

General Terms and Conditions status 2020

1. General

These General Terms and Conditions are legally valid for all business relationships, sales and other legal transactions between us and our Customers. Any agreements or amendments deviating therefrom, arrangements made by phone or orally, shall only be legally valid after they have been confirmed by us in writing. The Customer waives Purchase Conditions of his/her own. We shall only be bound by any Customer's Purchase Conditions to the contrary if they have been acknowledged by us explicitly in writing. Our offers are subject to confirmation. Orders shall only be considered as accepted after we have confirmed them in writing.

Dimensions, weights and performance data as well as illustrations are only approximate and non binding unless they have been identified by us explicitly as binding. We reserve the right of ownership and copyright with regard to cost estimates, drawings and other documents. They may only be made accessible to third parties with our explicit written confirmation.

2. Prices and payment

The prices specified in our offers, order confirmations, invoices etc. are binding and are calculated in Euros, plus the value-added tax provided by law. Any increases of manufacturing, material and labour costs which may occur between the date of order confirmation and the delivery date shall be passed on to the client.

In the case of new orders (=follow-up orders), we shall not be bound to our previous prices. Unless anything to the contrary has been agreed explicitly in writing, our invoices shall be due for payment to us without any discount within 10 days after the date of invoice. In case of money transfers and checks, the date of payment shall be the day on which the value thereof is officially credited to our account.

In case of delay in payment, we shall be entitled to demand interest at 8 % over and above the base rate at that time.

The Customer shall only be entitled to offset payments against our claims or assert a right to retention if his/her counterclaim is uncontested or if a valid legal document is existing.

3. Delivery

Deliveries shall be made on account and at the risk of the Customer. Our written order confirmation shall apply as regards the scope of the delivery or other performance.

Delivery periods shall begin after all the documents required for the execution of the order have been received, the down payment has been made and the materials have been provided in proper time, to the extent that these have been stipulated.

Our delivery period shall be considered as complied with if the goods have left the factory within that period. Part shipments of an adequate volume and deviations from the orders up to +/- 10 % shall be admissible.

We shall be released from our obligation to supply for the duration of the impediment or its repercussions due to any circumstances which may render manufacture or delivery of the ordered items impossible or excessively difficult, as well as by all cases of force majeure, measures taken by government authorities, plant interruptions etc., also if they are suffered by our suppliers. Strikes, lockouts, insufficient availability of means of transportation or the obstruction of means of transportation are equivalent to cases of force majeure as mentioned above.

4. Packaging, shipment, transfer of risk

We select the packaging, type of shipment and the transport route to the best of our judgement unless the Customer has given us specific provisions in writing. Shipment shall be effected in all cases on account of and at the risk of the Customer. Even if delivery is performed on a freight prepaid basis, the risk shall pass to the Customer at the time the goods leave our factory or at the time of transfer to the forwarding agent.

At the Customer's written request, the goods shall be insured against damage occurred in storage, due to breakage, in transport and due to fire.

5. Warranty

The Customer undertakes to check the delivered items immediately upon receipt. Any notices of defects shall be asserted to us in writing without delay, at the latest within a preclusive period of 2 weeks upon receipt of the shipment. Timeliness shall not be judged to exist based on the date of dispatch of the written notices of defects by the Customer but on the date of receipt of the written notice of defects in our company. Our liability shall be limited to warranting a reduction of the purchase price, whereas cancellation of the contract and compensation for damages shall be excluded. We shall be entitled to defend a claim for the reduction of the purchase price by repairing or supplying a replacement within a reasonable period. The Customer shall not be released from the agreed payment by notices of defects. Our liability shall be void if the Customer defaults in his/her obligations towards us.

6. Disclaimer of liability

The Contractor shall be liable in case of intent or gross negligence of the Contractor or of one of his/her agents or persons employed in the performance of the contract subject to the legal provisions. In all the other respects, the Contractor shall only be liable subject to the product liability law on account of injuries to life, body or health or on account of culpable breach of essential contractual obligations. However, the claim for damages on account of breach of essential contractual obligations shall be limited to the foreseeable damage which is typical for such contracts. The Contractor's liability shall also be limited in cases of gross negligence to the foreseeable damage typical for the contract, if none of the exceptions specified in sentence 2 of this section applies.

However, the liability for damage caused by the delivery item to the Customer's objects of legal protection – e.g. damage to other objects – is completely excluded. This shall not apply in cases of intent or gross negligence, or on account of liability due to injury to life, body or health. The provisions of the above sections cover compensation for damages besides the performance and compensation for damages instead of the performance, for no matter which legal cause, especially on account of defects, the breach of obligations resulting from the obligatory relation or from tort. They shall also apply to the claim for compensation for expenses made in vain. However, liability for default and the impossibility to perform shall be subject to the following section:

The Contractor shall be liable in the presence of default or impossibility to perform in case of intent or gross negligence of the Contractor or one of his/her agents or persons employed in the performance of the contract subject to the legal provisions. In all cases of negligence, however, the Contractor's liability shall be limited to the foreseeable damage typical for the contract, if there is no injury to life, body or health.

7. Reservation of title

All our deliveries shall be effected subject to the reservation of title. The title to the goods shall only pass to the Customer after he/she has paid all his/her liabilities resulting from any business relationship with us. This also applies if the purchase price for certain deliveries of goods designated by the Customer has been paid. In case of current account transactions, the reservation of title may be used, if applicable, to secure our claim for the outstanding balance.

If bills of exchange or cheques have been used for payment, payment shall be considered to have been effected only after these have been honoured.

In case the Customer does not act in keeping with the contract, especially as regards default in payment, we shall be entitled to take back all the reserved goods; in this case, the Customer shall be required to surrender possession of these goods without any further action. Taking back the reserved goods only implies rescission of the contract if we declare this explicitly in writing or if this is specified by mandatory legal provisions.

Machining and processing shall be effected for us – with the exclusion of the acquisition of ownership pursuant to § 950 BGB (*German Civil Code*) – without binding us. The processed goods are used to secure our claims to the amount of the invoice value of the processed reserved goods.

If our goods are processed by the purchaser together with other goods not belonging to us, we shall be entitled to the new object in the proportion of the invoice value of the processed reserved goods to the acquisition price of the other processed goods. In all the other respects, the new object shall be subject to the same stipulations as the reserved goods. In case of resale of the reserved goods, the claims resulting therefrom for the purchaser shall be assigned to us as of now. This assignment shall also apply if the reserved goods have been machined or processed previously by the purchaser, or if they are re-sold to several buyers. The assigned claim is used for our security to the amount of the invoice value of the goods sold in each individual case.

If the goods are re-sold by the purchaser together with other goods which are not belonging to us, either without or after machining or processing, the assignment shall only apply to the amount of the value of the goods in question based on our invoice.

8. Industrial property rights

In case of development and design as well as in case of development and design of parts by the buyer, the buyer shall be liable to the supplier for the supplies and services ordered being free from third-party property rights, shall not hold the supplier responsible for all corresponding claims and shall refund him/her for any damage thus incurred.

9. Place of performance and venue

The place of performance and legal venue for all claims arising from the contractual relationship as well as from bills of exchange and cheques for both parties shall be Nabburg or the court having local jurisdiction for Nabburg.

10. Oral collateral agreements, date of taking effect

Any specifications or collateral agreements other than contained in the above conditions or in our order confirmation shall only be valid if confirmed by us in writing. Should one or several provisions be invalid, the other provisions remain nevertheless in force.

The completely or partially invalid stipulation should be replaced by a provision whose economic result is as close as possible to that of the invalid one.

emz Hanauer GmbH & Co. KGaA
P.B. 13 60 –
D-92503 Nabburg - Germany