

General Conditions of Delivery and Payment of the Emitec Companies* in Germany (Scope of Application: China Business)

CONVENIENCE TRANSLATION

Applicable to transactions with enterprises, legal entities organised under public law and special funds under public law

1. General

- 1.1. Our Conditions of Delivery and Payment shall apply exclusively; we do not recognise any of the customer's general terms and conditions of business that conflict with or deviate from or merely supplement our Conditions of Delivery, as a whole, unless we expressly consent to their validity in writing. Our Conditions of Delivery and Payment shall also apply even if we make deliveries being aware of other conditions of the customer that deviate from our Conditions of Delivery.
- 1.2. Our Conditions of Delivery and Payment shall also apply to all future transactions with the customer.

2. Conclusion of Contract and Amendments

- 2.1. Our offers shall be non-binding and subject to confirmation.
- 2.2. Unless otherwise agreed in writing, the documents belonging to the offer, such as descriptions, illustrations, drawings, specifications of weight and dimensions, shall be binding only if they are designated as such explicitly and in writing.
- 2.3. If custom-made articles are ordered, excess or short deliveries shall be permissible.
- 2.4. Unless otherwise agreed, cost estimates shall be remunerated.
- 2.5. Oral agreements made after conclusion of a contract, particularly subsequent amendments and supplements to our Conditions of Delivery – including this stipulation requiring written form – and side agreements of any kind shall likewise be valid only if confirmed by us in writing.

3. Delivery

- 3.1. The delivery period shall be indicated in the agreements between the contracting parties. Requisite for compliance with the delivery period by us shall be that all commercial and technical issues between the contracting parties have been resolved and that the customer has fulfilled all its

obligations, such as presenting the necessary official certificates or permits or making a down-payment. If this is not the case, the delivery period shall be extended appropriately. This provision shall not apply if we are responsible for the delay.

- 3.2. Compliance with the delivery deadline shall be subject to our having been able to obtain the correct supplies in due time.
- 3.3. The delivery period shall be deemed to have been complied with if, by the end of this period, the goods have left our works or are ready for dispatch and notification of such readiness has been provided. If acceptance is required, the acceptance date shall be definitive, or, alternatively, the date on which the customer is notified that the contractual goods are ready for acceptance – unless acceptance is refused for legitimate reasons.
- 3.4. If the customer does not accept the goods despite the fact that they have been made available on the due date and despite a proper offer on our part, we shall charge the costs incurred by us due to the delay to the customer.
- 3.5. If non-compliance with the delivery period can be attributed to *force majeure*, industrial action, particularly strike and lockout, shortage of raw materials or natural disasters, the delivery period shall be extended appropriately. We shall notify the customer of the beginning and end of such circumstances as soon as possible.
- 3.6. Partial deliveries shall be permissible to the extent that this can reasonably be expected of the customer.
- 3.7. Delivery shall be made ex our works, EXW (Incoterms 2010).

4. Price and Payment

- 4.1. In the absence of any special agreement, prices shall be in euros ex works including loading at the works and packaging (EXW Incoterms 2010). VAT at the currently applicable statutory rate shall be added to the prices.
- 4.2. In the absence of any special agreements, payments shall be rendered net to our payment office within 30 days as of the invoice date.

- 4.3. The customer shall be entitled to retain payments or to set-off payments against counter-claims only to the extent that such counter-claims are undisputed or *res judicata* or based on a claim for the costs of remedying defects or additional production costs.
- 4.4. If the customer falls into default with payment, we shall be entitled to declare all our claims immediately payable.

5. Passing of Risk

- 5.1. The risk shall pass to the customer when the goods have left our works, even if and to the extent partial deliveries are made or we additionally assumed other services, such as the costs for dispatch or supply and erection/assembly. If acceptance is required, the risk shall pass to the customer when the acceptance procedure has been carried out. The acceptance procedure shall be carried out on the acceptance date without delay or, alternatively, after we have given notification that the goods are ready for acceptance. The customer may not refuse acceptance because of an insignificant defect.
- 5.2. If dispatch or acceptance are impossible or delayed owing to circumstances for which we are not responsible, the risk shall pass to the customer on the date on which notification is given that the goods are ready for dispatch or acceptance. We undertake to take out insurance as required by the customer at the customer's expense.

6. Retention of Title

- 6.1. We shall retain title to the goods until all payments arising from the entire business relationship have been received. This shall apply even if some or all of our receivables have been included in a current invoice, and the balance has been established and acknowledged. If we accept bills of exchange and cheques, payment shall not be deemed received until they have been honoured or cashed.
- 6.2. As long as title to the goods is retained, the customer may not transfer title to the goods as security to third parties. In the event of attachments and seizures or other third-party dispositions, the customer shall inform us of this without delay and point out our ownership to the third party.

- 6.3. If the customer breaches the contract, in particular, in the event of default, we shall be entitled to repossess the goods after setting a deadline, and the customer shall be obliged to surrender them. If we repossess the goods, this shall be deemed rescission of the contract.
- 6.4. Upon application for commencement of insolvency proceedings on the customer's assets, we shall be entitled to rescind the contract and demand the immediate return of the goods.
- 6.5. Any processing and treatment of the goods shall be carried out for us by the customer without this generating any obligations for us. If the goods become an integral part of another object by combination or mixing or if a new object is produced by processing or remodelling, the customer hereby transfers its ownership or co-ownership of such object to us and undertakes to hold the object in safekeeping on our behalf free of charge with the diligence of a prudent businessman. In the event of a resale, Article 6.5 shall apply analogously. If co-ownership arises, our share shall correspond to the portion resulting from the ratio of the value of the goods delivered by us to the value of the new object.
- 6.6. We undertake to release the security to which we are entitled where its value exceeds the receivables to be secured by more than 20 per cent.
- 6.7. To the extent that the legal system of a state to which the goods are to be delivered provides for special requirements for the validity of retention of title, particularly also vis-à-vis the customer's creditors, it shall be the customer's responsibility to take all steps without delay to ensure that the retention of title takes effect and remains in effect until payment of the full purchase price. The customer shall bear any costs that this may entail.
- 6.8. If the legal system of a state to which the goods are to be delivered does not permit retention of title, but allows us to reserve other rights relating to the goods, we may exercise all rights of this kind. The customer shall be obligated to cooperate in measures that we wish to take in order to protect our ownership rights or other rights relating to the goods.

7. Liability for Defects in Quality and in Title

- 7.1. Claims based on defects shall require that the customer – to the extent that the customer is a businessman, legal entity organised under public law or a special fund under public law – has properly fulfilled its duties to inspect the goods and report defects pursuant to §377 of the German Commercial Code (*HGB*).
- 7.2. Defects in the delivered object shall be remedied by us after we have been notified by the customer of such defects. This shall be done free of charge by subsequent improvement or delivery of a replacement at our discretion. In the event of delivery of a replacement, the replaced parts shall become our property, and the customer shall be obliged to surrender the defective goods. The customer shall give us sufficient time and opportunity – after consultation with us – to carry out whatever subsequent improvement and deliveries of replacements we deem necessary; otherwise we shall not be liable for any ensuing consequences.
- 7.3. If the defect cannot be remedied within the reasonable period or if the subsequent improvement or delivery of a replacement must be regarded as having failed for other reasons, the customer may, at its discretion, demand a reduction of remuneration (price reduction) or rescind the contract. A failure of subsequent improvement is not to be assumed until we have been given sufficient opportunity for subsequent improvement or delivery of a replacement without the desired success being achieved, until subsequent improvement or delivery of a replacement is no longer possible, until this is refused or unreasonably delayed by us, until there are justified doubts as to the prospects of success or until this is unacceptable for other reasons. If merely an insignificant defect is shown to exist, the customer shall be entitled only to a price reduction. Otherwise, the right to reduce the price shall be excluded.
- 7.4. We explicitly accept no liability for defects in quality in the following cases: unsuitable or inappropriate use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance and unsuitable operating resources.
- 7.5. Inappropriate subsequent improvement by the customer or a third party does not give rise to any liability on our part for the

ensuing consequences. The same shall apply to changes made to the goods without our prior approval.

- 7.6. If the use of the goods leads to an infringement of national intellectual property rights or copyrights, as a rule, we shall, at our expense, procure the right of further use for the customer or modify the goods – in a way that is acceptable for the customer – so that the infringement no longer exists. If this is not possible on economically reasonable terms or within a reasonable period, the customer and we shall be entitled to rescind the contract. Moreover, we shall indemnify the customer from claims raised by the holders of the proprietary rights that are undisputed by us or *res judicata*. Subject to Article 8, the above-specified obligations on our part shall be conclusive for infringements of proprietary rights or copyrights. The customer shall be obligated to notify us without delay of any asserted claims based on infringements of proprietary rights or copyrights and to assist us to an appropriate extent in the defence against the asserted claims or to enable us to take the modifying measures pursuant to the above conditions.

8. Liability

- 8.1. We shall assume unlimited liability for intentional and grossly negligent conduct as well as for culpable injury to life, limb and health to the extent such injury was caused by us, our executive employees or vicarious agents. Moreover, we shall be liable within the framework of the statutory provisions in the event of liability under the German Product Liability Act (*Produkthaftungsgesetz*), for assumption of guarantees, of a procurement risk and in other cases of strict liability (no-fault liability).
- 8.2. In the event of simply negligent breach of major contractual duties, that is, such duties the proper performance of which the customer relies on and may rely on, as a rule, for execution of the contract, our liability shall be limited to the reasonably foreseeable damage typical of this type of contract.
- 8.3. Further claims shall be excluded. Any exclusion or limitation of our liability shall also cover the personal liability of our executive employees and vicarious agents.

9. Time-Barring

All claims to which the customer is entitled based on defects shall become time-barred within 12 months as of delivery unless otherwise provided for in this clause. Other claims shall become time-barred within six months after the customer has gained positive knowledge of such claims. With regard to intentional, grossly negligent or fraudulent conduct and in the event of claims under the Product Liability Act and based on culpable injury to life, limb and health – also to the extent such conduct caused a defect or a defect caused a corresponding injury – the statutory limitation periods shall apply. They shall also apply to defects of buildings or to goods that have been used in accordance with their normal use for a building in which they have led to a defect.

10. Miscellaneous

10.1. The contractual relationships shall be governed by the laws of the Federal Republic of Germany only, excluding conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

10.2. If we take legal action abroad, the customer shall be obliged to reimburse the costs (including any lawyers' fees, court costs and enforcement costs) of justified legal action to us.

10.3. Any dispute arising out of or in connection with this Conditions of Delivery and Payment or the Contract or its validity shall be resolved through friendly consultation. If no agreement can be reached within 30 (thirty) days after the dispute has arisen, the dispute shall, to the exclusion of the ordinary courts of law, only be submitted for arbitration to the Swiss Chambers' Arbitration Institution and shall be decided according to the Swiss Rules of International Arbitration of the said arbitration commission. The venue of the arbitration shall be Geneva, Switzerland. All arbitration proceedings shall be held in English language.

The arbitration tribunal shall consist of 3 (three) arbitrators. The Parties shall each appoint 1 arbitrator. The third arbitrator, who shall as chairman, shall be jointly appointed by the above-mentioned arbitrators. In one Party fails to appoint its arbitrator within 1 (one) month after receipt of the notice of arbitration from the arbitration commission

or in case the arbitrators fail to reach an agreement on the chairman within 1 (one) month after they have been appointed, the respective arbitrator or the chairman shall be appointed by the Chairman of the Swiss Chambers' Arbitration Institution.

The arbitration award shall be final and binding on both Parties. The arbitration fees and the reasonable expenses incurred by the winning party, including lawyer's fees, shall be borne by the losing Party except awarded otherwise by the arbitration tribunal. During the arbitration proceedings, the Parties shall continue to perform this Agreement except for the provisions which are under dispute.

10.4. We shall be entitled to transfer our rights and obligations under this contract to another affiliated group company in Germany or abroad. In such case, we will discuss the contractual amendments necessitated by this with the customer.

10.5. Should individual parts of these General Conditions of Delivery and Payment be legally invalid, this shall not affect the validity of the other provisions.