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**General Terms and Conditions of Business; Effective 1st May, 2011**

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**§1 Scope**

The following General Terms and Conditions shall exclusively apply to the entire business relationship between EURECA Messtechnik GmbH (hereinafter referred to as EURECA) and the contracting party in their version effective at the time of the conclusion of the contract. Deviating provisions proposed by the contracting party shall be ineffective unless expressly accepted in writing by EURECA.

**§2 Conclusion of the contract**

The products, prices and services offered by EURECA do not constitute an offer to conclude a sales and purchase agreement according to §§ 145 ff. BGB (German Civil Code). An order of the contracting party constitutes an offer to conclude a sales and purchase agreement. Thereby it is irrelevant whether the order is placed at EURECA itself, one of its sales representatives or Commercial Agents.

A sales and purchase agreement shall only be concluded and become binding upon written confirmation of the order by EURECA or the delivery of the goods or services. EURECA is compelled to inform the purchaser without delay if the order is not going to be confirmed.

**§3 Prices**

The prices mentioned by EURECA are—if nothing else is agreed—in EURO, excluding VAT and the costs for shipping, packing and insurance. These costs are to be borne by the contracting party. Additional costs for fast- or express-delivery are basically to be borne by the contracting party. Necessary costs for tools, drafts and printing plates are to be borne by the contracting party and shall be invoiced separately.

**§4 Delivery / terms of delivery**

The risk of damage or loss at delivery shall be borne by the contracting party. The choice of the means of transport is incumbent on EURECA. The risk of damage or loss shall pass to the contracting party at the time of hand over of the goods to the freight driver. In case the goods are to be delivered at EURECA's premises, at the time EURECA makes them available for the contracting party. EURECA shall not contract a transport insurance. Only upon express written instruction of the contracting party and the corresponding assumption of costs shall EURECA contract a transport insurance.

The stipulation of mandatory and optional terms of delivery must be in written. Terms of delivery are optional, if not expressly agreed as mandatory in written. The terms of delivery start with the conclusion of the contract. Cases of force majeure or business disruption at EURECA or one of its suppliers, which through no fault of its own temporarily prevents EURECA from delivering the object of purchase at the agreed date or within the agreed term, lead to a prolongation of the agreed terms of delivery up to 4 months.

Should delivery be impossible due to reasons to be blamed on the contracting party, or should the contracting party reject acceptance of the goods without legal ground, the contracting party shall bear the costs for the unsuccessful delivery.

The contracting party bears the costs of reshipment. Any reshipment needs prior approval by EURECA.

**§5 Quantity contracts**

Quantity contracts have a duration of 12 months if not expressly agreed otherwise, starting with the first delivery/collection of goods by the purchaser. The quantities agreed in this contract are to be entirely collected by the purchaser until the end of the duration of the contract. EURECA reserves the right to at its sole discretion either deliver the outstanding quantities unasked and invoice them, or to invoice the already delivered quantities subsequently adjusted, should the purchaser not have collected the agreed quantity until the end of the contract.

**§6 Payment**

Invoices will be due for payment with no deduction made within the payment target. Cheques and drafts shall only be accepted if agreed upon separately. The day EURECA is in funds is regarded the day of receipt of the payment. In event of

default of payment, EURECA shall have the right to invoice the lawful default interests. The costs of each reminder shall be charged on the contracting party with an amount of EUR 10,00. EURECA reserves the right to assert any further damages.

## **§7 Warranties**

The contracting party shall examine the goods and packing without delay at their delivery. Notices of defects, quantity variances and wrong delivery need to be submitted in written and within 5 working days by the contracting party. Hidden defects shall be asserted immediately after their discovery by the contracting party. Should the contracting party not duly fulfil its above mentioned obligations, the goods are to be considered as accepted.

Claims of the contracting party on the grounds of defects prescribe within one year from the passing of the risk, if the contracting party is a corporate body under public law, a public trust or public corporation, or an entrepreneur acting at the time of the conclusion of the contract in the frame of his industrial or independent professional activity. Further claims remain unaffected, as far as EURECA is mandatorily answerable by law or a further liability has been expressly agreed, in particular in case of the acceptance of a guarantee. Customary discrepancies regarding design, colour, constitution and weight of the goods are reserved.

## **§8 Liability**

Should legal provisions oblige EURECA to accept responsibility for damage as a result of slight negligence, EURECA shall have—except for the case of bodily harm—limited liability:

Liability shall exist only in the event that essential contract obligations are violated, e. g. obligations which the contract wishes to impose on EURECA in accordance with its content and purpose or the fulfilment of which serve to make the correct and proper execution of the contract possible in the first place and on the compliance with which the contracting party relies and may place its trust. Such liability shall be limited to the typical kind of damage foreseeable at the time of the contract closure. Any liability on part of EURECA on the grounds of the fraudulent concealment of a defect, arising out of the acceptance of a guarantee or a procurement risk or in accordance with the law on product liability shall remain unaffected.

As far as liability for EURECA is excluded or limited, this exclusion or limitation is valid too for the personal liability of its employees, representatives or auxiliary persons.

## **§9 Retention of title**

EURECA will retain title to all goods supplied by it until full payment of the amounts invoiced. In case payment is made by cheque or draft, EURECA will retain title to all goods supplied until value setting.

Until such time as the property in the goods passes to the purchaser, the contracting party shall hold the goods as EURECA's fiduciary agent, and shall keep the goods properly protected.

If third parties take up steps to pledge or to otherwise dispose of the goods, the contracting party shall immediately notify EURECA in written. Should the third party not be able to pay to EURECA the costs of a court procedure and the extrajudicial costs of a legal dispute on the grounds of §771 ZPO (German Code of Civil Procedure), the contracting party is liable for the corresponding outfall at EURECA.

The contracting party may only sell the goods which are the property of EURECA in the ordinary course of business. The contracting party already at this point assigns his purchase price claims from resale vis-à-vis his customers to EURECA. A further, specific assignment is not needed. On demand of EURECA the contracting party is obliged to prove its claims against third parties resulting from resale individually and to notify the assignment to those third parties, requesting them to make their payments directly to EURECA. EURECA is entitled to notify those third parties directly regarding the assignment and to collect the debt claim itself. The contracting party is not allowed to assign the claims in any other way.

If goods which are the property of EURECA are mixed, blended, consumed, processed or combined with other items, the contracting party already at this point assigns his ownership rights or co-ownership rights to the new item to EURECA and shall hold the item free of charge in safe custody for EURECA with the care of a prudent businessman. In order to secure the claims of EURECA against the contracting party, the latter also assigns those claims that might originate through the connection of the goods with a piece of real estate against third parties. Should the goods under co-ownership of EURECA be sold, the assignment is reduced to the front ranking part of the claim, which corresponds with to EURECA's co-ownership share.

The contracting party undertakes to store the goods under title retention separately and to hallmark them clearly.

The retraction of the goods supplied under retention of title is only to be considered as a cancellation of the contract, if this has been expressly communicated to the contracting party.

EURECA is entitled to demand adequate securities in amount as well as in form for the due fulfilment of its contractual obligations from the contracting party. If the value of those securities EURECA is entitled to exceeds the value of the corresponding claims by more than 20%, EURECA undertakes to release those exceeding securities upon request of the contracting party.

#### **§10 Set-off and right of retention**

The contracting party is only entitled to set-off claims against accounts receivable, if these have been ascertained in a legally binding way or have not been contested by EURECA. Furthermore the contracting party is only entitled to carry out a right of retention as far as his counterclaim is based on the same contractual relationship.

#### **§11 Additional provisions**

Complementary to the provisions of this agreement, the corresponding legal regulations, commercial costumes and common conditions for this business sector apply.

#### **§12 Data protection**

The German Data Protection Act allows the collection, modification, storage and transmission of personal data or their usage as means for the fulfilment of own business purposes, if it serves the assigned purpose of the contractual relation or a relation of mutual trust similar to a contractual relation with the concerned partner (§ 28 Abs. 1 BDSG/German Data Protection Act). EURECA will make use of this possibility. Specific sorts of personal data (§ 3 Abs. 9 BDSG/German Data Protection Act) will not be collected or processed. The contractual party agrees that the data necessary for the realization of the business are collected and stored by EURECA as well as transmitted by EURECA to its service providers.

#### **§13 Place of fulfilment and jurisdiction**

For both Contract Parties the place of fulfilment shall be 50933 Köln and the court of jurisdiction shall be the court responsible for Köln. German law alone shall apply under the preclusion of application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or the other laws on the international sales of movables.

#### **§14 Severability clause**

Should any of the provisions contained in these Terms and Conditions be legally invalid, unfeasible or contain loopholes, the validity of the remainder of the provisions shall remain unaffected by this circumstance. Instead of the invalid or unfeasible provisions or in order to fill the loophole, an adequate regulation shall apply, which—as far as legally possible—shall come as close as possible to what the contract parties wanted or would have wanted according to the spirit and purpose of the agreement.