

## General Terms & Conditions of Sale and Delivery

### 1. General Information

1.1. These General Terms & Conditions of Sale and Delivery apply to all business relations between the Supplier – i.e., depending on the designation in the order confirmation – EBG Elektronische Bauelemente GmbH or an affiliate of EBG Elektronische Bauelemente GmbH (hereinafter referred to as the Supplier) and an enterprise (hereinafter referred to as the Customer); hereinafter, the Supplier and the Customer are referred to as the Parties. In particular, the Supplier shall in all instances, regardless of whether in the actual concrete case it explicitly makes reference to these General T&Cs of Sale and Delivery, apply these General T&Cs of Sale and Delivery to all goods and services (hereinafter referred to as goods & services) provided to the Customer. These General T&Cs of Sale and Delivery are available at <https://www.ebg-resistors.com/en/general-terms-conditions/> in several languages; the language version in the language in which the contract document for which these General T&Cs of Sale and Delivery form the basis was drawn up shall be deemed the authoritative version (the other language versions shall be deemed non-binding and are provided for informational purposes only); in cases of doubt, the German version shall be deemed the authoritative version.

1.2. The Customer shall accept these General T&Cs of Sale and Delivery at the latest when it gives its contract declaration to the Supplier. The legal relations between the Parties shall in all instances be governed by these General T&Cs of Sale and Delivery, unless other written provisions are explicitly set forth in a given individual case. This shall apply regardless of any reference made by the Customer to its own terms & conditions of purchase or other terms and conditions, including if the Supplier has not explicitly objected to the inclusion thereof. Furthermore, this shall also apply in cases where the Supplier, in full awareness that the Customer's terms & conditions contradict or differ from its own, provides the contractual goods & services without reservation.

### 2. Conclusion of Contract

2.1. Offers made by the Supplier are non-binding and subject to amendment. Orders placed by the Customer which do not indicate an acceptance deadline shall be binding upon the Customer for at least 30 days.

2.2. A contract with the Supplier does not arise until a written order confirmation has been sent or the Supplier has confirmed the order in writing (order confirmation).

2.3. Deviations between the order confirmation or accompanying documents and any statements made earlier by the Parties shall be deemed approved unless the Customer explicitly objects to the deviations within an appropriate deadline, namely within 7 (seven) days of receiving the order confirmation. The Customer does not have any right to object to the scope or applicability of these General T&Cs of Sale and Delivery.

2.4. All offers and the content thereof, e.g., descriptions of processes, components or technologies, drawings and designs, templates and/or software, which are provided as part of the offer (a) shall in all instances remain the intellectual property of the Supplier, and the Customer shall not acquire any associated rights or entitlements which have not been explicitly granted; (b) shall be made available to the Customer for personal use only, and only in order to allow assessment of whether to place an order with the Supplier; (c) shall be kept confidential by the Customer, and shall not be disclosed to third parties or duplicated in any way; and (d) if the Customer decides not to place an order shall be returned to the Supplier along with a suitable notification.

2.5 If the Supplier provides an offer but no order is placed, the Supplier reserves the right to charge the Customer for labor and costs associated with preparing the offer, cost estimate and/or accompanying documents (e.g., plans).

### 3. Goods & Services to be Supplied; Tools; Production Site

3.1. The goods and services to be supplied (hereinafter referred to as contractual items, contractual goods or products) shall in all instances be defined in the specifications in the order confirmation and accompanying documents. In cases where unspecified reference numbers are used, they shall be deemed to refer to products manufactured by the Supplier. Any changes to the contractual items require explicit written approval from the Supplier. In the absence of explicit written agreement, intellectual property rights shall not be deemed to be part of the contractual items; furthermore, no rights or entitlements that have not been explicitly set forth in writing shall be transferred to the Customer.

3.2. If, due to the nature of the production process, it is not possible to specify a particular volume in advance, overshipments or short shipments by the Supplier shall be permitted. Furthermore, in the case of made-to-order production, special production or low-volume production, the Customer shall accept the actual volume produced as the contractual items.

3.3. Unless agreed otherwise with the Supplier, the Supplier shall provide the machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and other items (hereinafter referred to as Supplier's tools) that are required to provide the Customer with the contractual items, and shall keep them in

good condition and, if necessary, replace them; the Customer shall bear the costs of providing, maintaining and replacing them. The Supplier is entitled to use the Supplier's tools which it employs in supplying the contractual items to the Customer to manufacture products for sale by the Supplier to third parties. In the absence of explicit written provisions, which must also contain clauses regarding price and maintenance, the Supplier's tools and the delivery of spare parts are not included in the contractual goods & services.

3.4. At any time, the Supplier is entitled to shift the production site for the products to a different location, which may be operated by another Supplier group company.

#### **4. Intellectual Property**

4.1. The Supplier retains all industrial property rights and intellectual property rights to and associated with the contractual items, their application and/or processes carried out with them, and their production methods, and to components, software (along with the source code, object code, user documentation, algorithms, user interface etc.), and to processes, plans, sketches, descriptions, drawings, manuals, assembly instructions, calculations, offers, cost estimates, other technical documents, templates, prototypes, catalogues, brochures, illustrations etc., including but not limited to all patent rights, trademark rights, design rights, copyright and other design rights, and/or rights to know-how and commercial, technical and process engineering information. The Supplier alone is the holder of these rights, and they shall continue to be held by the Supplier. Aside from the simple right for the Customer to use the contractual items for their intended purpose – in their concrete form and configuration as received from the Supplier – the Customer shall not be granted any rights, and in particular shall not be granted licensing or utilization rights.

This right to use the contractual items for their intended purpose shall be held by the Customer only, and is not transferable or sublicensable. Only the Supplier is entitled to use or exploit those rights or to apply for protective rights and/or to uphold the rights in other ways. The Customer is not entitled to modify the appearance of the contractual items in any way; in particular, it shall refrain from removing or modifying the Supplier's brand name or other identifying marks.

4.2. Insofar as the Customer is provided with manuals, end user documentation, similar instructions or other information, they shall be used solely to facilitate proper operation and use of the contractual items. Insofar as the contractual items include software, usage rights shall apply only to the contractual items for which the software was acquired or along with which the software was supplied, in order to facilitate operation of and solely for the duration of active use of the contractual items, and solely for the period of use of the contractual items by the Customer.

4.3. The Supplier shall exclusively and comprehensively retain all rights to outcomes, findings, developments, inventions etc. which arise in connection with the Supplier's performance and which relate to the contractual items, including if goods or services are supplied on the basis of user specifications or if the Customer makes any other contribution thereto. Any rights which arise on the Customer side shall be automatically transferred to the Supplier when the outcomes, findings, developments, inventions etc. arise and shall automatically pass to the Supplier, so that the Supplier becomes the sole and exclusive rights-holder and beneficial owner. Furthermore, exploitation rights shall be comprehensively and exclusively assigned to the Supplier.

4.4. Only the Supplier is entitled to submit applications for protective rights or invoke priority rights (if applicable). All applications for protective rights shall be made at the Supplier's discretion and maintained at the Supplier's discretion.

4.5. In the case of copyright-protected outcomes, the Customer hereby grants the Supplier the exclusive right to utilize the outcomes without chronological, material or geographic limitation based on all currently known or future types of exploitation, and in particular to duplicate, disseminate, lease and lend, transmit or send them via wireless or wired connection, or present, show or display them and make them available, and to grant all rights to the outcomes to third parties gratis or against payment or to grant sublicenses, and in doing so permit the third parties to utilize the outcomes to the same extent. Furthermore, the Supplier is entitled to adapt the outcomes itself or have them adapted by third parties and to exploit the adapted results thereof to the same extent or hand them over to third parties.

4.6. Documents and information shall not be forwarded to third parties without the Supplier's explicit written permission, and any use beyond what has concretely been agreed is prohibited. In particular, the Customer shall not be granted any licensing rights and/or ownership rights to the Supplier's documents, information, intellectual property, production systems or tools, including in the event of inadequate or late performance or complete lack of performance.

4.7. If the Supplier is to grant rights to the Customer, an explicit written provision shall first be drawn up, and unless explicitly stipulated otherwise, shall only include non-exclusive rights without the right to the transfer or granting of sublicenses and without the right to adapt. The Customer shall not assert any rights relating to protective rights applications, and in particular shall not assert rights based on prior use.

4.8. The Customer is not entitled to modify the Supplier's brand name or other identifying marks, and is not entitled to remove them from the contractual items, packaging and/or accompanying documents, and/or is not entitled to

use them without the aforementioned marks. If the Customer resells the contractual items, it shall refrain from modifying or removing the items' identifying marks.

4.9. If, in order to provide the contractual items, it is necessary to use existing intellectual property rights and/or know-how belonging to the Customer, the Customer shall grant the Supplier the necessary usage rights, which shall be global, non-exclusive, gratis, non-transferable, and sublicensable to subcontractors only (if appropriate), in order to ensure that the contractual items can be provided and delivered to the Customer or a third party specified by the Customer during the life of the business relationship.

## **5. Audits**

The Customer is only entitled to conduct audits of the Supplier or its vendors if it has explicit written permission.

## **6. Payment; Payment Terms**

6.1. All of the Supplier's prices are subject to statutory value-added tax. Price lists shall be considered non-binding and for informational purposes only.

6.2. The basis for the Supplier's prices is the cost structure (consisting of the costs of raw materials, development, production and wages, taxes, customs duties and other charges) as of the date on which the Supplier issues the order confirmation. If, in the period leading up to the respective (partial) delivery, this cost structure increases by at least 10%, the relevant price shall be modified based on the change in the cost structure. The agreed prices do not include any payment for granting or transfer of rights (if applicable). Such payment shall always be shown separately.

6.3. The Supplier's invoices are payable in full without charges or deductions of any kind within 30 (thirty) days of the invoice date.

6.4. The Customer is not entitled to withhold payment from the Supplier.

6.5. The Customer is only entitled to offset against the Supplier if the claims are res judicata or have been explicitly acknowledged in writing by the Supplier.

6.6. The Supplier is entitled to offset or withhold amounts which are owed to the Customer or its affiliates by EBG Elektronische Bauelemente GmbH or its affiliates.

## **7. Delivery**

7.1. The Supplier shall deliver Free Carrier (FCA own plant or freight warehouse of the Supplier, per Incoterms 2010) including packaging.

7.2. A Supplier contract shall only be deemed a fixed-date transaction (§ 919, Austrian Civil Code [ABGB]) if that has been explicitly agreed in writing. Aside from that, a delivery deadline or delivery date shall only be binding upon the Supplier if it has explicitly provided the Customer with a written guarantee to that effect.

7.3. The Supplier is entitled to make partial deliveries. Refusal to accept the contractual items shall not release the Customer from its payment obligation.

7.4. The delivery period shall start at the earliest when the Supplier sends its order confirmation. If the Supplier has not received all necessary documents and information to allow fulfillment of the contract, or if the Customer has not completely fulfilled its duty to cooperate, the delivery period shall be suspended.

7.5. If delivery is delayed due to events beyond the Supplier's control, including but not limited to force majeure, official actions, seizure, natural disasters, civil unrest or war, transport disruptions, interruption of operations, labor disputes, or if a vendor fails to deliver to the Supplier or delivers in violation of contract, the delivery deadline shall be extended accordingly (or the delivery date shall be moved), including an appropriate restart period. If, due to such events, a delivery is delayed by more than the length of the original delivery period (or the period between the order confirmation and the delivery deadline), either Party is entitled to withdraw from the part of the shipment affected by the delay, provided it sends an explicit written notification within the 14-day period that follows the end of the aforementioned extension period.

7.6. If, pursuant to relevant legislation, the Customer is entitled to withdraw due to delay on the part of the Supplier, in the case of partial deliveries the right to withdraw shall only apply to the delayed part of the shipment. The Customer can only invoke a right to withdraw if it has first set the Supplier an appropriate grace period for delivery by sending a written notification.

7.7 The Supplier is entitled to refrain from making a delivery or rendering performance if it is prohibited under national or international law (e.g., embargo, US (re)-export control regulations, other sanctions). If permit requirements apply, the Supplier is entitled to refrain from making the delivery or rendering performance until the relevant authority has issued the necessary permit.

## **8. Warranty**

8.1. The warranty period is 12 (twelve) months following receipt of the goods.

8.2. The Supplier hereby provides warranty that as of the contract date the purchase and use of the contractual items does not infringe any ownership rights of third parties in the Supplier's country of domicile, and that exporting of the contractual items complies with the export regulations in the Supplier's country of domicile. The Supplier does not owe the Customer an overall system, but rather merely individual components. Accordingly, the Supplier only provides warranty that the contractual items meet the concrete technical specifications explicitly agreed in writing as of the date of handover. The Supplier does not provide any further warranty. If performance is rendered/completed based on the Customer's specifications and requirements, the Supplier only provides warranty that performance was rendered in accordance with the Customer's requirements and does not provide warranty for the appropriateness of the resulting structure, composition, design etc.

Specific characteristics, features and usage options of the contractual items shall only be deemed to have been promised if explicitly agreed in writing. In particular, the Supplier does not provide warranty of suitability or possible uses which have not been explicitly promised in writing; and it is hereby explicitly stated that there is no implicit or explicit warranty of the suitability of the contractual items for a particular purpose, nor any warranty regarding the system in which the contractual items are installed. Furthermore, the Supplier provides no warranty with respect to defects which are caused by the materials supplied by the Customer in order to manufacture the contractual items or by the instructions issued by it, nor for functional defects resulting from unanticipated environmental conditions, design defects or other design-related problems.

Under no circumstances shall the Supplier be held liable for (i) changes to the product which were carried out by the Customer or a third party (ii) changes which the Supplier has carried out based on a request from the Customer (iii) use of or connection of the contractual items or the combination of the contractual items with other products by the Customer or a third party (iv) contractual items which were manufactured by the Customer or a third party in accordance with the specifications.

Declarations and promises by the Supplier, in particular assurances of quality, shall not be deemed guarantees in the legal sense unless explicitly agreed otherwise in writing.

8.3. If the Supplier has to provide warranty, it is entitled, at its own discretion, to first rectify or exchange the goods within an appropriate period. Replaced items shall become the property of the Supplier and shall be returned to it. If the Supplier does not rectify or exchange the goods within an appropriate period, or if it refuses to do so, or if rectification or exchange are not feasible, the Customer is entitled, at its own discretion, to demand a price reduction or, insofar as the defect is not merely a minor defect, to demand cancellation of the contract. In the case of contracts where partial delivery is permitted, the right to cancel is limited to partial deliveries which have not been properly fulfilled. If the Customer sells, modifies or adapts the goods in full awareness that they are defective, it shall forego its right to cancellation. No further warranty shall apply.

8.4. The Supplier hereby confirms that the contractual items were developed by persons with regard to whom the Supplier has secured the relevant intellectual property rights. Furthermore, the Supplier confirms that as of the order confirmation date no third parties have asserted claims against the Supplier with respect to infringement of their rights by the contractual products, and the Supplier is not aware of any rights of third parties which would be infringed by the contractual products per se, in their actual concrete composition and design as delivered by the Supplier. The Supplier does not provide any further warranty.

8.5. With regard to software, the Supplier hereby provides warranty that the software meets the software specifications which were supplied and confirmed by the Supplier, and that as of the delivery date the software is free of malware and/or computer viruses. No further properties shall be assumed, nor are they promised.

It is hereby explicitly stated that the software may not run in a completely error-free manner and/or without crashes. With regard to the relevant systems or product/field, the software is merely programmed for the specified system environment which is indicated in the software documentation. Moreover, any warranty is limited to defects which can be demonstrated and reproduced by the Customer.

If the Customer modifies the system environment and/or knowingly performs interventions of any kind in the software, all other warranty for the software is hereby explicitly excluded. Furthermore, if the software interfaces with a superordinate system/program and the alleged error originates from that superordinate system/program – and that will be presumed if the Customer cannot prove otherwise – warranty is hereby explicitly excluded. Warranty is explicitly excluded in cases of improper use, use of unsuitable storage media and/or system components, other failure to comply with defined system environment parameters, lack of suitable anti-virus or security measures which are not state-of-the-art, or use of unsuitable personnel.

In all cases it is the Customer's responsibility to demonstrate that a defect to which warranty applies is present. If a defect arises within the warranty period, the Customer shall immediately send a clear and detailed written notification containing all necessary information to allow analysis of the defect. In particular, the notification must describe the work steps which led to the occurrence of the defect, the manner in which the defect manifests itself and its impact.

At its own discretion, the Supplier may rectify a software defect by immediately eliminating it, supplying a new program, or providing an adequate workaround. No warranty is provided for minor software defects that do not impair functionality.

8.6. The presumption of defects in the goods in the first six months following handover, as defined in § 924 Austrian Civil Code, shall not apply.

8.7. The Customer's right of recourse against the Supplier, insofar as the Customer itself had to provide warranty (§ 933b Austrian Civil Code), shall not apply.

8.8. If warranty claims are asserted, it is the Customer's responsibility to demonstrate that the defect was present on the date of handover.

## **9. Reporting of Defects**

9.1. The Customer shall send the Supplier explicit written notification of defects in the contractual items within an appropriate deadline, namely within 7 (seven) days of receiving the goods in the case of obvious defects, and within 7 (seven) days of discovery in the case of hidden defects. In the case of partial and successive deliveries, a separate defects report shall be sent separately for each individual delivery. In all instances the defects report shall be deemed late if it is no longer feasible for the Supplier to perform a follow-up check of the goods for which defects have been reported. Once the defect has been determined, the Supplier's explicit written permission is required for any sale, processing or further processing of the goods in question, otherwise claims shall be forfeited.

9.2. The Customer shall ensure that the Supplier actually receives the defects report, and shall bear the burden of proof for ensuring that. Merely sending back the goods shall not be deemed reporting of defects.

9.3. Claims pursuant to warranty, damages claims based on the defect itself or on errors regarding the item's freedom from defects, or claims relating to other forms of compensation, cancellation or termination of contract cannot be asserted unless a defect report is sent in a timely manner.

9.4. If a defect report is sent, the Customer shall, at its own discretion, either return the parts in question to the Supplier at its own cost and risk or arrange for the Supplier to perform an on-site assessment. Performing an assessment of the goods or accepting the returned goods without reservation does not imply that the Supplier has waived its right to object in the event that a defect report is sent late or not sent at all. When a reported defect undergoes assessment and rectification, the Customer shall provide reasonable assistance and in particular information. If, following assessment, the Supplier does not acknowledge the reported defects, the Customer shall reimburse the Supplier for all costs (including travel time) associated with the assessment.

## **10. Liability**

10.1. The Supplier shall only be held liable in cases of willful intent or gross negligence. The Customer shall bear the burden of proof for demonstrating willful intent or gross negligence.

10.2. The Supplier shall not be liable for indirect, incidental damages or consequential damages, including but not limited to removal or installation costs, recall costs, assembly-line stoppage costs, downtime, defect assessment (including additional test runs, material costs, and costs of additional incoming goods checks), additional handling expenses (including shipping costs and travel costs), financial losses – in particular lost earnings and capital costs – or damages arising from third-party claims against the Customer. In all cases, in terms of amount the Supplier's liability is limited to EUR 5 million per claim.

10.3. The aforementioned limits on liability apply to all of the Customer's claims under contract law and tort law, and also in particular to any infringements under intellectual property law and/or product liability claims. However, the aforementioned limits do not apply insofar as mandatory liability applies (i) under the Austrian Product Liability Act [PHG] (ii) due to willful intent or gross negligence (iii) due to loss of life, personal injury or damage to health.

10.4. All damages claims shall become statute-barred 3 (three) years after the occurrence of damage. All other claims, regardless of the legal grounds, shall become statute-barred 3 years after delivery (Section 10.4 herein does not apply to warranty claims, which are covered in Section 8.1).

10.5. (In light of Sections 10.1–10.4, and in all cases only to the extent that a liability limit or liability exclusion as stipulated therein is deemed non-permissible), the Supplier is only liable for the Customer's damage containment (e.g., a product recall) insofar as (i) relevant legislation obligates the Customer or its buyer to engage in damage containment (e.g., a product recall) (ii) the Customer and the Supplier are in agreement concerning imminent material defect claims or product liability claims and, respectively, a public authority has issued an order for damage containment. The Customer shall immediately consult with the Supplier and provide it with comprehensive information; otherwise, any relevant claims shall be excluded. In particular in the case of a product recall or settlement negotiations, the Parties shall seek to reach agreement on an action agenda, and such an agreement that stipulates appropriate measures shall not be refused unless there are significant grounds. (In light of Sections 10.1–10.4, and in all cases only to the extent that a liability cap or liability exclusion as stipulated therein is deemed

non-permissible), the Supplier is only liable for appropriate measures, which shall be taken following the timely involvement of and in agreement with the contractor, up to a total of EUR 5 million per claim.

10.6 If the Customer demands that the contractual items be supplied/implemented based on the Customer's specifications or concrete design requirements, or if the Customer demands the use of technologies or solutions specified by the Customer, the Customer shall ensure that they or the application/use thereof are unencumbered by third-party rights, and in such situations, the Customer shall indemnify the Supplier against all damages, claims or execution asserted by third parties, in particular in the case of production.

#### **11. Cancellation**

The Parties may only cancel the contract prematurely if there are significant grounds and after having sent a written warning, subject to the Supplier's statutory withdrawal rights and the clauses in Section 13.

#### **12. Retention of Title**

12.1. We retain ownership of the sold goods until all our present and future claims arising from the purchase agreement have been paid in full.

Furthermore, we also retain ownership of the sold goods until all our present and future claims arising from any other business relations have been paid in full.

For purposes of clarity, it is hereby stated that this also applies to the supply of machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and/or other devices, insofar as the Supplier is contractually obligated to supply them.

12.2. Until the secured claims have been paid in full, the goods supplied under retention of title shall not be pledged to third parties or assigned as security. The Customer shall immediately notify us in writing if and insofar as a third party seeks to take possession of the goods which belong to us.

12.3. If the Customer infringes the contract, in particular if it fails to pay the due purchase price, we are entitled to withdraw from the contract as stipulated in the relevant legislation and to demand that the goods be returned based on retention of title and withdrawal. If the Customer does not pay the due purchase price, we are only permitted to assert the aforementioned rights if we have first unsuccessfully set the Customer an appropriate payment deadline, or if setting such a deadline is unnecessary under the relevant legislation.

12.4. As part of its ordinary business operations, the Customer is permitted to resell and/or process the goods supplied under retention of title. In such cases, the following additional clauses apply:

- a) The retention of title extends to the full value of the outcomes resulting from the processing, mixing or combining of our goods, and we shall be deemed the producer. If, in the event of processing, mixing or combining with goods of a third party, it continues to retain its ownership, we shall acquire co-ownership based on the respective ratios of the invoice values of the processed, mixed or combined goods. Aside from that, the resulting outcomes are subject to the same conditions as the goods supplied under retention of title.
- b) The claims against third parties which arise from the resale of the goods or of the outcomes are now hereby assigned to us by the Customer either in total or in the amount of our co-ownership share (see paragraph above) as security. We hereby accept that assignment. The Customer's obligations set forth herein in Section 12, in particular those described in Section 12.2, also apply to the assigned claims.
- c) Along with us, the Customer is entitled to collect the claims. We shall refrain from collecting the claims as long as the Customer meets its payment obligations to us, does not fall into payment arrears, no requests for the opening of insolvency proceedings are opened, and there are no other defects in its performance. However, if any of the above does apply, we are entitled to demand that the Customer notify us regarding the assigned claims and the debtor in question, provide all necessary information to allow collection, surrender the accompanying documents and notify the debtors (third parties) regarding the assignment.
- d) If the realizable value of the security exceeds our claims by more than 10%, we shall release the security at our discretion if asked to do so by the Customer.

#### **13. Supplier's Right to Withdraw**

13.1. The Supplier is entitled to withdraw from the contract if there are significant grounds, provided it sets an appropriate follow-up deadline of a maximum of 14 days. Significant grounds shall be deemed present in particular if (i) the Customer is in arrears in fulfilling key contractual obligations, in particular the duty to pay the purchase price or collaborative activities which are required to enable the Supplier to fulfill the contract (ii) if a request to open bankruptcy, settlement or other insolvency proceedings for the Customer's assets is submitted or (iii) bankruptcy, settlement or other insolvency proceedings are opened for the Customer's assets or are not opened due to lack of cost-covering assets.

13.2. If, after the contract has been signed, it becomes evident that the Supplier's payment claims are in jeopardy due to the Customer's inability to perform, in particular if its assets position has deteriorated, the Supplier is entitled to refuse to render performance and to set the Customer an appropriate deadline within which it shall render performance in a step-by-step manner against delivery or shall furnish security. If the Customer refuses or the deadline passes fruitlessly, the Supplier is entitled to withdraw from the contract and demand damages.

13.3. The Supplier is entitled to withdraw from the contract if the fulfillment thereof is prohibited under national or international law (e.g., f, US (re)-export control regulations, other sanctions). This also applies to legislation which does not enter into force until after the contract is signed.

#### **14. Compliance**

14.1. The Customer shall comply with the Miba Code of Conduct, which is available on the Internet at:

[http://www.miba.com/fileadmin/user\\_upload/A\\_Miba\\_Code\\_of\\_Conduct\\_Broschure\\_EN\\_060318.pdf](http://www.miba.com/fileadmin/user_upload/A_Miba_Code_of_Conduct_Broschure_EN_060318.pdf)

The Miba Code of Conduct is incorporated by reference into the contract between the Customer and the Supplier. The Customer hereby declares that it is familiar with the Miba Code of Conduct and that it shall ensure that its employees comply with it. The Customer shall immediately notify the Supplier regarding any activities on the part of its employees which constitute an infringement of the Miba Code of Conduct. The Customer shall help the Supplier to obtain information relating to any infringement of the Miba Code of Conduct.

14.2. Furthermore, the Customer shall comply with all applicable legislation, regulations and other standards. In particular, the Customer hereby confirms that the goods/services are not subject to any foreign trade constraints. If necessary, the Customer shall provide relevant information regarding the goods if asked to do so by the Supplier. The Customer hereby assures the Supplier that it will always fully comply with all export provisions currently applicable to the contractual goods and/or services and their export and/or re-export, in particular with the regulations of the Austrian Foreign Trade Act 2011, Council Regulation (EC) No. 428/2009 regarding a Community regime for the control of exports, transfer, brokering and transit of dual-use items (as amended) and the US Export Administration Regulations (EAR), to the exclusion of any responsibility in this regard.

14.3. Any violation of these export provisions or of the Miba Code of Conduct shall entitle the Supplier to immediately terminate all existing contracts with the Customer due to significant grounds.

14.4. Furthermore, the Customer shall ensure that in its commercial documents it immediately provides the Supplier with separate notification regarding any permit requirements or constraints on the (re-)export of its goods under Austrian, European or US export and foreign trade regulations and regarding the export and foreign trade regulations in the country of origin of its goods, and in the case of goods requiring permits shall provide the following information in a timely manner prior to initial delivery:

- EBG Elektronische Bauelemente GmbH material number
- Description of goods
- All applicable export list numbers including the Export Control Classification Number (ECCN) per the U.S. Commerce Control List
- Place of origin of the goods under trade policy
- Customs tariff number (HS code)

14.5. The Customer shall immediately notify the Supplier regarding any changes in permit requirements for goods supplied by the Supplier that are a consequence of technical or regulatory changes or official decisions.

Moreover, if the Customer is listed on an EU or US sanctions list, the Supplier reserves the right to terminate all business relations, payment flows and performance with immediate effect. The same applies if the Customer infringes any of the provisions set forth herein in Section 14, in particular the Miba Code of Conduct (hereinafter jointly referred to as "compliance provisions"). Furthermore, in the event of infringement of any of these compliance provisions, the Customer shall comprehensively indemnify the Supplier against associated damages and claims.

#### **15. Confidentiality; Drawings and Models**

15.1. The Customer shall ensure that all technical and commercial information of the Supplier of which it becomes aware as part of the contractual relationship is kept confidential. In particular, "confidential information" shall not be disclosed. The following in particular are deemed "confidential information," regardless of whether they relate to the Supplier, its affiliates or its customers/business partners: any information, documents, drawings, data, data on electronic storage media, processes and process steps, compositions, formulae, machinery, systems, templates, objects, market and marketing information, technical and commercial information, commercial and business secrets, financial information, business models and business processes or other information that merits protection which, before or after the drawing up of these General T&Cs of Sale and Delivery, are knowingly or unknowingly handed over to the Customer by the Supplier in written, graphical, oral, visual, or electronic form, or via the sending of a product or product sample, during a company visit or in any other way or which pass into the Customer's realm of control and/or of which it becomes aware, or any copies or other information derived therefrom. In particular, information or work outcomes which arise in connection with the provision of the goods/services, regardless of whether they were created by the Supplier, Customer and/or a third party, shall be deemed confidential information. The following is not deemed confidential information: information which in its totality and in the precise structure and composition of its components was, as of the date on which the information changed hands under this contract, demonstrably already generally known to or easily accessible by individuals in circles that customarily deal with such types of information.

15.2. The Supplier's prior written permission is required in each individual case for any forwarding of confidential information for use for own purposes or a third party's purposes, regardless of whether all or part of the information is used, whether it is modified or processed, or is part of other information. This also applies to scientific publications. Furthermore, the Customer shall only use the confidential information to the extent that is explicitly permitted under the relevant contract, and during and after the end of the contract shall not use it for its own purposes or for other parties' purposes, and shall handle the information in a manner that allows the Customer to return it after the order has been fulfilled. In particular, the Customer shall not attempt to obtain any findings or draw any conclusions from the confidential information, nor trace back to the underlying information, nor to analyze it through observation, assessment, dismantling or testing. This also applies to scientific publications.

15.3. All specifications, drawings and other technical documents or attachments to enquiries or orders (e.g., plans) which are handed over or made available to the Customer in connection with the Supplier's drawing up or fulfillment of the contract shall remain the property of the Supplier, and along with specifications, drawings, plans, detailed drawings, production materials and other technical documents and tools (hereinafter jointly referred to as "documents") shall be used by the Customer for the actual contractual purpose as defined in the order confirmation only and not for any other purposes, and shall not be duplicated or made available to third parties. Upon request, these documents and the confidential information along with all excerpts and duplicates shall be immediately surrendered to the Supplier, any copies shall be destroyed, and any backup copies or recordings on electronic storage media shall be deleted, and written notification to that effect shall be sent immediately.

15.4. The Customer shall refrain from using its knowledge of the confidential information to assert any rights relating to protective rights applications, and in particular shall refrain from asserting rights based on prior use. As stipulated in Section 4, all work outcomes and documents which are generated or produced based on confidential information of the Supplier, including jointly prepared specifications sheets (if applicable), shall become the property of the Supplier when created and shall be marked as the property of the Supplier (see Section 4 above). Production materials, in particular tools, templates, technical devices etc. which the Supplier has made available to the Customer shall be marked as the property of the Supplier and are subject to the confidentiality provisions and prohibitions on use set forth herein in Section 15. These documents and production materials shall be immediately surrendered to the Supplier upon demand, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

15.5. The Customer shall ensure that all documents and materials which might contain confidential information of the Supplier are safeguarded and protected against access by third parties.

15.6. The Customer requires explicit written permission to indicate or draw attention to the business relationship with the Supplier in advertising materials or publications of any kind.

15.7. If there are grounds for suspecting infringement of these confidentiality provisions, the Customer shall bear the burden of proof for demonstrating that the confidential information was already known to the general public on the contract date or was disclosed without its involvement or responsibility. Vis-a-vis the Supplier the Customer is jointly and severally liable along with any third party to whom confidential information was disclosed by the Customer, or by whom confidential information was disclosed to the Customer, for any infringement of the confidentiality provisions herein.

15.8. The Customer hereby acknowledges that infringement of these confidentiality provisions could cause the Supplier major or irreparable damage, for which statutory damages might be inadequate. For each case and for each day of infringement of this contract by the Customer and/or a person to whom the Customer has disclosed the information in question, the Customer shall pay the Supplier a contractual penalty of EUR 50,000, regardless of further claims or legal remedies. The defense that a series of infringements should be treated as a one continuous infringement is barred. Insofar as legally permissible, the contractual penalty shall not be subject to judicial intervention or assessment for appropriateness and shall be independent of the damages caused.

15.9. The Supplier shall not be liable for ensuring that the use of the confidential information does not infringe the intellectual property rights, copyright and/or other rights of third parties, and/or for damages caused to the Customer or a third party. The Supplier is completely at liberty to utilize and make use of the confidential information in any manner it wishes.

15.10. Section 15 herein continues to apply without limitation after the end of or cessation of the contractual relationship, for as long as is permitted under the relevant legislation, and in all instances for five (5) years after the end of the order in question.

## **16. Data Protection**

If the Customer processes personal data for and on behalf of the Supplier in connection with the provision of goods/services, it shall comply with relevant legislation, in particular Austria's Data Protection Act [DSG] (as amended) and the EU General Data Protection Regulation. Accordingly, the Customer shall draw up a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Furthermore, if data are transferred – to the Customer or its subcontractors – to a recipient domiciled in a country outside the European Economic Area and this is absolutely necessary to allow performance, in addition to drawing up the EU standard contract clauses or their equivalent the Customer shall also use the contract templates issued by the European



Commission to provide a suitable guarantee as defined in Art. 46 Paragraph 2 Parts c and d of the General Data Protection Regulation.

#### **17. Place of Fulfillment; Place of Jurisdiction**

17.1. The place of fulfillment for both Parties is the location specified by the Supplier in the order confirmation, otherwise Laakirchen, Austria.

17.2. The sole place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction for Linz, Austria. However, the Supplier is also entitled, at its own discretion, to assert claims against the Customer before the court with subject-matter jurisdiction for the Customer's headquarters.

#### **18. Applicable Law**

This contract, including the questions of whether it is legally valid and/or void and its advance effects and aftermath, is subject to Austrian law only, to the exclusion of conflict of law provisions and UN CISG.

#### **19. Severability**

If a provision of these General T&Cs of Sale and Delivery is ineffective, invalid or infeasible, this shall not affect the efficacy, validity or feasibility of the other provisions. In such cases, the provision shall be replaced by one which in terms of commercial outcome approximates to it as closely as possible and is not ineffective, invalid or infeasible. The same applies to contractual gaps.

#### **20. Transfer of Rights and Obligations**

The Customer hereby agrees that the Supplier may transfer the contractual relationship as a whole to an affiliate of EBG Elektronische Bauelemente GmbH (independently of the percentage shareholding). In such instances, based on written notification, the affiliate specified by the Supplier shall take over all obligations and claims arising from the legal relationship and shall assume all of the Supplier's organizational and other rights.

#### **21. Written Form**

In order to be valid, any changes or amendments to these General T&Cs of Sale and Delivery or other contractual agreements between the Supplier and the Customer shall be carried out in writing. The same applies to deviations from the requirement regarding written form.