

# Terms of Business for Services

(incl. Training) of TURCK GmbH for commercial transactions between businesses

Date: December 2013

## I. Scope

1. Unless otherwise stated in writing, the legal relations between the Purchaser and TURCK GmbH (hereinafter: "TURCK") in conjunction with the performance of services (also applies to support services, incl. training) shall be based exclusively on the following general terms and conditions.
2. The general terms and conditions of the Purchaser are not recognized and are only applicable if they are expressly approved by TURCK in writing.
3. These general terms and conditions also apply if TURCK unreservedly performs the services in the knowledge of conflicting or different terms and conditions of the Purchaser.
4. All agreements made between TURCK and the Purchaser concerning the performance of services, particularly with regard to the conclusion or modification of service contracts must be made in writing. This also applies to a cancellation or waiver of the writing requirement.

## II. Scope of performance

1. The scope and the content of the services are specified in the respective service contract, or the associated specification of services and these general terms and conditions, which are part of the service contract.  
Unless otherwise expressly stipulated in writing, the mounting, installation, repair or commissioning work is not included.
2. Software updates are only included in the scope of performance of service contracts if this has been stated in writing.
3. TURCK shall decide exclusively on the service personnel to be deployed. This particularly applies to the qualification of each individual employee with regard to the specific object of the contract.
4. If the service personnel are dismissed for reasons for which TURCK is not responsible, the resulting costs shall be borne by the Purchaser.
5. The TURCK service personnel must only submit legally binding statements in regard to the service order placed. Any other statements outside of this require agreement with the line manager of the TURCK service personnel. Legally binding statements shall only be deemed as such if they are submitted in writing.
6. Unless otherwise agreed, service operations shall be performed as per the service contract in accordance with § 611 of the German Civil Code („BGB“), a specific result is not due.

## III. Technical assistance of the Purchaser

1. The Purchaser must bear any of the following costs and provide in due time:
  - a) all ancillary work outside of the scope of performance including the specialist and auxiliary personnel required, building materials and tools,

- b) the objects and materials required for the service operation, such as scaffolding, lifting gear and other equipment, fuel and lubricants,
- c) energy and water at the point of use including connections, heating and lighting,
- d) rooms that are sufficiently large, suitable, dry and lockable for the safe-keeping of equipment, materials, tools etc. and reasonable work and break rooms for the service personnel including sanitation facilities that are reasonable for the conditions; the Purchaser must also take those measures for the protection of TURCK property and that of the service personnel at the work site that he would take for the protection of his own property,
- e) protective clothing and equipment that is necessary on account of the particular conditions of the work site,
- f) sufficient parking facilities for the service personnel as well as free Internet access and phone at the work site. If these are not provided, reimburse costs for Internet access and phone incurred for the completion of the operation.

2. Prior to the beginning of installation work, the Purchaser must provide of his own accord information on the location of covered electricity, gas and water lines, and similar systems as well as any static information.
3. Prior to the beginning of the service operation, the necessary provisions and objects required for the commencement of work must be present at the work site, and all necessary preliminary work must have been completed so that the service work can be completed as per the agreement and without any interruption.
4. If the service operation is delayed due to circumstances for which TURCK is not responsible, the Purchaser shall cover the costs for waiting time and also any traveling required by TURCK service personnel according to the service charges stated in the TURCK Service Price List.
5. In the event of damage or loss of devices, tools and equipment brought by TURCK to the work site, the Purchaser undertakes to replace them completely if he is responsible for this.
6. The Purchaser undertakes to ensure the safety of the workplace, the observance of applicable safety regulations and proper working conditions. He must notify the service personnel of any special regulations relating to his company.
7. The Purchaser shall provide any necessary in-company approvals, authorizations, permits at his own expense.
8. If the Purchaser does not fulfill his obligations, TURCK is authorized but not obliged to carry out the tasks incumbent on the Purchaser in his place and at his expense. In other respects, the contract and legal rights and claims shall remain unaffected.

## IV. Other assistance of the Purchaser

1. The Purchaser shall support TURCK on request in the preparation of the service work at his own cost. The Purchaser shall in particular make the travel arrangements, including the booking of suitable flights and other transport on request.
2. The Purchaser shall ensure the safety of personnel on journeys to and from the work site as well as during the service work. On request the Purchaser shall make adequate arrangements for transporting the service personnel from and to the airport and shall, if necessary, accompany them.
3. The Purchaser shall provide English or German speaking co-workers for the service work. If such co-workers are not available and if no agreement on a common language is made in advance of the service work, the Purchaser undertakes to provide an interpreter at his own expense.

## V. Conclusion, execution, extension of performance

1. All offers made by TURCK are without obligation.
2. Contracts are not concluded until a purchase order/order is placed by the Purchaser and the corresponding written order confirmation by TURCK has been made. Purchase order/order and order confirmation can also be sent by fax or e-mail. Purchase orders/orders made verbally or by phone must be confirmed in writing.
3. TURCK is authorized to engage third-parties to carry out services.
4. TURCK reserves the right to perform additional services not specified in the order if these are in the interest or the actual or supposed will of the Purchaser. TURCK shall as far as possible obtain the agreement of the Purchaser prior to the extension of services.
5. In the event of direct replacement, ownership of the faulty device shall be transferred to TURCK at the time when the goods are accepted. All other claims of the Purchaser are satisfied by the re-placement.

## VI. Prices, delivery of spare parts

1. Unless any other written agreement is made between the parties, the services rendered shall be charged at cost in accordance with the rates specified in the applicable TURCK Service Price List. Time required for traveling, preparation and waiting shall be charged as working time.
2. Unless any other written agreement is made between the parties, the services rendered for training shall be charged at cost in accordance with daily rates specified in the applicable TURCK Service Price List. Training material is included in the costs for training. Devices from the TURCK product range shall be provided by TURCK for the duration of the training. If the training is to take place on TURCK's premises, the provision of training rooms with the appropriate equipment, such as beamers, screens, flipcharts, writing material, electrical connections, and if necessary controllers etc. shall be included in the costs for training. Furthermore, the training costs include the board of seminar participants. If the training is to take place on the Purchaser's premises, the Purchaser must provide training rooms with the appropriate equipment, such as beamers, screens, flipcharts,

writing material, electrical connections, and if necessary controllers etc. The specific requirements for the particular training must be agreed with the trainer. If devices, particularly beamers, computer etc. are not available and have to be provided by TURCK, these shall be charged separately. The time required for traveling and preparation shall not be charged for training seminars. If any waiting time occurs, this shall be charged as training time.

3. All prices and rates are stated as net prices and do not include the statutory value added tax.
4. Costs for spare parts, packaging, transport and the insurance of material shall be payable by the Purchaser. Suitable spare parts shall be delivered in accordance with the General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry. Refer here to [www.turck.com/agb](http://www.turck.com/agb).
5. Traveling and accommodation costs for service personnel, including transport costs and the insurance of personal luggage, as well as any tools carried or shipped, shall be charged according to the rates of the TURCK Service Price List and at cost. This includes costs for the procurement of visas, prescribed medical and public health examinations, also for duties, payments of securities and other costs incurred in international travel. Travel expenses also include costs for travel home during the period of service based on the tariffs specified for the sector.
6. If the performance of the service is interrupted for reasons not attributable to TURCK, the Purchaser undertakes to reimburse TURCK for the costs incurred.
7. On completion of services, the Purchaser must certify the hours spent and material used on the certificate of work presented to him by the TURCK service personnel. This certificate is binding for the Purchaser.
8. If on completion of services there is no employee of the Purchaser available or if the presented certificate of work is not signed, this shall be sent to the Purchaser by post, fax or email after the service personnel has returned, and shall be deemed binding for the Purchaser unless it is rejected immediately after receipt with the reasons stated.
9. Costs incurred shall also be charged to the Purchaser if an order cannot be executed. This particularly applies if reported defects do not appear during inspection, the Purchaser culpably fails to meet the agreed service appointment, the Purchaser cancels an order in process, and required parts cannot be procured within a reasonable time.

## VII. Conditions of payment

1. Payment claims by TURCK are payable in full immediately after receipt of the invoice.
2. TURCK reserves the right to request progress payments amounting to 80 % of the value of the service work performed in each case.
3. If the Purchaser becomes in arrears with his payment obligations, he shall pay interest on arrears of 8 % above the respective base rate of the European Central Bank. The right to claim for interest on arrears and further damages for delay shall remain unaffected.
4. The Purchaser is only entitled to offset or assert a right of retention if the Purchaser's counterclaim is uncontested or legally established.
5. The Purchaser is not entitled without previous agreement in writing from TURCK to assign his claims against TURCK or to arrange for its collection by third parties.
6. Payment claims of TURCK are limited to 5 years.

## VIII. Copyrights

1. The software used by TURCK in training seminars is protected by copyright. The software must neither be copied nor removed from the seminar rooms. TURCK accepts no liability for damage caused by viruses that may arise in conjunction with unauthorized downloads. On no account shall seminar participants copy software onto the computers of TURCK. In the event of noncompliance TURCK reserves the right to claim for damages.
2. The seminar documents used and issued by TURCK are protected by copyright and must neither be copied nor duplicated in any way without the written permission of TURCK.

## IX. Execution of training seminars

1. TURCK reserves the right to make adaptions and changes to the content or methods of training seminars provided that these do not considerably change the overall character of the training seminar. TURCK reserves the right to change the venue and/or time of the training seminar or engage a replacement trainer, or cancel the event if circumstances arise for which TURCK is not responsible, such as sickness or other reason for non-attendance of a trainer. If the number of participants is below the minimum of 3, TURCK reserves the right to postpone or cancel the event.
2. Other claims, in particular claims for damages (also cancellation fees for fairs or hotel charges) in the event of the changes to or cancellation of a training seminar are invalid.

## X. Time for the performance of services

1. The times given to the Purchaser are not binding for TURCK unless a time for the performance of services has been agreed in writing by the parties.
2. If a period of performance has been set, the period shall begin with the date of written confirmation of the order by TURCK,

however, not before all technical and commercial issues have been clarified and the necessary permits have been submitted. Changes required by the Purchaser to the execution of the object of the contract shall result in a corresponding extension of the period.

3. The observance of a period agreed in writing is subject to TURCK receiving correct and timely delivery by its suppliers. Partial performances and partial deliveries are permissible.
4. The observance of a period agreed in writing requires the Purchaser to provide TURCK in good time with the systems, materials etc. to which the performance of the service relates. Otherwise the period shall be extended accordingly.
5. If the nonobservance of a period agreed in writing for the rendering of services is due to mobilization, war, rebellion, strike or lockout, or the occurrence of unforeseeable or other obstacles for which TURCK is not responsible, such time shall be extended accordingly.
6. If the nonobservance of a period agreed in writing for the rendering of services is due to reasons other than those stated in the previous clause, the Purchaser is entitled to demand a fixed compensation for delay if he has suffered damage. This compensation for delay shall amount to 0.5 % for each full week of delay, but shall not exceed in total 5% of the fair value of the contract object to which the services relate.
7. Claims for damages by the Purchaser in place of performance due to delay or impossibility to perform services are restricted to 10 % of the fair value of the contract object to which the services relate.
8. All the above provisions relating to periods apply accordingly to due dates.

## XI. Right to rescind, conditional performance

1. TURCK reserves the right to cancel the contract if either the measures required for the performance of services cannot be implemented or only with a disproportionately high expenditure, and/or if subsequently the unfavorable circumstances regarding the financial position or credit-worthiness of the Purchaser become known, such as in particular the nonobservance of the agreed conditions of payment, default in payment with regard to demands from TURCK, suspension of payment or insolvency proceedings.
2. TURCK likewise reserves the right to cancel the contract if the safety of the service personnel is not guaranteed at the work site for political or other reasons. TURCK shall assess this at its own discretion.
3. The contract performance is subject to the proviso that fulfillment is not prevented by any impediments arising from German, US or other applicable national, EU or international foreign trade regulations or any embargos or other sanctions.

## XII. Acceptance

1. If the testing of a contract object is contractually agreed, the service rendered must be accepted by the Purchaser as soon as he has been notified that the designated test has been completed. Also in this case, the payment shall be based at cost according to the applicable schedule of rates.
2. If no notification is given, the acceptance shall be given with the commissioning of the contract item.
3. If for reasons not attributable to TURCK the Purchaser does not give acceptance within a period of 14 days after readiness for acceptance has been notified, the services rendered shall be deemed as accepted.
4. After completion of acceptance by the Purchaser any faults reported that could be determined by the agreed form of acceptance are invalid, unless the Purchaser has reserved the right to make claim to a specific fault.

## XIII. Claims for defects

1. The Purchaser must notify TURCK immediately of any defects discovered.
2. If it is determined that the reported defect is due to a different technical issue than was present when the original service was rendered, the claims of the Purchaser become void. The resulting costs that must be documented shall be charged to the Purchaser.
3. Claims by the Purchaser for normal wear and for defects for which the rectification was not commissioned by the Purchaser, or which have arisen through improper modifications or repairs by the Purchaser or by third parties, are excluded.
4. Claims for defects in the event of damage arising from force majeure or contamination through extraordinary mechanical, chemical or atmospheric influences are excluded.
5. Defects arising from the performance of the services must at the discretion of TURCK either be rectified without charge within a reasonable period or must be provided again (supplementary performance). Parts that are replaced in this case become the property of TURCK.
6. If the supplementary performance is unsuccessful, if it is not completed within a reasonable period, refused or fails for any other reason, the Purchaser can cancel the contract or reduce the payable remuneration irrespective of any claims for damages in accordance with clause XIV.
7. The right of the Purchaser to make claims for defects is limited to within twelve months.
8. Further claims of the Purchaser against TURCK are excluded subject to article XIV.

## XIV. Claims for damages

1. Claims for damages of the Purchaser, for whatever the legal reason, in particular the infringement of duties arising in connection with the contract or tort, as well as compensation for any unnecessary expenditures shall be excluded. This shall not

apply in cases of willful misconduct, gross negligence, or injury to life, body or health in accordance with the German Product Liability Act (Produkthaftungsgesetz), on account of warranties or infringement of essential contract obligations; the compensation claim for the infringement of essential contract obligations shall be restricted to typically foreseeable damages.

2. Other contract claims for damages as well as claims for compensation for unnecessary expenditure shall be limited – notwithstanding clause XIII. 7. - to 2 years. This does not apply to clause XIV. 1. section 2. In cases as per clause XIV. 1 section 2 the statutory limitation periods apply.

## XV. Data storage

Data transferred to TURCK, particularly personal data shall be stored exclusively for the processing and execution of the particular order. By registering the participant declares his agreement with the handling and processing of personal data for the purposes of the execution of the seminar.

## XVI. Applicable law, place of jurisdiction, severability

German law shall apply to all legal relations of the parties to the exclusion of UN Sales Law (CISG). Sole place of jurisdiction for all disputes arising between the parties shall be the court responsible for the principal place of business of TURCK. TURCK, however, reserves the right to make a claim against the Purchaser at his general place of jurisdiction.

If individual provisions of this contract are invalid in full or in part, this shall not affect the validity of the remaining provisions.