

# GENERAL TERMS OF OFFER AND SALE FOR BUSINESSES (B2B)

## 1. General

1.1 These General Terms (hereinafter referred to as "General Terms") will apply to all offers, agreements, deliveries and activities of Evatec AG, Trübbach – Switzerland (principal office) and its affiliates (together hereinafter referred to as "EVATEC").

An "affiliate" is any legal entity which is owned or under common control of Evatec AG. "Control" and "own" mean possessing a 50% or greater interest in an entity or the right to direct the management of the entity.

**1.2 Deliveries are made and services are carried out by EVATEC only on the basis of these present General Terms, if the parties do not agree otherwise in writing. Any and all terms and conditions, including those of customer, if not explicitly accepted by EVATEC in writing, are not binding for EVATEC, even if not expressly rejected.**

## 2. Quotations

2.1 All quotations are non-binding unless otherwise stated by EVATEC in writing.

2.2 Only the written or electronic order confirmation shall be binding.

## 3. Scope of supply and services

EVATEC's scope of supply and services referred to in the order confirmation shall form part of the contract only. Additional goods and services not specified therein shall be invoiced separately.

## 4. Technical documentation

4.1 Sales brochures and catalogues are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed.

4.2 EVATEC reserves all rights to any technical documentation supplied to the customer. Without prior written consent of EVATEC, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer. In particular the customer is not entitled to reproduce or replicate components or parts thereof and services specified therein.

## 5. Confidentiality

Each party shall keep confidential the manufacturing and business secrets as well as any other proprietary information received from the other party to the contract and shall neither directly nor indirectly disclose the same to any third party whomsoever nor publish them in any manner whatsoever nor use them for any other purpose, in particular but without limitation for the reproduction or replication of machines, systems, components and parts thereof.

## 6. Norms and standards in force in the country of destination

6.1 The goods are constructed in accordance with the European norms and standards (EC marking) unless otherwise provided for in writing.

6.2 At the latest when placing the order, customer shall advise EVATEC in writing of all other safety and operation standards in force in the country of destination. Customer shall bear the cost of any alteration or addition to the goods required to comply with standards or regulations, which have not been advised and agreed to by EVATEC.

6.3 In case of resale or transfer of goods the customer is obliged to take precautions that the goods meet the requirements, standards and regulations to be observed at the new location and that all manuals and product related specific documents are updated accordingly for the operation of the then current product version.

## 7. Prices

7.1 Unless otherwise agreed upon in writing prices are net, FCA EVATEC's premises, according to INCOTERMS 2020, and exclusive of value added tax, sales tax and packing, unless expressly otherwise provided for in EVATEC's offer.

7.2 Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like, which are levied out of or in connection with the contract, or shall refund them to EVATEC against adequate evidence in the event that EVATEC is liable for them.

7.3 Prices will be adjusted appropriately if:

- the term of delivery has been subsequently extended due to any reason for which the customer is responsible, or
- the nature or the scope of the agreed supplies or services has changed, or
- the material or the execution has undergone changes because the information and/or documents provided by the customer were not in conformity with the actual conditions or were incomplete.

## 8. Terms of payment

8.1 Payments have to be effected net of any deductions whatsoever in accordance with the order confirmation or invoice as the case may be. Payment will be deemed to be made when the total price agreed on has been received by EVATEC in the currency agreed upon.

8.2 No interest will be reimbursed for advance payments.

8.3 Any dates agreed for payment shall remain in full effect even where through no

fault of EVATEC delays arise in the performance of the contract. The late delivery of minor components, the absence of which does not restrict the use of the goods or any further work within the scope of EVATEC's warranty obligations do not affect the time fixed for payment.

8.4 If EVATEC does not receive payment by the date stipulated interest shall thereafter accrue on the sum due and owing and shall be charged immediately to the customer at the current base lending rate (LIBOR plus 4%), provided that such rate shall not be less than 1.5% per month.

8.5 The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by EVATEC is inadmissible.

## 9. Reservation of title

9.1 EVATEC shall remain the owner of all goods until having received the full payments in accordance with the contract.

9.2 The customer shall cooperate in any measures necessary for the protection of EVATEC's title. In particular upon entering into the contract it authorizes EVATEC to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at the customer's cost.

9.3 During the period of the reservation of title, the customer shall, at its own cost, maintain the goods and insure them for the benefit of EVATEC against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that EVATEC's title is in no way prejudiced.

## 10. Delivery time

10.1 The time for delivery shall start as soon as the contract is entered into, the scope of supply and the specifications are defined, all relevant official formalities have been completed, payments due with the order have been made and any agreed securities have been given. The date of delivery shall be deemed to be observed if by that time EVATEC has sent a notice to the customer informing that the goods are ready for dispatch.

10.2 EVATEC's compliance with the time for delivery is conditional upon customer's fulfilling its contractual obligations.

10.3 The time for delivery will be extended correspondingly and EVATEC is not responsible for claims or damages resulting in case of contingencies beyond the reasonable control of EVATEC. As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

10.4 Unless otherwise explicitly provided for in writing, agreed delivery dates are approxi-

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mate and not binding. However, six weeks after failure to deliver by an agreed non-binding delivery date, the customer shall be entitled to request EVATEC in writing to make delivery within a reasonable period. Failure to deliver within a reasonable period after the notice shall constitute late performance by EVATEC.

10.5 If this has been agreed expressly in writing, the customer is entitled to claim liquidated damages for delayed services in so far as it can be proved that the delay has been caused by the fault of EVATEC and that the customer has suffered a loss caused by such delay.

10.6 In the case of delayed goods or services the customer has no rights and claims other than those expressly stipulated in this clause 10; in particular he has no right to rescind the contract. This limitation, however, does not apply to gross negligence or willful misconduct of EVATEC.

## 11. Termination

EVATEC reserves the absolute right to refuse cancellation of purchase orders by the customer. However in the event that EVATEC accepts customer's request to cancel a purchase order, EVATEC is entitled to liquidated damages as follows:

- cancellation before 50% of the agreed upon lead time has elapsed:  
50% of the total purchase order price
- cancellation after 50% of the agreed upon lead time but up to 75% of such period has elapsed:  
80% of the total purchase order price
- cancellation after 75% of the agreed upon lead time has elapsed until the date of delivery:  
100% of the total purchase order price.

## 12. Passing of benefit and risk

12.1 Benefit and risk of the goods shall pass to the customer by the date of shipment FCA EVATEC's premises according to INCOTERMS 2020.

12.2 If delivery is delayed at the request of the customer or otherwise due to no fault of EVATEC, the risk shall pass to the customer at the date originally agreed for delivery. From this date onwards the goods shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.

12.3 Transport shall be at customer's expense and risk. The customer shall be responsible for taking an insurance against risks of any kind.

12.4 Customer shall comply with all applicable domestic, foreign, import, export, security and controller access laws and regulations, including obtaining all necessary security clearances for airports, cargo transport areas, and related facilities, governmental approvals and licenses in connection with the purchase of goods.

## 13. Inspection and acceptance of goods and services

13.1 EVATEC shall check the goods before dispatch and the services upon completion as far as usual. Any further controls requested by the customer have to be agreed upon separately and paid for by the customer.

13.2 The customer shall inspect the goods and services within a reasonable period and shall notify EVATEC immediately of any defects in writing. If the customer fails to do so, the goods and services shall be deemed to have been accepted.

13.3 EVATEC shall rectify the defects notified in accordance with clause 13.2 as soon as possible and the customer shall give EVATEC the possibility of doing so. After rectification of such defects, an acceptance protocol shall be carried out at the request of EVATEC or the customer.

13.4 In the case of insignificant defects, in particular those which do not substantially hinder the efficient functioning of the goods or services, the customer shall not be entitled to refuse the acceptance of the goods or services and the signature of the acceptance report. EVATEC shall rectify such defects without delay.

13.5 The goods and services shall be deemed accepted:

- If acceptance is delayed for one month due to reasons beyond EVATEC control;
- If the customer refuses EVATEC to get unlimited access to the goods as to perform all works necessary and/or appropriate for final acceptance;
- If the customer declines to accept the goods and/or services without reasonable grounds for doing so; or
- Immediately if the customer uses the goods for production purposes, including but not limited to so called trial or qualification runs if and to the extent that products produced during such production activities should be offered for sale by the customer.

13.6 In case of delay in installation or performance due to customer's fault, customer shall be obliged to reimburse to EVATEC all idle cost such as additional accommodation and travelling cost as well as a flat fee in the amount of CHF 1'500.00 per man/waiting day.

13.7 The customer has no other rights and claims in respect of any defects whatsoever in relation to goods or services than those expressly named in clause 13 and clause 14 (Warranty).

## 14. Warranty

### 14.1 Warranty period

The period of warranty is 12 months and shall commence upon dispatch of the goods FCA or, where any acceptance test has been provided for, the period of warranty shall commence latest 3 months after dispatch of the goods FCA. If dispatch or acceptance is

delayed for reasons beyond EVATEC's control, the warranty period shall terminate not later than 18 months after EVATEC has notified the customer that the goods are ready for dispatch.

For replaced or repaired parts, the warranty period shall run for another period of 6 months after replacement or completion of the repair or acceptance but no longer than a period being twice the warranty period pursuant to the preceding clause.

The warranty under this contract expires prematurely with immediate effect if the customer or third parties make inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take appropriate steps to mitigate the damage and give EVATEC the possibility to make good such defect.

### 14.2 Liability for warranty and defects in material and workmanship

EVATEC warrants the technical specifications expressly specified in the order confirmation or the specific technical specification mutually agreed upon in writing only as well as the material and workmanship of the delivered goods and undertakes to repair or replace at its option free of charge to the customer any defective parts during the warranty period at its earliest convenience, subject to the provisions of clause 13 which shall be applicable mutatis mutandis. Any parts replaced shall become property of EVATEC.

### 14.3 Exclusions from the liability

Expressly excluded from EVATEC's warranties and liability for defects are damages caused by normal wear, defective maintenance and handling by the customer, failure to observe the operating instructions, electrostatic effects, excessive voltage or current, excessive use, chemical or electrolytic influences, application of material, equipment and spare parts not recommended by EVATEC, defective repairs which have not been carried out by EVATEC or its agents, or resulting from other reasons beyond EVATEC's control as well as in case of modifications made by the customer or improper system integration, construction, assembly and installation work not undertaken by EVATEC, provided that the respective burden of proof is with the customer if a dispute regarding exclusion of warranty may arise.

### 14.4 Supplies and services of subcontractors

EVATEC warrants for goods and services of subcontractors requested or provided by the customer to the extent of such subcontractor's warranty and liability obligations only.

### 14.5 Exclusivity of warranty claims

The customer shall not be entitled to any warranty, express or implied, except those specifically set forth in clause 14.1 to 14.4 and EVATEC shall have no liabilities for any other claims, including but not limited to, claims arising out of injury to or interference with customer's production or any other consequential damages. This limitation, however, does not apply to gross negligence or willful misconduct of EVATEC.

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## 15. Termination of the contract by EVATEC

15.1 The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the goods or services or considerably affect the activities of EVATEC, or if performance subsequently becomes impossible. In so far as such adaptation is not economically feasible EVATEC shall be entitled to terminate the contract or the parts affected thereby.

15.2 If EVATEC wishes to terminate the contract it shall - after having recognized the consequences of the event - immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract EVATEC shall be entitled to the payment of those parts of the goods and services, which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

## 16. Exclusion of further liability

16.1 EVATEC makes no representation or warranty of any character with respect to infringement or to the exemption of the goods and services from third parties' protective rights.

EVATEC shall not be liable to customer and customer agrees to indemnify EVATEC and hold EVATEC harmless against third parties' actions with respect to the infringement of any third party property rights caused by customer's products and/or the underlying production processes.

**16.2 EVATEC ASSUMES NO RESPONSIBILITY FOR ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS SPECIFICALLY PROVIDED IN THESE GENERAL TERMS.** Without limiting the generality of the foregoing, this exclusion from liability includes, but is not limited to, claims, arising out of interference with the customer's production, expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental or consequential loss.

16.3 These exclusions, however, shall not apply to gross negligence or willful misconduct of EVATEC.

16.4 Notwithstanding the foregoing, nothing herein shall limit EVATEC's liability if, and only to the extent that, limitation or exclusion of such liability is prohibited by or contrary to the Product Liability Act or other applicable law, provided that the customer will indemnify EVATEC for all non-contractual claims for product liability raised by third parties if the occurrence of the damages is not clearly imputable to EVATEC.

## 17. No liability for additional obligations

EVATEC is not liable for claims of the customer arising out of insufficient information or faulty advice and the like or out of breach of any additional obligations whatsoever except where caused by EVATEC's gross negligence or willful misconduct.

## 18. Installation

Unless otherwise agreed upon the goods shall be installed by and at the risk and expense of the customer. In the event that EVATEC is requested to supervise such installation, EVATEC's responsibility shall be limited to exercising that degree of skill customary in the trade in supervising installations of the same type. Customer shall remain responsible for all other aspects of the work including compliance with the local regulations.

## 19. Software Rights

19.1 Software programs will fully remain the property of EVATEC and may not be disclosed, copied or otherwise duplicated apart from a single back-up copy for customer's internal safety purposes.

19.2 Customer is granted a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for any other purpose than that of operating the product, for which such software is intended. Typically, no source programs or codes are provided.

## 20. Export / Import Compliance

Customer acknowledges that EVATEC is required to comply with applicable export / import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the goods and/or services, including any export / import license requirements. Customer agrees that goods and/or services will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations. EVATEC's continuing performance hereunder is conditioned on compliance with such export / import laws and regulations at all times.

## 21. Miscellaneous

21.1 The place of performance is agreed to be the place of the EVATEC entity which delivers the goods, even when the transfer of the goods is carried out at another place.

21.2 Place of jurisdiction for all disputes arising out of or in connection with these General Terms, any contract or agreement shall be the competent courts with jurisdiction over the respective EVATEC entity.

21.3 These General Terms and all contracts and agreements shall be governed by and interpreted in accordance with the material law which is applicable at the registered seat of the respective EVATEC entity without giving effect to respective conflict of law

principles. The uniform UN law of sales (CISG) shall not be applicable.

## 21.4 Arbitration

All disputes arising out of or in connection with these General Terms, a contract or agreement shall, if the customer's registered seat is outside of the European Union and nothing to the contrary is agreed upon in writing, be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC") in effect from time to time by one or more arbitrator(s) appointed with the said Rules.

21.5 In any action or arbitration brought under or in connection with these General Terms or any related contract, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

21.6 If any one or more of the provisions of these General Terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of these General Terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

Evatec AG

Hauptstrasse 1a  
CH-9477 Trübbach  
Switzerland