

**General terms and conditions of Sale for  
ETK EMS Asia Productions Ltd., ETK EMS Skanderborg A/S, ETK EMS Næstved A/S and ETK EMS  
Sønderborg A/S**

**1. Scope of application**

- 1.1. These General Terms and Conditions of Sale (hereafter mentioned as GTCS) applies to all sales of goods by ETK regardless any conflicting, contrary or additional terms and conditions in any purchase order or other communication from Customer.
- 1.2. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by ETK unless and until ETK expressly confirms an acceptance in writing.
- 1.3. ETK reserves the right to change the GTCS at any time without any notice.

**2. Offers, Purchase Order and Order Confirmation**

- 2.1. All offers given by ETK are available for acceptance within fifteen working days from the date of issue, unless otherwise specifically stated therein and are subject to the availability of the goods offered.
- 2.2. All purchase orders issued by Customer shall specify as a minimum the type and version number, quantity of goods requested, applicable agreed unit prices, delivery place and requested delivery date. No purchase order shall be binding on ETK unless and until confirmed by ETK in writing.
- 2.3. Stocked intermediate products and items without movement which has been used in the production of goods shall be transferred to the Customers Consign Inventory. This also includes unique incoming raw materials and contracted purchase commitments which cannot be sold to the supplier, all intermediate products and components are invoiced at purchase price + 15% to the Customer.
- 2.4. The Customer shall be offered a consignment stock for the transfer of goods which have been settled upon delivery of the parts in the purchase order.

**3. Terms of Payment**

- 3.1. Unless otherwise specified, all fees are stated in USD or DKK exclusive of any taxes, impositions and other charges including but not limited to sales, use, excise, value added and similar taxes or charges imposed by any government authority.
- 3.2. Unless expressly stated otherwise, bank guarantee or cash payment for 70% of the estimated total running order value must be provided prior to any acceptance of purchase order. Only with this in place ETK accepts 30 working days net payment terms if this cannot be provided, all payment will be cash upfront including estimated excess stock "liability".
- 3.3. Customer must submit such financial information as may be reasonably requested by ETK for the establishment or continuation of payment terms.
- 3.4. ETK may in their sole discretion at any time change agreed payment terms without notice by requiring payment cash in advance or cash on delivery, bank guarantee, letter of credit or otherwise.

- 3.5. If Customer fails to pay any invoice within 7 working days of the payment due date, ETK may suspend delivery of any purchase order or any remaining balance thereof until payment is made or terminate delivery of any purchase order or any remaining balance thereof by providing written notice of termination to Customer within seven working days of the expiration of the grace period. ETK shall charge Customer interest from the due date to the date of payment at a rate of 1,5% per calendar month. This shall be in addition to and not in limitation of any other rights or remedies to which ETK are or may be entitled at law or in equity.
- 3.6. Entitlement to goods delivered shall remain with ETK and shall not pass to Customer until the goods have been paid for in full. If Customer fails to pay any invoice within 14 working days of the due date of payment, ETK may reclaim goods entailed in the invoice. Insurance of the goods shall be taken out by Customer and shall cover in full the value of replacing the goods until such time entitlement to the goods has passed to Customer.

#### **4. Terms of Delivery and Late Delivery**

- 4.1. Unless expressly stated otherwise in ETK order confirmation, all deliveries of goods shall be EXW in accordance with Incoterms 2010. The risk of loss of or damage to goods shall pass to Customer in accordance with the agreed delivery term.
- 4.2. The delivery dates of goods shall be those set forth on ETK Intelligence/order confirmation. If ETK fails to deliver goods within 14 working days of the agreed delivery date, Customer may terminate the applicable purchase order in whole or partial as to those goods affected by the delay by providing written notice of termination to ETK within 7 working days of the expiration of the grace period. Customer may not claim damages for any loss suffered as a result of the delay subject. These terms shall be Customer's exclusive remedies for late delivery.
- 4.3. ETK reserves a right to perform rate delivery.

#### **5. Acceptance of goods**

- 5.1. Customer shall inspect goods delivered upon receipt. Customer shall be considered accepting the goods delivered unless written notice of rejection specifying any reasons for rejection, is received by ETK within 5 working days of delivery of the goods.

#### **6. Warranty**

- 6.1. ETK warrants that from delivery and for a period of 24 months from the date of delivery, goods shall be free from defects in workmanship.
- 6.2. The warranty does not cover damage resulting from misuse, negligent handling, lack of reasonable maintenance and care, accident or abuse by anyone other than ETK.
- 6.3. With respect to goods which do not conform to the warranty, ETK's liability shall be limited to at ETK's discretion 1) refund of the purchase price for such goods less a reasonable amount for usage, 2) repair of such goods or, 3) replacement of such goods; provided however that such goods are returned to ETK along with acceptable evidence of purchase within 14 working days after Customer discovers the lack of conformity or ought to have discovered it.
- 6.4. ETK offers no other warranty, expressed or implied with respect to goods delivered hereunder, and the warranty constitutes the sole obligation in respect of any lack of conformity of

goods delivered hereunder. In particular, ETK offers no warranty related to the merchantability of goods delivered or their suitability or fitness for any particular purpose.

## **7. Intellectual Property Rights Infringement**

- 7.1. If any goods delivered are considered infringing to a Third Party's patent, utility model, design, trademark or other intellectual property right and Customer are enjoined from using same, ETK shall at Customer's discretion and expense replace the goods with non-infringing substitutes.
- 7.2. The substitutes must not entail a material diminution in performance or function or modify the goods in the process of non-infringement.
- 7.3. ETK are not entitled to sell or in any other way share information with another third party unless this is necessary to obtain either pricing or parts to build the specific product.
- 7.4. All documents and product rights belong to Customer.

## **8. Limitation of Liability**

- 8.1. Neither of the Parties are liable for indirect, special, incidental, consequential or punitive damages of any nature, including but not limited to business interruption costs, loss of profit, removal and/or reinstallation costs, procurement costs, loss of data, injury to reputation or loss of customers.
- 8.2. ETK is not liable for any claims regarding the design compliance with Customer's design, specifications or instructions or repair, modification or alteration of any products by a Third Party or use in combination with other goods.
- 8.3. Goods are manufactured according to Customer's specifications and IPC610 Class 2, all mechanical drawings and specifications must be provided from Customer. The documentation and assembly specifications are the sole responsibility of Customer.

## **9. Force majeure**

- 9.1. Either Party shall be excused from any delay or failure in performance if caused by reason of any occurrence of contingency beyond its reasonable control including but not limited to acts of God, acts of war, fire, insurrection, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature.
- 9.2. The obligations and rights of the party excused by force majeure shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption.
- 9.3. When such events have abated, the Parties' respective obligations shall resume. In the event, the interruption of the excused Party's obligations continues for a period in excess of 30 working days, either Party shall have the right to terminate the applicable contract(s) of sale.

## **10. Applicable law and jurisdiction**

- 10.1. If any provision of these GTCS be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law

giving effect to the intent of the Parties and enforced as modified. All other terms and conditions of this document shall remain in full force and effect and shall be construed in accordance with the modified provision.

10.2. The GTCS and all contracts entered into between the Parties shall be governed by and construed in accordance with the laws of Denmark without giving effect to any choice of law or conflict of law provisions. Any suits, actions or proceedings that may be instituted by either of the Parties against the other Party shall be instituted exclusively before the competent courts of Denmark. However, without prejudice to the right to bring suits, actions or proceedings in any other court which would have jurisdiction if this provision had not been incorporated into these GTCS.

**Acceptance of the above mentioned**

Customer

ETM EMS

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
VAT/CVR

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
ZIP and City

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Name in print