

# SALES – TERMS & CONDITIONS

Unless otherwise specifically agreed in writing, the following Terms and Conditions apply to any supply of equipment or spare parts (hereinafter the "Products") by EIVA A/S, Niels Bohrs Vej 17, 8660 Skanderborg, Denmark (or its affiliates, hereinafter together referred to as "EIVA") to any customer (hereinafter referred to as the "Buyer").

These Terms and Conditions shall apply no matter by which means the Buyer has placed an order for the Products and shall supersede any conditions of purchase stipulated in the Buyer's order or otherwise, except if such conditions of purchase are specifically agreed in writing by EIVA. Any confirmed order, accepted offer or any other method of agreeing on the delivery of Products between EIVA and Buyer shall herein be referred to as the "Agreement".

No order shall be deemed accepted by EIVA until specifically stated in writing by EIVA or when the Products have been delivered by EIVA to the Buyer, whichever is earlier.

## 1. Extent of Agreement

**1.1** The Agreement covers all parts of the order and supersedes any prior agreement between the parties.

**1.2** If EIVA in addition contracts to carry out specific adaptations to the Buyer's property, as part of the supply of Products, this will be stated separately and such services will be subject to EIVA's "Consultant - Terms and Conditions".

**1.3** Any software products supplied on a stand-alone basis by EIVA shall be subject to EIVA's "Software License - Terms and Conditions" and not these Terms and Conditions. Any software embedded in the Products shall be subject to these Conditions, however (i) the embedded software shall further be subject to clause 2 ("Grant of License") in EIVA's "Software License - Terms and Conditions" and (ii) such embedded software may only be used as an integrated part of the Product in which it is embedded.

**1.4** Any information given by EIVA in commercials, on EIVA's homepage or in other promotional material, shall only be deemed indicative unless expressly stated in the Agreement.

## 2. Delivery

**2.1** If not otherwise agreed in writing, the delivery term shall be "Ex Works, Niels Bohrs Vej 17, 8660 Skanderborg, Denmark (Incoterms 2020)" and delivery of the Products shall take place in accordance with such delivery term regardless of any subsequent installation or other work related to the Products.

**2.2** If EIVA arranges shipment on behalf of the Buyer, EIVA will arrange the shipment Incoterms 2020 CIP and will invoice the Buyer all shipment expenses at cost plus a surcharge of 15% to cover general and administrative costs.

## 3. Examination

The Buyer shall immediately upon receipt of the Products examine the Products for any defects. If the examination shows any defects, the Buyer shall immediately notify EIVA as mentioned in section 6.2; otherwise the Products will be deemed accepted by the Buyer, and the Buyer will not be entitled to claim that the Products are defective except for such defects which could not reasonably have been discovered by Buyer at its examination.

## 4. Delay

**4.1** Any time of delivery stated by EIVA shall be approximate estimates only and thus not be binding on EIVA, unless a fixed time of delivery has been expressly agreed in writing.

**4.2** EIVA is not liable for any delays due to export/import control or required export licenses regardless of which countries the Products or spare parts hereto are shipped from or delivered to, including but not limited to USA, and any estimated or fixed delivery date shall be postponed by such delay.

**4.3** An estimated or fixed delivery time shall be postponed by the number of days passing from the date of the Agreement until EIVA

has received all technical specifications and other necessary information from the Buyer.

**4.4** If delivery or installation cannot take place as stipulated in the Agreement, EIVA will inform the Buyer in writing without any undue delay. If a delay extends beyond 12 complete weeks, and the delay is not due to force majeure, import/export control or other reasons for which EIVA is not responsible, the Buyer will be entitled to cancel the Agreement and reclaim any prepayments made.

**4.5** In the event the Products have been expressly agreed to be delivered at a fixed time, the price of the Products shall be reduced by 0.5% per any full calendar week of delay for which EIVA is responsible, however for a maximum of 12 weeks.

**4.6** The right to cancellation in accordance with section 4.4 above or reduction of price in accordance with section 4.5 above are Buyer's sole and exclusive remedies for delay.

## 5. Force Majeure

If delivery in due time is prevented by reason of any occurrence or contingency beyond EIVA's reasonable control, including, but not limited to war, riot, strikes, lock-outs or other serious labour disputes, public confiscation, currency restrictions, Government measures such as import or export prohibition, Act of God, failing energy supply, fire, flood, explosion or failure of suppliers due to their force majeure, EIVA is entitled to either cancel the Agreement in whole or in part or to postpone delivery time. EIVA shall have no liability in the event of such cancellation or postponement.

## 6. Defects Warranty

**6.1** EIVA warrants that the Products shall be free from original defects in material and workmanship for a period of one year commencing at the date of delivery. Unless specifically stated in writing by EIVA, EIVA does not warrant that the Products are fit for certain purposes, and it is entirely Buyer's obligation to evaluate whether the Products fulfil the Buyer's needs and ability to operate in connection with Buyer's other equipment and operational environment.

**6.2** In order to exercise this warranty, the Buyer must provide a written warranty claim immediately after a defect has been established and in any event before the expiry of the warranty period, specifying the details of the defect. Failure to do so will result in a repair charge being levied based on cost and time to repair the defective Products.

**6.3** The warranty does not cover accidental damage and will be classified null and void if unauthorized repairs or modifications to the Products are carried out.

**6.4** EIVA is not responsible for defects, which were not inherent in the Products at the time of delivery.

**6.5** EIVA is not liable for defects which arise from poor maintenance, incorrect installation by the Buyer or modifications or repairs conducted by the Buyer without EIVA's written consent.

**6.6** EIVA commits to remedy all other recorded defects by repair of the Products. Such repair is the Buyer's sole remedy in the event of defects. Remedial action will take place at EIVA's facilities or an appropriate manufacturer's facilities appointed by EIVA, and the responsibility and cost of shipping the Products to and from those facilities will be solely to the Buyer's account. If for practical reasons remedy has been agreed to take place on site, all costs relative to EIVA personnel, including but not limited to travel expenses, waiting time on site and other time spent, will be invoiced to the Buyer at cost plus a surcharge of 15% to cover general and administrative costs.

**6.7** EIVA may at its sole discretion decide to deliver a replacement of the defective Products instead of reparation. Replacements are delivered Ex Works as described in section 2.1 and the Buyer shall accept the same time of delivery as for the first delivery of the Products.

## 7. Limitation of Liability

**7.1** EIVA disclaims product liability to the widest extent possible under the applicable jurisdiction. The Buyer shall indemnify and hold EIVA harmless from any claims asserted against EIVA by

any third party if the basis of such claim is the use and operation of the Products.

**7.2** EIVA shall not have any liability for delays, missing deliveries or defects except as set out in clause 4 and 6 above.

**7.3** EIVA shall in no event be liable for loss of profit, loss of earnings, loss of savings, loss or corruption of data or other indirect or consequential losses (including environmental damage) due to delayed delivery or defective or malfunctioning Products, notwithstanding whether or not EIVA has been informed of such potential losses.

**7.4** EIVA's liability for any loss or damage attributable to Products delivered by EIVA - including EIVA's cost of repair and/or replacement, and including any liability and cost of fulfilment of obligations under clause 11 (Intellectual property rights) - shall in any event be limited to the lower of 200% of the purchase price for the Product in question and DKK 10.0 million.

## **8. Price and Payment**

**8.1** The price as stated in the Agreement is a fixed price except for applicable VAT and other taxes and duties.

**8.2** Payment is to be made by bank transfer according to the invoice forwarded by EIVA in connection with the Products.

**8.3** All payments shall be received by EIVA within 30 days after the date of invoice. All cost of payment is for the Buyer's account. Late payments will be subject to interest in accordance with section 5 of the Danish Interest Act (renteloven).

**8.4** If specifically requested by EIVA, the Buyer must before delivery of the Products initiate supply EIVA with a bank guarantee or "Confirmed Letter of Credit" against a first class bank reasonably acceptable to EIVA for the full purchase price.

**8.5** If the Buyer fails to fulfil the terms of payment, EIVA is entitled to cancel the Agreement immediately, and to claim damages against the Buyer for both the losses incurred including lost profits and any legal expenses required.

**8.6** The Buyer shall not be entitled to retain any payment or set off any payment against any alleged outstanding claim against EIVA unless such claim has been approved by EIVA or confirmed by the applicable courts, see section 16.

## **9. Buyer's Default**

**9.1** If delivery of the Products is prevented or delayed for reasons attributable to the Buyer, payment will fall due no later than 30 days from the original date of delivery according to the Agreement.

**9.2** EIVA reserves the right to claim damages for any loss including loss of profit incurred by the Buyer's inability to take delivery of the Products, such as payment for waiting time.

## **10. Property, Risk and Insurance**

**10.1** EIVA retains sole and exclusive title to the Products until the agreed price has been paid in full.

**10.2** The Buyer shall ensure full insurance of the Products from the time of delivery, and must, on request, provide proof of such insurance. EIVA will provide, on request, details of the insurance value of the Products on order. Products, owned by and supplied by the Buyer, in custody of EIVA, e.g. for repair or calibration, must be insured against all risks by the Buyer at his sole account.

## **11. Intellectual property rights**

**11.1** No intellectual property rights are transferred from EIVA to the Buyer under this Agreement. All rights not expressly granted are reserved by EIVA.

**11.2** Developed items shall be the property of EIVA and any intellectual property right including without limitation each invention, discovery or improvement which includes ideas, concepts, know-how or techniques developed or created during the carrying out of the Services shall belong to and vest in EIVA and the Buyer shall take all steps reasonably necessary to give effect to this.

**11.3** Any third party claims contending that EIVA's Products on a stand-alone basis infringe third parties' intellectual property rights, will be settled or defended by EIVA, and EIVA will pay defence costs, settlement amounts and court-awarded damages, on the condition that Buyer i) promptly provides written notice to EIVA, ii) cooperates with EIVA and follows the instructions given by EIVA in the defence or settlement of the claim, and iii) grants EIVA total and sole control of the defence and potential settlement of the claim.

**11.4** Should a third party claim be raised or in case that EIVA finds such a claim likely to be raised, EIVA is entitled to at its own choice i) modify the EIVA branded product, ii) replace the Product with an equivalent product of a similar kind or iii) recall the Products. If EIVA decides to recall Products, EIVA shall, if the Products were delivered to the Buyer within the immediately preceding three-year period, refund the purchase price of the Products to the Buyer minus reasonable deductions due to age, use and condition. If the Products were delivered to the Buyer before the immediately preceding three-year period, EIVA shall not be obligated to make any refund.

**11.5** EIVA will not be liable in any way for claim of infringement arising from i) modifications not made by EIVA, ii) compliance of EIVA products with third party or Buyer designs, instructions, specifications, or technical information, iii) Buyer's use of the Products with products that are not delivered by EIVA, or iv) Buyer's non-conformities in any way in regards to specifications provided by EIVA.

**11.6** EIVA shall not have any further liability in the event of an (alleged) infringement of third party rights than as described in this clause 11.

## **12. Waste electronics**

If the Buyer purchases electrical and electronic Products from EIVA for resale within the European Union, then Buyer is responsible for providing means of waste disposal and scrapping of such equipment in accordance with applicable national law and Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE).

## **13. Dual-use products**

**13.1** EIVA and the Buyer shall comply with any International and Danish legislation regarding export control on dual-use products (products that can be used for both civilian and military purposes) including embargo of export of certain products to certain companies and persons.

**13.2** The Buyer shall not be entitled to export the Products if there is any suspicion that the Products will be used in connection with military technology or purposes.

## **14. Severability**

If any provision(s) of these conditions is/are finally determined to be invalid or unenforceable, the balance of these conditions shall remain in effect. In this case the provision(s) must be replaced by such valid and enforceable provision(s) as will come as close to the purpose and legal position of the invalid or unenforceable provision(s) as possible.

## **15. Assignment**

EIVA shall be permitted to assign all of its rights and obligations under the Agreement to any third party provided that the existing obligations are being carried out as agreed with the Buyer.

## **16. Disagreements**

**16.1** Any dispute or claim arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Denmark except for Danish choice of law rules.

**16.2** Any dispute arising out of or in connection with this Agreement shall be settled by the Maritime and Commercial Court of Copenhagen (Sø- og Handelsretten) as the court of first instance. However, if the Buyer is a company registered in Denmark - or if the Maritime and Commercial Court of Copenhagen (Sø- og Handelsretten) cannot be chosen as venue - any dispute arising out of or in connection with this Agreement shall be settled by the District Court in Aarhus, Denmark, as the court of first instance.