

General Terms and Conditions of Purchase

1. Scope

1.1. These General Terms and Conditions of Purchase apply for all orders by Eppendorf AG and its affiliated companies located in Germany (hereinafter together referred to as „Eppendorf“) from suppliers and other business partners (hereinafter together referred to as the „Supplier“).

1.2. These General Terms and Conditions of Purchase also apply if Eppendorf accepts deliveries without any reservation despite having knowledge about contradictory or supplemental terms and conditions of the Supplier. General terms and conditions of the Supplier which are contradictory to or supplement these General Terms and Conditions of Purchase only become part of the contract to the extent that Eppendorf expressly consents to them in writing.

1.3. Individual agreements made in a specific situation with the Supplier have priority over these General Terms and Conditions of Purchase.

1.4. These General Terms and Conditions of Purchase apply only with regard to entrepreneurs within the meaning of § 310 para. 1 German Civil Code (Bürgerliches Gesetzbuch).

2. Conclusion of the contract

2.1. Offers by the Supplier are made without charge and do not establish any obligations for Eppendorf. The Supplier will expressly point out in its offer any deviations compared to the inquiry from Eppendorf and additionally offer alternatives to Eppendorf which are technically and economically better in comparison.

2.2. Orders from Eppendorf require written form or text form. Deviations, amendments or supplements to the order in the order confirmation only become part of the contract if they are confirmed by Eppendorf in writing or text form

2.3. Eppendorf may cancel the order if the Supplier has not accepted the order within two (2) weeks after it was received.

2.4. Cost estimates by the Supplier are binding and will not be compensated unless expressly agreed otherwise.

3. Prices

3.1. Exclusively the prices and currencies set forth in Eppendorf's order are determinative. All prices are understood to include packaging and are net prices without value added tax which Eppendorf must additionally pay in the respective statutory amount.

3.2. If the Supplier assumes installation or assembly, the Supplier bears all expenses required for that purpose, especially the costs of installation and assembly, travel costs, providing the tools as well as daily allowances.

4. Delivery and time of delivery

4.1. The delivery of goods must be carriage paid (CPT Incoterms® 2020) from the place of delivery set forth in the order to the place of destination referred to in the order.

4.2. The Supplier is not entitled to make partial deliveries unless Eppendorf has expressly agreed to them or such deliveries can be reasonably expected from Eppendorf. In case of goods which depend on batches, partial deliveries must come from one batch and be marked accordingly.

4.3. Agreed dates or time periods are binding. Compliance with the delivery dates or time periods depends on receipt of the goods at the place of destination designated by Eppendorf. If a delivery with installation or assembly is agreed, the acceptance of the installation or assembly is determinative for the timeliness of the delivery.

4.4. If delivery dates or time periods are not complied with, the statutory provisions apply. If the Supplier recognizes that it cannot completely or partially or timely fulfill its contractual obligations, the Supplier must inform Eppendorf about this without undue delay and state the reasons and the likely duration of the delay. In particular, the Supplier can only raise the argument that it did not receive from Eppendorf the documents required for the delivery at all or in a timely manner if the Supplier reminded Eppendorf in writing to provide such documents and did not receive them within a reasonable time period.

5. Shipping and transfer of risk

5.1. The risk of accidental loss and deterioration shall pass to Eppendorf in accordance with the Incoterms® agreed in the order. If the Supplier has assumed installation or assembly, the risk shall pass to Eppendorf at the time of acceptance.

5.2. Each delivery must include a delivery note which states Eppendorf's order number and designates the content of the delivery by type and quantity. If the delivery note is missing or incomplete, Eppendorf is not responsible for any delays in the processing and payment resulting therefrom.

5.3. The Supplier shall pack the goods with packing materials permitted at the place of destination so that transport damages are prevented and the transport requirements (e.g. uninterrupted compliance with a cooling chain) are complied with. In case of damages resulting from inappropriate packaging, the Supplier is liable in accordance with the statutory provisions. If Eppendorf declares, as an exception, that it agrees to assume packing costs, these costs must be charged at provable own costs.

6. Use of subcontractors

The Supplier is not entitled to have work owed by it to Eppendorf performed by third parties (e.g. subcontractors) without the prior written consent of Eppendorf.

7. Payment terms

7.1. Payments are due within thirty (30) days. The period of payment shall commence as soon as (i) the delivery has been handed over to Eppendorf or a party appointed by Eppendorf to receive the delivery at the place of destination, (ii) all other performance has been completely rendered (including any agreed acceptance) and (iii) a properly issued invoice has been received by Eppendorf.

7.2. In case of payment within fourteen (14) days, Eppendorf is entitled to deduct three (3) percent discount. A deduction of the discount is also permissible if Eppendorf exercises a set-off or withholds payments in a reasonable amount based on defects.

7.3. The Supplier must prepare for each order a verifiable invoice which must contain all mandatory information required under German law. Eppendorf's complete order number and, if available, the number of the delivery note of the Supplier must be stated on the invoice. The invoice must be transmitted to the billing address designated by Eppendorf in the order.

7.4. Payment does not constitute an acknowledgement that the corresponding delivery and/or performance were in accordance with the contract.

7.5. A set-off or an assertion of a right of retention by the Supplier is excluded unless the Supplier exercises a set-off with a counterclaim that is undisputed or has been confirmed in a final non-appealable judgment or asserts a right of retention with regard to such a counterclaim.

8. Responsibility to examine the goods and notify defects

8.1. To the extent practical in the normal course of business, Eppendorf will conduct an examination of the goods without undue delay after they have been received at the place of destination to determine whether the goods correspond to the order quantity and type and whether there is any externally visible transport damage or any other externally apparent defect.

8.2. If Eppendorf discovers in the examination upon receipt of goods under Clause 8.1 or later that there is a defect, Eppendorf will notify the Supplier about this defect.

8.3. The Supplier waives the defense that an objection to a defect is late for all externally apparent defects for which an objection has been raised within ten (10) calendar days after delivery and with regard to all other defects for which an objection is raised within ten (10) calendar days after the defect is discovered.

9. Claims based on defects

9.1. If goods are defective, Eppendorf shall be entitled to avail itself to the statutory rights for defects subject to the provisions set out in this Clause 9.

9.2. Eppendorf has the right to choose the type of supplementary performance. The Supplier may refuse the type of supplementary performance chosen by Eppendorf if this type is only possible with disproportionate costs. In case of supplementary performance, the Supplier is required to bear all expenses required for the purpose of remedial measures, including costs of transport travel, labor, material as well as installation and disassembly costs.

9.3. If the Supplier does not comply with its obligation for supplementary performance within a reasonable time period set by Eppendorf, Eppendorf may, at its sole discretion and in accordance with the statutory provisions, completely or partially rescind the contract or reduce the purchase price or itself correct the defect or have it corrected by third parties at the expense of the Supplier and claim damages or demand reimbursement of expenses incurred in vain.

9.4. The rights set forth in Clause 9.3 may be exercised without setting any deadline if Eppendorf has a particular interest in immediate supplementary performance and a request to the Supplier to correct the defect within a reasonable time period cannot be reasonably expected by Eppendorf. This is especially the case if Eppendorf must immediately correct the defect, in order to avoid being in default with its own delivery or if there is a hazard for operational security or if this is necessary to prevent extremely high damages. The statutory provisions under which the setting of a time period is not required remain unaffected therefrom.

9.5. The limitation period for claims by Eppendorf in respect of a defective good is thirty-six (36) months commencing with delivery of the defective good at the place of destination or, to the extent a delivery with installation or assembly is owed, since acceptance, unless a longer limitation period applies under the law. To the extent the Supplier delivers a defect-free item anew (replacement delivery) in the context of the Supplier's obligation for supplementary performance, the limitation period shall start to run anew after delivery of the defect-free item, unless the Supplier has expressly and correctly reserved the right to make the replacement delivery only as goodwill, to avoid disputes or in the interest of continuing the supplier relationship when effecting the supplementary performance.

10. Product liability and liability insurance

10. In the event that claims are asserted against Eppendorf based on product liability, the Supplier shall indemnify Eppendorf against any such claims if and to the extent the damage has been caused by a defect in the good supplied by the Supplier. In case of fault-based liability, however, this only applies if the Supplier is at fault. If the cause of the damage fall within the area of responsibility of the Supplier, the Supplier must prove that it is not at fault.

10.2. Upon request, the Supplier shall provide reasonable assistance to Eppendorf in clarifying and defending against claims of third parties.

10.3. Under its duty to indemnify pursuant to Clause 10.1, the Supplier shall assume all costs and expenses resulting from or in connection with a legally conducted measure to prevent damage (e.g. a recall). Eppendorf will inform in advance the Supplier in a timely manner, to the extent possible and reasonable, and provide the Supplier with the opportunity to comment.

10.4. The Supplier undertakes to maintain reasonable insurance coverage with regard to product liability. Upon request, the Supplier shall provide evidence of such insurance coverage to Eppendorf.

11. Intellectual property rights and other rights of third parties

11.1. The Supplier shall ensure that the delivered goods as well as the manufacturing process do not infringe any intellectual property rights or other rights of third parties.

11.2. The Supplier shall be liable for the expenses and damages resulting from an infringement of intellectual property rights or other rights of third parties (including legal fees), unless the infringement of such rights is not attributable to the Supplier. To this extent, the Supplier shall indemnify and hold Eppendorf harmless from and against all claims of third parties based on an infringement of such rights.

12. Special rights to rescind and terminate

Eppendorf is entitled to completely or partially rescind the contract or terminate it for good cause with immediate effect if the Supplier is generally unable to pay its debts, or if the Supplier has filed an application for the opening of insolvency proceedings or if the opening of insolvency proceedings has been refused for lacking assets or if there is another material deterioration in the financial situation of the Supplier or if such a situation threatens to occur and this endangers the performance of an obligation owed to Eppendorf for delivery or performance.

13. Provided material

13.1. Material provided by Eppendorf remains the property of Eppendorf. The Supplier shall hold such material in gratuitous custody and with the care of a prudent business man for Eppendorf and shall store the material separately from all its other goods and mark the material as property of Eppendorf. Provided material shall only be used in accordance with its designated purpose.

13.2. Any processing or remodeling of the provided material by the Supplier is always effected free of charge for and on behalf of Eppendorf. If processing of provided material occurs with goods or material not owned by Eppendorf, Eppendorf will only become co-owner of the processed product proportionately according to the invoice value of the provided material compared to the value of the other processed items. The Supplier shall hold the provided material in gratuitous custody and with the care of a prudent business man for Eppendorf.

14. Means of production

14.1. Tools, models, samples, measuring and testing equipment, print templates, testers for circuit board assembly and other means of production which Eppendorf provides to the Supplier to fulfill the order remain the property of Eppendorf. The means of production produced by the Supplier in fulfilling the order and invoiced to Eppendorf shall become the property of Eppendorf at the time they are produced. The Supplier shall hold the means of production in gratuitous custody and with the care of a prudent business man for Eppendorf.

14.2. All means of production as well as the items produced with them shall not be passed on to third parties or used for purposes other than the purposes of the contract without the prior written consent of Eppendorf. Eppendorf may demand that such means of production be returned if the Supplier breaches these duties or if they are no longer required to fulfill the delivery or render performance.

15. Print orders

In the case of all print orders, Eppendorf shall receive a final draft for approval prior to the start of production. The name of the Supplier or the printing company may only be indicated on printed materials with the express prior consent of Eppendorf.

16. Export controls and customs duties

The Supplier shall comply with all requirements of applicable national, European and international export and customs provisions. The Supplier shall inform Eppendorf in writing and in a timely manner before delivering the ordered goods about all data, documents and information which Eppendorf needs to comply with the applicable export and customs provisions in case of exporting, importing and re-exporting, especially all applicable export list numbers (including the export control classification number in accordance with the U.S. Commerce Control List ("ECCN")), the origin of the goods under commercial policy and the statistical product number (HS-Code).

17. Reservation

Eppendorf may refuse to fulfil its obligations under the contract insofar as the fulfilment is prohibited or impaired by national and/or international foreign trade law or embargos and/or any other sanctions.

18. Force majeure

18.1. In the event that one of the parties cannot fulfill its contractual obligations due to acts, events or circumstances which are outside the reasonable control of a party (force majeure), that party is released from its duties to perform for the duration of the hindrance. Force majeure shall include (without limitation) war, terrorism, natural disasters, strike or any labor disputes, general shortages of raw materials and restrictions on the consumption of energy.

18.2. If force majeure prevents, hinders or delays a party's performance of its obligations for a continuous period of more than six (6) months, the other party may terminate the contract. There are no claims for damages in this regard.

19. Confidentiality

Each party agrees to keep confidential all information it becomes aware in its capacity as a party or which is received in relation to its business relationship with the other party that is indicated as "confidential" or whose confidential or proprietary nature is apparent under the circumstances, and not to disclose such information to anyone and to ensure that all such information is protected with security measures and a degree of care that would apply to its own confidential information.

20. Miscellaneous

20.1. The Supplier shall not assign its claims against Eppendorf to any third party without the written consent of Eppendorf.

20.2. The Supplier undertakes to name Eppendorf as a reference customer and issue press releases or make any other public statements under the contractual relationship only with the prior written consent of Eppendorf.

20.3. If a provision in these General Terms and Conditions of Purchase and the further agreements made between Eppendorf and the Supplier are or become void, invalid or due to any reason ineffective, this will not affect the validity or effectiveness of the remaining provisions. The void, invalid or ineffective provision shall be deemed replaced by such valid or effective provision that in legal and economic terms comes closest to what the parties intended or would have intended in accordance with the purpose of their contractual relationship if they had considered the point at the time of the conclusion of the contract or further agreement. The same shall apply to lacunae.

20.4. Amendments to provisions in the contract between the parties as well as a waiver of rights under these provisions require written form unless a stricter requirement of form applies. This also applies for any waiver of this written form requirement.

20.5. Place of performance for the delivery and any supplementary performance is the place of destination designated in the order.

20.6. The law of the Federal Republic of Germany shall apply. The Vienna UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

20.7. The courts of Hamburg, Germany, have exclusive jurisdiction to settle any dispute arising out of or in connection with the contractual relationship. This does not affect any mandatory jurisdiction established by law.

Status: January 2020