

General Terms and Conditions of Business of ebner tec gmbh



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Scope and Validity

The General Terms and Conditions of Business [GTC] of ebner tec gmbh, FN 189809g, Gewerbepark 6, 4493 Wolfhern (hereinafter "ebner tec gmbh") shall apply to all deliveries of products and data as well as to all independent services and services in connection with the delivery of products and data, whether such deliveries or services are made/performed by ebner tec gmbh itself or by third parties commissioned by ebner tec gmbh. These GTC also apply to all subsequent business transactions and do not have to be agreed separately.

The contract partners' terms of business are ineffective for legal transactions with ebner tec gmbh. The state of the art, but also the recognized rules of professional conduct and ethics, must be observed for deliveries and services.

Validity

Orders and contracts, to be legally binding, must be confirmed in writing by ebner tec gmbh and duly signed on behalf of ebner tec gmbh. Communication by e-mail shall be deemed to meet the written requirement. Any offers made by ebner tec gmbh are in general non-binding and subject to change without notice. Verbal agreements are only valid if confirmed in writing by ebner tec gmbh.

Offers

Our offers are based on the assumption that all preparatory work and interfaces required for the plant (energy, signals such as EUROMAP, mechanics, pneumatics, cold and hot water) have been completed/are available upon delivery of our components. Our offers are also based on the assumption that the customer will provide, for the duration of assembly work, suitable lifting equipment (forklift, indoor crane, etc. ...) for the assembly of our delivery, together with the necessary specialist personnel to operate the lifting equipment. Our offers are further based on the assumption that neither the machine nor the peripherals need to be modified or prepared during assembly/putting-into-operation. Additional costs resulting from waiting times or multiple journeys to the assembly site, for which ebner tec is not responsible, will be invoiced in accordance with ebner tec gmbh's rates as applicable from time to time. In case of delays in the putting-into-operation and final acceptance for reasons for which ebner tec gmbh is not responsible, the final invoice will be issued no later than 30 days after delivery of the scope of delivery.

Provision of Services

ebner tec gmbh is committed to adhering as closely as possible to the agreed deadlines for the provision of services. At ebner tec gmbh's discretion, services may be provided by ebner tec gmbh staff themselves or by independent third parties on behalf of ebner tec gmbh. If delivery and services can be divided, partial delivery/performance of services is possible. The contract partner ensures that ebner tec gmbh, without specific request, receives all documentation necessary for the fulfillment and performance of the contract/order in due time and that Ebner tec gmbh is informed of all processes and circumstances relevant for the performance of an order. This also applies to all documents, processes, and circumstances which become known only in the course of Ebner tec gmbh's activity. The contract partner also agrees to establish the organizational framework conditions for the provision of services. If the execution of an order is prevented by the contract partner after signing of a contract, ebner tec gmbh may insist on performance or claim damages in the amount of the total contractual value, with regard to which the parties agree on the exclusion of judicial moderation rights. If an order is not executed due to circumstances which constitute an important reason on the part of ebner tec gmbh, ebner tec gmbh shall only be entitled to receive compensation that covers deliveries/services made/performed up to such point in time. This applies in particular if, despite termination, the services performed can be used by the contract partner.

Acceptance/Notice of Defects

The contract partner agrees to immediately inspect deliveries and services of any kind whatsoever, in particular also the data provided, and to notify of defects in writing and without delay. If the contract partner fails to inspect deliveries and services, in particular data, and to notify of defects, within one week of their acceptance, all claims for damages arising from defects, or a resulting extension of the delivery date, are deemed waived. If the customer fails to notify of defects within one week from acceptance, the delivery of data shall be deemed accepted as at the end date of such period. The customer agrees to hold ebner tec gmbh harmless with regard to delivery delays of data subject to acceptance that result in overall delivery delays. Notifications of defects shall only be valid for reproducible defects and if made in writing within one week of delivery or performance.

Responsibilities

The supplier/client assumes responsibility for material pairing (bonding) in the multi-component area. ebner tec gmbh shall be held harmless in this respect. Any arising additional expenditure will be invoiced separately.

Warranty

The contract partner's warranty claims are limited to improvement, price reduction, and supply of missing parts. The contract partner shall not be entitled to refuse acceptance, deliveries and services due to minor defects. Warranty claims are forfeited in case of manipulations by the contract party or by third parties resulting in subsequent changes of the deliveries. ebner tec gmbh shall not be responsible for delays in delivery and performance or cost increases caused by incorrect, incomplete, or subsequently changed details and information, or the documentation provided; these can never cause delays in performance on the part of ebner tec gmbh. Any resulting additional costs shall be borne by the contract partner. The buyer shall not be entitled to withhold payments due to warranty claims, or to offset such payments against counterclaims, unless these have been acknowledged in writing by ebner tec gmbh. Parts subject to wear and tear as well as travel and incidental expenses are not covered by the warranty and will be invoiced separately by ebner tec gmbh. For abrasive injection molding materials ebner tec cannot give any warranty for their lifetime. If unjustified warranty claims have been asserted, ebner tec gmbh shall be entitled to invoice the costs incurred at the rates as applicable from time to time. The warranty period is one year from delivery or ends after one million (1,000,000) cycles.

Acceptance

Unless otherwise agreed, acceptance of performance/products takes place at ebner tec gmbh's premises; the contract partner confirms acceptance by signing an acceptance report. The contract partner is notified of the acceptance date at least 14 days in advance. If the contract partner fails to appear on the acceptance date as notified, the service/product shall be deemed accepted.

If, at the request of the contract party, no proper acceptance takes place at ebner tec gmbh's premises and if the contract party orders the products to be made ready for shipping, such order to get the goods ready for shipping, waiving acceptance at ebner tec gmbh's premises, shall constitute the due and positive acceptance of the service/product. Following acceptance, the contract partner can no longer assert any defects in the overall product or defects from warranted properties of the performance/product against ebner tec gmbh. In the absence of a deviating agreement, the products or the manufactured items are accepted jointly at the seller's premises. The processing material required for test injection molding must be provided by the buyer free of charge. After acceptance, the buyer cannot claim that the object of purchase does not have the warranted properties.

Liability

ebner tec gmbh's liability for damage due to slight negligence is expressly excluded. Liability is also excluded for damage resulting from incorrect operation; improper maintenance; changed operating system components, interfaces and parameters; use of unsuitable means of organization and data carriers; abnormal operating conditions; transport damage; lack of organizational framework conditions, and incomplete documentation. To the extent permitted by law, the compensation of consequential damages and financial losses, savings not achieved, loss of interest, and damage resulting from third-party claims against ebner tec gmbh is in any case excluded. Claims for damages expire one year after the delivery/performance of service. Such claims shall be limited to the amount of the invoice for the delivery or service triggering damages.

INCOTERMS/Terms of Delivery

Unless otherwise agreed, transportation of deliveries is at the contract partner's risk and expense. All offers of ebner tec gmbh are based on ex-works terms and have been calculated accordingly.

Terms of Payment

If no separate written agreement has been reached, the contract partner is to effect payment of the invoice amount immediately and net, without deductions. Invoices may be transmitted by e-mail. If the contract partner is in delay with the payment of an invoice by more than three days, ebner tec gmbh is entitled to refuse further performance until outstanding invoices, including interest and dunning costs as incurred, have been paid in full. This refers to all of the contract partner's current orders and not just to an individual order/project. ebner tec gmbh shall be held harmless in the event of delays arising from the contract partner's default in payment. In the event of default in payment, interest on arrears will be charged in accordance with the Austrian Business Code [UGB]. If ebner tec gmbh's services are divisible, ebner tec gmbh is entitled to issue interim invoices after partial deliveries or partial services.

Services

Unless otherwise agreed, ebner tec gmbh performs its contractual services at the premises of ebner tec gmbh during normal working hours. If, at the contract partner's request, services are performed outside normal working hours and/or outside the premises of ebner tec gmbh, additional costs will be invoiced separately.

Retention of title

ebner tec gmbh retains title to the delivered products and developments until all existing or future contractual claims against the contract partner have been met in full. The retention of title refers to those amounts of money which have been contractually fixed with the contract party and which have not yet been paid. ebner tec gmbh must be informed without delay of any measures which could endanger its retention of title. The client shall bear all costs of an intervention procedure and of all defensive measures deemed necessary by ebner tec gmbh.

Copyright and Utilization

Unless otherwise contractually agreed, ebner tec gmbh has all copyrights to the agreed services (data, documentation, etc.). When taking over models, templates, etc., ebner tec gmbh assumes the contract partner to be the copyright holder.

Loyalty and Confidentiality

The contract partners are committed to mutual loyalty. Furthermore, they agree to treat confidentially any knowledge whatsoever about the contract partner and not to disclose any data or documents whatsoever to unauthorized third parties. The contract partners undertake to bind third parties involved in the performance of mutual services to observe such secrecy obligations, and to enforce such obligations. If the confidentiality obligation is breached by third parties commissioned by the contract partner, the contract partner assumes liability for any damage incurred by ebner tec gmbh.

Jurisdiction and Choice of Law

The agreed exclusive place of jurisdiction for all disputes arising between ebner tec gmbh and the contract partner shall be with the court competent in terms of subject matter for A-4400 Steyr. Austrian law shall apply to all contracts between ebner tec gmbh and the contract partner, including the question of their valid conclusion and any effects prior to and after their coming into effect, with the UN sales law and the conflict of laws rules of private international law being excluded. The agreed place of performance for all services provided by ebner tec gmbh or its subcontractors shall be A-4493 Wolfhern.

General Provisions

Should individual provisions of these GTC be or become invalid, the validity of the remaining provisions of these GTC shall not be affected thereby. Supplements or subsidiary agreements hereto must be in writing in order to be valid and effective; the same applies to a waiver of this written requirement. The contract partner expressly consents to the transmission to it of advertising e-mails by ebner tec gmbh under the Austrian Telecommunications Act, section 107.