

Dr. Eberl MBE-Komponenten GmbH – General Terms and Conditions of Sale - Valid world-wide except Germany

1. General

1.1 The terms and conditions of deliveries and/or services contained herein shall apply to all quotations and purchase orders accepted by Dr Eberl MBE-Komponenten GmbH (hereinafter referred to as "MBE Kompo"). MBE Kompo's acceptance of purchase orders issued by Purchaser (customer) is based on these terms and conditions irrespective of whether Purchaser accepts them in writing, by implication or by acceptance of and payment for the goods or services sold hereunder.

1.2 These terms and conditions shall govern the contractual arrangement entered into between MBE Kompo and Purchaser with respect to the goods and services sold hereunder to the exclusion of any terms or conditions of purchase proposed by Purchaser. General terms and conditions of the Purchaser shall apply only if and when expressly accepted by MBE Kompo in writing within the purchase order acknowledgment.

1.3 The legal validity of one or more provisions of this Agreement shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the agreement.

2. Quotations, Prices and Terms of Payment

2.1 Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after the date thereof.

2.2 Unless otherwise stated in writing by MBE Kompo, all prices quoted shall be exclusive of transportation, insurance, taxes, customs fees, duties and other charges related thereto, and Purchaser shall report and pay any and all such charges and hold MBE Kompo harmless therefrom.

2.3 Prices quoted relate only to the goods and/or services referenced in this document and do not include intellectual property, or patent rights of any kind. 2.4 Purchaser shall pay the invoiced amount within thirty (30) days from the date of MBE Kompo invoice. MBE Kompo may exercise an option to assess an interest charge of 2% per year above the current prime rate quoted by European Central Bank. Purchaser hereby grants to MBE Kompo a purchase money security interest in the goods and/or services delivered by MBE Kompo to secure the purchase amount of such until MBE Kompo is paid in full. Purchaser agrees to execute and deliver all documents requested by MBE Kompo to maintain its security interest.

2.5 Unless otherwise agreed, prices shall be quoted and invoices shall be paid in EURO.

3. Delivery, Title and Risk of Loss

3.1 For any shipments, the delivery term for the goods referenced in the purchase order document is ex works (EXW) shipping point (Dr. Eberl MBE-Komponenten GmbH, 71263 Weil der Stadt, Germany).

3.2 Title to the goods referenced in these terms and conditions, and risk of loss or damage to the goods shall pass to Purchaser at the time MBE Kompo completes its delivery obligations, irrespective of subsequent installation at customer's site by MBE Kompo. Goods held or stored by MBE Kompo at Purchaser's request for more than 8 weeks beyond the scheduled delivery date shall be at Purchaser's risk and expense. Title of these goods and risk of loss or damage pass to Purchaser at the time. Unless otherwise agreed, the customer is responsible for the installation, system integration and initial operation in his laboratory.

3.3 Freight and associated duties incurred by MBE Kompo in shipping the goods, if agreed to by MBE Kompo, shall be invoiced to Purchaser.

3.4 If an agreed shipping, installation, training or acceptance test cannot be carried out within 8 weeks after scheduled time for goods as a result of circumstances beyond MBE Kompo's responsibility, e.g. missing laboratory infrastructure, personnel or material, any acceptance test shall be deemed fully passed. This applies also for cases of Force Majeure. MBE Kompo is then entitled to issue the related invoices.

4. Termination or Change of Purchase Orders

4.1 Purchaser shall not terminate, suspend shipments, re-schedule or cancel delivery of accepted purchase orders under this document in whole or in part, without MBE Kompo's prior written consent and upon terms that will compensate MBE Kompo for any loss or damage resulting from such action. Purchaser's liability shall include, but not be limited to, the price of product and/or services delivered or held for disposition, the price of services already performed, and for work in process, incurred costs and a reasonable allocation of general and administrative expenses, plus MBE Kompo's loss of profits thereon.

4.2 Any such termination shall be subject to a minimum termination charge of twenty-five percent (25%) of the value of the purchase order terminated. If delivery of the goods referenced in this Agreement is delayed by Purchaser, MBE Kompo may invoice Purchaser when MBE Kompo is prepared to ship. MBE Kompo may invoice Purchaser immediately upon termination or cancellation or suspension of any accepted purchase order.

5. Warranty

5.1 MBE Kompo warrants to Purchaser that the goods referenced in this document and delivered to Purchaser will conform to the relevant technical specifications previously delivered by MBE Kompo or, if not previously delivered, then delivered herewith. The foregoing warranty for products by MBE Kompo shall be valid for a period of twenty-four (24) months from the date of delivery. In the event that any goods delivered by MBE Kompo do not meet the foregoing warranty, such shall be deemed defective and MBE Kompo will give an appropriate credit for the defective good(s) to Purchaser or, at MBE Kompo's expense and option, repair or replace the defective good(s). Either of these alternatives shall be Purchaser's sole and exclusive remedy in the event of delivery of defective good(s).

5.2 The foregoing warranty is MBE Kompo's sole warranty with respect to any goods delivered to Purchaser hereunder and is conditioned on:

- all claims regarding any defective goods must be made in writing to MBE Kompo within 2 weeks after the defect occurs, and
- defective goods shall not have been manipulated, damaged or destroyed by Purchaser or its personnel.

5.3 This warranty applies only to Purchaser and may not be assigned or extended by Purchaser to any of its customers or other users of the goods. This warranty does not extend to any system into which the goods are incorporated. MBE Kompo shall be allowed a reasonable period to investigate any claim relating to defective goods and shall be given access to Purchaser's relevant records and data for this purpose.

5.4 The above warranty does not apply to, and MBE Kompo makes no warranties with respect to products that are experimental products or prototypes (all of which are provided "AS IS"). No statement made by any MBE Kompo employee or other representative should be interpreted as expanding the scope of the warranty provided herein.

6. Limitation of Liability

6.1 Purchaser's sole and exclusive remedy and MBE Kompo sole and exclusive liability to Purchaser for delivery of defective goods, whether brought under a claim alleging breach of contract, tort injuries, negligence theory, strict liability, class action, or any other legal theory, shall be limited exclusively to crediting Purchaser in the amount of the purchase price paid for the defective good(s) or repairing or replacing the defective good(s), at MBE Kompo's option.

6.2 In no event will MBE Kompo be liable to Purchaser or any other party, under any circumstances for any special, consequential or indirect damages such as loss of capital, loss of use, substitute performance, loss of production, loss of profits, loss of business opportunity, or any other claims for damages.

6.3 The warranty and remedies provided in Sections 5 and 6 of this Agreement shall apply to the exclusion of any other warranties (express or implied, including the warranties of merchantability and fitness for a particular purpose) or remedies that might otherwise be available under applicable law, notwithstanding the fact that other damages or injuries might be reasonably.

7. Intellectual Property Warranty & Indemnity

7.1 With respect to intellectual property and industrial property matters, MBE Kompo's sole and exclusive liability is to indemnify Purchaser only against valid claims based upon infringement of validly issued European and U.S. patents and then only with respect to goods comprising MBE Kompo's regularly established line of products and only when such goods are used for normal purposes in the form in which sold by MBE Kompo. This indemnification does not apply to patents covering composite structures or systems into which the goods referenced in this document may be incorporated by Purchaser. MBE Kompo's sole obligation under this indemnification shall be the assumption of the defense of any such suit brought against Purchaser. MBE Kompo shall be given exclusive control of the defense of such claim, including settlement, and Purchaser, at its own cost, shall assist MBE Kompo in the conduct of such defense.

7.2 MBE Kompo's total liability hereunder shall be limited to its own costs up to, but not exceeding, the amount paid by Purchaser as the purchase price attributable to the goods that are the subject of the claim or claims. Purchaser assumes and will hold MBE Kompo harmless against any patent liability for products manufactured to Purchaser's design or specifications or specially designed by MBE Kompo to meet Purchaser's requirements. Purchaser grants to MBE Kompo a royalty-free right to use, for the purpose of making the goods and selling them to Purchaser, any intellectual property or industrial property right that Purchaser owns or to which Purchaser has licensing, sublicensing or "have made" rights.

8. Assignment

Purchaser shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of MBE Kompo. Any attempted assignment without MBE Kompo consent shall be void and ineffective. No course of dealing or failure of either party to strictly enforce any term, right or condition of this document shall be construed as a waiver of such term, right or condition.

9. Excuse of Performance

Except with respect to Purchaser's obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of products despite MBE Kompo's reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control.

10. Dispute

Any disputes are to be determined under the laws of the Federal Republic of Germany. They will be settled before a competent court in Stuttgart. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

11. Entire Agreement

Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained in these Terms and Conditions supersede all prior oral or written understandings between Purchaser and MBE Kompo and shall constitute the entire Agreement with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a writing signed by a duly authorized officer of Purchaser and MBE Kompo.