

GENERAL PURCHASING TERMS

I. GENERAL

The legal relationships between the supplier and ourselves, Emil Hembeck GmbH & Co. KG, are governed by these purchasing terms and any other agreements. The supplier's general terms of trade do not apply, even if we do not contradict these in a stand-alone case.

Unless regulated otherwise in these conditions, the delivery contract, any changes, declarations and auxiliary agreements on its termination and all other declarations and notifications require the written form. If the supplier fails to accept an order within two weeks of its receipt, we are entitled to revoke the order at any time.

II. SCOPE OF DELIVERY

1. The supplier shall ensure that it knows all the main data and circumstances of the deliveries that are required to fulfil its contractual obligations. It shall ensure that its deliveries include all the services necessary for reliable and economic use of the goods in accordance with regulations, that they are suitable for the intended purpose and correspond to the state-of-the-art. When providing its services, the supplier shall observe all pertinent standards, laws and legislation, in particular those concerning environmental protection, hazardous materials/goods and the prevention of accidents, likewise the generally recognised rules of technical safety and industrial health protection.
2. Within the bounds of reason, we are entitled to demand that the supplier makes changes to the design and execution of the delivery item. The supplier must then make the changes within a reasonable deadline. Reasonable arrangements shall be mutually agreed with regard to the effects, in particular on higher or lower costs and on the delivery dates.

III. PRICES, CONDITIONS OF PAYMENT

1. Unless agreed otherwise, prices stated in the order are fixed prices.
2. Unless agreed otherwise in writing, deliveries shall be made free to the place of use.
3. Unless agreed otherwise, the fixed prices agreed include the costs of packaging. Goods must be packed in such a manner that they cannot be damaged during transport. The supplier's obligation to take back packaging is determined by legal provisions.
4. Unless agreed otherwise in writing, no remuneration is paid for submissions, presentations, negotiations and/or for preparing offers and projects.
5. The purchase price is payable upon provision of performance conform to contract and presentation of a proper invoice able to be reviewed. If deliveries are accepted ahead of schedule, however, the due date starts at the earliest at the agreed delivery date. We choose the method of payment. Emil Hembeck GmbH & Co. KG is granted a payment period of 30 days. In case of payment within 14 days of receipt of an invoice able to be reviewed, although at the earliest after receipt of goods, the supplier shall grant a discount of 3 %, within 20 days a discount of 2 %, unless agreed otherwise. In case of part deliveries, payment is not due until the last delivery has been made.
6. The supplier is not entitled to assign the claims it accrues against us or have these collected by third parties. The regulation under § 354a HGB remains unaffected.

7. Reservations of title are not binding unless they have been agreed in writing beyond the supplier's terms of trade.

IV. DELIVERY PERIOD

1. The delivery period stated in the order is binding. If goods are delivered before the agreed date, Emil Hembeck GmbH & Co. KG reserves the right to return them at the supplier's expense and risk. If we do not return goods delivered prematurely, they are stored by Emil Hembeck GmbH & Co. KG at the supplier's expense and risk.
2. The supplier is obliged to notify Emil Hembeck GmbH & Co. KG without delay, in writing, if circumstances occur or are recognisable which jeopardise the agreed delivery date.
3. In case of default of delivery, Emil Hembeck GmbH & Co. KG is entitled to demand flat-rate default damages of 1% of the value of the delivery for each completed week of default, although not totalling more than 10 % of the value of the delivery; further-going legal claims are reserved. Any contractual fines paid shall be offset against claims to damages. A contractual fine can be pursued up until the goods delivered too late have been paid for.

V. ACCEPTANCE / READINESS TO DELIVER

1. We have the right to adapt dates and quantities to meet our actual requirements at any time.
2. Framework and call-up orders solely oblige us to accept the quantities allocated for a period of 4 weeks. The period is extended accordingly if further-going manufacturing releases have been issued.
3. In principle, the supplier is responsible for material dispositions which constantly exceed a period of 8 weeks. A duty of acceptance exists only insofar as longer material releases have been agreed.
4. Over deliveries and under deliveries are admissible only after specific agreement and shall be determined by us in a part-related manner.
5. Part deliveries are admissible only at our express request or with our express approval.
6. The supplier assures that, in principle, it is able to produce the agreed quantities and can deliver these in such a way that they can be utilised immediately in series production.
7. The supplier warrants a basic reliability of supplies on the basis of the requirements announced to and agreed with it. Its arrangements must allow flexible adaptations to be made at short notice.

VI. RELEASE FROM THE DUTY OF PERFORMANCE, WITHDRAWAL FROM CONTRACT

1. Acts of God release the parties from their duties of performance for the duration of the hindrance and in the scope of its effects. Within the realms of reason, the parties are obliged to provide the information required without delay and to adapt their obligations in good faith to the changed circumstances.
2. In case deliveries are hindered over a longer period, if a moratorium on payments is issued, insolvency proceedings are opened or the opening of such proceedings is rejected due to lack of mass or comparable proceedings are launched against one of the parties, the other party is entitled to withdraw from that part of the contract that has not been fulfilled.
3. The legal provisions concerning withdrawal remain unaffected.

VII. QUALITY MANAGEMENT / INSPECTION OF INCOMING GOODS

1. The supplier shall constantly monitor the quality of its deliveries and services. It shall install and maintain a quality system in accordance with ISO 9001:2000, VDA 6.1 or QS 9000 or some other standard agreed with us. Changes to the delivery item require our permission in advance. The supplier shall keep written records of when, in what way and by whom the faultless manufacture of the delivery has been ensured for all the products it delivers to us. These records shall be retained for at least 12 years and presented to us on request. Upstream suppliers shall be obliged in the same manner.
2. We inspect incoming goods only with regard to outwardly recognisable damage and non-conformities in identity and quantity able to be recognised from the outside. We shall complain of such deficits without delay. We reserve the right to undertake further-going inspections of incoming goods. Otherwise we shall complain of defects as soon as these have been discovered in the course of regular operations. The supplier thus waives the argument of a belated complaint of defects. If non-conformities are established, we are entitled to return the complete delivery.

VIII. INSPECTION OF DEFECTS – WARRANTY

1. If the delivery item is defective, our claims are governed by legal provisions, unless the provisions below regulate something to the contrary. If operational safety is endangered, if there is a risk of disproportionately high losses or in order to maintain our capacity to deliver to our buyers, we are entitled - after informing the supplier - to undertake rework ourselves or have this done by third parties. Costs incurred on this account are borne by the supplier. The supplier is liable for all damages and expenses that we incur directly or indirectly due to non-conformities in the article. Expenses for inspections of incoming goods beyond the normal extent are also subject to recompense, insofar as at least parts of the delivery have been identified as defective. The same applies to a partial or a complete inspection of deliveries received in the course of our further operations or those of our buyers. Insofar as the supplier deploys third parties for the provision of services, it is liable for these in the same way as for its vicarious agents.
2. The supplier shall also refund expenses incurred by our buyers or by us in advance or in connection with defect liability events for early prevention - warding off or reducing - of losses (e.g. call-back campaigns).
3. The supplier shall refund the expenses which we are obliged by law to pay to our buyers and which are attributable to defects in its delivery.
4. Unless regulated otherwise by overriding laws, the supplier is liable for defects which occur within 36 months from our receipt of the delivery or from its acceptance. In case of subsequent fulfilment, the deadline is extended by the period during which the delivery item cannot be used conform to contract. The same deadlines apply to subsequent fulfilment. The limitation by time of claims due to defects starts at the earliest two months after the claims of the end customer have been fulfilled. This suspension of expiry ends at the latest 5 years after delivery to us.
5. The supplier is obliged to maintain adequate insurance coverage for the aforesaid risks for the duration of the delivery relationship. It shall submit evidence of such upon request.

IX. OWNERSHIP, PROVISION OF MATERIALS, TOOLS

1. If Emil Hembeck GmbH & Co. KG provides and/or supplies materials, these remain the property of Emil Hembeck GmbH & Co. KG. They are processed or reshaped by the supplier on our behalf. If the materials are processed with other objects not belonging to us, we acquire co-ownership of the new item in the ratio of the value of our items to the other objects processed at the time of processing.
2. Tools provided by Emil Hembeck GmbH & Co. KG remain the property of Emil Hembeck GmbH & Co. KG; the supplier is obliged to deploy the tools solely to produce the goods ordered by Emil Hembeck GmbH & Co. KG. The supplier is obliged to insure the tools to their as-new value - at own expense - against fire and water damage and against theft. It is obliged to perform any maintenance and inspection work required at its own expense. The supplier shall notify us immediately if any problems occur; if it culpably fails to do so, our claims to damages remain unaffected.

X. PROTECTED RIGHTS, CONFIDENTIALITY

1. The supplier is obliged to treat in strict confidence all diagrams, drawings, calculations and other documents and information it receives. It may not disclose such to third parties without express approval from Emil Hembeck GmbH & Co. KG. The obligation of secrecy also includes personal data. The obligation of secrecy also applies after this contract has been processed or terminated.
2. The conclusion of contract shall be treated in confidence. The supplier's promotional materials may not refer to the business relationship with us unless we have given our written permission. Emil Hembeck GmbH & Co. KG and the supplier are obliged to treat all non-public commercial or technical details which become known to them through the business relationship as operating secrets. Sub-suppliers shall be obliged accordingly.

XI. PLACE OF JURISDICTION AND FULFILMENT

1. Insofar as the supplier is a merchant, the place of jurisdiction is the registered headquarters of Emil Hembeck GmbH & Co. KG. We are nevertheless entitled to take action against the supplier at the court responsible for its registered headquarters.
2. Unless regulated otherwise by the order/confirmation of order, the place of fulfilment is the registered headquarters of Emil Hembeck GmbH & Co. KG.
3. German law shall prevail over the contractual relationship to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sales of Goods (CISG).

XII. BINDING NATURE OF THE CONTRACT

Should individual provisions in these purchasing terms be legally unworkable in full or in part, this shall not affect the validity of the remaining provisions.

Emil Hembeck GmbH & Co. KG
58509 Lüdenscheid
Germany

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