

## **General Terms and Conditions of EMKA**

### **1. Exclusive application and acceptance of our General Terms and Conditions of Business**

**1.1** All our offers are based on our General Terms and Conditions. General Terms and Conditions of the customer or any specifications of the customer deviating from our General Terms and Conditions or any other agreements shall only be an integral part of the contract and binding for us if we have expressly accepted them in writing.

**1.2** By placing an order or accepting our services, the customer recognizes that our General Terms and Conditions not only apply to the contract in question, but also to all future business transactions in the course of an on-going business relationship. Should we establish new General Terms and Conditions in the course of this on-going business relationship, these shall apply from then on.

### **2. Offers – Collateral Agreements – Contract Terms – Offer Documentation**

**2.1** Our offers should be understood as an invitation to conclude a contract and are non-binding insofar as a contract does not come into being until we have confirmed the order in writing.

**2.2** Any collateral agreements regarding our offers and order confirmations as well as agreements with our sales representatives require our written approval to be effective.

**2.3** In case of doubt, our written order confirmation shall exclusively determine the contract terms.

**2.4** Any documents attached to our offers (catalogues, price lists, drawings, sketches, samples, dimension and weight specifications and more) shall only be considered an agreement as to the quality of our goods if expressly approved by us in writing.

**2.5** We reserve all proprietary and copyrights in these documents as well as all other intellectual property rights to which we are entitled. They may not be made accessible to third parties and shall be immediately returned to us in full upon request or if the order is not placed with us.

**2.6** Electronically created order confirmations are also binding without signature.

### **3. Prices and Payment**

**3.1** Our prices are net prices. Unless agreed otherwise, they shall apply to delivery ex-works, but without freight and packaging, and for all deliverables exclusive of insurance and VAT. We will in any case add the statutory VAT at the rate applicable on the day of performance.

**3.2** The following shall apply to orders which are to be delivered more than four months after conclusion of the contract: should our purchase prices and/or our applicable wages and salaries increase until the time the contract is executed, we shall be entitled to charge a higher price on a pro rata basis as a percentage of the purchase price and/or the labour costs. Where possible, we will give advance written notice of foreseeable price increases of more than 5% of the agreed net price (purchase price; labour costs). If our customer receives such a written notice of a price adjustment of more than 5%, he may terminate the contract, provided that any preliminary work done by us prior to receipt of the termination is accepted and paid at the increased rate unless the increased price exceeds the originally agreed price by 10% or more.

**3.3** For reasons of production, we reserve the right to exceed and/or fall short of the agreed quantities by up to 10% and to invoice the resulting increased or reduced price whenever this is reasonably acceptable to the customer. Provided this is foreseeable in the production process, the customer will be informed in advance of any excess or shortfall in production quantities.

**3.4** Unless otherwise agreed, our services are to be paid without deduction immediately after receipt of the invoice. Our sales representatives are not entitled to receive payments. Any discounts are to be agreed separately in the order confirmation and only apply if the customer is not in arrears with the payment of previous orders. In all other respects, the payment terms stated in the offer or in the order confirmation shall apply. The customer shall be in default without further warning upon failure to pay within 30 days after receipt of the invoice.

**3.5** If, after conclusion of the contract, we become aware of circumstances that make the creditworthiness of the purchaser appear doubtful, we may, at our discretion, demand advance payment or security. The same shall apply if the purchaser fails to comply with a payment obligation towards us by the due date and is in default. If one of these cases occurs, all our claims against the customer, including those arising from other transactions, become due immediately; should we have accepted bills of exchange which are not yet due, we may demand immediate payment against the return of the bills of exchange.

**3.6** Should the customer fail to pay by the due date, we are entitled to charge interest of 5% per year from the time the payment is due. This does not apply in the case of default. If the customer is in default of payment, the customer shall be obliged to provide compensation for all damages resulting therefrom in accordance with the statutory provisions (including interest for the duration of the default in the amount of 8 percent above the base rate - provided no consumer is involved in the legal transaction - subject to a proof on our part of a higher interest penalty, of necessary judicial costs, of dunning fees charged at a flat rate of €30.00 per reminder). If the customer pays the invoice within 30 days after receipt of the invoice (cash receipt), any interest charges and other costs do not apply.

**3.7** Insofar as we accept checks or bills of exchange, we always do so only by way of payment, but not in lieu of performance. In such cases, we do not need to vouch for timely payment or acts of protest. The costs of discounting and collection shall be borne by the customer who shall repay such amounts immediately upon request.

**3.8** The customer is not entitled to set off against our payment claims or exercise any retention rights with respect to any amounts due. This shall not apply to counterclaims that are undisputed or have been determined to be final and absolute and to the right of retention until such claims have been settled.

**3.9** In case of wrong delivery and return of the entire order or individual articles, we charge a net processing fee of € 50.00.

#### **4. Delivery periods and dates**

**4.1** Unless expressly stated in writing as binding, any agreed delivery periods and dates are only approximations.

**4.2** A delivery period determined solely by its length shall begin at the end of the day on which complete agreement on all the details of the order is reached, at the earliest however on the date the order is accepted by us, but not before the customer has provided all required documents, approvals and permits and not before receipt of a down payment the customer may be required to pay. This shall not affect clause 2.1.

**4.3** A delivery period or delivery date shall be deemed to have been met when the goods leave our factory or external warehouse by the agreed date, or, in cases where the goods cannot or are not intended to be shipped, when notification that the goods are ready for delivery is sent by the agreed date.

**4.4** If delivery is delayed due to circumstances outside our personal sphere of influence (e.g. war, mobilization, fire, flood, strike, lockout, confiscation, embargo, prohibition of foreign exchange, insurrection, general lack of supplies, restriction of energy consumption, breakdowns and the like, this list not being exhaustive), the delivery period shall be extended and/or the delivery date shall be postponed by the duration of the disruption; this shall also apply to delays caused by the fact that we ourselves are not supplied properly or not in due time through no fault of our own. We will notify the customer in writing without delay of any such disruptions. If such circumstances arise after we are in default of delivery, any default consequences shall be excluded for the duration of their effectiveness.

**4.5** If we are in default of delivery, the customer shall be entitled to withdraw from the contract, provided he has granted us a reasonable grace period commensurate with the ordered item and we have failed to deliver within this grace period according to clause 4.3.

**4.6** Exceeding a delivery period or delivery date or being in default of delivery shall not give rise to any damage claims on the part of the customer, unless such delay is based on wilful intent or gross negligence of one of our legal representatives or one of our vicarious agents. Our liability for default damages is determined by the amount set out in clause 8.7, which shall apply here accordingly.

**4.7** If the delivery of the goods is delayed at the request of the customer, we shall be entitled to charge storage costs in the amount of 0.5% of the net invoice amount for each month of the delay or part thereof after notification of our readiness to deliver.

**4.8** Should the customer be in default of acceptance or violate other forms of cooperation, we are entitled to demand compensation for the resulting damage and freely dispose of the goods after setting a grace period of no less than one month from the occurrence of the default of acceptance or from the first occurrence of a failure to cooperate while having given the appropriate warning.

**4.9** We are entitled to make partial deliveries and to invoice each partial delivery separately.

#### **5. Insurance – Shipping – Transfer of Risk – Acceptance of Returned Packaging**

**5.1** At the customer's request and expense, we will insure shipments of goods against the usual transport risks with the exception of shipments to foreign countries, shipments handled by freight forwarders or our own vehicles, and pick-ups.

**5.2** If we do not receive any special shipping instructions, we will ship the goods on the shipping route we consider to be the least expensive. The goods are shipped at the expense and risk of the customer.

**5.3** The risk of loss or deterioration of the goods for reasons outside our responsibility shall pass to the customer at the time the goods are loaded in our factory or, where the goods cannot or are not intended to be shipped, at the time the notice regarding readiness for delivery is sent. The goods shall be deemed to have been delivered if the goods, or in cases where the goods cannot or are not intended to be shipped, the notice has left our factory or sales warehouse before expiry of the deadline. We hereby assign any claims for compensation against the forwarder, which arise from a loss or deterioration of the goods outside the scope of our responsibility after the goods are loaded in our factory, to the customer provided the customer on his part has met his obligations towards us, in particular his payment obligations.

**5.4** Insofar as we are obligated to take back packaging according to the Packaging Ordinance, the customer shall bear the costs for the return transport of the used packaging.

**5.5** We only send risk coverage certificates and additions to locking systems per registered mail upon the express request of the customer.

## **6. Tools – Special Parts**

**6.1** The customer shall deliver all tools, fixtures, models, mounting parts and the like to be provided by him under the contract by the agreed date free of charge. The necessary details are contained in the respective contract concluded between EMKA and its contractual partners.

**6.2** Tool costs incurred for the production of special parts are always charged separately from the value of the goods. The specific tool costs are stated in the order confirmation. However, EMKA and the customer may conclude a separate agreement for the production of tools based on these General Terms and Conditions. The tool costs shall then be paid in accordance with this separate agreement. In the case of compensation for costs, the customer acquires no claim to the surrender of the tools. They remain our property and in our possession. We undertake to store the tools for a period of one year after the last delivery. If, prior to the expiry of this period, the customer notifies us in writing that he will place another order within the next six months, the retention period is extended by another year. Once the retention period has expired, the customer can purchase the tools at standard market conditions. If he does not purchase the tools, EMKA is entitled to demand the standard remuneration for the storage of the tools.

## **7. Reservation of Title**

**7.1** The goods delivered by us remain our property until all our claims arising from the business relationship with the customer have been completely repaid, even if they have become part of a current account. Claims, for which we accepted checks or bills of exchange or cheques, are not regarded as paid until such bills of exchange or cheques have been duly honoured and any protest periods have expired.

**7.2** If, due to the fact that goods we supplied to the customer are processed or transformed together with goods of the customer, we do not acquire co-ownership, but lose our ownership rights, then the ownership or co-ownership of the customer in the new goods shall pass to us immediately upon the creation thereof. The customer hereby assigns to the surrender of the new goods to us be required for our acquisition of ownership or co-ownership rights, such surrender shall be replaced by the agreement that the customer keeps our goods like a borrower or, should the customer not be in possession of the goods, by the customer's assignment of all rights to recovery against the possessor, such assignment to be deemed affected hereby. Any goods with respect to which we thereby acquire ownership or co-ownership rights shall be legally treated like the original goods.

**7.3** All claims of the customer arising from the resale of any goods in which we have a ownership or co-ownership rights (reserved goods) shall be assigned to us immediately upon the conclusion of the sales transaction, irrespective of whether the reserved goods are sold to one or several buyers. We hereby accept the assignment. Should we not be the sole owners the reserved goods or should these goods be sold together with goods we do not own, the customer's claims shall be deemed assigned to us only with respect to an amount equal to the amount of our invoice for such reserved goods. Upon request, the customer is obliged to inform us immediately of the names and addresses of his customers and to provide us with the data and amounts of each individual invoice concerning the resale of reserved goods. The customer may collect the assigned claims. We may revoke this authority if the customer fails to meet a contractual obligation towards us in a timely manner or if we become aware of circumstances which appear to endanger our rights.

**7.4** If the purchaser is partly or wholly in default of meeting an obligation secured by the reservation of title, or if we become aware of circumstances that appear to endanger our rights, we may demand the surrender of the reserved goods without previously having declared our withdrawal from the purchase agreement according to Sect. 449 of the German Civil Code (BGB) or having set a deadline to meet the payment obligation. The existence of the contractual relationship between us and the customer and the resulting obligations of the customer towards us shall remain unaffected by such a demand and the surrender of the goods.

**7.5** At the customer's request, we undertake to release the securities (goods and receivables) to which we are entitled in accordance with the above regulations to the extent that their value exceeds the claims to be secured by more than 20%. The valuation of the collateral is based on its realizable value (security value).

**7.6** If the retention of title becomes invalid upon delivery abroad or for some other reasons, the customer is obliged to immediately grant us security for the delivered items or some other security for our claims which applies under the laws at the registered place of business of the buyer and reflects the provisions on retention of title under German law as closely as possible.

## **8. Liability for Material Defects**

**8.1** We are liable for defects in our goods that existed at the time of the transfer of risk and which occur within two years from the date of delivery in accordance with clause 5.3, unless such goods are wear parts. Warranty claims shall lapse one year after delivery in accordance with clause 5.3. This shall not apply insofar as our goods are building-related within the meaning of Sect. 438 (1) No. 2 b BGB, in which case the limitation period shall be 5 years from the abovementioned date. Sect. 377 of the German Commercial Code (HGB) remains unaffected.

**8.2** We shall not be liable for defects resulting from documents (drawings, designs, samples, software, etc.) submitted or approved by the customer or for damages resulting from unsuitable or improper use, natural wear and tear and faulty or negligent treatment. Any article and quality specifications as well as technical and commercial descriptions are only binding and/or considered an agreement on their quality if expressly designated as such in writing. Any guarantees provided require a special written agreement to be valid.

**8.3** If parts we have obtained from a supplier prove to be defective, our liability shall only be subsidiary. We can relieve ourselves of our warranty obligation by assigning our warranty claims against suppliers to the customer. This does not apply, however, to the extent that these rights are lesser than the rights against us to which the customer is entitled.

**8.4** If our goods are defective, we will provide supplementary performance at our discretion and expense. The supplementary performance is deemed to have failed if we expressly confirm the failure or if the third attempt at supplementary performance is unsuccessful. Should the third attempt at supplementary performance fail, the customer shall be entitled to withdraw from the contract or to reduce the purchase price. Should the customer fail to exercise his option within 14 days of the failure of the third supplementary performance, he shall only be entitled to reduce the agreed price under the contract.

**8.5** Defects in a partial delivery of our goods shall not entitle the customer to object to the whole delivery of goods, unless he has no demonstrable interest in the partial delivery. A deviation of the delivered quantity of up to +/-10% from the agreed quantity represents a negligible breach of duty. A shortfall entitles us to subsequent delivery of the goods. Should the subsequent delivery fail, the customer shall be entitled to reduce the price. The preceding sentences 2 to 4 shall not apply if, under the terms of clause 3.3, lower prices were charged in the case of shortages and higher prices in the case of excess deliveries and these have been paid by the contractual partner and/or reduced in the case of shortages.

**8.6** Our warranty obligation is subject to the customer informing us of the defect in writing immediately after discovery thereof. In all other respects, Sect. 377 HGB shall apply.

**8.7** Unless otherwise stipulated below and without prejudice to the regulations governing compensation set out below, we shall only be liable for breach of contractual/non-contractual obligations or obligations during the initiation of the contract in case of wilful intent or gross negligence on our part or that of our legal representatives or vicarious agents, or for serious organizational fault.

**8.7.1.** Specifically, the following applies:

**a)** In all transactions, we are only liable for the foreseeable damages typical under this type of contract in the event of a breach of material contractual obligations (cardinal duties).

**b)** Any liability for property damage shall be limited to a total of € 10,000,000.00.

**c)** Any liability for pecuniary loss is excluded, unless such loss is caused by gross negligence or wilful misconduct on our part or that of our legal representatives or vicarious agents or by a serious organizational fault on our part. Claims based on injury to life, limb or health are not considered pecuniary losses within the meaning of the preceding sentence.

**d)** Within the scope of our liability to our contractual partners who are merchants within the meaning of the HGB or entrepreneurs pursuant to Sect. 14 BGB (German Civil Code), we are also not liable for gross negligence by us, our legal representatives or vicarious agents unless such negligence can be demonstrably attributed to a breach of a material contractual duty and the damage incurred by the contractual partner was covered by an appropriate insurance policy of his own. We do not accept liability for malfunctions caused by faults or defects of our products, unless they can be attributed to gross negligence or wilful intent on our part. We also accept no liability for consequences resulting from the operation of our products or from the choice of the wrong product (in particular the choice of one of our products that is objectively unsuitable for the intended purpose of the customer). Any liability for unforeseeable damages, or for damages and consequential damages resulting from a defect and which are not typical for this type of contract, is also excluded.

**8.7.2.** Any liability on our part within the scope of entrepreneurial recourse pursuant to Sect. 478 BGB shall be limited to € 10,000,000.00.

**8.7.3.** The above exclusions and limitations of liability do not apply to claims for damages in case of injury to life, limb or health. Any claims under the Product Liability Act and on the basis of tortious liability shall remain unaffected. The same applies to claims arising from a lack of an agreed quality, from non-compliance with a separately agreed guarantee or from fraudulent intent.

**8.8** Our warranty is void if the goods are modified by a third party. Our warranty is also void if the customer fails to comply with our instructions for use. Clause 8.7 shall remain unaffected.

#### **9. Returns**

The charge for return deliveries due to incorrect orders is 5% of the value of the goods, no less, however, than € 50.00.

#### **10. Reservation of the Right of Withdrawal**

We have the right to withdraw from the contract if its fulfilment meets with insurmountable technical difficulties or overcoming such difficulties would result in a disproportionate expense compared to the value of the services to be provided by us or if we become aware of circumstances which make the creditworthiness of the customer appear doubtful.

#### **11. Patents – Copyright**

The customer warrants that the use of the samples and drawings made available to him by us does not infringe the rights of third parties. Should a third party assert claims against us under copyright, competition or trademark law on the basis of samples and drawings made available to us by the customer, the customer undertakes to indemnify us from such third party claims.

#### **12. Place of Performance – Place of Jurisdiction – Applicable Law**

**12.1** Place of performance for all duties arising from this contractual relationship shall be Wuppertal.

**12.2** Exclusive place of jurisdiction for all disputes regarding, and arising from, the contract, including transactions involving bills of exchange and cheques, shall be Wuppertal. However, we also have the right to bring an action against the customer in any other jurisdiction responsible for him. If the customer is not a merchant registered with the German commercial register, a legal entity under public law or a public law entity with special funds but has a general jurisdiction in Germany, these provisions shall apply if the customer moves his head office or habitual place of business outside the Federal Republic of Germany after conclusion of the contract or if his head office or habitual place of business is unknown at the time the action is brought.

**12.3** The contractual relationship is subject to the laws of the Federal Republic of Germany, the contractual language is German. This agreement is not subject to the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **13. Severability**

Should one or more provisions of these General Terms and Conditions be or become invalid for whatever reason, this shall not affect the validity of all other provisions.