

Terms and Conditions of Purchase of the EMAG Group



1. Scope

1.1. These General terms and Conditions of Purchase apply to orders for goods and services that companies of the EMAG group (hereinafter "Customer") place with suppliers.

1.2 The Terms and Conditions of Purchase also apply to contracts that the Customer enters into with the supplier. Once the supplier has approved these terms and conditions after having viewed them, they also apply to future contracts with the supplier.

1.3 Terms and conditions of the supplier are excluded. These shall apply only if and insofar as the Customer has explicitly accepted them in writing.

1.4 Receipt or acceptance by the Customer of goods or services shall not constitute consent to the general terms and conditions of the supplier.

2. Offers

2.1 Offers and cost estimates shall be provided to the Customer free of charge and shall not obligate the Customer to accept them.

2.2 If the supplier wishes to obtain clarification of technical requirements before submitting an offer, it may, after agreeing an appointment with a technical contact, contact the Customer in relation to technical questions.

3. Conclusion of a contract

3.1 Orders, changes or modifications to orders, and other agreements made in connection with the conclusion of a contract shall be made or confirmed in writing.

3.2 The supplier shall confirm the order in writing and the confirmation shall reflect the content of the order exactly. If the content of the supplier's order confirmation deviates from the order, the contract shall not be concluded, unless the order constitutes acceptance of a binding offer of the supplier and reflects the content of such order exactly. The supplier's order acceptance must contain the order number and other order details

4. Drawings, models, documentation and other materials provided

4.1 All drawings, models, samples, tools and other items provided to the supplier by the Customer remain the property of the Customer. Copyrights and industrial property rights in such items must be respected.

4.2 The supplier is prohibited from providing the materials as described in Clause 4.1 to third parties, either for inspection or usage, without prior written approval from the Customer. Such materials remain property of the holders of the respective rights and shall be returned to the Customer upon request. The supplier shall in particular respect existing copyrights and other industrial property rights therein.

4.3 The materials provided to the supplier from the Customer shall be kept properly and sufficiently insured against all damage, e.g. caused by fire, water, burglary, sabotage. After the end of the contractual cooperation, they shall be immediately released to the Customer upon request.

4.4 The agreement of the Customer concerning calculations, drawings and other documentation of the supplier shall not affect the liability of the supplier in case of breaches of obligations or rights.

5. Monitoring of work progress

If the supplier is contracted to manufacture individual parts, the Customer shall have the right, during regular business hours and subject to advance notice, to arrange for a representative to review progress of implementation. The Customer is entitled in such cases to review performance of the contract by the supplier.

6. Subcontractors

The supplier is not entitled to engage third parties to provide services owed without prior written consent from the Customer. Subcontractors approved by the Customer may only be replaced by other subcontractors that have been approved by the Customer.

7. Deadlines, time limits and penalties

7.1 The supplier shall comply with the deadlines and time limits agreed upon. For deliveries, compliance shall be determined by reference to the date of arrival of non-defective goods at the place of destination. For services, compliance shall be determined by reference to the date of completion at the place of implementation. If acceptance by the Customer of goods or services is agreed upon or provided for by law, the Customer's declaration of acceptance after successful acceptance shall be decisive.

7.2 Delivering of goods or performance of services ahead of schedule requires the written consent of the Customer.

7.3 If the supplier becomes aware that it will be unable to comply with deadlines and time limits agreed upon, it must inform the Customer promptly, stating reasons for and the anticipated length of the delay. This shall not affect the Customer's statutory rights in case of late performance

7.4 If the supplier is late with performance, the Customer is entitled to demand liquidated damages of 0.2% for every working day elapsed, up to a total of 5% of the total net value of the contract. If damages become payable, the Customer may demand payment of the damages until the final account has been settled, even if it did not reserve the right to demand damages when receiving late delivery of goods or accepting late performance of services. The right to assert claims for damages over and above this or for unnecessary expenses and the right to withdraw from the contract subject to the fulfillment of the statutory requirements remain unaffected by this.

8. Partial, excess or short deliveries

8.1 Partial deliveries or partial performance of services require the prior consent of the ordering party. Such consent shall not constitute grounds for bringing forward the due date of payments. In such cases, the supplier shall pay any additional travel or transport costs arising

8.2 The Customer reserves the right to accept excess or short deliveries on an individual basis. If excess deliveries are made without prior approval from the Customer, the Customer can refuse receipt, return the delivery at the expense and risk of the supplier, or place it in storage.

9. Codes of conduct for outside companies

If services are to be performed at the Customer's premises, the supplier shall ensure that the persons performing the services observe the applicable company and safety regulations which shall be made available to the supplier prior to the beginning of work.

10. Prices, terms and conditions of delivery and payment, shipping

10.1 Prices agreed shall be binding. The prices exclude statutory VAT.

10.2 Deliveries shall be made DDP to the named place of destination, Incoterms® 2010, unless acceptance is provided for in law or agreed upon.

10.3 Payment shall be made by bank transfer within 21 calendar days with 3% discount or net 90 days. Payment and discount periods, including those agreed upon that deviate from Sentence 1, shall commence on receipt of invoice, but not before complete, non-defective delivery or performance, or acceptance if this has been agreed upon or is provided for in law

10.4 The place of payment shall be the applicable place of business of the Customer.

10.5 Deliveries shall be shipped to the place of destination free of charge, at no expense to the Customer for freight and packaging and at the risk of the supplier. Insofar as other delivery terms are arranged and the Customer is the freight payer or carries the risk of transport for the deliveries, the Customer shall be a self insurer.

10.6 Unless specifically agreed otherwise, deliveries shall be packaged appropriately in accordance with the respective applicable regulations for the type of packaging and transport safety.

11. Set-off and retention rights, assignment

11.1 The Customer is entitled to make use of all set-off and retention rights provided for in law.

11.2 The supplier shall not be entitled to assign claims of the Customer to third parties without prior written consent from the Customer or allow claims to be collected by third parties unless such claims are uncontested, accepted or established as valid by a court.

12. Passage of risk, notification of defects

12.1 For deliveries, risk shall pass to the Customer upon arrival at the agreed place of destination. For deliveries with setup or installation obligations or for cases in which the supplier has other contractual obligations for which acceptance is agreed upon or provided for in law, the risk shall pass to the Customer at the time of official acceptance.

12.2 Insofar as the commercial obligations to examine the goods and to give notice of defects in accordance with section 377 of the German Commercial Code apply, the obligations of the Customer shall be limited to inspection of the delivery with regard to amount and identity, externally visible transport and packaging damage, and taking of samples to determine whether characteristic features are present.

12.3 If the commercial obligations to examine the goods and to give notice of defects apply, the Customer shall give notice of externally visible defects within 10 working days of delivery. Notice of other defects must be given promptly upon their discovery.

12.4 If acceptance is agreed upon, the inspection for defects shall be carried out in connection with the acceptance.

13. Material defects and defects of title, period of limitation for warranty claims

13.1 The supplier is obliged to provide goods and services free of defects. Goods and services must comply with the current state of the art, the generally accepted codes of practice for technical safety regulations and occupational health regulations from both the proper authorities and professional or trade associations, and with applicable environmental regulations. A CE marking is required on all machines, devices and systems. If agreed, certificates of origin must be included with deliveries and must state the agreed point of origin.

13.2 If the supplier has any concerns about the agreed type of implementation, these must be immediately communicated to the Contracting Body in writing.

13.3 The Customer is entitled to the statutory warranty claims if the agreed characteristic features or guarantees are not adhered to. Guarantee claims that go above and beyond the statutory provisions governing claims shall remain unaffected by this clause. The supplier's obligation to remedy defects complained of refers to all measures to be taken by the supplier and to the bearing of costs at the place of performance.

13.4 In the event of defects, the Customer is entitled to fully exercise the corresponding legal rights. To this end the Customer may, at its option, require the supplier to remedy the defect by way of rectification, replacement or remanufacture and to compensate it for damage in accordance with the statutory provisions.

13.5 If the supplier fails to remedy the defect within a reasonable grace period allowed to it, if the remedy is unsuccessful, or if setting of an extension of time is not required, the Customer can, if the statutory conditions are satisfied, withdraw from the contract, demand compensation, compensation in lieu of performance or reimbursement of needless expenditures, or abate the price of the delivery or service.

13.6 If the supplier does not fulfill its obligation to remedy the defect within a reasonable grace period allowed it, and does not have the right to refuse to remedy the defect, the Customer shall, in case of risk of high damages and if the supplier cannot be contacted, be entitled to remedy the defects itself or have the defects remedied by a third party at the expense of the supplier. In such cases, the supplier's obligation to remedy defects shall nevertheless remain in force.

13.7 The Customer shall keep deliveries subject to complaint ready for inspection by the supplier.

13.8 The period of limitation to which the Customer is entitled for making claims against the supplier for material defects shall be 24 months from the date of delivery. Exceptions to this are subassemblies, machines and systems; the period of limitation for such items shall begin only after acceptance by the orderer, if such acceptance is agreed upon or provided for by law. The Customer has a 48 month period in which to claim defects of title, insofar as a longer period is not provided for by law.

14. Other liabilities, property rights of third parties, insurance

14.1 The supplier's liability for reasons other than those described in Clauses 13 or 7 is governed by the relevant statutory regulations. The supplier shall release the Customer from all claims made on grounds of non-contractual product liability if these result from a defect in goods delivered and/or services performed by it where the cause of the defect originates within the supplier's sphere of control. If the Customer is obligated by law or regulatory authorities to carry out a recall, the supplier shall reimburse the Customer for expenses arising from such recall if it is due to a culpable breach of duty. The Customer's right to claim damages from the supplier shall remain unaffected by this. The Customer shall inform the supplier about such measures within a reasonable amount of time and offer the supplier the opportunity to respond.

14.2 The supplier shall ensure that the Customer does not violate the copyrights, patents or other property rights of third parties when using its goods or services in compliance with the contract. The supplier shall release the Customer from any and all third party claims which are made against it due to breach of commercial property rights or copyrights in case of use in compliance with the contract, and

shall bear the costs incurred by the Customer in safeguarding these rights if the third party claims are founded on culpable conduct on the part of the supplier.

14.3 The supplier shall ensure that it has sufficient insurance cover against liability risks arising from the contracts concluded with the Customer. Upon request of the Customer, the supplier shall provide evidence in the form of a written confirmation by the insurance company of the insurance cover and the amount of the sum insured for each individual type of loss.

15. Environment

The supplier shall ensure that it has sufficient insurance cover against liability risks arising from the contracts concluded with the Customer. Upon request of the Customer, the supplier shall provide evidence in the form of a written confirmation by the insurance company of the insurance cover and the amount of the sum insured for each individual type of loss.

16. Title, regard for copyrights and industrial property rights in documentation provided

16.1 The Customer contests any and all provisions regarding reservation of title or declarations of reservation of title by the supplier, insofar as these go beyond simple reservation of title. These shall require the prior written consent of the Customer on an individual basis. If the supplier's own suppliers assert property rights, joint ownership rights or rights of lien or takes measures for debt enforcement, the Customer shall assert claims against the supplier for any and all damage arising as a result.

16.2 The processing or transformation of materials provided to the supplier shall be done for the Customer, and the Customer shall become owner of the new or transformed goods. If the processing includes blending or mixing with other goods of the supplier, thus resulting in joint ownership, the supplier shall store the new goods for the Customer with the due diligence of a prudent business person..

17. Nondisclosure, data protection, IT security

17.1 The supplier shall treat any information obtained as part of the contractual cooperation with the customer as confidential, in particular information about internal company issues, know-how, or business plans of the customer, regardless of whether this information is made available during the course of the cooperation or in documents. The customer is only permitted to make it accessible to third parties if this is unavoidable for the provision of contractual services owed to the customer. This also applies to parts that the supplier produces specifically according to the specifications of the customer or with the involvement of the customer. The employees and subcontractors employed by the supplier and approved by the customer are also obligated to maintain confidentiality.

17.2 The supplier shall comply with the data protection regulations for data submitted to the supplier in the context of contractual cooperation. The customer is entitled to store data provided to the customer by the supplier for the purpose of fulfilling the contractual relationship and to process it as part of the data protection regulations, provided this is necessary for contractual purposes.

17.3 The supplier shall observe the principles of correct data processing during the provision of services. These include, e.g., compliance with statutory data protection regulations and all precautions and measures in accordance with the current state of the art.

17.4 The supplier shall take suitable technical and organizational measures required to ensure a high level of IT security relating to the services and the IT systems used by the supplier for their provision. The supplier shall ensure compliance with the minimum standards of ISO/IEC 27001:2022 (or, if a successor version is published, the successor version) or another similarly high security standard, such as BSI (German Federal Office for Information Security) IT-Grundschutz (Basic IT Protection), in the currently valid version. At the request of the customer, the supplier shall provide detailed information on the respective measures and make the corresponding concepts, certificates, and test reports available.

18. Place of performance, jurisdiction, applicable law

18.1 The place of performance for deliveries is the place of destination, for services requiring acceptance it is the place of acceptance.

18.2 The place of payments shall be the Customer's place of business.

18.3 Jurisdiction for disputes lies with the competent court for the Customer's place of business. The Customer is also entitled to sue the supplier at the general court of jurisdiction of the supplier.

18.4 German law applies to the exclusion of the United Nations Convention on the International Sales of Goods (UN Sales Convention; CISG)