

General Terms and Conditions for Samples and Developments of the Emitec Companies* in Germany

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

1. General

- 1.1. These Terms and Conditions shall apply to all deliveries of samples and developments with and without consideration. Our General Conditions of Delivery and Payment shall apply to any other deliveries and services. Our Terms and Conditions 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 Terms and Conditions, as a whole, unless we expressly consent to their validity in writing. Our Terms and Conditions shall also apply even if we surrender sample products being aware of other conditions of the customer that deviate from our Terms and Conditions.
- 1.2. Our Terms and Conditions shall also apply to all future deliveries of samples and developments.

2. Conclusion of Contract, Amendments, Content

- 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. Oral agreements made after conclusion of a contract, particularly subsequent amendments and supplements to our Terms and Conditions – 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 sample or development has left our works or is 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 sample or development 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 accordingly. 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 euro 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 sample or development has 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, 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 sample or development 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. The customer may not transfer title to the sample or development as security. 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 sample or development after setting a deadline, and the customer shall be obliged to surrender it. If

we repossess the sample or development, 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 sample or development.

7. Requirements Placed on Testing

- 7.1. We shall surrender the sample or developments to the customer exclusively for trial and testing purposes. The sample product may under no circumstances be used within the framework of the production intended for the customer's clients or built into products to be delivered to third parties.
- 7.2. The customer must ensure that a disruption of its production and business processes by the use of the sample product and the tests conducted with it is ruled out to the greatest possible extent. To this end, the customer must provide a testing environment separated from all and any production facilities and must conduct tests only there.
- 7.3. If the customer conducts tests during which the sample or development may catch fire or otherwise pose a threat to objects and/or persons, the customer must ensure that such objects and/or persons are sufficiently protected from damage/injury.

8. Liability for Defects in Quality and in Title

- 8.1. If the sample or development is surrendered to the customer without consideration, its claims on the basis of defects in quality and in title shall be restricted to the rights under § 523, § 524 of the German Civil Code (*BGB*). The following provisions shall apply in the event of surrender with consideration.
- 8.2. Because the testing phase of the sample or development has not yet been concluded and the sample or development is not yet ready for serial production, we cannot assume responsibility for the faultlessness of the product, particularly for the product's suitability for the intended purpose of the customer's future final product. The only purpose of delivering the sample or developments is the performance of tests by the customer.
- 8.3. With regard to the sample or development surrendered to the customer, our liability for

defects shall be restricted to subsequent performance – to be rendered at our discretion by subsequent improvement or delivery of a replacement free of charge – and in the event of its failure and rescission of contract declared by the customer, to repayment of the purchase price. 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.

- 8.4. The right to price reduction is ruled out.
- 8.5. We explicitly accept no liability for defects in the sample or development in the following cases: unsuitable or inappropriate use, faulty assembly or commissioning by the customer, natural wear and tear, faulty or negligent treatment, improper maintenance and unsuitable operating resources.
- 8.6. If the use of the sample or development 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 sample or development – 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 9, 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.

9. Liability

- 9.1. We shall be liable without limitation for intentional and grossly negligent conduct and for culpable injury to life, limb or health to the extent the latter were caused by us, our executive employees or vicarious agents, to the extent the loss was not only realised or increased due to the fact that the customer used the sample or the development outside the intended purpose.

- 9.2. 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).
- 9.3. 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. In the event of simple negligence, we shall be liable for loss of profit or loss of production only if the sample or development was used for its intended purpose according to these Terms and Conditions or if the customer can prove that the relevant damage would have occurred also in the event of use for its intended purpose.
- 9.4. 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.

10. 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, at the latest, however, within the statutory limitation periods. 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 samples or developments that have been used in accordance with their normal use for a building in which they have led to a defect.

11. Miscellaneous

- 11.1. 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).

- 11.2. 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.
- 11.3. If the customer is a businessman, the place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships that are based on these Terms and Conditions shall be the registered office of *Emitec Gesellschaft für Emissionstechnologie mbH** in 53797 Lohmar. We shall also be entitled to sue the customer at our discretion before the court at the customer's registered office or branch office.
- 11.4. 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.
- 11.5. Should individual parts of these Terms and Conditions be legally invalid, this shall not affect the validity of the other provisions.