

General Terms and Conditions of Business, Delivery and Service of Emmegi Deutschland GmbH

1. Scope and Formation of Contract

1.1 All our deliveries and services ("deliveries") including future deliveries, shall be made exclusively in accordance with the following terms of delivery and payment. Supplementary or differing terms and conditions of the purchaser shall only apply if we have expressly agreed them with the purchaser. Any such agreement is to be recorded in writing.

1.2 Our offers are non-binding and without obligation. A contract does not come into being until the purchaser has received our written order confirmation or until we commence delivery of products or services.

1.3 Decisive for the content of the contract are our offer, our written order confirmation and these terms and conditions. Other agreements on the execution of the contract, in particular subsequent amendments, supplements or subsidiary agreements shall only become part of the contract if we have expressly agreed them with the purchaser. Such agreements are to be recorded in writing. We reserve the right to deviate from illustrations and descriptions, tolerances in quality and dimensions customary in the industry, the correction of printing errors and mistakes, as well as product changes that are for the purpose of technical progress. Dimension and weight details in such illustrations, descriptions and planning documents are generally non-binding; this does not apply if the deviations etc. are unreasonable for the purchaser.

2. Nature of the Goods, Copyright

2.1 The agreed quality of our services and goods only includes those properties and characteristics which are stated in our offer or our order confirmation. Other or more extensive properties and characteristics are only part of the agreed quality if we have expressly agreed them as such with the purchaser. Such quality agreements must be set down in writing.

2.2 Declarations which go beyond an agreement on quality within the meaning of clause 2.1 above and which we make with regard to certain properties and characteristics of our goods only constitute a guarantee of quality within the meaning of Sections 442, 444 BGB (German Civil Code) if our declaration refers to the quality (a characteristic) and we state that we wish to assume responsibility for the quality in a binding and no-fault manner. Such declarations must be made in writing.

2.3 We reserve the right of ownership and copyright to all documents such as offers, illustrations, drawings, cost estimates and the like which are made available to the purchaser or interested parties; these may only be used for the contractually agreed purpose and may only be made available to third parties with our express consent. The documents must be returned immediately on request or if the order is not placed. A contractual penalty of EUR 7,500 shall be deemed forfeited for each individual case of infringement; the right to assert further damages remains reserved.

3. Prizes and Payments

3.1 Our prices are net (plus VAT) ex works, excluding packaging and transport costs and are charged in EUR. Confirmed prices are only valid if the confirmed quantities are accepted. Sales prices quoted in writing are deemed fixed prices if the offer is accepted immediately, but no later than within 10 days, without change by written order.

3.2 If and to the extent that the purchaser is an entrepreneur, we reserve the right to pass on to the purchaser any cost increases in purchasing and/or production of more than 3%, where we are not responsible for them. This applies in particular in the event that we purchase goods from third parties and the price increase was not foreseeable for us or is based on measures taken by sovereign bodies (e.g. punitive tariffs).

3.3 Our services are provided on advance payment, unless otherwise agreed in the offer and/or the order confirmation. If advance payment has not been expressly agreed and no other arrangement has been made, our invoices are due for payment 10 days after the invoice date. From the due date, the purchaser shall owe interest at the statutory rate of interest under Section 288(2) BGB.

3.4 If it becomes apparent that our payment claims are at risk due to the purchaser's lack of ability to pay, we shall be entitled to make all claims not yet due from the entire business relationship with the purchaser immediately due and payable, provided that we have already made our delivery. This also applies if we have already accepted cheques or bills of exchange. For future deliveries that have not yet been made, we can demand payment in advance. A risk within the meaning of these provisions exists if information from a bank or a credit agency suggests the credit unworthiness of the purchaser.

3.5 The purchaser may only offset (i) claims arising from the same legal relationship in a relationship requiring reciprocal performance and (ii) claims that are undisputed or have been declared final and absolute; this also applies to the assertion of rights of retention.

4. Place of Performance, Delivery and Transfer of Risk

4.1 The place of performance for all delivery obligations of the parties arising from the contract is our registered office or our branch or distribution centre where the goods are handed over to the first carrier for conveyance to the purchaser.

4.2 The risk of accidental loss or accidental damage to the goods passes to the purchaser at the point in time at which we have handed over the goods to the first carrier for conveyance to the purchaser. If the goods are ready for dispatch and dispatch is delayed for reasons for which we are not responsible, the risk is transferred to the purchaser upon receipt of the notification of readiness for dispatch. The risk is also transferred if we carry out the transport, assume other obligations to be performed at the place of delivery or assume the transport costs. At the request and expense of the purchaser, we are required to take out transport insurance policies as requested by the purchaser.

4.3 If we provide assistance in the loading and/or unloading of the goods or in any other way (signing insurance policies, completing customs formalities, etc.) in the transport of the goods, this is done on behalf of and at the risk of the purchaser.

4.4 Transport damage must be reported immediately to the transport person and to us.

4.5 Subject to statutory and non-negotiable take-back obligations, we are not obliged to take back packaging. Where the Packaging Ordinance (or from 1/1/2019 the Packaging Act) imposes a non-negotiable obligation to take back the packaging at our expense, the place of performance for the return of the packaging by the purchaser is our registered office.

5. Delivery and Performance Deadlines

5.1 Delivery and service dates and deadlines stated in offers and order confirmations are normally non-binding. The time limits commence with the dispatch of the order confirmation, but not before the purchaser has provided any documents, permits, releases and information necessary for processing the order and not before receipt of an agreed down payment.

5.2 The deadlines are deemed to have been met if dispatch has taken place or readiness for delivery or performance has been notified before they expire.

5.3 Cases of force majeure (unforeseen circumstances and occurrences beyond our control and which could not have been avoided with the diligence of a prudent businessman) may interrupt our obligation to deliver and perform as long as they last and to the extent of their effect, even if we are already in default.

5.4 Provided that we have concluded a congruent hedging transaction with our supplier in good time, the delivery dates stated by us are subject to timely and correct supply to us.

5.5 In cases of clauses 5.3. and 5.4. we shall be entitled to withdraw from the contract if we have informed the purchaser immediately about the occurrence of force majeure in cases of 5.3. or about the untimely or incorrect delivery in cases of clause 5.4. and have reimbursed the purchaser without delay for any advance payment made.

5.6 If we fail to meet agreed delivery deadlines, the purchaser may set us a reasonable deadline for performance. After the fruitless expiry of this grace period, the purchaser may withdraw from the contract. Claims for damages by the purchaser shall be excluded in all cases of delayed delivery, even after expiry of a grace period granted to the supplier; this exclusion of liability shall not apply in the case of intent or gross negligence and in the other cases of unlimited liability described in clause 9.

6. Warranty

6.1 The order shall be executed in accordance with the general state of the art within the framework of the technically necessary material and process-related tolerances in the quality customary in the industry. For material defects and defects of title of the deliveries and services at the time of the transfer of risk, we provide a guarantee in accordance with the provisions of clauses 6.2 et seqq. to the exclusion of further claims; this exclusion of liability does not apply to intent or gross negligence and in the other cases of unlimited liability described in clause 9. For the delivery of used goods to commercial customers, we do not assume any warranty unless otherwise expressly agreed. Replacement parts shall be considered used goods within the meaning of this provision.

6.2 Warranty claims require that the purchaser has properly fulfilled its obligations to inspect the goods and give notice of defects in accordance with Section 377 HGB. The purchaser must inspect the delivery item immediately after delivery with the thoroughness that is reasonable under the given circumstances. If damage (loss/damage to substance) is externally identifiable on delivery, this must be recorded in a confirmation of receipt to be signed by the purchaser and the deliverer. Furthermore, all detectable defects must be reported in writing without delay but no later than 7 working days after delivery. The date of receipt of the written complaint by us is decisive. Defects which it is impossible to discover within this period even with the most careful examination must be notified immediately after discovery. The obligation to give notice of defects shall also apply to such business relationships which are not based on purchase law, but which are to be assessed, for example, in accordance with the law on contracts for work and services and the law on business management, etc. If no complaint is lodged in due time, the assertion of warranty claims by the purchaser is excluded. It bears the full burden of proof for all preconditions for the claim, in particular for the defect itself, for the time of discovery of the defect and for the timeliness of the defect notification.

6.3 If the notices of defect are justified, we shall, at our discretion, provide subsequent performance (elimination of the defect or delivery of a defect-free item). The purchaser shall give us the necessary time and opportunity to carry out all repairs and replacement deliveries which we deem necessary. Replaced parts become our property. If the subsequent performance fails twice, is refused by us or is unreasonable for the purchaser, the purchaser is entitled to require rescission of the contract (withdrawal) or reduction of the remuneration (abatement) to the exclusion of further claims; however, in the case of a minor breach of contract, in particular in the case of only minor defects, the purchaser is not entitled to withdraw from the contract.

The above exclusions of liability do not apply in cases of intent or gross negligence and in the other cases of unlimited liability described in clause 9.

6.4 Claims by the purchaser for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded where the expenses increase because the goods delivered by us have subsequently been taken to a location other than the purchaser's branch office, unless the transfer corresponds to their intended use.

6.5 Installation and removal services shall not be borne by us and any compensation for costs or damages shall be excluded in this respect; this exclusion of liability shall not apply in cases of intent or gross negligence and in the other cases of unlimited liability described in clause 9.

6.6 Recourse claims by the purchaser against us under Section 445a BGB are strictly excluded; this exclusion of liability does not apply to intent or gross negligence and in the other cases of unlimited liability described in clause 9.

6.7 Insofar as and to the extent that recourse claims by the purchaser within the meaning of Section 445a BGB cannot be excluded for mandatory legal reasons, the following shall apply in any case: Recourse claims by the purchaser only exist against us to the extent that the purchaser has not made any agreements with its customer that go beyond the mandatory statutory claims for defects. The above paragraphs 6.4 and 6.5 shall also apply accordingly to the scope of the purchaser's right of recourse against us.

6.8 Where additional warranty obligations are assumed for the quality of the contractual goods by terms and conditions of our suppliers / manufacturers, including with regard to the warranty period, we shall not be directly bound by them. The purchaser shall only be entitled to rights from such promises from the user of these conditions (upstream supplier or manufacturer), which we shall assign to the latter - insofar as legally permissible - at its request.

6.9 No warranty is given in the following cases in particular: Unsuitable or improper use, faulty assembly or commissioning or repair by the purchaser or third parties not authorised by us, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable foundation or fastening (sub)structures, chemical, electrochemical, magnetic or electrical influences (in particular also lightning and overvoltage) unless we are responsible for them.

6.10 If the use of the delivered goods leads to an infringement of industrial property rights or copyrights in Germany, we shall, at our own expense, generally procure the right of further use for the purchaser or modify the delivered goods in a manner reasonable for the purchaser in such a way that the infringement of the property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the purchaser is entitled to withdraw from the contract. Under the aforementioned conditions, we shall also be entitled to withdraw from the contract. In addition, we shall indemnify the purchaser and hold it harmless from undisputed or legally established claims of the respective holder of the property right.

7. Retention of Title

7.1 The delivered items remain our property until all claims arising from the business relationship with the purchaser have been settled in full. In the case of payment in the so-called „cheque/bill of exchange transaction“, the reservation of title shall continue to exist even if the cheque given by the purchaser is cashed, until the bill of exchange is returned, validated or any other recourse against the bill of exchange is excluded.

7.2 In the event of processing, mixing or combining of our goods, it is agreed that this is done in our name as manufacturer and that we acquire directly ownership or - if the processing, mixing, combining with goods / materials of several owners is done or the value of the item produced in this way is higher than the value of the reserved goods - the co-ownership (fractional ownership) or the expectant right to the future (co-)ownership of the newly created item in the proportional value.

7.3 The purchaser is only allowed to sell the delivery items subject to retention of title („products subject to retention of title“) within the scope of ordinary business transactions. The purchaser is not entitled to pledge the products subject to retention of title, to assign them as security or to make other dispositions that endanger the supplier's ownership. The purchaser hereby assigns to us the claims arising from the resale - in the case of co-ownership in accordance with item 7.2 proportionately; we hereby accept the assignment. The purchaser is authorised, subject to revocation, to collect the claims assigned to us in trust for us in its own name. We may revoke this authorisation as well as the authorisation to resell if and to the extent that the purchaser is in default with the payments owed to us.

7.4 The purchaser is required to treat the products subject to retention of title with care for the duration of the retention of title and to insure them adequately at its own expense.

7.5 We are entitled to withdraw from the contract in the event of conduct on the part of the purchaser in breach of contract - in particular in the event of default of payment - and to demand the return of the goods without prejudice to our other rights.

7.6 On a request to that effect by the purchaser, we are required to release the securities to which we are entitled under the above provisions where their realisable value exceeds the total claims to be secured by 10%.

8. Limitation Periods

8.1 Claims for defects by the purchaser shall become time-barred one year from delivery of the goods. Claims by the purchaser based on a defect of the goods, which consist in a right in rem of a third party, on the basis of which the surrender of the goods can be required, or in any other right which can be entered in the land register, shall become time-barred after three years.

8.2 Other contractual claims by the purchaser due to breaches of duty are also subject to a limitation period of one year - where allowed by law - with the exception of claims for damages due to loss of life, bodily injury, damage to health and other damage based on an intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents.

8.3 A suspension of the statute of limitations of claims by the purchaser during negotiations shall only occur if we have agreed to negotiations in writing. A suspension ends three months after our last written statement. The rectification of defects by repair does not lead to suspension of the limitation period.

9. Liability

9.1 Claims not expressly granted in these terms and conditions, in particular claims for damages and reimbursement of expenses by the purchaser for any form of poor performance of the contract and cases of tort are excluded. The exclusion of liability shall not apply to intent or gross negligence, nor to damages resulting from injury to life, limb or health, nor under the Product Liability Act, nor if we have fraudulently concealed a defect.

9.2 We shall also be liable for slight negligence if we have contractually assumed the procurement risk or a guarantee or if it concerns obligations which are indispensable for the achievement of the purpose of the contract and on strict compliance with which the purchaser can rely („cardinal obligations“). The amount of our obligation to pay damages in these cases is limited to foreseeable damages typical for the contract.

9.3 Where liability is excluded in accordance with clause 1 above, this shall also apply to the liability of vicarious agents and assistants.

10. Use of software

10.1 Where our scope of performance also includes the supply of software, the purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

10.2 The purchaser may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (Section 69a et seqq. Copyright Act). The purchaser undertakes not to remove manufacturer's details - in particular copyright and notes - and not to change them without our prior express consent.

10.3 All other rights to the software and documentation, including copies, remain with us and the software supplier. The granting of sublicences is not permitted.

10.4 The supply of software does not include its installation, unless otherwise agreed.

11. Data protection

11.1 The data of the purchaser necessary for the business transaction will be stored by us and will only be passed on as part of the contract processing if this is necessary in compliance with the legal data protection regulations.

11.2 For the purpose of executing the order, the purchaser must in particular provide the VAT number issued by the competent tax office for the business premises and all other information required in accordance with the statutory provisions. Otherwise the order will not be processed. The purchaser hereby expressly declares its agreement.

11.3 If we receive confidential data from the purchaser, such as design drawings, machine information or order data, we are entitled to pass this data on to affiliated companies, partner companies and subcontractors for the purpose of fulfilling the order. The partner company will oblige them to maintain confidentiality. Assurance is given that the data will only be passed on to third parties for the purpose of fulfilling the order.

12. Final Provisions

12.1 The law of the Federal Republic of Germany applies to these terms and conditions of business and the entire legal relationship between us and the purchaser.

12.2 Where the purchaser is a merchant or special fund under public law or has no place of jurisdiction in Germany, Ulm is the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. However, we shall also be free to assert claims against the purchaser at its general place of jurisdiction.

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