

# Terms & Conditions of Purchase of EKPO Fuel Cell Technologies GmbH (as at July 2023)

Max-Eyth-Straße 2, 72581 Dettingen/Erms, Germany:

## I. General Provisions and applicability

All orders shall be governed by these Terms and Conditions of Purchase exclusively. Any standard terms and conditions of business of a supplier which conflict with or derogate from our Terms and Conditions of Purchase shall not apply unless they have been expressly approved in writing. The acceptance of goods or services from a supplier or any payment made for such goods and services shall not be deemed to constitute such agreement.

## II. Conclusion of the contract

1. Contracts, delivery schedules/forecasts and orders, as well as any amendments or modifications thereto, must be in text form. This shall also apply to any derogations in quality and quantity from the terms of our order, as well as to any subsequent amendment of contracts. Any standards and designs/drawings that may be stipulated by us in an order in specific cases, including tolerances, shall be binding. By accepting an order, the supplier acknowledges that it has informed itself of the nature and the scope of its performance by consulting the plans provided. Should the order itself, or the documentation, designs/drawings and plans provided by us, contain any manifest inaccuracies, typographical errors or mathematical errors, these shall not be binding upon us. The supplier shall be obliged to inform us of any such errors. The same shall apply in the event of any missing documents or designs/drawings.
2. Orders shall only be binding upon us if they are confirmed in writing by the supplier, subject to the stipulation of a binding delivery date, within a period of 14 days from the date of their receipt by the supplier to the extent that nothing is agreed to the contrary in individual cases.

## III. Delivery and transport

1. The agreed delivery periods and delivery dates shall be binding. The supplier shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g., limitation to stock). The supplier shall be in default without any further warning, if the agreed delivery date is not observed.
2. Should any agreed delivery dates not be observed, the statutory provisions shall apply. We are in particular entitled to rescind from the contract and demand damages in lieu of fulfillment damages at the fruitless end of reasonable grace period.
3. In case of non-observance with the delivery dates we are entitled after advance threat to demand a penalty for every commencing week of delayed delivery of 0.5 % up to 5 % of the order value. The penalties must be set-off against any damage for delayed delivery the suppliers is liable for.
4. Partial deliveries shall not be permitted, unless we have expressly consented thereto in text form.
5. Any acceptance without reservation of a delayed delivery or service shall not constitute a waiver of any claims which we may have pursuant to such delayed delivery/service.
6. Prior to the expiry of the delivery period we shall be entitled to refuse acceptance of the goods.
7. Our shipping instructions must be complied with. Any costs incurred by us as a result of any non-compliance with our shipping instructions shall be borne by the supplier.
8. Delivery shall take place at expense of the supplier at the point of delivery stipulated by us. Should we be exceptionally required to bear transport costs, the supplier must elect the mode of transport stipulated by us, and otherwise the mode of transport and method of delivery which are most favorable for us.
9. Risk shall be transferred on the occasion of acceptance by our receiving office.
10. Packaging shall be included in the price. If exceptionally contrary provisions are agreed, packaging shall be invoiced at cost price. The supplier must use the packaging stipulated by us and must ensure that the goods are protected from damage by the packaging.

## IV. Force majeure

Disturbances, official measures and other unforeseeable and unavoidable non-company related events shall release the affected party from any contractual obligations for the duration of its existence. The affected party shall immediately inform the other party and take any necessary action in order to limit the impact of such events. Furthermore, the affected party shall immediately inform the other party about the end of such event.

## V. Quality and acceptance

1. The supplier shall ensure that its deliveries comply with the technical data and specifications stipulated by us, the applicable versions of accident prevention and VDE regulations, the applicable statutory provisions and the latest state of the art.
2. In order to ensure the quality of its deliveries, the supplier must carry out quality testing which is tailored to the type and volume of the relevant delivery.
3. In terms of measures, volumes and quality, the values which are recorded during our incoming inspection of and quality tests on incoming goods shall be the values applicable.
4. The acceptance of any goods shall be subject to an inspection of the goods as to their lack of defects, and in particular their correctness and completeness, as and when this is feasible in the ordinary course of business.
5. We shall perform an inspection for quantity and identity and shall examine the goods for manifest damages in transit. We shall notify such defects immediately. Any advanced requirement for examination and to notification is excluded.
6. The supplier must make all supplier declarations required by law in a correct and complete manner.
7. Should we or our customers be subsequently charged by any customs authority on account of any inaccurate supplier declarations that we issued ourselves, or should we or our customers suffer as a result hereof any other financial disadvantage, and should such an inaccuracy be attributable to the original information on origin provided by the supplier, the supplier shall be liable in this respect.
8. To the extent that the supplier manufactures products within the meaning of Article 3 of Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (the REACH Regulation), it shall be responsible for ensuring that it complies with its duty to pass on certain information in accordance with Article 33 of the REACH Regulation.

## VI. Terms of payment

1. Any prices which are agreed shall include packaging, transportation and any other costs.
2. To the extent that no specific agreement is reached, an invoice shall be settled within a period of 30 days from the payment date and the receipt of both the invoice facility and the receipt of the goods or the provision of the service. Where early delivery is accepted, the payment period is calculated with respect to the originally scheduled delivery date.
3. Payment shall be made subject to the verification of the invoice and due and proper delivery.
4. Should any advance payment be made by us, we shall be entitled to a bank guarantee.

## VII. Warranty

1. The supplier shall ensure that the goods comply with our specifications, including their package design and labeling. Our order shall be executed in a professional and proper manner and in accordance with the latest state of the art.
2. The statutory provisions relating to material defects and defects in title shall apply, to the extent that nothing is agreed to the contrary hereinafter.
3. We shall be required to inform the supplier immediately of any defects in or the defective execution of a delivery, as soon as they are identified in the context of a standard commercial procedure. In the event of the delivery of defective goods the supplier shall be given the right to rectify the defects (by reworking or redelivery). In urgent cases we shall be entitled at the cost of the supplier to rectify any defect ourselves, or to have such defect

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rectified by a third party. In particular, an urgent case shall arise where to avoid severe risk or significant damage it becomes impossible or unreasonable to inform the supplier of the damage and to set the supplier a deadline, albeit a short one, to take remedial action. The supplier must be informed immediately of such a procedure.

4. The warranty period shall be 48 months from the date of the delivery of the goods (transfer of risk), in case we are using the goods for our own delivery with products to manufacturers or suppliers of the automotive industry. Apart from that the warranty period shall be 30 months.
5. In the case of any defects of title for which the supplier is responsible, the supplier shall indemnify us in respect of any third-party claims.
6. In case of redelivery ("*Nachlieferung*") the warranty period shall restart from the date of such a redelivery. In case of repair ("*Nachbesserung*"), the warranty period shall restart from the date of fulfillment of the respective obligation to repair regarding the scope of repair. It shall not apply where the supplier expressly and rightfully reserves the right to perform the repair solely out of goodwill, to avoid disputes or with a view to upholding the supply relationship.
7. Should we incur costs as the result of any defective delivery or other defective performance, and in particular transport costs, material costs, labor costs, replacement costs or the cost of an incoming inspection exceeding the ordinary scope, the supplier shall be obliged to reimburse such costs to us.

### VIII. Product liability

1. In the event that any claim is brought against us on the basis of product liability or any similar inalienable principles of liability pursuant to any foreign law and regardless of culpability, the supplier shall indemnify us in respect of any such claims brought by third parties, to the extent that the damage is caused by a defect in the delivered goods. The principles of Section 254 of the German Civil Code shall apply accordingly as regards compensation for damage between ourselves and the supplier. This shall also apply in the case of direct claims on the part of the supplier. Where the cause of the damage lies within the supplier's field of responsibility, the supplier must establish he has not acted culpably. As far as any such claims are concerned, the supplier shall waive any right to rely on the statute of limitations for as long as any claim may be brought against us.
2. In the cases described in section VIII. 1, the supplier shall bear all associated costs and expenses. Beyond this, the statutory provisions shall apply.
3. Should we and/or our customers be obliged to conduct a recall as a result of goods delivered by the supplier and/or we are required to bear the costs of any recall, the supplier shall be required to meet such costs or to indemnify us in respect thereof. This only applies where there is fault on the part of the supplier; the principles of Section 254 of the German Civil Code shall apply accordingly. The supplier must be informed immediately of the procedure or any claim under Sentence 1.

### IX. Proprietary rights

1. The supplier shall deliver the goods free from any third party rights (proprietary rights).
2. The supplier shall indemnify us in respect of all claims which may arise from any use of such proprietary rights.

### X. Services

Any persons who carry out works at our premises in the context of the performance of a contract must comply with the provisions of the works regulations applicable to such premises. Liability for any accidents shall be excluded, unless such liability results from the willful or grossly negligent breach by our legal representatives or vicarious agents of any obligation incumbent upon them.

### XI. Title to and the provision of information

1. All commercial and technical information provided and made available by us shall, to the extent that it is not demonstrably in the public domain, be treated as confidential as far as third parties are concerned. We reserve all of our rights to such information.

2. We shall retain title to all drawings, drafts, samples, specifications, internal company data, tools, facilities, etc. that we have made available to the supplier for the purposes of tendering for or completing an order. Such items shall be retained with the due care and diligence exercised by a prudent businessman and may only be used in connection with our orders. The items which are produced using the material made available by us or on the basis of our confidential information or with our tools or duplicated tools, may not be used either by the supplier itself or be offered or delivered to third parties.

### XII. Compliance

1. The supplier is obliged to comply with the relevant legal provisions as regards the treatment of employees, environmental protection, data protection and workplace safety. The Supplier further warrants to comply with the provisions of the *Supplier Code of Conduct of ElringKlinger Group* (available at <https://www.elringklinger.de/en/company/supply-chain-management/sustainable-supplier-management>) in the version applicable at the time of the conclusion of the contract and to impose such provisions vis-à-vis its own contractual partners by means of suitable contractual regulations.
2. The Supplier agrees that we or third parties commissioned by us as well as our customers or third parties commissioned by our customers may carry out audits on compliance with the obligations arising from the *Supplier Code of Conduct* and may request to review the documents of the Supplier and even its suppliers for this purpose. We reserve the right to make copies if necessary. Reviewing documents is limited to documents that are related to the fulfilment of the contractual obligations and this shall be done in compliance with the legal data protection regulations and in compliance with company and business secrecy. The audit will take place during normal business hours and with prior notice.
3. In the event that a supplier repeatedly breaches this section XII. and/or despite appropriate advice and fails to demonstrate that the breach has been resolved to the fullest extent possible and that suitable precautions have been enacted to preclude any future breaches, we shall reserve the right to rescind existing contractual agreements or terminate such contracts without notice.

### XIII. Miscellaneous provisions

1. In order to be valid, any ancillary agreements must be in writing. Should a provision hereof be or become invalid, this shall not affect the validity of the remaining provisions.
2. The contract shall be governed exclusively by German law, excluding conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods.
3. The place of performance shall be the place to which the contract stipulates the goods are to be delivered or at which the service is to be provided.
4. The place of jurisdiction for all disputes which arise pursuant to the contractual relationship shall be the court having jurisdiction where we are domiciled. We shall also be entitled to bring proceedings against the supplier before the court of its registered office or before the court of the place of performance.