

# **General Purchasing Terms and Conditions**

of EMKA Beschlagteile GmbH & Co. KG, Langenberger Straße 32, 42551 Velbert/Germany,  
**(Buyer)**

## **I. General**

1. The following Purchasing Terms and Conditions of the Buyer are exclusively valid. Deviating stipulations of the supplier shall not be accepted by the Buyer.
2. The Purchasing Terms and Conditions shall also apply exclusively if the Buyer orders, accepts or pays goods / services knowing of conflicting or deviating terms of the supplier.

## **II. Purchase Orders**

1. Purchase Orders shall only be binding if they are placed by the Buyer in writing. Verbal agreements, subsidiary agreements or also retroactive amendments and other modifications shall require written confirmation by the Buyer to be valid.
2. Quotations shall be the binding basis for the goods delivered / services provided during its indicated validity period. Should the quotation not stipulate any validity period, a minimum validity period of three months from receipt of the quotation shall apply.
3. Unless otherwise agreed in writing, quotations are free of charge.
4. In business dealings with the Buyer the Supplier shall have to give at least the following data: PO number, point of unloading, full item / piece designation, quantities and quantity units as well as the VAT ID number in case of imports from the EU.

## **III. Prices**

All prices are fixed prices and include all services the supplier is required to provide to carry out his contractual duties.

#### **IV. Scope of Supply and Services, Title and Rights of Utilisation**

1. The Supplier shall transfer the unencumbered title of the subject matter of the contract to the Buyer. This includes, without limitation:
  - The Supplier has to transfer the title of all the technical documents (also suitable for sub-suppliers) as well as other documents required for the manufacture, maintenance and operation. Unless agreed otherwise, all the documents have to be written in German.
  - Regarding all the goods and services eligible for industrial protection, the Supplier shall assure the Buyer of having the geographically, timely and content-wise unrestricted, non-exclusive and irrevocable right of utilisation of all known and unknown types of utilisation and shall grant this to the Buyer.
  - The Supplier warrants that he strictly complies with the stipulations of the Arbeitnehmererfindungsgesetz (ArbnErfG) (Law on employee inventions) and utilises relevant inventions in due time.
2. If the Supplier has to deviate from the agreed scope of supply, additional charges or time-related changes can only be made after receiving the written consent of the Buyer.

The Buyer shall be entitled but not obliged to take delivery of shortage quantities unless otherwise agreed by the parties. The Buyer is furthermore entitled to reject surplus quantities at the expense, risk and cost of the Supplier.

#### **V. Quality Assurance**

The supplier warrants to maintain a quality assurance system that is suitable in type and scope and is state of the art. Records of his quality controls have to be provided to the Buyer on request.

#### **VI. Deadlines and Terms**

1. Agreed terms shall be binding, in case of default, the statutory regulations apply. The Buyer shall be entitled to reject deliveries before due date.

2. When delays in delivery are detected, the Supplier shall have to notify the Buyer immediately in writing about the reasons as well as the anticipated duration of the delay.
3. Accepting a delayed delivery without giving notice of the delay shall not imply a waiver of the damages the Buyer is entitled to.

## **VII. Delivery and Storage**

1. Provided the parties have agreed on Incoterms, these apply in the latest version as long as they do not conflict with the stipulations of these General Purchasing Terms and Conditions or the other individual agreements. Unless agreed otherwise, the delivery is made delivered/effected/ duty paid according to Incoterms to the place of performance indicated in the Purchase Order.
2. Deliveries/ provided services have to be made to the indicated address. The delivery/provision of services to another place of receipt than indicated shall result neither in a fulfilment nor in a transfer of risks at the expense of the Buyer, even if this place accepts the delivery/provision of services. Additional costs for the delivery to the wrong place shall be borne by the Supplier.
3. Partial deliveries shall be inadmissible without the express consent of the Buyer.
4. If weighing is required, the values determined by the calibrated scales of the Buyer are authoritative.
5. If the Supplier claims the return of the required packaging material, this shall expressly be agreed upon between the parties. Without a respective note, the Buyer shall dispose of the packaging material at the cost of the Supplier, the claim of the Supplier for return shall cease.
6. The Supplier shall warrant that the statutory regulations are fully complied with during transportation.

## **VIII. Delivery of Goods / Provision of Services**

1. The Supplier shall not be entitled to transfer contractual obligations fully or partially to third parties without the consent of the Buyer.

2. In case of fulfilment of the contract by third parties the Supplier shall be obliged to indicate the vicarious agents to the Buyer.
3. With the exception of claims that have been identified or acknowledged as legally binding, the Supplier shall not be entitled to cede contractual or statutory claims against the Buyer.

### **IX. Termination**

1. The Buyer shall be entitled to terminate the contract fully or partially. In case of a termination, he shall be obliged to compensate for all deliveries made / services provided until then according to Section 649, paragraph 2, BGB (German Civil Code). Further claims by the Supplier shall be excluded.
2. The Buyer shall have the right to terminate the contract for cause without notice if a significant deterioration of the financial situation of the Supplier occurs / is likely to occur and thus the fulfilment of the contract by the Supplier is at risk.

### **Billing / Offsetting**

1. The Supplier can only offset with undisputed or legally binding outstanding accounts.
2. The prerequisite for the settlement of any outstanding accounts is the billing according to Section 14 UStG (VAT Act) An invoice which has been duly made out shall become due 30 days after delivering the goods/ rendering the services and receipt of invoice.

### **XI. Warranty for Defects**

1. The Supplier shall warrant regardless of negligence or fault that his goods / services have the agreed appearance and workmanship and serve the intended purpose. Expenditure of the Buyer due to flawed goods / services shall be compensated by the Supplier.
2. The claims of the Buyer due to faulty goods / services shall start to lapse only with the full delivery of goods / services or as from the acceptance at the earliest.

3. Claims for defective goods lapse not earlier than after 36 months provided there are no longer statutory limitation periods. For new deliveries / provision of services, the limitation periods shall start anew; in case of rectification of defects only, if it is the same defect or the consequences of a faulty rectification of defects.
4. The Buyer shall, provided the commercial inspection and defect notification requirement according to Section 377 HGB (German Commercial Code) applies, notify the Supplier of apparent defects within ten (10) days from delivery. The Buyer shall notify of defects detected only later within ten (10) days after detection. For the timeliness the despatch of the notice of defects at the Buyer is definitive.
5. The Supplier waives the objection of delayed notices of defects (Section 377, 381, paragraph 2 HGB) for all defects other than apparent ones.
6. The Supplier shall be obliged to remedy all deficiencies that he has been notified of in due time immediately and in a cost-neutral way for the Buyer. All costs for remedying deficiencies shall be borne by the Supplier including all incidental costs according to the statutory regulations. If the Supplier is in default regarding its obligations of remedying the deficiencies within a reasonable deadline set by the Buyer, the Buyer shall be entitled to remedy the deficiencies himself in the way of substitute performance and demand reimbursement along with possibly needed advance payments from the Supplier. The statutory rights to terminate the contract, to reduce the purchase price or claim damages shall remain unaffected.

## **XII. General Liability, Insurance**

1. Unless agreed otherwise in these General Purchasing Terms and Conditions, the Supplier shall bear liability according to the statutory regulations.
2. The Supplier shall bear liability for damages for which he and his vicarious agents and performing agents are answerable, an adequate third-party liability insurance shall be kept at his expense. The limit of indemnity per occurrence of damage shall be provided to the Buyer on request. The contractual and statutory liability of the Supplier shall remain unaffected by the scope and amount of insurance coverage.

## **XIII. Warranties and Representations**

1. The Supplier shall warrant to comply with the stipulations of the German Minimum Wage Act (MiLoG / Mindestlohngesetz) and shall indemnify the Buyer from and against any third-party claims, in particular from those according to Section 13 MiLoG, upon first request. In the same way, the Supplier shall warrant that mandatory obligations for paying contributions to social insurance carriers, employer's liability insurance and other bodies such as the mutual institutions of the bargaining partners mentioned in Section 8 AEntG (German law concerning the posting of employees abroad).
2. The Supplier shall verify the compliance with the prerequisites according to XIII. 1. by the sub-suppliers or temporary employment agencies and commit them in writing to the compliance thereof. Furthermore, he shall procure the written confirmation by them that they demand the compliance with the requirements by the sub-suppliers or temporary employment agencies commissioned by them.
3. Should third party claims be made against the Buyer in view of the goods / services provided by the Supplier, the Supplier shall exempt the Buyer from such claims in full on first request. The Supplier shall furthermore be obliged to reimburse reasonable legal fees and court costs of the Buyer.
4. Moreover, the Supplier shall be liable vis-a-vis the Buyer for any damage incurred due to the culpable non-compliance with the obligations according to XIII 1. and XIII 2.
5. Illegal employment of any kind shall be refrained from. The Supplier shall commit himself to comply with any statutory regulation relevant for him as well as the international standards of ethical behaviour.

#### **XIV. Place of Jurisdiction**

Place of jurisdiction is the domicile of the Buyer or according to his preferences also the General Place of Jurisdiction of the Buyer.

#### **XV. Applicable Law**

For any privity of contract between the Supplier and the Buyer, the Law of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11/04/1980 in its current version.

## **XVI. Advertising and Confidentiality**

1. The use of the company name of the Buyer shall be as prohibited as well as the use of its mark description and combination trade mark. Naming the Buyer as a reference customer shall only be admissible after the written consent of the Buyer.
2. The Supplier shall warrant to maintain absolute silence about all operational processes, plants, machines, documents and installations at the Buyer and its customers that he learns about in the context of his activities for the Buyer, also after concluding the contractual relations. The same obligation shall apply for the vicarious agents and performing agents of the Supplier; these shall be committed to this by the supplier accordingly.

## **XVII. Data Protection**

The Buyer points out according to Section 33 BDSG (German Data Protection Act) that he will store the data of the Supplier on the basis of the German Data Protection Act (BDSG) for the execution of the contract.

## **XVIII.**

In case that the Supplier shall be provided with these Terms in another language, in case of doubt only the German version shall apply.

## **XIX. REACH Clause / RoHS Clause**

1. For all materials, formulations and products delivered to the Buyer, the resulting requirements and measures of the REACH regulation (1907/2006/EC) have to be fulfilled by the Supplier.
2. The Supplier shall ensure that the subject matters of the contract to be supplied by him fully correspond to the requirements of the RoHS Directive (2011/65/EU) in its current version.

## **XX. Severability Clause / Text Form**

Severance of any provision in this contract shall in whole or in part be held to any extent to be unlawful or unenforceable under any enactment or rule of law, the remainder of the provisions shall stand in full force and effect. The same shall apply for the corresponding contract. As far as in the above terms for declarations by the parties the written form is required, the text form shall also suffice, provided the law does not expressly require the requirement for written form.

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