Standard Terms and Conditions of Delivery and Payment of Eberspächer Controls Landau GmbH & Co. KG. Status as of March 2016

I. Definition, scope
1. The following standard terms and conditions shall not apply vis a vis consumers.
2. The following standard terms and conditions shall apply exclusively; any conflicting or deviating terms and conditions of the customer shall not be recognised by Eberspächer Controls Landau GmbH & Co. KG (hereinafter referred to as Eberspächer) unless it has expressly agreed to their validity in writing. The following terms and conditions shall apply even if Eberspächer makes the delivery to the customer without reservation, in full awareness of conflicting or deviating terms and conditions of the customer.
3. Any agreements or ancillary agreements deviating from these terms and conditions shall not be valid unless they are confirmed in writing by Eberspächer.

II. Offers - offer documents, confirmation of orders
1. If the order is to be qualified as a bid within the framework of § 145 German Civil Code (BGB), Eberspächer shall be entitled to accept it within 4 weeks.
2. Eberspächer shall retain all property rights and copyrights for images, drawings, calculations and other documents. This shall also apply to written documents which are designated as "confidential". Any disclosure to third parties shall require the express written consent of Eberspächer.
3. A delivery contract shall only be deemed to have been entered on a written confirmation of the order and no later than upon delivery. Transmission of confirmation by data transmission shall satisfy the requirement for the written form. If Eberspächer can prove through the submission of a transmission report that it forwarded a declaration by fax or data transmission, it shall be assumed that the customer received said declaration.
4. If Eberspächer uses tele- or mediaservices for conclusion of contract, the customer shall renounce notification of information specified in the statutory order according to Art. 241 EGBGB (Introductory Law to German Civil Code (BGB)) and confirmation of receipt of order. Orders transmitted electronically shall be deemed to be received by Eberspächer after been called up and opened. Eberspächer shall retain the right to delete orders without opening.

III. Prices - terms of payment
1. All prices quoted by Eberspächer shall be deemed to be ex-Eberspächer delivery works plus value added tax applicable at the time of billing, without packaging; the latter shall be billed separately.
2. Price alterations shall be admissible if more than four months lie between the conclusion of the contract and the delivery date agreed upon. If salaries and wages, material costs or market unit prices increase thereafter up to completion of the delivery, Eberspächer shall be entitled to increase the price in a reasonable manner in line with cost increases. The customer shall only be entitled to rescind the contract, if the price increase exceeds the increase in general costs of living between the order and the delivery dates in a considerable manner.
If the customer is a merchant, a public law entity or a special federal fund, price changes shall be admissible under the aforementioned provisions if more than six weeks lie between the conclusion of the contract and the delivery date agreed upon.
3. For customer specific products and carry over products payment shall be made at end of the following month (reflecting average 47 days), beginning from the receipt of invoice or the receipt of goods, at customer manufacturing site, whatever occurs later.
For EMS (Electronics Manufacturing Services) unless otherwise agreed upon, payments shall be due on delivery, latest on receipt of invoice.
Eberspächer shall be entitled at any time to make delivery contingent on payment on delivery without quoting a reason. In general Eberspächer shall be entitled to demand delivery against cash in advance or cash on delivery or provision on letter of credit for good cause.^
4. The day of receipt of payment shall be deemed for all means of payments to be the day on which Eberspächer or third parties, which have a claim against Eberspächer, may dispose of the amount.
5. The Customer may only set off claims with undisputed counterclaims, counterclaims recognized by Eberspächer or recognized by a non-appealable decision. Also the Customer shall only be authorized to exercise a retention right provided its counterclaim is based on the same contractual relation.
6. Apart from statutory preconditions, the customer shall be put in default, after notice from Eberspächer to perform, if such notice been given after performance became due. Notice to perform shall be unnecessary, if a time for performance is determined according to the calendar. In the event of default of payment by the customer, Eberspächer shall be entitled to retain all deliveries or services. In the event the Customer is in default in payment, Eberspächer shall be entitled to charge default interest at a rate of 8% above the base interest rate.

IV. Retention of title
1. Eberspächer shall retain title to the delivery items until receipt of all payments under the business relationship with the customer.
2. The assertion of the retention of title and the pledging of the delivery items by Eberspächer shall not be deemed to be a rescission of the contract unless expressly declared in writing by Eberspächer.
3. The customer shall be entitled to continue to sell the delivery items in the ordinary course of business; however, it shall already now assign all accounts receivable to Eberspächer in the amount of the purchase price (including value added tax) agreed between Eberspächer and the customer which arise for the customer as a result of reselling, regardless of whether the delivery items are sold on with or without processing. The customer shall be entitled to collect these accounts receivable after their assignment. The right of Eberspächer to collect the accounts receivable itself shall not be affected; Eberspächer undertakes, however, not to collect the accounts receivable as long as the customer properly meets its payment obligations and is not in default of payment. If the customer is, however, in default of payment, Eberspächer may require the customer to disclose its assigned accounts receivable and their debtors, to make all information available which is necessary for collection, to submit the corresponding documents and to inform the debtors (third parties) about the assignment.
4. The processing or transformation of the goods by the customer shall always be for Eberspächer. If the delivery items are processed together with other items which do not belong to Eberspächer, Eberspächer shall acquire co-ownership of the new item in the proportion of the value of the delivery items to the other processed items at the time of processing.
5. If the delivery items are mixed in an inseparable manner with other items which do not belong to Eberspächer, Eberspächer shall acquire co-ownership of the new items in the proportion of the value of the delivery items to the other mixed items. The customer shall hold the co-owned items in safe custody for Eberspächer.
6. The customer may neither pledge nor transfer the delivery items by way of security. In the event of attachment or seizure or other disposals by third parties, the customer shall inform Eberspächer without delay and provide it with all information and documents which are necessary for it to secure its rights. Enforcement officers and/or third parties must be informed of the property rights of Eberspächer.
7. Eberspächer shall release the securities held by her to the extent their value exceeds 20 % of the claim to be secured. Eberspächer shall select the collaterals to be released.

V. Deliveries, delivery period
1. Compliance with agreed dates of delivery and performance shall presuppose that all technical issues have been clarified and payments or other obligations of the customer have been made and/or fulfilled in due time. If this is not the case, the period of time shall be extended in a reasonable manner.
2. Eberspächer shall deliver the contractual goods to the customer in accordance with its delivery possibilities.
3. Partial deliveries shall be admissible provided that they do not result in any disadvantages in terms of use.
4. In the event the Customer requests the delay of a delivery, the good shall be stored at Eberspächer at the risk and expense of the Customer.
5. The delivery period shall be extended in the event of force majeure, strike, inability to perform without attributable negligence as well as unfavourable weather conditions for the period of hindrance.
6. In the event the Customer delays acceptance of deliveries or breaches any other cooperation duty, Eberspächer shall be entitled to give preference to other orders of third parties and adequately extend the delivery period. Without prejudice to further claims, Eberspächer shall be entitled to demand the compensation of any damage it incurs, including any additional expenses.

VI. Default in Delivery
If Eberspächer defaults in delivery despite of additional respite, the customer shall declare within reasonable time, if he wishes to withdraw from contract and/or claims on damage compensation in lieu of performance or insists on delivery. Number IX. 5. shall apply for customers claims of damage compensation.

VII. Shipment - passing of risk
1. Unless otherwise laid down in the confirmation of order, delivery "ex works" shall be deemed to have been agreed. Shipment shall be at the risk and for the account of the customer. This shall also apply to return shipments.
2. Packing material shall be charged separately. Container and wagon rents shall be borne by the recipient.
3. If Eberspächer is obliged under the German Packaging Ordinance to take back the packaging used for transport and/or sale, the customer shall bear the costs for the transport back and the reasonable costs of utilisation or, if this is possible and considered as purposeful by Eberspächer, the reasonable costs which arise on top for the reuse of the packaging. The customer undertakes and confirms upon the placement of its order vis a vis Eberspächer to direct any packaging, which is not sent back, to utilisations stipulated under the German Packaging Ordinance.

VIII. Proprietary rights
The customer undertakes to inform Eberspächer immediately of proprietary rights asserted by third parties concerning the supplied products and to let Eberspächer assume legal defence at its expense. Eberspächer is responsible that the goods do not breach any industrial property rights, which are published by the European patent office or in one of the following states: Germany, France, Great Britain, Austria, China, Belgium, India, Sweden or USA. Eberspächer shall be entitled to carry out the necessary alterations following proprietary right assertions of third parties at its own expense, even for goods already supplied and paid.

IX. Warranty / damages / liability
1. Eberspächer must immediately be notified and given notice of obvious defects. In the event of a defect for which Eberspächer is responsible, Eberspächer shall, at its option, proceed to either subsequent improvement or replacement delivery. In the event of subsequent improvement, Eberspächer shall be obliged to bear all expenses incurred in respect of the remedying of the defect and, more particularly, transport costs, shipping costs, labour and material costs, insofar as these costs are not increased by the fact that the subject matter of the purchase is transported to a place different from the place of performance.
2. If subsequent performance fails, the customer shall be entitled to demand damages in accordance with the provisions hereinafter as well as a reduction of the corresponding compensation for this order and rescind the contract. If the customer granted Eberspächer an appropriate period for subsequent performance, it may demand damages instead of performance and/or reimbursement of expenses in accordance with the provisions hereinafter. Insofar as the subject matter of purchase or the work performed lack a warranted or guaranteed property, Eberspächer shall be liable under the statutory provisions.
3. If Eberspächer is not responsible for specific defects, warranty claims shall be excluded unless a warranted property is lacking. Warranty claims including customers rights of recourse shall be excluded, if the customer not removes defects by a suitable specialist workshop/service station, unless the customer can prove that a specialist workshop/service station would have performed the repair in the same way.
4. Any claims under § 437 BGB (German Civil Code) shall become statute-barred 12 months after the passing of risk, unless the items involved were used in accordance with their usual uses for a structure or work and have caused the latter's defectiveness.
5. Eberspächer shall be liable for compensatory damages and reimbursement of expenses under § 284 BGB (German Civil Code) due to a breach of contractual or noncontractual duties only in case of intent or gross negligence of statutory agent, and of persons whom Eberspächer employs to perform his obligation, in case of injury of life, body or health, in case of guarantee or breach of essential contractual duties, in case of compulsory liability in accordance with the German Product Liability Act or other compulsory liability. Compensatory damages for breach of essential contractual duties shall be limited to foreseeable, typically arising damages for the contract, unless in case of intent or gross negligence of statutory agent, and of persons whom Eberspächer employs to perform his obligation.
6. Eberspächer shall be liable under the statutory provisions if Eberspächer culpably violates an essential contractual obligation; in this case the obligation to pay damages shall be restricted to foreseeable, typically arising damage.
7. Moreover, Eberspächer shall also be liable under the provisions of the German Product Liability Act.
8. As for the rest, damage claims for any reason whatsoever shall be excluded, apart from default damage regulated in a different clause. Eberspächer shall, more particularly, not be liable for damage not caused to the delivery item itself.

X. Construction, tools
1. All proposals, construction drawings and other documents made available to the customer by Eberspächer, shall remain the property of Eberspächer and may not be disclosed to third parties without Eberspächer's written consent. Eberspächer shall have the sole right to use these construction drawings and any tools and/or equipment manufactured on their basis. The customer shall be liable for the legality of the use of drawings, sketches, models etc. sent to Eberspächer.
2. Models, moulds, dies, extrusion tools, installations and other operating equipment shall be invoiced separately. They shall remain the property of Eberspächer even if a portion of the cost was invoiced.

XI. Place of performance, place of jurisdiction, applicable law, miscellaneous
1. Unless expressly otherwise agreed, the registered office of Eberspächer shall be the place of performance.
2. If the customer is a merchant, a public law entity or a special federal fund, the place of jurisdiction shall be the competent court at the place of business of Eberspächer. Eberspächer shall, however, be entitled to sue the customer also before any other admissible court. This shall also apply in the event the Customer does not have a general place of jurisdiction in Germany, relocates its residence or ordinary place of residence abroad after the conclusion of the Contract or its residence or ordinary place of residence is not known on the date of the action.
3. The present terms and conditions shall be exclusively governed by German law.
4. Should a provision of these terms and conditions or part of such a provision be or become invalid, the remaining provisions and/or the remaining part of the provision shall remain valid.
5. The contractual language shall be German. The German language shall take priority over any other language that may be used.