

## General Sales Terms and Conditions

November 2024

### I. Scope

All proposals, order acknowledgments, sales contracts, deliveries and services supplied or performed by EBNER Industriefenbau GmbH, 4060 Leonding, Ebner-Platz 1, Austria (hereinafter referred to as "EBNER") are made exclusively on the basis of these General Sales Terms and Conditions. These apply also to all future business transactions, in particular to spare parts orders, even if they have not been again expressly agreed. Contradictory terms or terms and conditions of the party purchasing equipment and/or services from EBNER ("the Buyer") that deviate from these General Sales Terms and Conditions are not applicable and will not be recognized by EBNER unless expressly confirmed by EBNER in writing. Fulfillment of a contract by EBNER does not imply agreement to terms and conditions that deviate from these General Sales Terms and Conditions.

### II. Scope of Supplies and Services

The scope of supplies and services consists only of those supplies and services expressly specified in the proposal/contract.

Unless agreed otherwise, especially the following items are excluded:

- building where the equipment will be installed
- foundations and anchor bolts
- all piping for supplies, connections and disposal
- cable trenches and connecting cables outside the scope of supply of EBNER
- laying cables and piping and the relevant equipment
- trench and pit covers
- charging baskets and frames
- platforms, stairs, railings and protective grids
- cranes, lifting platforms, transport equipment, scaffolding, forklifts and other work assistive devices
- unloading and proper storage of equipment until the time of installation
- tools, accessories, consumables and utilities required for installation, commissioning and operation
- air conditioning in particular for control rooms
- instruction/training of Buyer's personnel
- installation and commissioning
- supplies and services related to standards, norms and special regulations in the country of destination
- obtaining the necessary approvals from authorities for installation, commissioning and operation of the equipment

The supplies, services and contributions mentioned above shall be provided by the Buyer at its cost in due time and in the required quality and quantity.

### III. Prices

The prices quoted in the proposal submitted by EBNER, in the order placed by the Buyer and in the order acknowledgment sent by EBNER or in the contract do not include any supplies, services or obligations that are not specifically mentioned within the scope of supplies and

services of EBNER.

The Buyer shall bear and pay all taxes, charges, fees, customs duties etc. levied by authorities in Buyer's country or any third country in connection with the performance of the contract. In the event any such taxes, charges, fees, customs duties etc. are imposed upon EBNER the Buyer shall save EBNER harmless. If the prices include any professional services (installation supervision, commissioning etc.) then these are based on the contractually agreed time schedule.

If the time schedule is delayed or postponed for reasons beyond EBNER's sole responsibility, the additional costs incurred in implementing these services will be invoiced according to the EBNER site service rates in force at the time. If the agreed time schedule is delayed by more than one month due to reasons beyond EBNER's sole responsibility, EBNER is entitled to adjust the contractually agreed prices accordingly.

Any consequences resulting from changes in law or regulations or new laws or regulations enacted after the date of EBNER's offer shall be borne by the Buyer. In case of import restrictions imposed by public authorities, such as but not limited to import duties, tariffs or taxes the prices shall be adapted accordingly.

### IV. Payment

Payment for the supplies and services (proportional payments in the case of partial deliveries) shall be made in accordance with the terms of payment stipulated in the order acknowledgment/contract. Payments are deemed as paid when they have been credited to EBNER's bank account.

Regardless of the payment method, all transfer-risk shall be borne by the Buyer. Bank fees due in the Buyer's country and/or in any third countries are to be borne by the Buyer. Bank fees incurred in Austria with the bank entrusted by EBNER will be borne by EBNER. Payment must be made net, without deduction of any taxes, duties, etc. If milestone payments have been agreed (e.g. payment installment is due upon start-up of the equipment or upon acceptance), the Buyer shall be obliged to pay such installment at the latest within 1 month from the relevant scheduled milestone date agreed in the contract in case such milestone is delayed for reasons outside the sole responsibility of EBNER.

Licenses for application software covered by the contract and the license code for permanent operation of the equipment will not be handed over until the contract price has been fully paid.

The Buyer may not suspend or withhold payment of the contract price nor delay any payments beyond the dates agreed. The Buyer shall not be entitled to set off any claims unless such claims are recognized by a final court judgement.

If the Buyer is in delay with its payment obligations or is late in providing payment securities such as bank guarantees, letters of credit etc., EBNER at its option may

- a) demand performance of the contract and
- i) postpone the performance of its own obligations until

the outstanding payments and other obligations of the Buyer are fulfilled,

- ii) extend the delivery schedule appropriately, and
  - iii) impose interest on late payments according to law, however not less than 8% p.a., or
- b) if Buyer's delay exceeds 30 days, terminate the contract in whole or in part and the Buyer shall compensate EBNER for all losses, costs, damages and expenses incurred by EBNER. In such case the Buyer must return to EBNER at EBNER's request, any equipment already delivered.

The equipment shall remain the property of EBNER until the contract price has been paid in full without reservation. If the retention of title clause is not permissible, invalid or not enforceable at the location where the equipment is supplied, EBNER shall be entitled to apply other security rights to the equipment delivered and the Buyer shall be obliged to comply with such rights exercised by EBNER in lieu of the retention of title.

## V. Delivery and Completion Period

Unless agreed otherwise in writing, the time schedule shall start on whichever of the following dates is latest:

- i) date on which the contract is signed by both parties or the order confirmation is signed by EBNER;
- ii) date on which all open technical matters have been clarified by the Buyer to the satisfaction of EBNER; or
- iii) date on which EBNER has received the down payment and/or the payment security to be provided by the Buyer in favour of EBNER is issued.

The date of delivery is Ex-Works and shall be deemed fulfilled upon readiness for shipment of the equipment, even in cases where the contract price includes transport and also where EBNER organizes the transport.

In case the Buyer fails to fulfill its contractual obligations in due time, in particular:

- if any payment has not been received by EBNER according to the terms of payment set out in the contract and/or contractually agreed payment securities (letter of credit, bank guarantees, etc.) have not been issued in time; or
- if the Buyer does not supply the necessary information in time as a basis for EBNER's implementation of the contract or if he does not approve, within a reasonable time-scale, the drawings and plans submitted to him for approval; or
- if the supplies, services and contributions to be provided by the Buyer are not performed or made available within the required time

EBNER, notwithstanding any other rights, shall be entitled to compensation for the additional costs resulting therefrom and to an appropriate extension of the time schedule.

If the equipment is ready for shipment but cannot be delivered for reasons beyond EBNER's sole responsibility, delivery shall be deemed effected on the date readiness for shipment is notified to the Buyer and any payments on delivery shall become due on such date. In such case, risk of loss and damage shall pass to the Buyer and all costs for storage, preservation, guarding and insurance shall be borne the Buyer.

EBNER shall be relieved of its obligations to perform the

contract on time, if a delay occurs for which EBNER is not solely responsible or if EBNER is prevented due to a force majeure event, such as social conflict (strikes and lock-outs), non-availability of means of transportation, acts of government, energy industry measures, war, civil disturbances, terrorism, epidemics and pandemics, boycott, explosions, cyberattacks, natural calamities including, without limitation, floods and earthquakes etc. and such other events that cannot reasonably be prevented by EBNER. This also applies when sub-contractors of EBNER are affected by such events.

Notwithstanding the foregoing, in case the security or health situation in the country where the Equipment or any part thereof will be manufactured, assembled or installed is, in the opinion of EBNER or any of its sub suppliers, not or no longer acceptable for EBNER's or its sub supplier's personnel, EBNER shall have the right to suspend the further execution of the work and postpone the delegation of personnel and/or withdraw personnel from the site, and such circumstances shall be considered as an event of "Force Majeure" as well.

If such reasons last for longer than 6 months EBNER is entitled to terminate the contract and the Buyer is obliged to pay for the equipment produced or in the process of fabrication and for the services provided so far, as a proportion of the contract price against EBNER's invoice.

## VI. Transportation and Insurance

In the absence of any specific provision in the contract, the equipment shall be dispatched either packed or unpacked, as reasonably decided by EBNER.

Unless expressly agreed otherwise in writing, the equipment is sold "Ex Works" from the premises of EBNER or its subsupplier. All references to trade terms in respect of delivery shall be construed in accordance with INCOTERMS 2020 published by the International Chamber of Commerce. If it is determined in the individual case that delivery is to be organized by EBNER, the freight prices valid on the day of delivery plus any necessary additional costs (e.g. for transport permits, waiting times, route changes, etc.) shall be invoiced separately. The Buyer shall be responsible for ensuring safe and unimpeded access to the unloading point and for the immediate unloading of the means of transport. Partial consignments are permitted unless agreed otherwise in the contract.

## VII. Technical data and drawings, Confidentiality

Weights, dimensions, consumption figures, production capacity and in general all technical data mentioned in catalogues, brochures or advertisements are to be considered as indicative values only and are not obligatory. EBNER reserves the right to make minor changes or modifications to the equipment or to provide any alternative materials provided this does not impair the proper function of the equipment.

The Buyer expressly undertakes to keep confidential and to use the drawings and technical information provided by EBNER strictly in accordance with the contract and only for the purpose of operation and maintenance of the equipment. Under no circumstances is the Buyer authorized to disclose or allow a third party access to the drawings and technical information relating to the equipment

and/or installation, nor shall the Buyer be entitled to reproduce the same or similar equipment without the prior written permission from EBNER. Buyer acknowledges that the drawings and technical information relating to the equipment and/or installation shall at all times remain and be the sole and exclusive property of EBNER and Buyer shall at any time have no right, title or interest therein or thereto. In case of violation of Buyer's obligations hereunder, EBNER shall, in addition to any other rights, be entitled to equitable and injunctive relief.

The Buyer shall not engage, whether directly nor indirectly, any competitor of EBNER for the performance of any erection or maintenance work or services related to the equipment delivered by EBNER without the prior written approval of EBNER. In particular, the Buyer shall ensure that no competitor of EBNER has access to drawings or documents provided by EBNER.

## **VIII. Installation and Commissioning**

If the scope of supplies and services includes installation on site the Buyer shall co-operate with EBNER so that the installation and commissioning can be carried out under the best possible and efficient conditions.

The Buyer shall inspect the equipment delivered to ensure it is complete and in good condition. The Buyer shall transport the equipment at its expense to the installation area or to store it in a covered and well-sheltered area, so that the Equipment is maintained in good condition until its installation. The proper guarding, storage and insurance against fire, accident, theft, etc, shall be provided by the Buyer at its cost and risk. Further, the Buyer shall take care that all equipment and materials are handed over to EBNER's personnel in the sequence of installation in good condition.

The Buyer shall ensure that no work be carried out in unsanitary or dangerous places and that EBNER's personnel is provided free of charge with suitable accommodation and food and that appropriate medical assistance is available on site. Prior to the start of the work at site, the Buyer shall inform EBNER in writing and with proper documentation of specific hazards on the site and shall provide the EBNER staff with comprehensive support in the elaboration of the specific risk analysis on site.

At EBNER's request, the Buyer shall provide free of charge the required materials, means of transport, energy and power sources, fuel, utilities, consumables and personnel, even if this was not stipulated in the contract.

If the Buyer is responsible for installation of the equipment and EBNER is only responsible for supervision of installation, the costs and risks of the installation work are to be borne by the Buyer.

If during the installation or commissioning period idle or waiting times occur for EBNER's personnel due to circumstances outside EBNER's reasonable control, and as a result additional working days or working hours, travels to and from the site, accommodation etc., are necessary, the Buyer shall pay these additional costs at EBNER's hourly rates applicable at the time.

## **IX. Performance Test and Acceptance**

If a performance test/acceptance tests is expressly stipulated in the contract, such test will take place within 10

days of the end of commissioning or when readiness for acceptance has been declared by EBNER, according to the terms and conditions stipulated in the contract. Acceptance shall be deemed achieved upon successful completion of the performance test. If this proof is given, the Buyer shall not have the right to demand further tests. If a performance test/acceptance test cannot take place or is not successful for reasons beyond EBNER's sole responsibility, the equipment shall be deemed accepted at the end of commissioning or 6 months after delivery or readiness for shipment, whichever is earlier. Upon acceptance the Buyer and EBNER will sign a respective acceptance document.

Minor defects that have no negative impact on the performance of the equipment shall not entitle the Buyer to withhold acceptance.

Unless expressly agreed otherwise in writing, the working and travel times of the EBNER staff delegated to site shall be paid by the Buyer at EBNER's hourly rates applicable at the time. All costs incurred during commissioning, testing and operation of the equipment (energies, materials, consumables etc.) shall be borne by the Buyer.

The Buyer is not permitted to operate the equipment, even for preliminary testing, until acceptance has been completed. If the Buyer operates the equipment in spite of this, it is at the Buyer's own risk and the equipment is automatically deemed accepted and all contractual obligations of the Buyer shall become due immediately.

If a facility consists of several individual sub-facilities, the end of commissioning and acceptance of such sub-facilities shall occur individually according to progress on site and the contractual obligations of the Buyer (e.g. payment on acceptance) are due in proportion to the facility as a whole as each sub-facility is commissioned and accepted.

## **X. Warranty**

EBNER warrants that upon delivery the equipment will be free from defects resulting from faulty material or bad workmanship. The warranty period for the equipment shall be 12 months.

If the equipment is delivered but not installed by EBNER, the warranty period shall start from the date of delivery of the equipment from EBNER's or subsuppliers' workshop or, where there is a delay in delivery which is not attributable to EBNER, the warranty period shall start from the notification of readiness for shipment.

If the equipment is delivered and installed by EBNER, the warranty period shall start from EBNER's notification that the equipment is ready for start-up. Unless the warranty period expires earlier according to the aforesaid provisions it expires at the latest 18 months after the date of delivery of the equipment or, in case of a delay in delivery not attributable to EBNER, 18 months after EBNER's notification of readiness for shipment.

For bought-in items, in particular electric components, the warranty granted to the Buyer is limited to the warranty given by the manufacturer or supplier.

The warranty covering replacement or repaired components shall expire on the same date as that of the main delivery.

Components subject to wear and tear are excluded from

the warranty. If the wear and tear parts have not been specified in the proposal or contract, they are considered to be parts subject to wear and tear recognized as such in the relevant industry.

Any defects in the equipment shall be notified to EBNER in writing immediately, otherwise all claims for damages and warranty shall be forfeited:

- apparent defects: no later than 7 days from receipt of consignment

- hidden defects: no later than 7 days from discovery of the defect.

The Buyer must provide proof that the defect already existed at the time of delivery; the legal reversal of the burden of proof is excluded. If a defect is due to faulty material or bad workmanship, defective parts will be repaired free of charge or replaced at EBNER's discretion. Defective components that have been replaced shall be made available to EBNER and become EBNER's property. In case of defects the Buyer shall take immediate measures to prevent worsening of damage.

The Buyer shall grant EBNER the opportunity to correct defects and grant access to the equipment at all times and allow a reasonable time limit to rectify a defect. Any claims of the Buyer for defects shall be time barred 6 months after the date of notification to EBNER of a defect, as indicated above, however latest upon expiry of the warranty period.

EBNER shall in no event be liable for defects resulting from improper use or operation or maintenance of the equipment not in accordance with EBNER's instructions and manuals, any alterations or modifications made by the Buyer or third parties without the prior written consent of EBNER, improper storage or handling, installation or commissioning performed without the supervision of EBNER's personnel and any reasons not attributable to EBNER.

In urgent cases, where the safety of the facility is put at risk or when it entails the prevention of serious damage (provided EBNER having been informed immediately beforehand) or if a defect, despite repeated attempts, cannot be resolved by EBNER, the Buyer shall have the right to correct the defect himself or with the help of a third party and to claim a refund from EBNER of the reasonable direct costs resulting from such correction.

If the occurrence of a defect as described above is disputed, the burden of proof lies with the Buyer. If the Buyer claims for defects which are not covered by the warranty hereunder, the Buyer shall reimburse EBNER for all costs and expenses incurred by EBNER in connection with such claim.

Except as provided in this clause, EBNER expressly disclaims any warranty, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose.

## **XI. Software**

To the extent software is included in the scope of supply of EBNER, the Buyer will be granted a non-exclusive right to use the software including the associated documentation only for the purposes of operation of the equipment. Use of the software on more than one system is prohibited.

The Buyer is not entitled to copy, reproduce, adapt, modi-

fy or translate the software or make it available to third parties. All other rights to the software and documentation and the source code will remain the exclusive property of EBNER or the software supplier.

For bought-in software and standard software, the provisions of the relevant end-user license agreements shall apply and the Buyer shall assume all relevant rights and obligations resulting therefrom. Any other claims against EBNER are expressly excluded.

## **XII. Limitation of Liability**

EBNER shall in no event be liable for loss of profit, loss of production, loss of contracts, loss of revenue, loss of data, loss of business or any indirect, incidental or consequential damages howsoever arising regardless whether caused by any breach of contract, tort (including but not limited to negligence) or otherwise.

The overall liability of EBNER under or in connection with the contract under whatever title, whether arising out of a breach of contract, tort (including but not limited to negligence) or otherwise, shall in the aggregate be limited to 10% of the contract price. This exclusion or limitation of liability is not valid in the case of wilful misconduct.

If EBNER is held liable for damages, these will only be paid for a maximum of damage, which for EBNER was foreseeable at the time of the conclusion of the contract.

The Buyer must provide evidence that EBNER is at fault; the legal reversal of the burden of proof is excluded. If liquidated damages/penalties have been agreed in the contract, it shall be considered the sole and exclusive remedy excluding any further claims.

The exclusions and limitations of liability shall apply to all of EBNER's liabilities arising out of or in connection with the contract, including without limitation any liability resulting from breach of guarantees and warranties.

The exclusions and limitations of EBNER's liability shall apply to the fullest extent permitted by law and shall also apply for the benefit of EBNER's personnel, its affiliated companies, licensors and subcontractors.

The rights and remedies of the Buyer stipulated in the contract shall be the exclusive rights and remedies available to the Buyer being in lieu of all other rights and remedies expressed or implied by law. In particular, EBNER expressly disclaims any liability for breach of accessory contractual obligations (e.g. advice, information, user manual), subrogation of product liability claims and claims for damages to items outside EBNER's scope of supply.

## **XIII. Compliance with export control and customs regulations**

Performance of the contract on the part of EBNER shall be subject to trade regulations, in particular national or international (re-) export control regulations and/or customs regulations, including embargoes, sanctions or other restrictions on the movement of goods (hereinafter referred to collectively as "Foreign Trade Regulations") which hinder the performance of the contract by EBNER, otherwise EBNER shall be entitled to terminate the contract in whole or in part.

The Buyer shall comply with the applicable foreign trade regulations when passing on the goods supplied by EBNER and the associated documentations to third parties, regardless of the manner in which they are made availa-

ble or the services provided by EBNER, including technical support of any kind. In any case, the Buyer shall comply with the foreign trade regulations of t the EBNER's country of domicile, the European Union, the United Kingdom of Great Britain, Northern Ireland and the United States of America when passing on the goods or services to third parties. If the Buyer violates foreign trade regulations when passing on the goods or services, EBNER shall be entitled to refuse to fulfill the contract and / or to terminate the contract concluded with the Buyer for good cause with immediate effect and EBNER shall be entitled to demand a contractual penalty of 5% of the contract price from the Buyer.

Upon request, the Buyer shall be obliged to provide EBNER with all information and documents which are required for compliance with foreign trade regulations or which are requested by authorities in the respect. These obligations may include, in particular, information on the final recipient as well as the (final) place of destination and the intended use of the goods or services of EBNER. The Buyer shall fully indemnify EBNER against all claims asserted by authorities or other third parties against EBNER due to the Buyer's non-compliance with export control obligations and the Buyer undertakes to compensate EBNER for all damages and expenses incurred in this connection. Any liability of EBNER for damages in connection with or due to the refusal to fulfill the contract or due to a termination of the contract by EBNER shall be excluded.

#### **XIV. Arbitration, Jurisdiction, Place of Arbitration / Jurisdiction and applicable Law**

All disputes or claims arising out of or in connection with the contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules. Arbitration shall take place in Linz, Austria and proceedings shall be held in the English language.

However, EBNER and the Buyer shall be free to assert any disputes or claims arising out of or in connection with the contract, including disputes relating to its validity, breach, termination or nullity, up to a value in dispute of EUR 75,000.00 before the ordinary courts. The ordinary place of jurisdiction is exclusively the competent court in Linz, Austria.

The contract shall be governed by Austrian substantive law under exclusion of its conflicts-in-law-provisions and the UN Convention on Contracts for the International Sale of Goods.

#### **XV. Miscellaneous**

These General Sales Terms and Conditions shall be deemed incorporated into the contract as if fully restated therein.

In the event that any provision of the contract shall prove to be invalid, illegal, void or unenforceable, such provision shall be deemed to be separable from the other provisions of the contract which shall remain binding. The parties shall replace the invalid, illegal, void or unenforceable

provision by a new but valid, legally permitted and enforceable provision which comes as close as possible to the original intentions of the parties. The same applies to any loopholes in the contract.

To the extent permitted by law, the parties agree to abstain from contesting or challenging the contract due to mistake, misrepresentation, doctrine of frustration or any other reason.