

EUROAMERICA

TEST AND MEASUREMENT SOLUTIONS

Standard Terms & Conditions

1. SCOPE

- 1.1 Unless expressly agreed otherwise, the following Terms and Conditions (“Terms and Conditions”) shall apply to all agreements for products and/or services between customers (“Customer”) and EUROAMERICA, LLC (“EUROAMERICA”). During an ongoing business relationship, the Terms and Conditions shall apply even if not expressly referred to by EUROAMERICA.
- 1.2 EUROAMERICA hereby expressly rejects all terms and conditions of the Customer.

2. OFFERINGS, DOCUMENTATION, INDUSTRIAL PROPERTY RIGHTS

- 2.1 Unless expressly specified as binding, offerings made by EUROAMERICA in sales documents, catalogues, or on the internet are subject to EUROAMERICA’s confirmation and are merely invitations to conduct business.
- 2.2 All technical data, specifications of the materials/processes used, etc. are only approximations used in the industry, unless EUROAMERICA’s offer documents expressly state that such pieces of data are binding. If EUROAMERICA makes changes to the production or process method or the product or service itself that have no influence on the adherence to the approximations used in the industry, EUROAMERICA shall inform Customer only if such changes affect a warranted product or service.
- 2.3 All documents provided by EUROAMERICA to Customer shall remain the property of EUROAMERICA; the same must not be made accessible to third parties without the prior written consent of EUROAMERICA and, if no agreement is entered into with EUROAMERICA, must be returned in their entirety at the request of EUROAMERICA, including any copies made thereof.
- 2.4 Before accepting and using a product or service of EUROAMERICA, Customer shall ensure that such product or service is fit for Customer’s intended purpose. This also applies to the choice of suitable materials. It is Customer’s responsibility to obtain information on the range of applications of the product.
- 2.5 EUROAMERICA is not responsible for verifying the correctness and/or legal conformity (especially in regard to Intellectual Property rights infringements) of information or specifications provided by Customer; this is the sole responsibility of Customer.
- 2.6 Customer shall indemnify and hold EUROAMERICA harmless against claims of third parties from Intellectual Property infringements as a result of the processing or use of products, drawings, or samples of EUROAMERICA by Customer or third parties instructed by Customer in a manner infringing the Intellectual Property rights of another. If such processing or use of the products, drawings, or samples results in litigation based on claimed or actual infringement of Intellectual Property rights, Customer shall reimburse EUROAMERICA for all expenses incurred by EUROAMERICA as a result of such litigation.

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- 2.7 Warranties by, or side agreements with, employees of EUROAMERICA must be confirmed in writing by EUROAMERICA to be valid if they exceed those provided in the written contract.
- 2.8 If the scope of supply includes software, Customer shall be granted a non-exclusive license to use the software delivered, including the documentation thereto. Customer may not grant sub-licenses or transfer the license to third parties, unless approved in writing by EUROAMERICA. A duplication of the software is not allowed, except to create a back-up copy.

3. ORDERS

Orders are deemed accepted if confirmed in writing by EUROAMERICA or fulfilled promptly upon receipt of the order.

4. DELIVERY SCOPE AND TIME

- 4.1 Delivery periods begin to run from the date of the execution of the contract and terminate upon dispatch of the product or notification of its readiness for dispatch.
- 4.2 Changes requested by Customer shall result in delivery periods starting to run anew as from the date of the changed order confirmation from EUROAMERICA.
- 4.3 Delivery periods shall be reasonably extended in *force majeure* events and similar events beyond the control of EUROAMERICA, as well as for unforeseeable events, such as: the denial of official permits, business disruptions, labor disputes, transport disturbances, delays in the upstream supplier chain to EUROAMERICA that are not the fault of EUROAMERICA, etc., if these events can be proven to have a considerable effect on delivery periods. If EUROAMERICA is already late with the delivery of the products before the occurrence of such event, there shall be no extension of delivery periods.
- 4.4 These provisions shall not lead to any changes with regard to the burden of proof.
- 4.5 Customer's right to withdraw from the contract after expiration of a reasonable grace period for EUROAMERICA shall remain unaffected.
- 4.6 Delivery in installments is permissible if Customer can reasonably be expected to accept installments.

5. PLACE OF DELIVERY, PASSING OF RISK

- 5.1 Deliveries without installation or assembly of the product shall be *ex works*, *ex warehouse*, or free carrier of original equipment manufacturer or service provider at the expense and the risk of Customer. Unless Customer has specified the type of shipment, EUROAMERICA shall choose the type of shipment at EUROAMERICA's reasonable discretion. EUROAMERICA shall insure the shipment against breakage, transport damage, and fire at the request and cost of Customer.
- 5.2 In the case of deliveries without installation or assembly, the risk in respect of the product shall pass to Customer when the products are handed over to Customer, the freight forwarder, or the

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carrier, but no later than when they leave the works or the warehouse of EUROAMERICA, even if carriage-paid delivery is agreed.

- 5.3 If a delivery without installation or assembly is postponed at the request, or delayed due to the fault, of Customer, the product shall be stored at Customer's risk. In such case, the date of the notification of readiness for dispatch shall be deemed the date of dispatch. The risk shall pass to Customer at the time at which Customer is in default of acceptance.
- 5.4 In the case of deliveries with installation and assembly of the product, the risk in respect of the product shall pass on the date of acceptance, but no later than the date on which Customer begins using the product. A delivery is deemed accepted if Customer has not expressly refused acceptance within fourteen (14) days following the request to accept the delivery. EUROAMERICA undertakes to inform Customer of this legal consequence when making the request. Clause 5.4 applies *mutatis mutandis*.

6. PRICES

- 6.1 All prices are *ex works* exclusive of freight/postage, packaging, insurance, and applicable VAT, all of which shall be paid in addition. Costs for putting a product into operation and for assembly, adjustment, etc. shall be charged separately.
- 6.2 EUROAMERICA has the right to increase the price of the product if the period between the date of the contract and the agreed date of delivery is more than four (4) weeks and the cost of production of the product have increased between the date of the contract and the delivery date due to circumstances beyond the control of EUROAMERICA, especially increased costs of parts and components. If EUROAMERICA increases the price in such case, the price increase shall not exceed the product cost increase. Upon request, EUROAMERICA shall present evidence of the product cost increase to Customer.
- 6.3 EUROAMERICA has the right to increase the price of the product if the period between the date of the contract and the agreed date of delivery is more than four (4) weeks and the EUR (€) to USD (\$) exchange rate has increased by more than 0.015% between the date of the contract and the delivery date.

7. PAYMENT

- 7.1 The agreed price is payable net in US Dollars within thirty (30) days from the receipt of the invoice or similar request for payment, charges to be borne by Customer, unless agreed otherwise. Other payment terms are only accepted in writing by the EUROAMERICA. Customer shall bear the payment risks and costs. Checks, promissory notes, and bills of exchange shall be accepted only after prior written consent of EUROAMERICA and subject to final settlement.
- 7.2 Customer shall have a right to retention or set-off only in respect to counterclaims that are uncontested or finally established in law.
- 7.3 Costs of securities to be provided, letters of credit to be used in international transactions, etc. shall be borne by Customer.

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8. LIABILITY FOR QUALITY DEFECTS

- 8.1 Customer shall inspect the products for defects immediately following receipt. Apparent defects must be notified in writing to EUROAMERICA within five (5) business days from receipt. Hidden defects must be notified in writing to EUROAMERICA within five (5) business days from their discovery.
- 8.2 If a defect is notified in time, EUROAMERICA shall remedy the defect within a reasonable period of time depending on the complexity of the product, and Customer shall provide EUROAMERICA the opportunity to do so. EUROAMERICA may decide on the type of remedy (supply of a defect-free product or rectification of the defect), taking into account the interests of Customer.
- 8.3 If EUROAMERICA fails to remedy the defect, Customer may, at Customer's option and notwithstanding any claims for damages, cancel the contract or demand a price reduction.
- 8.4 All claims for defects under a warranty of quality which were or could have been discovered by Customer prior to installation or processing of the products shall be forfeited once the product is processed or installed. The foregoing does not apply if EUROAMERICA has acted with intention or gross negligence in causing damage to the product during installation.
- 8.5 EUROAMERICA does not guarantee a certain product's life expectancy, especially in difficult operating conditions that were not known by EUROAMERICA beforehand. Claims based on premature malfunction or failure of the delivered product shall not be accepted if they result from such difficult operational conditions or operational conditions not known by EUROAMERICA beforehand.
- 8.6 With regard to products manufactured according to drawings or specifications provided by Customer, EUROAMERICA's warranty of quality only extends to include compliance with the specifications.
- 8.7 EUROAMERICA shall have no liability for quality defects not, or only marginally, affecting the value or the suitability of the product for use.

9. GENERAL LIMITATION OF LIABILITY

- 9.1 EUROAMERICA may be held liable under the applicable laws in respect of claims for damages made by Customer on the basis of willful action or gross negligence on the part of EUROAMERICA in the performance of EUROAMERICA's obligations. EUROAMERICA may further be held liable under the applicable laws for the fulfillment of material contractual obligations. Material contractual obligations are obligations, the fulfillment of which is crucial for the proper performance of the contract and which a contract party may normally rely on. If EUROAMERICA has acted neither with intention nor with gross negligence, its liability for damages will be limited to the foreseeable damages that may typically occur with this type of contract.
- 9.2 Claims for damages, no matter on what legal ground, beyond those referred to in Paragraph 9.1 above shall not be accepted. This shall also apply if Customer claims reimbursement of futile expenditures instead of damages.

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9.3 If Customer provides materials for the production of ordered products, EUROAMERICA shall keep such materials insured against theft only. EUROAMERICA may be held liable for the loss or deterioration of such materials only if EUROAMERICA has acted with intention or gross negligence.

10. WARRANTIES AND DISCLAIMER OF WARRANTIES

10.1 Express Warranty of Title. EUROAMERICA represents, with respect to all of the goods being sold under this Agreement and as part of the basis of this Agreement, that EUROAMERICA has good and marketable title to the goods. EUROAMERICA further warrants that EUROAMERICA has the right to transfer possession and title of the goods to Customer at that time. EUROAMERICA MAKES NO REPRESENTATIONS AS TO WHETHER THE GOODS BEING SOLD ARE FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR SIMILAR CLAIMS AND DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OR SIMILAR CLAIMS WITH RESPECT TO THE GOODS.

10.2 Disclaimer of Express Warranties. EXCEPT AS OTHERWISE PROVIDED HEREIN, EUROAMERICA HAS MADE NO AFFIRMATION OF FACT AND HAS MADE NO PROMISE RELATING TO THE GOODS BEING SOLD THAT HAS BECOME ANY BASIS OF THE BARGAIN MADE OR THAT HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY AFFIRMATION OR PROMISE. NO DESCRIPTION OF THE GOODS BEING SOLD HAS BEEN MADE PART OF THE BASIS OF THE BARGAIN OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY DESCRIPTION. NO SAMPLE OR MODEL HAS BEEN MADE PART OF THE BASIS OF THE BARGAIN OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE WHOLE OF THE GOODS WOULD CONFORM TO ANY SAMPLE OR MODEL.

10.3 Disclaimer of Implied Warranty of Merchantability. EUROAMERICA DISCLAIMS ANY WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE GOODS BEING SOLD.

10.4 Disclaimer of Implied Warranty of Fitness. EUROAMERICA DISCLAIMS ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSES WITH RESPECT TO THE GOODS BEING SOLD.

10.5 Disclaimer of All Implied Warranties. SUBJECT TO CUSTOMER'S RIGHT OF INSPECTION, EUROAMERICA IS SELLING THE GOODS ON AN AS IS, AS THEY STAND, and/or A WITH ALL FAULTS BASIS AND DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO THE GOODS.

11. RETENTION OF TITLE

11.1 Delivered products shall remain property of EUROAMERICA until full payment of all monies owed to EUROAMERICA in respect of the business relationship with Customer, including from other current or future contracts ("Retained Goods").

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- 11.2 If Retained Goods are processed by Customer to form a new, movable item, this shall be done on behalf of EUROAMERICA but shall not create an obligation or liability on the part of EUROAMERICA. The new item shall be the property of EUROAMERICA. If Retained Goods are processed together with other goods not owned by EUROAMERICA, EUROAMERICA shall acquire co-ownership of the new product in proportion of the value of the Retained Goods (invoiced price) to the value of the other goods at the time they were processed and the value of the processing. If the Retained Goods are linked, mixed, or commingled with other goods not owned by EUROAMERICA, EUROAMERICA shall acquire co-ownership of the new product in accordance with the law. If the Retained Goods are linked, mixed, or comingled in such a way that Customer shall acquire sole ownership, Customer shall assign to EUROAMERICA *pro rata* ownership in proportion of the value of the Retained Goods to the value of the other goods at the time they were linked, mixed, or commingled. The new items owned or co-owned by EUROAMERICA are deemed to be Retained Goods as defined herein. Customer shall preserve such sole ownership or co-ownership for EUROAMERICA free of charge and with the due care of a prudent businessman.
- 11.3 Customer shall notify EUROAMERICA immediately of any enforcement action by third parties against the Retained Goods or the assigned receivables and make available the documentation required for an objection to enforced proceedings.

12. JURISDICTION

- 12.1 The laws of the United States of America shall apply exclusively and without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG). The contract language is English.
- 12.2 If Customer is a merchant, an entity under public law, or a fund under public law, the courts at the place of EUROAMERICA's registered office shall have jurisdiction over all disputes between the parties, including actions on checks, promissory notes, or bills of exchange and actions restricted to documentary evidence. EUROAMERICA may, alternatively, bring suit against Customer before any other competent court.