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**General Terms of Sale**  
**Ekko-Meister AG, Lengnau (BE)**  
*Last updated: 11 February 2019*

## 1. General Information, Scope

Products and/or services from EKKO-MEISTER AG are supplied exclusively on the basis of the following terms and conditions; EKKO-MEISTER AG does not recognise any of Buyer's terms and conditions that conflict with or differ from our Standard Terms and Conditions except where EKKO-MEISTER AG has expressly consented to their validity in writing. The EKKO-MEISTER AG Standard Terms and Conditions also apply in the event EKKO-MEISTER AG supplies products and/or services without reservation despite knowing of conflicting terms and conditions. The foregoing also applies where, in any given situation, EKKO-MEISTER AG has not expressly rejected the Buyer's terms and conditions.

Incoterms 2010 shall be used for purposes of interpreting the clauses laid out in these Standard Terms and Conditions.

Our Standard Terms and Conditions also govern all future dealings with Buyer.

### 1.1. Right of Rescission

Where we are able to anticipate prior to the start of production that the specific products commissioned by Buyer are not technically feasible within the required parameters or can only be produced under particularly difficult conditions, EKKO-MEISTER AG has the right to rescind the contract with immediate effect; in such case, Buyer cannot demand damages. EKKO-MEISTER AG also has the right to rescind the contract with immediate effect in the event that performance of the contract is rendered impossible due to an event of force majeure.

### 1.2 Confidentiality

The parties shall treat all commercial and technical details that are not known to the public and which are discovered due to business dealings with EKKO-MEISTER AG with strict confidentiality as business secrets. No drawings, models, samples, or similar items may be turned over or otherwise made available to unauthorised third parties. The replication of such items is permitted only within the bounds of operational necessity and the provisions of copyright law. The parties may leverage the business relationship with EKKO-MEISTER AG for promotional purposes only with prior written consent.

## 2. Prices, Payments and Netting

All pricing, terms of delivery, and terms of payment are determined solely based on the written order confirmation from EKKO-MEISTER AG. Unless otherwise stipulated, all prices are net prices in Swiss Francs, and ex works, but do not include packaging. The prices do not include taxes, duties, surcharges, or value-added tax. **2.1 Prices**

To avoid delinquency penalties, payment must be made within 30 days of the invoice date without deduction. Unauthorised deductions will be charged back to the customer.

Any information provided in EKKO-MEISTER AG catalogues and price lists is non-binding; such information does not comprise an offer and is subject to change at any time without advance notice. In particular, EKKO-MEISTER AG reserves the right to change its prices at any time.

EKKO-MEISTER AG reserves the right to renegotiate long-term contractual pricing arrangements in the event that payroll costs, the costs for raw materials, power, or freight change significantly in the period between the date the contract was entered into and the date of delivery.

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## 2.2 Delinquent Payment

Where payment is delinquent, Buyer will be invoiced for all of the resulting costs as well as late payment interest of 7% p.a. starting from the payment due date on the original invoice. Buyer may not withhold payment on grounds that Buyer has complaints. Where Buyer suspends payments or in the event that bankruptcy proceedings or court proceedings are commenced, EKKO-MEISTER AG has the right to rescind the contract with immediate effect; in such case, Buyer cannot assert claims for costs.

## 3. Orders, Content and Scope of Deliveries

Supply contracts (order and acceptance) and release orders as well as changes or amendments to such must be set out in writing. Release orders can also be submitted via electronic data interchange. An order is considered accepted only after it has been confirmed by EKKO-MEISTER AG in writing (this includes via e-mail or fax). The content of the contract is determined solely on the basis of the wording of the written order confirmation (also including such sent via e-mail or fax) from EKKO-MEISTER AG as well as the item text including the drawing number.

Deviations in measurements or quality are permitted within the limits set out in the applicable DIN standard or by special arrangement.

Overdeliveries comprising 10% of the order volume are permitted and are in line with ranges customary in the industry. Deviations of this scope are not material defects and cannot be returned or deducted.

The technical information, depictions, drawings, measurements and weights provided over the internet, in brochures, offers and other printed materials are intended solely to describe the product and are deemed non-binding average values. They do not constitute a specification of properties and do not establish any guarantee with regard to properties or useful life unless expressly described as such.

### 3.1 Engineering, Drawings

Our products are subject to change and improvement at any time. Nevertheless, EKKO-MEISTER AG is not obligated to replace parts that have already been produced and delivered. Where necessary, drawings created and sent to us by Buyer will be converted into an internal production drawing and submitted to Buyer for approval. Once Buyer has approved, the order will be fulfilled exclusively on the basis of the EKKO-MEISTER AG drawing.

Unless otherwise stated, the data developed from engineering service and tool design such as drawings, 3D data, findings gained from attempts, and comparable activities and information (intellectual property) remain the property of Ekko-Meister AG.

## 4. Annual and Blanket Purchase Orders

Annual and blanket purchase orders obligate Buyer to purchase the total volume comprising the foundation of the annual or blanket purchase order.

Where there are no specific release dates stipulated in the annual or blanket purchase order, a request for the release of the total volume is to be submitted within two months of the date the order was received.

In the event Buyer does not comply with release request dates, EKKO-MEISTER AG has the right to make and invoice deliveries pursuant to the release dates stipulated in the order confirmation.

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## 5. Delivery Date

In the event Buyer fails to satisfy duties under the contract in a timely manner – including duties of cooperation and related duties – such as obtaining a letter of credit, producing domestic or foreign certificates, transport papers, necessary documents, or materials supplies, making an advance payment, or similar obligations, EKKO-MEISTER AG has the right to postpone its delivery dates for a reasonable length of time in accordance with the requirements of our production process.

Unless otherwise stated in the order confirmation, our products are supplied ex works. Agreed dates and deadlines are binding. In the case of delivery ex works, EKKO-MEISTER AG will make the goods available in a timely manner giving due consideration to the usual time for loading and shipment. Where transport papers need to be drawn up, EKKO-MEISTER AG will charge a transport surcharge. Where Buyer organises the transportation and ensures that the corresponding transport papers are issued, the issue of the invoices constitutes confirmation that the products are ready to be shipped and that EKKO-MEISTER AG has satisfied all of its obligations with regard to delivery. Acts of force majeure, labour disputes, civil unrest, measures taken by government agencies, and other unforeseeable, unavoidable and major events release EKKO-MEISTER AG from its duties of performance for the duration of the disruption and in proportion to their impact. The foregoing also applies where such events occur at a point in time at which EKKO-MEISTER AG is delinquent in its performance. Claims for damages as the result of delinquent performance by EKKO-MEISTER AG are barred in their entirety.

EKKO-MEISTER AG has the right to make partial deliveries to a reasonable extent. Buyer is responsible for transportation costs or surcharges.

Where EKKO-MEISTER AG is delinquent, EKKO-MEISTER AG is liable to Buyer for any substantiated loss due to the delay, provided that after learning of the duration of the delivery delay, Buyer notifies and provides proof to EKKO-MEISTER AG of the amount of the loss anticipated due to delay. Where the anticipated loss due to delay exceeds 20% of the value of the volume affected by the delivery delay, Buyer must attempt to make a corresponding substitute purchase without delay.

## 6. Transfer of Risk and Retention of Title

Costs and risk associated with physical turnover and transportation transfer to Buyer at the point that the goods are dispatched from the factory. Differing provisions are valid only where they are expressly stated in the EKKO-MEISTER AG order confirmation. EKKO-MEISTER AG retains the title to all goods delivered until payment has been made in full; in such case, all separate deliveries are considered to comprise a single delivery transaction. In the case of open accounts, the retention of title serves to secure the balance due. Supplier retains the title to all ordered and delivered items until payment in full of the respective purchase price or fee. Supplier has the right to take any measures necessary to ensure that the retention of title is legally valid in the respective country, e.g., entry in the lien register, etc. Buyer hereby grants Buyer's irrevocable consent to such measures. Buyer must maintain the delivered items in good condition at Buyer's expense until such time as payment has been made in full. Furthermore, Buyer must take all actions required to ensure that Supplier's ownership rights are not impaired. Buyer must obtain insurance coverage for items delivered on account such that in the event of their partial or complete destruction, Supplier has a claim to appropriate compensation. The claim against the insurer is hereby assigned in the corresponding scope. In the event that retention of title is not an established or enforceable practice in a cross-border context, Buyer must assist in finding other legal remedies to the benefit of Supplier, the purpose of which is to secure Buyer's ownership under the applicable legislation.

## 7. Defect Claims

Where goods do not deviate or deviate only insignificantly from the stipulated specification at the time of transfer of risk, they are in conformity with the contract. Conformity and absence of defects of EKKO-MEISTER AG goods are determined exclusively according to the explicit stipulations regarding the quality and quantity of the ordered goods. Liability is assumed for a specific use or a specific property only to the extent that such is expressly stipulated; in all other respects, Buyer bears the risk of suitability and utility. EKKO-MEISTER AG is not liable for deterioration, destruction or improper handling of the goods following the transfer of risk.

The contents of the stipulated specification and any expressly stipulated intended use do not establish a guarantee; a guarantee must be offered by means of a written agreement (this includes via e-mail or fax).

As soon as defects can be identified during the normal course of business, Buyer must immediately report such to EKKO-MEISTER AG in writing (by registered mail). In particular, complaints regarding workmanship, quantities or weight are to be reported within a period of 10 days from receipt of the goods. The defect report must contain the following information: part number and name, order and lot number, packaging date, delivery ticket number, and a description of the defect. No guarantee can be offered for parts that can no longer be allocated to one of our individual production lots.

### 7.1 Warranty

In the event that flawed goods are supplied, EKKO-MEISTER AG is to be given the opportunity prior to manufacture (processing or installation) to sort out product, make corrections or supply replacements. In urgent situations and with the prior agreement of EKKO-MEISTER AG, Buyer may undertake corrections itself or have a third party undertake such. Buyer can then assert claims for damages due to additional expenses only where this has been agreed to in advance in writing. Where EKKO-MEISTER AG supplies replacements, Buyer must promptly provide the rejected goods to EKKO-MEISTER AG or, by agreement, ship them back. Buyer is not entitled to warranty claims where the fault is attributable to: disregard of the operating, maintenance or installation instructions, inappropriate use, incorrect or improper or negligent handling, normal wear and tear, or in the event that Buyer or a third party has tampered with the delivered item. Guaranteed properties must be described as such in detail in writing. More extensive claims are hereby expressly barred.

## 8. General Limitations of Liability

As a general rule, an obligation to pay damages is owed only where it can be demonstrated that EKKO-MEISTER AG is responsible for the loss caused. Claims by Buyer are excluded to the extent that the loss is attributable to disregard of operating, maintenance or installation instructions imputed to Buyer, inappropriate or improper use, incorrect or negligent handling, normal wear and tear, faulty repair, or unsuitability of the design originating from Buyer. With respect to claims by Buyer to avert a loss due to impending recalls, or impending claims or claims asserted against Buyer due to recalls, there must be a separate, written agreement between Buyer and EKKO-MEISTER AG. Where such an agreement is drawn up, Buyer must inform EKKO-MEISTER AG of the risks associated with the contracted item. Without such an agreement regarding recalls drawn up in writing, EKKO-MEISTER AG cannot be obligated to become involved in claims arising from averting loss or claims due to planned, ongoing or completed recalls; any liability for consequential loss of any kind is expressly excluded. In all other respects, the monetary value of any acknowledged liability is limited to the value of the goods supplied. The foregoing terms are subject to any statutory provisions that cannot be waived.

Where the type and scope of tests or the testing means and methods are not agreed to in more detail by Buyer and EKKO-MEISTER AG, EKKO-MEISTER AG will itself determine state-of-the-art testing within the scope of its knowledge, available options and experience. The test records will be stored for a maximum of 10 years and can be examined by Buyer. Agreements extending beyond the foregoing scope are valid only when set out in writing by Buyer and EKKO-MEISTER AG.

Should any term of this contract or of any further agreements entered into be or become invalid, this shall not affect the validity of the contract in other respects. The parties must replace the invalid term with a provision that most closely approximates its economic effect. These Standard Terms and Conditions have been drawn up in German and English. Should any doubt arise, the German version shall prevail. No liability or other claims arising from

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translation errors or interpretation can be asserted. Buyer must notify EKKO-MEISTER AG of any and all provisions applicable at the destination site regarding the design, features, import and placing into use of the products. In the event Buyer fails to satisfy this duty of disclosure, EKKO-MEISTER AG is not liable for any directly or indirectly resulting losses.

## **9. Venue, Place of Performance, Governing Law**

The place of performance is the EKKO-MEISTER AG headquarters, currently located in CH-2543 Lengnau (BE). For all disputes arising under this contract, including indirectly associated disputes such as, for example, precautionary procedures to protect ownership rights, venue shall be proper exclusively in the courts of competent jurisdiction for the location of EKKO-MEISTER AG headquarters, currently CH-2543 Lengnau (BE). The legal relationship is governed exclusively by the substantive law of Switzerland. Application of the UN Convention on Contracts for the International Sale of Goods ("Vienna Convention") is hereby excluded.