which the Purchaser is to blame, the deadline shall be deemed observed if readiness for dispatch has been notified by the agreed deadline.

b) upon delivery with installation or assembly, as soon as delivery has been effected inside the agreed set period.

3. If the failure to comply with the deadline for delivery or services is proven to be attributable to mobilization, war, uprising, strike, lockout or the occurrence of unforeseen circumstances, the deadline shall be duly prolonged and the Supplier shall not be considered liable for such failure. The same shall apply if, for similar reasons, the Supplier fails to receive supplies on time from its own contractors, although it has made every effort to ensure such supplies. The Purchaser shall only be able

to withdraw from the contract subject to statutory regulations, and prior to the notification to the Supplier with a request for subsequent fulfilment of the contract, if the delay is attributable to the Supplier.

4. If dispatch or service is delayed at the request or due to the fault of the Purchaser, the Purchaser shall be charged warehouse fees of 0.5% but no more than 5% of the invoiced amount for every commenced month, beginning first month after notification of readiness for dispatch, unless the Purchaser provides evidence of lesser costs or the Supplier of greater costs.

VI. Passing of Risk

Risk shall pass to the Purchaser as follows, even if carriage paid delivery has been contracted:

a) upon delivery without installation or assembly if the ready-for-use consignment has been despatched or collected. At the request and expense of the Purchaser, even if the Supplier carries out transport itself or bears the costs thereof, the consignment shall be insured by the Supplier for breakage and damages during transport and from fire.

b) if dispatch, delivery, start or implementation of installation or assembly is delayed at the request of the Purchaser or for reasons for which it is responsible, risk shall pass to the Purchaser for the period of the delay; nevertheless, the Supplier undertakes to procure the insurance cover required by the Purchaser at the request and expense of the Purchaser.

VII. Receipt

1. The Purchaser shall take receipt of the delivered items, even in cases of insignificant material defects and/or insignificant complaints.

2. The Supplier shall be permitted to deliver in instalments providing the instalment can be used by the Purchaser for the contracted intended purpose, the delivery of the remaining ordered goods is secured, and the Purchaser does not incur significantly more expense or additional costs as a result thereof (unless the Supplier declares its willingness to bear said costs). The Supplier shall also be permitted to deliver in instalments if the nature of the obligation requires the delivery in instalments.

VIII. Liability for Defects

The Supplier shall be liable for defects, but not for insignificant defects, as follows:

1. The Purchaser shall diligently, as expected by a diligent person of its profession and experience, inspect the delivered item or service immediately upon receipt and inform the Supplier immediately of any defect as specifically as possible in written form, at the latest 8 (eight) days after receipt. Should the Purchaser fail to make said notification, the item delivered or the service shall be deemed accepted and approved unless the defect is concealed. Should such concealed defect be present at the time of the delivery but only revealed at a later date but not later than 6 months as of receipt, written notification thereof shall be immediate, at the latest 8 (eight) days after discovery; otherwise, the delivered item or service shall be deemed accepted and approved, even in respect of the defect.

2. In the event of a serious defect in delivery or service, the Purchaser shall be entitled to choose between remedying the defect or delivering a flawless item or providing a flawless service (supplementary performance). If there is any right of the Supplier to refuse one of the two or both types of subsequent performance in accordance with statutory regulations, this right of the Supplier shall not be affected hereby. The Purchaser shall grant the Supplier the amount of time and the opportunity it deems necessary to provide subsequent satisfaction. The Supplier shall be able to refuse to provide subsequent performance for as long as the Purchaser fails to meet the responsibilities and obligations to which it is obliged as defined in No. 3 below.

3. The Purchaser shall comply with its contractual duties for which it is responsible, in particular the agreed terms of payment. If notification has been made of a defect, the Purchaser shall be permitted to withhold payment in proportion to the defect in question. In the event defects are notified without justification, the Supplier shall be entitled to require the Purchaser to compensate for the expenses it thereby incurred.

4. If the Supplier allows an appropriate period of time set it to provide remedy to pass without correcting the defect, and/or if subsequent fulfilment proves a failure or is impossible, the contract shall remain valid, but the Purchaser shall be able to withdraw from the contract or call for a cut in payment (reduction). In the case of an insignificant defect, however, there shall be no right to withdraw from the contract.

5. Claims of the Purchaser derived from defects shall become statute-barred one year after a duly and timely notification of the Supplier by the Purchaser with regard to the respective defect. Any claims with regard to defects the Purchaser has not notified the Supplier about within the deadlines stated in Article VIII. 1. (which are eight (8) days after delivery or, in case of concealed defects which are revealed prior to six (6) months after delivery, eight (8) days after discovery) shall be precluded and cease to be valid.

6. If the Purchaser modifies the item delivered or the service without the consent of the Supplier or has an alteration carried out by third parties so that it becomes impossible or unreasonable to expect a defect to be remedied, the Purchaser loses its rights with regard to the respective defect to the extent permissible by law. In any case, the Purchaser shall bear the extra expense incurred in remedying the defect caused by the modification.

7. Claims of the Purchaser for expenses incurred through subsequent performance, in particular the costs of transport, travel, labour and material shall be ruled out insofar as these costs increase because the delivered item has been moved to a location other than the branch of the Purchaser and this relocation does not reflect customary use – unless otherwise explicitly agreed between the parties.

8. Claims to compensation for damages shall only prevail subject to Section X. Any further-reaching claims relating to a defect of the Purchaser against the Supplier shall be ruled out. If there are any specific statutory regulations governing the ultimate delivery of the goods to a consumer, if and to the extent applicable, they shall not be affected hereby.

9. Nos. 1 to 9 shall apply correspondingly to those claims of the Purchaser for subsequent reworking, replacement or compensation generated by suggestions or advice provided under the contract or through the breach of secondary contractual obligations.

IX. Industrial Property Rights and Copyright

1. The Supplier undertakes to only effect delivery in the country of the destination free from industrial property rights and third-party copyright (referred to in the following as "industrial property rights"). Should a third party lodge justified claims against the Purchaser for the infringement of industrial property rights and copyrights through the contractually used deliveries of the Supplier, the Supplier shall be liable to the Purchaser as follows within the period of set down in Article VIII No. 5.

a) The Supplier shall choose to acquire a right of exploitation for the deliveries in question or to alter or exchange said deliveries in such manner that no third-party rights are infringed any longer, the item delivered, however, continuing to fulfil the contractually agreed functions. If this is not possible within reason for the Supplier, the Purchaser shall be entitled to withdraw from the contract or to claim a reduction of payment in line with the statutory regulations.

b) The duty of the Supplier to pay compensation of damages shall be subject to the restrictions defined in Article X.

c) The aforementioned obligations of the Supplier shall only prevail if the Purchaser does not acknowledge a breach to a third party (unless such acknowledgment is made with the consent of the Supplier) and the Supplier retains the right to timely and duly take all defense measures and/or negotiate a settlement. If the Purchaser ceases to use the delivered item in order to contain damages or for other good cause, the Purchaser undertakes to inform the third party that such discontinued use does not constitute any acknowledgment of a breach of property rights.

2. Claims of the Purchaser shall be ruled out to the extent it is responsible for the infringement of industrial property rights.

3. Claims of the Purchaser shall also be ruled out if the breach of property rights was generated as a result of special specifications of the Purchaser, by an application (of the delivered items) that could not be foreseen by the Supplier or if it was caused by the Purchaser modifying the delivered items or using them together with products that were not delivered by the Supplier.

4. In the event of breaches of industrial property rights, the regulations of Article VIII Nos. 3 and 9 shall also apply accordingly to the Purchaser's claims specified in No. 1 a).

5. The Purchaser shall inform the Supplier immediately in writing if claims to the infringement of third-party rights are lodged against the Purchaser.

X. Other Claims to Compensation for Damages

The Supplier shall not be liable for a merely negligent breach of contractual duties other than major contractual duties. Major contractual duties shall be those the fulfilment of which is essential to the contract and that actually render proper contract implementation possible in the first place. Furthermore, the Supplier shall not be liable if its simple vicarious agents breach contractual duties through slight negligence.

Unless willful intent, fraud or gross negligence is attributable to the Supplier, the Supplier shall only be liable for foreseeable damages that occur, typical for the contract. In any case, the Supplier and the Purchaser agree that – to the extent permissible under the applicable law – the Supplier may not be held liable for damages which exceed the value of the contract and/or the part of the contract to which the damages relate, unless this amount will be in clear disproportion to the damage or it is stipulated otherwise by law.

The liability under the product liability laws shall not be affected hereby; this shall also apply to liability for injury to life and limb for which any of the party is responsible. When a guarantee has been assumed, the Supplier shall be liable subject to the statutory regulations.

Any existing claims to compensation that still prevail shall become statute-barred inside the statutory deadlines.

Nothing in this or any other article shall preclude any of the statutory obligations or liability of the Purchaser in relation to damages unless and to the extent such preclusion is permissible by law (such as the Supplier's obligation to mitigate the damages, consideration of the Supplier's other benefits, the Supplier's liability for damages, etc.) and/or statutory rights of the Supplier in relation to damages (such as statutory reasons for exclusion and/or limitation of liability for damages).

XI. Jurisdiction and applicable Law

1. If the Purchaser is a business company, sole entrepreneur, other business persons, a legal entity under public law or a publicly owned special asset, the sole place of jurisdiction for all disputes derived directly or indirectly from contractual relations or any thereto related relations shall be at the competent court in Ljubljana, Slovenia.

2. Contractual relations or any thereto related relations shall be subject to Slovenian law, the application of International Private Law and the UN Convention on Contracts for the International Sale of Goods (CISG) shall be ruled out.

XII. Binding Effect of Contract

Even in the event single parts of the contract prove to be invalid, the remaining parts thereof shall continue to be valid and binding.

Status October 2017