

## General Conditions of Sale and Delivery of em-tec GmbH

### 1. General, Conclusion of Contract

1.1 These General Conditions shall only apply to

- persons, who act in practice of their commercial or self-employed business (entrepreneur),
- legal entities of public law or a public-legal fund,

and are effective to all present and future deliveries and services of em-tec GmbH in connection with contracts of sale, work contracts and contracts for work and materials. Any General Conditions of the Purchaser are hereby rejected in full and shall not commit us even if not again proposed after receipt.

1.2 Our offers shall be subject to alteration. Contract conclusions and all other agreements, including verbal agreements and promises by our employees or representatives shall only become legally binding after having been confirmed in writing via mail, fax, or e-mail by em-tec GmbH.

1.3 Given drawings, sketches, technical data, weight data, measurements and performance descriptions shall, insofar as they are not expressly stated to be binding in our confirmation, only be regarded as approximate information. We retain the ownership and the intellectual property rights in such documents; they must not be disclosed to any third party.

1.4 The Purchaser takes the sole responsibility for his own documents placed at our disposal, such as drawings, gages, samples or similar. The Purchaser is responsible for his presented execution drawings, that these drawings do not violate protecting rights of a third party. We are not obliged to inspect, whether due to the execution drawings of the Purchaser our offer, the fulfillment of the order or other reasons may violate any protecting rights of a third party. In case of a utilization of a third party nevertheless, the Purchaser must exempt us.

1.5 Unless otherwise agreed, the respectively latest edition of Incoterms established by the International Chamber of Commerce shall govern the interpretation of the customary delivery conditions (e.g., EXW).

### 2. Purchase Order & Prices

2.1 All purchase orders must a) be submitted in English or German; b) be on Buyer letterhead; c) include complete billing and shipping address; d) include a purchase order number; e) include the complete item number, Product description, quantity, and net price in EUR; f) include em-tec GmbH's quotation number, if any, g) VAT and tax related information. All purchase orders placed by Buyer for Products and/or Services shall be subject to these Terms and Conditions and an order confirmation from em-tec GmbH accepting the purchase order for the products and/or services

2.2 All quotations made by em-tec GmbH are conditioned upon the terms and conditions. Price quotations, unless otherwise stated, will expire four weeks from the date issued and may be terminated at any time upon notice to Buyer.

2.3 No order shall be binding upon em-tec until an order confirmation is issued by an authorized representative of em-tec GmbH.

2.4 All published prices for product and/or services are subject to change without notice.

2.5 Unless otherwise agreed, our prices are free ex-works. Any additional costs, for example incurred by packing, freight, import duty, assembly, insurance premiums and value added tax (VAT) shall be borne by the Purchaser.

2.6 em-tec GmbH will prepare export packaging when requested (at an additional quoted price) and furnish pro forma export invoice and export declarations according to its best ability and judgement, but without liability for fines or other charges due to unintentional error or incorrect declarations.

2.7 In the event that, after the conclusion of the contract, the net purchase prices to be paid by em-tec GmbH for the contractual materials = at the time of delivery should increase or decrease by more than 5 percent, each of the two contracting parties has the right to demand from the other to demand entry into additional negotiations with the aim of bringing about an appropriate adjustment of the contractually agreed prices for the contractual materials concerned to the current delivery prices by means of an agreement.

### **3. Terms of Payment**

3.1 Unless otherwise expressly agreed upon, our invoices must be paid by the Purchaser within 30 days after the date of the invoice. Early payment discount is not applicable.

3.2 If payment is delayed, the Purchaser shall be liable to pay interest from the due date of payment in accordance with the prevailing bank interest rates, but at least an interest rate of 8 % above the respective discount rate of the European Central Bank. The right to claim further damages shall be reserved. § 353 HGB shall not be affected.

3.3 In the event of circumstances arising after entering into the contract, which materially adversely affect the financial situation of the Purchaser and endangering the realization of our contractual claims against the Purchaser, em-tec GmbH shall be entitled to retain deliveries or services even where it is under an obligation to perform first unless the Purchaser has already performed his obligations or security is given to us. If the Purchaser does not comply with the request for simultaneous performance or giving security, then we may withdraw from the contract. Our right to enforce reservation of title according to clause 6.7 shall not be affected.

3.4 The Purchaser shall only be entitled to a right of retention insofar as the claims in question are based on the same contractual relationship. The Purchaser shall only be entitled to off-set his payment with such counterclaims that are undisputed or have been confirmed by a final and unappealable statutory judgement.

### **4. Performances, Periods of Delivery and Dates**

4.1 Periods and dates of delivery are approximate only unless we have expressly confirmed them in writing as binding. Any period of delivery shall commence upon the date of our order confirmation, but, however, not before all technical and commercial details have been clarified and all necessary licenses have been granted. Any alterations in deliveries requested by the Purchaser within the delivery period shall extend the delivery period accordingly.

4.2 We are entitled to make partial deliveries. Unforeseeable events entitle us to defer delivery for so long as the impediment persists plus an appropriate additional period. Unforeseeable events are such circumstances as we could not have avoided by reasonable care in the circumstances of the particular case, such as war, currency and economic or other sovereign measures, civil disturbance, natural events, fire, strikes, log-outs, non-supply of raw materials arising through no fault of us, traffic obstructions, interruption of operations and any other events of force majeure, through which the performance of the contract is endangered, made substantially more difficult or rendered impossible. In cases of substantial obstacles or impossibility em-tec GmbH shall also be entitled to withdraw from the contract without any obligation to pay damages. The Purchaser may demand a statement from us as to whether we are withdrawing from the contract or delivering within an appropriate period. If we do not give such a statement, then the Purchaser may withdraw from the contract. The Purchaser shall not refuse partial deliveries and partial performance unless he has a legitimate interest in rejecting them.

### **5. Dispatch and Passing of Risk**

5.1 Packing will be done such as usual in the trade and at the Purchaser's expense.

5.2 The goods will be transported at the expense of the Purchaser and at his risk. The risk shall pass to the Purchaser upon transfer of the goods to a forwarder or carrier and in any event not later than on leaving our warehouse or works, even if free delivery to the place of destination is agreed. If the dispatch is delayed by reason of the Purchaser's conduct, then the risk shall pass to the Purchaser immediately upon notice of readiness for dispatch been given.

5.3 Goods in respect of which notice of readiness of dispatch has been given, must be collected without delay. If not, em-tec GmbH shall be entitled at its option to dispatch such goods or to store them at the expense and risk of the Purchaser and to invoice them immediately.

5.4 Transport insurance will only be affected for the Purchaser if expressly agreed upon in writing and at the Purchaser's expense, even where free delivery to the place of destination is agreed.

## **6. Reservation of Title**

6.1 All goods supplied remain our property (reserved goods) until settlement of all our claims referring to the whole business connection, whatever their legal basis is, even if payments have been made in respect of specially designated claims. Where there is a current account with the Purchaser, any property to which we have reserved title shall be security for the balance outstanding on account. The same refers to other contingent liabilities, which we enter for the Purchaser.

6.2 Processing or manufacturing of the goods to which em-tec GmbH retains title shall be carried out for us as manufacturer as provided in § 950 BGB (German Code of Civil Law), without committing us. The manufactured goods shall be considered as the goods, to which we have retained title according to clause 6.1 above and the Purchaser must store these goods for us free of charge.

6.3 If goods to which em-tec GmbH retains title are mixed or combined by the Purchaser with other goods so that our property is superseded, then em-tec GmbH shall be entitled to a share in the ownership of the new product in the proportion, which the invoiced value of the goods to which we have retained title bears to the total invoiced value of all other goods used. The Purchaser must store these goods for us free of charge. Such goods arisen out of the processing or combining with other goods shall be considered as our property according to clause 6.1 above. 6.4 The Purchaser is permitted to sell goods, to which we retain title, but only in the normal course of business and on his normal terms, unless he is late in payment and provided that his claims including any ancillary rights arising from resale are assigned to us in accordance with the following conditions. The Purchaser is not entitled to dispose in any other manner of goods to which we retain title. It shall also be regarded as a sale if the Purchaser uses the goods to which we retain title for performing work contracts and contracts for work and materials.

6.5 The Purchaser's claims pertaining to the goods and arising from the resale or a different legal ground (insurance, tortuous act) of the goods, to which we retain title are already now completely assigned to em-tec GmbH. These claims shall be deemed to serve as security to the same extent as does the reserved good pursuant to clause 6.1 above.

6.6 In case the reserved good is sold by the Purchaser together with other merchandise, the claim accruing from such resale shall be assigned to us in the amount of the invoice value of the reserved good. In case of goods resold in which we have rights of co-ownership as specified under clause 6.3, a portion of this claim corresponding to our share of co-ownership is to be assigned to us.

6.7 The Purchaser shall be entitled to collect the money based on resale, unless we revoke such permission; we are allowed to revoke such permission in case of delayed payment by the Purchaser and/or in case of a material deterioration of his financial situation. Upon our request, the Purchaser shall be committed to inform his customers immediately about the assignment to us – unless this information has been given by ourselves – and to provide us with the information and documents being necessary for collecting the claims from the customers. In case of delayed payment or a material deterioration in the financial situation of the Purchaser we are further entitled to demand the return of the reserved goods or the transfer of the indirect possession thereof at the Purchaser's expense; in such cases we shall also be entitled, after giving notice, to enter the Purchaser's business facilities and to take possession of the reserved goods. Such steps are only to be considered as withdrawal from the contract, if so, expressly declared in writing.

6.8 The Purchaser shall immediately inform us about an attachment or other impairments of the goods by third parties to which we have retained title.

6.9 em-tec GmbH shall release securities upon its choice on the Purchaser's request if the value of the given securities exceeds by 20 % our claims.

## **7. Notification of Defects and Rights of the Purchaser for Defects**

7.1 The Purchaser shall check the goods immediately upon receipt with due and reasonable care. Notification of defects in respect of recognizable defects must be given in any event not later than two weeks after receipt in writing and in respect of non-evident defects within two weeks after identification.

7.2 If the manufacturing and delivery are based on Purchaser's construction respective Purchaser's statements, drawings, or other specifications, we do not take responsibility for the suitability to the assigned purpose; in these cases, our responsibility covers only the manufacturing according to the drawings or specifications.

7.3 We are not responsible for failures, which are arisen due to the following reasons: Misuse, overload, faulty installation, or start-up by the Purchaser or a third party, natural wear, faulty or careless handling, substitution of non-em-tec parts, unfit operating supplies, chemical, electric-chemical or electrical influence, unless in our responsibility.

7.4 All claims of the Purchaser are cancelled, if serial number, type, or similar signs are removed or unrecognizable, because in these cases the internal check of the reason for the defect is impossible and we are not able to recourse claims to suppliers of em-tec GmbH.

7.5 We will replace or rework any defective goods, for which we have received a justified and immediate notification of defects; alternatively, we shall also be entitled, adequately considering the Purchaser's interests, to pay compensation for the inferior quality of the goods.

7.6 If we do not comply with our obligation according to clause 7.5 or do not fulfill such obligation in accordance with the Contract or the replacement fails, the Purchaser may demand a price reduction or withdraw from the Contract.

7.7 Our liability for defects of accessories or components of equipment sold by em-tec GmbH is limited first to the assignment of our claims against the manufacturer. We will provide the Purchaser all necessary information he needs for the non-judicial utilization. If the utilization fails, our liability according to clause 7.5 will take place.

7.8 All further or different claims are excluded. This also applies for claims of compensation of damages, which are not arisen at the delivery object (consequential damages). If a warranty, which is explicit confirmed in our acknowledgement of order and described like this, is breached, claims for damages can only be raised, if the purchaser was to be protected by the guaranteed quality precisely from such damage.

7.9 The purchaser's rights due to defects shall expire within the statutory period. If the purchased product is used, any liability for defects shall be excluded; this does not apply in cases of crafty concealment or breach of a warranty.

## **8. Defects of Title**

8.1 em-tec GmbH ensures that all deliveries are free from third-party property rights and that no patents, licenses, or other property rights of third parties within Germany are breached through the delivery and use of the delivered items.

8.2 em-tec GmbH indemnifies the purchaser and its customers from third-party claims arising from any breach of property rights. Furthermore, em-tec GmbH is liable within 12 months from delivery by our choice and at our expense, we obtain a right or change the delivered products or replace with non-proprietary ones. If this is not possible under reasonable conditions, the customer is entitled to statutory rights of withdrawal or price reduction.

8.3 The obligations referred to in Clause 8.2 shall only exist if the claims of the third party in respect of the delivered goods are asserted by the Purchaser against third parties in writing without undue delay after their assertion and are not acknowledged.

8.4 In the event of other defects of title, Section 7 applies accordingly.

8.5 Further or other claims of the customer due to a defect of title are excluded.

## **9. Software**

9.1 If em-tec GmbH provides user software with its deliveries, the customer is allowed to use the software in its unchanged form and together with the delivered hardware in accordance to the intended use and manual. The usage of the software is not limited in time. The right of usage is not exclusive.

9.2 The Purchaser and its customers may only copy the software for security purposes, but not change, reverse engineer, unpack or recompile it and must not extract program parts.

9.3 Unless otherwise stated, the usage fee for the user software is included in the purchase price.

## **10. Order Cancellation / Return of Goods**

10.1 In general, no order cancellations and/or return of goods are accepted

10.2 Cancellation of orders might be accepted by way of exception, but no cancellation is valid without the written agreement of em-tec GmbH. Unless stipulated otherwise in the contract, the customer will be charged a cancellation fee of a minimum of 10% of the net total of that order exclusive of VAT. Costs already incurred by the cancellation date for the procurement and/or manufacturing of that order will be invoiced additionally.

10.3 Any return of goods to em-tec GmbH must have the prior written authorization of em-tec GmbH. No returns will be accepted without a Return Material Authorization ("RMA"). The return of goods must be sent carriage paid. Prior to any return, the goods must be cleaned and be accompanied by the safety data sheet of the product returned. Returned goods containing an unidentified product will be shipped back at the expense of the client.

10.4 Only standard new products may be taken back if agreed in writing by em-tec GmbH. In all cases, a markdown of 20% of the sales price will be applied in all cases for the processing costs, minimum invoiced amount will be EUR 100, exclusive of VAT.

10.5 Customer-specific material that is still available at em-tec GmbH in the event of an accepted cancellation of the order must be taken over by the customer at cost price plus a surcharge of 20%.

## **11. General Limitation of Liability**

11.1 Our liability exclusively follows this General Conditions of Sale. All claims, which are not explicitly granted in this Conditions, especially claims for damages out of impossibility, delay, breach of contractual extra obligations (including advice and given information), breach of duty prior to contract, unallowed acting – also so far these claims relate to claims for defects of the Purchaser – are excluded, unless they are based on an event of willful intent or gross negligence by us, a legal representative or agent of us, or unless they are based on a light negligent breach of essential contractual duties by us, a legal representative.

11.2 Reserving the rights of clause 7.9 all claims against em-tec GmbH, whatever their legal basis may be, shall be time-barred after one year, unless there is a willful or crafty behavior by us; in these cases, the legal statutory limitation periods are effective.

11.3 The above provision shall not apply to claims for personal injury or damage to privately used objects under product liability law.

## **12. Place of Performance and Jurisdiction, Law applicable**

12.1 The place of performance for our deliveries shall be our company headquarter.

12.2 The place of jurisdiction between us and the Purchaser is Landsberg am Lech. em-tec GmbH shall also be entitled, however, to bring actions against the Purchaser at his own place of residence.

12.3 The law of the Federal Republic of Germany as applicable between domestic parties shall govern all legal relationships between em-tec GmbH and the Purchaser.

## **13. Data Protection and Personal Data**

The purchaser is advised that em-tec GmbH stores and processes personal data to the extent as it is necessary in the context of the contractual relationship. Personal data will only be passed on to third parties if there is a legal obligation for this. The purchaser has the right to receive information about his processed data upon request.

## **14. Export**

The purchaser is obliged to comply with all rules, laws, and regulations regarding the export of goods and export control, which are valid in the European Union and the United States of America.

14.1 The goods purchased from em-tec GmbH may not be exported, sold, or consumed by the purchaser in violation of applicable laws or regulations of the European Union and the United States of America. This also includes: (a) "US Export Administration Act" and the associated regulations, (b) "U.S. International Traffic in Arms Regulations (ITAR)"; (c) the provisions of the Chemical Weapons Convention (CWC); (d) Sanctions and embargoed countries.

14.2 The purchaser is responsible for obtaining all licenses and permits that are required for the import of the products in accordance with the laws and regulations applicable in the country of destination. Furthermore, the purchaser is explicitly advised that approval from the German Federal Government and / or the United States of America may be required to export or ship the goods to a third country. It is the sole responsibility of the purchaser to obtain information about the location of the end user and to inform the supplier if further export permits or an end use certificate must be presented. 14.3 The purchaser must not sell or ship the goods to third parties who are on a European or US ban list (governments, institutions, organizations, or natural persons). The products purchased from em-tec GmbH may not be used directly or indirectly in dangerous nuclear applications, nor in the design, development, manufacture, storage or use of chemical weapons, biological-weapons or rockets. The client is obliged to inform em-tec GmbH of such an intention.

## **15. Ethical Corporate Principles**

em-tec GmbH requires its business partners to have commercial practice and manufacturing processes that comply with all applicable laws and regulations.

The supplier and the purchaser commit themselves not to participate in activities that may conflict with the applicable law or their respective regulations for ethical business practices, be it regarding the two parties themselves, their employees and representatives or other intermediaries.

Regarding the sale or resale of the goods of the supplier, the purchaser agrees that he may not make any payments or transfers of value to third parties (not even through one or more intermediaries) that transform the purchaser, the supplier or companies affiliated with the purchaser into one situation that contradicts the American Foreign Corrupt Practices Act or other applicable anti-corruption law. In the event of non-compliance with the provisions set out in this paragraph, the purchaser is obliged to keep the supplier and its affiliated companies free of damage and to release them from any liability to sell or ship the goods to third parties who are on an European or US ban list (governments, institutions, organizations or natural persons).

## **16. Final Clause**

Should individually provisions of these General Terms and Conditions become ineffective or unenforceable, the effectiveness of the business conditions will not be affected.