

# General Terms and Conditions

## ek robotics GmbH

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This document is a translation of the original document "Allgemeine Geschäftsbedingungen", which is written in German language. The original version in German language is binding.

### 1 General, scope of validity

- 1.1 The following general terms and conditions are decisive for all of our offers, agreements and other contractual supplies and services.
- 1.2 The general terms and conditions apply to legal relationships with companies, i.e. natural and legal persons or legally qualified partnerships which are carrying out a commercial or independent professional activity.
- 1.3 Our general terms and conditions apply exclusively; we do not recognise any customer conditions that contradict or deviate from our general terms and conditions unless we have expressly agreed to the validity thereof in writing. Our general terms and conditions shall also apply if we accept the services of the customer without reservation in the knowledge of conflicting or deviating customer conditions.
- 1.4 The general terms and conditions shall apply in addition to and secondarily to the individual contractual regulations agreed with the customer.
- 1.5 Our general terms and conditions shall also apply to all future business transactions with the customer in the case of ongoing business relationships.

### 2 Offer and conclusion of contract

- 2.1 All of our offers are subject to change and non-binding, unless we make a binding offer in text form expressly and in writing in accordance with section 126 b of the BGB (German Civil Code).
- 2.2 We can accept orders within four weeks.
- 2.3 Verbal orders, orders or other contracts concluded by our employees or agents require our written confirmation to be effective, unless the declarations were made by members of the board.
- 2.4 The fact that we do not respond to offers, including those made in electronic form, shall not be deemed to be acceptance thereof.

### 3 Scope of delivery and services

- 3.1 Our written order confirmation in text form in accordance with section 126 b of the BGB is binding with regard to the description of the type and scope of our deliveries and services. All information regarding the nature of the delivery item in brochures, catalogues, on the Internet, in advertising or in our correspondence prior to the offer as well as on VDI type sheets is only regarded as approximate, unless expressly declared as binding in our offer or our order confirmation. This also applies to photographs, drawings and other illustrations.
- 3.2 The customer must present specific requirements for the automated guided vehicle to be manufactured (hereinafter "AGV") or any other project that is being manufactured during the planning phase. The customer's requirements, which should be formulated in a requirement specification as far as possible, define the functionality and performance capability of the AGV
- 3.3 or the other project that is being manufactured. The requirements made by the customer must be attached to the contract in the form of an appendix.
- 3.4 We check the customer's requirements for completeness, uniqueness, consistency and technical feasibility, and will draw up the functional specification on the basis of this.
- 3.5 If serious technical problems prevent the implementation of the customer's requirements during the preparation of the functional specification, or if the customer's requirements do not take sufficient account of relevant circumstances, we shall immediately and comprehensively inform the customer thereof and present possible solutions if necessary. If the customer's requirements are not feasible for us in a technically reasonable manner, they shall be marked accordingly by a special note in the functional specification.
- 3.6 The customer shall check the functional specification that we have drawn up, particularly with regard to the implementation of his specified requirements and shall accept the specification in writing. This makes the functional specification decisive for the technical details of the order.
- 3.7 We reserve the right to make design and shape changes during the delivery period, provided that and insofar as the subject of the delivery and its functionality and appearance are not fundamentally changed as a result thereof, and the changes are acceptable to the customer.
- 3.8 The installation and operation of an AGV or other project shall take place on the basis of our "Technical Conditions". These are the basis for the acceptance of all of the main characteristics and key figures of the AGV. The "Technical Conditions" are a constituent of these conditions and can be handed over to the customer upon request.
- 3.9 Customer preparations must also be carried out on the basis of our "technical conditions". The customer must fulfil the specifications thereof when services are being provided on site.
- 3.10 The performance specifications for an automated guided vehicle relate to indoor operation at an air temperature of + 5° to 40° C, a level floor that meets our floor specifications, and dry operating conditions. They do not extend to acceleration times. Deviations from the performance specifications are also permitted within the range of normal tolerances for the above-mentioned conditions.

- 3.11 The exclusive right is reserved to property rights and copyrights in cost estimates, drawings and similar documents and also information of a physical or non-physical nature – also in electronic form. Such documents and information may only be made available to third parties if we have given our prior consent, including extracts thereof, and if a contract is not concluded they must be returned to us without having to be asked and without delay or destroyed immediately if the return thereof is not possible or inappropriate.

#### **4 Change Requests – Change Performance Procedure**

- 4.1 Changes to the information in the functional specification require a corresponding declaration from the parties in text form in accordance with section 126 b of the BGB concerning changes to the information. The customer can demand changes and additions to the service at any time if these are technically feasible and reasonable for us. We will check the change request within 20 working days of receipt and inform the customer of the result together with any costs that may have been incurred or changes to the project schedule in the form of a binding offer in text form in accordance with section 126 b of the BGB.
- 4.2 The customer shall check the offer within 10 working days of receipt. If the customer accepts the offer, the changes shall become a constituent of the contract. If the customer does not accept the offer, the parties to the contract will continue the project unchanged.
- 4.3 We will continue to perform the contractual services in accordance with the plan during an ongoing service change procedure, unless the customer instructs us in writing that the work should be stopped or restricted until a decision has been made about the change of services. If services must be provided or actions must be carried out before the conclusion of the service change procedure that would no longer be realisable due to the service changes, we shall inform the customer thereof immediately in writing.

#### **5 Delivery and performance deadlines, dates**

- 5.1 Delivery shall take place ex works (EXW Incoterms 2020).
- 5.2 Delivery or performance deadlines and delivery or performance dates shall be agreed individually or specified by us when the order is accepted.
- 5.3 The delivery or performance deadline for "ex works" deliveries shall be deemed to have been fulfilled if the customer has been informed of readiness for delivery until the expiration thereof.
- 5.4 The start of the delivery or performance deadline that has been individually agreed or specified by us requires clarification of all technical questions.
- 5.5 Compliance with the delivery or performance deadline by us further requires in-time and proper fulfilment of the customer's obligations. The right is reserved to object to the non-fulfilment of the contract.
- 5.6 If we do not receive deliveries or services from subcontractors that are incorrect or not in time for reasons beyond our control despite having proper congruent coverage, or if events of force majeure occur, i.e. performance impediments lasting for more than 14 calendar days for which

we are not to blame, we will inform the customer thereof in writing in good time. In this case, we are entitled to postpone the delivery or service for the duration of the hindrance or withdraw from the contract in whole or in part because of the part which has not yet been fulfilled, insofar as we have complied with our above-mentioned obligation to provide information and have not assumed the procurement risk or production risk and the performance hindrance is not only of a temporary nature. Force majeure constitutes the equivalent of strikes, lockouts, official intervention, energy and raw material shortages, transport bottlenecks without fault, operational impediments for which we are not to blame such as fire, water and machine damage, and all other impediments for which are not responsible from an objective point of view.

- 5.7 If a delivery or performance date or a delivery or performance deadline is binding and is exceeded by more than 12 weeks due to events in accordance with the preceding section 4, or if adherence to the contract is objectively unreasonable for the customer in the case of a non-binding delivery or performance date or a non-binding delivery or performance deadline, the customer is entitled to withdraw from the contract because of the part which has not yet been fulfilled.
- 5.8 The default in delivery for which we are responsible shall be determined in accordance with the statutory regulations. However, a reminder from the customer is required in any case. If we are in default of delivery, the customer can only demand lump-sum compensation for the damage which he has suffered due to default. For each completed calendar week of default, the damage compensation shall amount to 0.5% of the value of the part of the delivery that cannot be used on time or not in accordance with the contract because of the delay, but no more than 5% of the net order value in total. We reserve the right to prove that the customer did not suffer any damage at all, or only a significantly lesser amount of damage than the above lump sum.
- 5.9 The rights of the customer in accordance with section XII of these general terms and conditions and our legal rights in particular in the event of an exclusion of the obligation to perform (e.g. because of impossibility or unreasonableness of performance and/or subsequent performance) remain unaffected.

## **6 Prices, payment conditions**

- 6.1 All prices are in EUROS (€) or country specific currency if needed plus the statutory rate of value added tax that applies at the time of invoicing, excluding taxes, insurance and duty.
- 6.2 The prices for the options only apply in conjunction with the placement of the main order.
- 6.3 If no separate agreements are made, the following payment conditions shall apply:
  - a) For AGV orders:
    - Payment of the amount of 40% of the order value upon confirmation of the order,
    - Payment of 40% of the order value after notification of readiness for delivery,
    - Payment of 10% after the system has been taken into service,
    - Payment of 10% after acceptance of the system or at no later than four weeks after handover and productive use of the system.

- b) For spare part orders or other services from us:
- Payments must be made within 30 days of the date of the invoice unless agreed otherwise

6.4 In the event of default of payment by the customer, we are entitled to demand default interest at the rate of 9 % above the base interest rate until full payment is made (section 288 para. 2 of the BGB). The customer is at liberty to provide us with proof of lesser damage.

## **7 Assignment prohibition**

Customer claims that have been made against us may not be assigned.

## **8 Retention, offsetting**

- 8.1 The customer shall only be entitled to the right of retention against our claims insofar as his counterclaims are undisputed or have been established as final and absolute.
- 8.2 As far as the customer is concerned, offsetting against our claims is limited to counterclaims resulting from the same contractual relationship or from other legal relationships that are undisputed, established as final and absolute or recognised by us.

## **9 Delivery, transfer of risk, acceptance delay**

- 9.1 Partial services are permitted, provided that they do not result in disadvantages for the customer.
- 9.2 The risk of accidental loss and accidental deterioration of the goods shall be transferred to the customer no later than when delivery takes place. However, in the case of purchases involving delivery by carrier, the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall be transferred as soon as the goods are delivered to the forwarding agent, the freight carrier or any other person or institution that is designated to carry out the delivery. The handover shall be the same if the customer is in default of acceptance.
- 9.3 If the customer is in default of acceptance, fails to participate in an act of cooperation or the delivery or service is delayed for other reasons for which the customer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).

## **10 Intellectual property rights, provision of documents**

- 10.1 The customer is obliged to inform us immediately of any industrial property rights claims from third parties with regard to the products that we have supplied. We are entitled, but not obliged, to take over legal defence at our own expense and on our own responsibility.
- 10.2 The customer guarantees that the goods and services that are provided and the documents that it has provided are free from third-party property rights. In the event of defects in title, the customer must indemnify us from all appropriate claims from third parties, unless he is not responsible for the defect of title.
- 10.3 By providing documents, the customer grants us the non-exclusive right to use them for all contractually intended purposes without any temporal or special limitation. If inquiries are received about items on the basis of provided documentation such as drawings and specifications (drawing parts), we are entitled to make them available to manufacturing sub-suppliers for the purpose of inquiries and subsequent fulfilment of the contract.

## **11 Acceptance**

- 11.1 We can request acceptance of the services in writing after notification of completion – also before the expiry of the agreed implementation period if necessary. The customer shall then carry out the acceptance within a period of 12 working days; another deadline may be agreed. If trial operation has been agreed, the acceptance must be carried out after successful trial operation.
- 11.2 Self-contained parts of the service must be accepted separately by our request.
- 11.3 A formal acceptance must take place if this is requested by a party to the contract.
- 11.4 We shall draw up a report of the acceptance, which must be countersigned by the customer.
- 11.5 In the event of material defects, acceptance can be refused until the defects have been rectified.
- 11.6 If the customer has used the service or a part of the service, the acceptance shall be deemed to have taken place after six working days of the start of use, unless otherwise agreed.
- 11.7 When acceptance has taken place, the risk passes to the customer, unless this does not already apply on the basis of section 9. or other regulations in these general terms and conditions.

## 12 Retention of title

- 12.1 Until all current and future claims arising from the respective contracts and the current business relationship (hereinafter referred to as "secured claims") have been paid in full, we reserve the right to ownership of all delivery items. If our obligation to provide services includes the delivery of software, the customer shall in any case only be granted a revocable usage right until all claims have been paid in full.
- 12.2 The delivery items that are subject to retention of title may neither be pledged to third parties nor transferred for security until full payment of the secured claims has been made. The customer must notify us in writing immediately if and to what extent third parties access our goods.
- 12.3 In the event of a breach of contract by the customer, particularly in the event of non-payment of the remuneration that is due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and demand the delivery items on the basis of retention of title and withdrawal from the contract. If the customer does not pay the remuneration that is due, we may only assert these rights if we have previously set the customer a reasonable payment deadline without success, or if the setting of such a deadline is superfluous in accordance with the statutory regulations.
- 12.4 The customer is authorised to resell and/or process the goods which are subject to retention of title during the normal course of business. In this case, the following provisions shall also apply.
- a) The retention of title extends to the products resulting from the processing, mixing or combination of our delivery items at their full value, whereby we shall be regarded as the manufacturer. In the event of processing, mixing or combination with third-party goods, if the third party has any ownership rights, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. The same conditions apply to the resulting product as for the items delivered under retention of title.
  - b) The customer shall assign claims against third parties arising from the resale of the goods or the product to us with immediate effect, either as a whole or for the amount of any co-ownership share to which we are entitled in accordance with the preceding paragraph for security purposes. We accept the assignment. The customer obligations referred to in section 12.2 shall also apply with regard to the assigned claims.
  - c) Both we and the customer shall remain authorised to collect the claim. We undertake not to collect the claim provided that the customer fulfils his payment obligations toward us, is not late with payment, does not file an application for the opening of insolvency proceedings, and no other deficiencies in his performance capability occur. However, if this is the case, we can demand that the customer informs us about the assigned claims and their debtors, provides all the information required for collection, hands over the associated documents and informs the debtors (third parties) about the assignment.
  - d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities by request of the customer. The choice of the securities to be released is up to us.

### 13 Customer defect claims

- 13.1 The legal regulations apply with regard to the customer's right in the event of material defects and defects in title, unless otherwise specified in the following.
- 13.2 The customer's defect claims arising from the purchase contract law require that he has complied with his statutory investigation and reporting obligation (sections 377, 381 of the German Commercial Code). If a defect appears during the investigation or later, we must be informed thereof immediately in writing. The notification shall be deemed to be immediate if it is provided within two weeks, whereby prompt dispatch of the notification is sufficient for adherence to the deadline. Irrespective of this examination and reporting obligation, the customer must provide notification in writing of obvious defects (including incorrect and short deliveries) within two weeks of delivery, whereby prompt sending of the notice is sufficient for adherence to the deadline. If the customer fails to properly investigate and/or report defects, our liability for the defect which has not been reported or not reported in time shall be ruled out.
- 13.3 At our discretion, all parts of the delivery item which are already subject to material defects at the time of risk transfer or services that were defective at the time of acceptance shall either be repaired by eliminating the defect or replaced, or new services shall be provided free of charge. Our right to refuse supplementary performance under the legal requirements remains unaffected.
- 13.4 The customer must give us the time and opportunity that is required to carry out the supplementary performance, particularly handing over the goods that are the subject of the complaint for checking purposes. In the case of replacement delivery, the customer must return the defective goods to us in accordance with the legal regulations. Supplementary performance does not include the removal of the defective item or re-installation, if we were not originally obliged to install it.
- 13.5 The cost of testing and subsequent performance, particularly transport, travel, labour and material costs (not removal and installation costs), shall be borne by us if a defect is actually present. If, however, a demand for defect rectification by the customer turns out to be unjustified, we can claim for repayment of the resulting costs by the customer.
- 13.6 If the subsequent performance has failed or a reasonable period of time to be set by the customer for subsequent performance has expired without success or is superfluous in accordance with the statutory regulations, the customer can withdraw from the contract or reduce the remuneration. There shall be no right of withdrawal in the event of a minor defect.
- 13.7 Additional claims by the customer due to or in connection with defects or consequential damage for compensation or the repayment of wasted expenditure shall only exist in accordance with **section 14** and are otherwise excluded.
- 13.8 No claims for defects as a result of natural wear and tear, improper handling or improperly implemented changes or repairs to the subject of the service by the customer or third parties shall apply. The same shall apply to defects which are attributable to the customer or attributable to a technical cause other than the original defect. The customer must particularly follow the operating, storage and/or maintenance recommendations specified by us or the manufacturer.



## 14 Other liability

- 14.1 Unless otherwise stated in these general terms and conditions, including the following provisions, we are liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- 14.2 Regardless of the legal basis, we are liable for damages in the event of intent and gross negligence. In the event of simple negligence, we are only liable
- a) for damage resulting from death, injuries or damage to health,
  - b) for damage resulting from violation of an essential contractual obligation (fulfilment of which makes proper execution of the contract possible at all, and compliance with which the contractual partner can put its trust in and may trust at regular intervals); however, in this case our liability is limited to compensation for foreseeable and typically occurring damage.
- 14.3 The liability limitations resulting from section 14.2 shall not apply if we have fraudulently concealed a defect or taken over a guarantee for the quality of the goods. The same applies to customer claims in accordance with the Product Liability Act.
- 14.4 In the event of a breach of duty which does not consist of a defect, the customer can only withdraw or terminate the contract if we are responsible for the breach of duty. The free right to termination by the customer (particularly in accordance with sections 650, 648 of the BGB) is ruled out. The legal requirements and legal consequences otherwise apply.

## 15 Limitation period

The limitation period for defect claims by the customer is two years, provided that the defective item has not been used in an assembly/construction in accordance with its usual purpose of use and is the reason for it being defective. This also applies to claims arising from unauthorised action which are based on a defect of the performance object. The period of limitation begins with the delivery of the performance object or the acceptance of the services. Unlimited liability on our part for damage resulting from the violation of a guarantee or death, injuries or damage to health, intent and gross negligence and product defects remains unaffected. A statement from us concerning a defect claim asserted by the customer shall not be regarded as the start of negotiations about the claim or the circumstances justifying the claim, provided that we have rejected the defect claim in full.

## **16 Intellectual property and usage rights for software, information and cooperation obligations**

- 16.1 All rights to software which is delivered to the customer or developed for the customer, particularly copyrights, service protection rights and applied industrial property rights, remain with us or the respective owners of rights, unless otherwise stipulated contractually or by law. This also applies if the software was developed in accordance with the specifications or with the cooperation of the customers.
- 16.2 If we use the customer's software, it will only be used for the contractually agreed purposes. If we require the source code of this software for contractually agreed changes or defect rectification, the customer shall make it available to us for use free of charge.
- 16.3 The customer only receives a simple usage right to the software to the extent that is required for the purpose of the contract, unless something to the contrary arises from contractual agreements, particularly the respective licensing conditions of the software, or from legally indispensable provisions. In particular, the customer is prohibited from copying, distributing, passing on, modifying, translating, extending and/or any other reworking of the software which we have provided, as well as decompiling of the software, unless this is expressly contractually permitted, particularly in accordance with the respective licensing terms of the software, or by law.
- 16.4 The customer may make the required backup copies of the software, unless the respective license agreement stipulates otherwise. Section 69d para. 2 of the Copyright Act remains unaffected. Backup copies on portable data carriers must be marked as such and marked with the copyright notice of the original data carrier.
- 16.5 In the event of unlawful use, the right is reserved to make damage claims by us and/or third parties, particularly the manufacturer of the software.
- 16.6 If a third party asserts claims that contradict the granted usage right of the customer, the customer must notify us thereof immediately in text form in accordance with section 126 b of the BGB. The notification shall also contain information about whether the customer has modified the software or linked it with other software and, from the customer's point of view, could justify third party claims. By our request, the customer shall let us handle the defence, and (provided that this is permissible and possible) let us be responsible for the defence or carry it out in accordance with our instructions. Until we have been informed as to whether we can take over the defence, the customer will neither recognize nor compare the asserted claims from the third party without our express consent. If we take over the defence, this obligation shall continue. The customer will also support us in the defence, in so far as this is necessary to carry out a proper defence. In return, we shall indemnify the customer from the necessary external costs resulting from the defence and any compensation and expense claims from the third party, insofar as we are responsible for these. If we do not take over the defence, the customer is entitled to carry out the defence at his discretion. Insofar as existing claims from a third party are not attributable to us, the customer shall not be entitled to any claims against us.
- 16.7 In the event of defects in title with regard to software, we are entitled to attempt supplementary performance at our own discretion, notwithstanding section 439 para. 1 of the BGB. The statutory provisions shall also apply to the warranty in the event of defects in title, irrespective of whether we have taken over the defence against a third party in accordance with section

16.2 of these provisions, but with the following deviations: (i) We shall only be liable for the recovery of data to the extent that the loss of data would have occurred even in the event of a data backup by the customer within the scope of due diligence. (ii) Section 16.3 of these general terms and conditions applies accordingly.

## **17 Product liability**

- 17.1 The customer will not change the subject of the service and will particularly not change or remove existing warnings about dangers in the event of improper use of the service object. In the event of violation of this obligation, the customer shall release us internally from product liability claims from third parties, insofar as the customer is responsible for the fault that triggered the liability.
- 17.2 If we have reason to carry out a product recall or issue a product warning because of a product defect in the subject of the service, the customer will support us and take all reasonable measures ordered by us. The customer is obliged to bear the costs of the product recall or warning, insofar as he is responsible for the product defect and the damage which has occurred. Further claims from us remain unaffected.
- 17.3 The customer shall immediately inform us in text form in accordance with section 126 b of the BGB about the risks that he has become aware of when using the goods, and possible product defects.

## **18 Confidentiality**

The customer is obliged to maintain confidentiality about all information to which he is given access and is designated as confidential or is recognizable as business or operating secrets in accordance with other circumstances for an unlimited period of time, and it must be neither recorded, passed on nor utilised. By means of appropriate contractual agreements with the employees and agents working for him, the customer must ensure that they refrain from any use, passing on or unauthorized recording of such business and operational secrets for an indefinite period.

## **19 Partial ineffectiveness**

Should individually provisions of these terms and conditions become completely or partially ineffective, the remaining provisions shall remain fully effective.

## **20 Choice of law, place of jurisdiction and place of fulfilment**

- 20.1 The law of the Federal Republic of Germany, excluding harmonised international law, particularly the UN Convention concerning contracts for the international sale of goods, apply to the legal relationship between us and the customer. The conditions and effects of the retention of title in accordance with Section X are subject to the law at the respective storage location of the item, insofar as the choice of law in favour of German law is subsequently non-permissible or ineffective.
- 20.2 If the customer is a businessman in accordance with the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive (also international) place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Rosengarten. However, we are also entitled to bring legal action at the customer's general place of jurisdiction.
- 20.3 The place of fulfilment for all services provided by the parties is our headquarters in Rosengarten.

## **21 Environmental statement**

As far as we are concerned, the main focus is on people and the environment. We therefore endeavour to produce our products in a resource-protecting manner and systematically record energy-saving potential in our production procedures and transport. We are working intensively on ecological alternatives for selecting sources of energy and raw materials, and on consistent approaches for avoiding waste and product recycling.

## **22 Criminal and anti-constitutional organizations**

The customer declares that he does not have any business or other connections with terrorists, terrorist organizations or other criminal or unconstitutional organizations. In particular, the customer shall take appropriate measures to ensure the implementation of EC Regulations 2580/2001 and 881/2002 within the scope of his business operations.

## **23 Child labour/youth employment (ILO Conventions 138 and 182 and the UN Convention on the Rights of the Child)**

No persons who are younger than the minimum age required by law in the respective country may be employed. Our customers are obliged to take the necessary measures to prevent the recruitment of persons under the legal age. The minimum age for admission for employment must not be less than the age at which compulsory education ends and under no circumstances less than 15 years of age. National standards for the protection of children and juvenile employees must be observed. The ILO exceptions apply. Children must be protected from economic exploitation, carrying out dangerous work which may affect the child's education and endanger the health or physical, mental, intellectual, moral or social development of the child.

## **24 Remuneration of employees**

Our customers must ensure that the wages paid to employees are at least equal to the statutory/standard wage or the minimum wage that usually applies in the industry. In so far as there are no statutory nor industry-standard minimum wages, the customer must ensure that the paid wage is essentially sufficient to cover the basic requirements of the employees taking individual circumstances into account (such as ancillary employment, part-time employment only or the like).