

em-tec GmbH

Terms and Conditions of Sale and Delivery

I. Scope of applicability

1. The General Terms and Conditions of Sale and Delivery ('Terms and Conditions') of em-tec GmbH at hand (hereinafter referred to as: 'EM-TEC'), shall apply to all current and future offers, contracts and other legal relationships between EM-TEC and its contractual partners (hereinafter referred to as 'Buyer').
2. The terms and conditions of the Buyer shall only become part of the contract if and insofar as they comply with the terms and conditions of the EM-TEC or if EM-TEC has expressly acknowledged the terms and conditions of the contracting party in written form, i.e., in writing, by fax or by e-mail.

II. Offers, Contract conclusion and Contract content

1. If and insofar as an order of a Buyer must be qualified as an offer in accordance with § 145 German Civil Code (BGB), EM-TEC shall be entitled to accept such offer within two weeks of receipt. Offers made by EM-TEC are in principle non-binding and without obligation, unless they are expressly designated as binding offers.
2. The acceptance of the offer by EM-TEC can be made by written declaration (i.e., in writing, by fax or e-mail) or by rendering the commissioned performance. EM-TEC reserves the right not to accept orders. Silence of EM-TEC after the expiry of the acceptance period shall in doubt be deemed as rejection of the respective order.
3. If a Buyer places an order by electronic means, EM-TEC shall endeavour to immediately confirm the receipt of such order. The confirmation of receipt does not yet represent a binding acceptance of the respective order, however, the confirmation of receipt by EM-TEC can be combined with a declaration of acceptance.
4. If EM-TEC accepts an order from a Buyer, such acceptance shall always be declared - even if EM-TEC does not explicitly refer to them - subject and with reference to the T&Cs at hand. If and insofar as the T&Cs at hand deviate from the terms and conditions of the Buyer, the acceptance of the order shall be understood as a new offer within the meaning of § 150 para 2 German Civil Code (BGB).
5. In the case of verbally agreed contracts, EM-TEC shall determine its scope of performances by a written contract confirmation.
6. Insofar as the contractual relationship between EM-TEC and the Buyer is based on the sale of goods or the delivery of to be manufactured or generated goods, §§ 433 et seq. German Civil Code (BGB) possibly in

conjunction with § 651 German Civil Code (BGB) shall apply subject to deviating provisions in the T&Cs at hand. For work contracts § 631 et seq. German Civil Code (BGB) shall apply subject to deviating provisions in the T&Cs at hand.

III. Transfer of Entitlements and Obligations

The assignment of entitlements and/or the transfer of obligations of the Buyer resulting from a purchase contract shall not be permitted without the written consent of EM-TEC.

IV. Prices

1. Prices, unless otherwise agreed, are net ex works or ex EM-TEC warehouse plus the respectively applicable VAT, transport and packaging costs as well as any applicable fees and duties.
2. Insofar as the delivery is performed later than 4 months after conclusion of the contract, EM-TEC may change the prices accordingly if the costs of the materials, production, packaging, distribution or transport have changed since the conclusion of the contract or if public charges, customs duties or exchange rates have since changed. The adjustment of the purchase price is based on the calculation utilised on the part of EM-TEC at the time of contract conclusion, taking into account the cost increases which actually occurred. A price increase shall be precluded as far as EM-TEC is responsible for the increase in costs. The profit of EM-TEC may not increase by the adjustment of the selling price.
3. It shall be explicitly specified if a written cost estimate is requested. Should the Buyer decide not to have the repairs carried out, EM-TEC shall be entitled to claim adequate remuneration for providing the cost estimate.
4. EM-TEC shall be entitled to demand reasonable advance payments.

V. Terms of Payment

1. The purchase price and prices for ancillary services shall become due and payable upon receipt of the invoice, however no later than upon delivery of the goods.
2. If payment terms have been agreed, the entire purchase price shall be due for payment with immediate effect if the Buyer is in default of payments, becomes insolvent, suspends payments or insolvency proceedings are filed against his assets.

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3. From the day of maturity onward, EM-TEC shall be entitled to charge interest at a rate of 8 percentage points above the base rate.
4. The statutory provisions shall apply should the Buyer be in default of payment.
5. The Buyer may only offset undisputed or legally determined counterclaims. The Buyer shall only be authorised to exercise a right of retention if his counterclaim results from the very same contractual relationship.

VI. Delivery deadlines and delivery dates

1. Delivery deadlines and delivery dates shall be binding only if specified in writing. Delivery deadlines and delivery dates shall be deemed to have been agreed as being approximate in so far as they were not explicitly agreed.
2. Temporary impediments to performance not attributable to EM-TEC, such as force majeure, riots, strikes, lockouts and non-delivery of EM-TEC with required materials shall extend the agreed delivery deadlines and delivery dates by the duration of the disruption caused by such circumstances. The same shall apply in the event that EM-TEC allows individual services to be provisioned by a third party as agreed and the corresponding service of a third party is not rendered.
3. Dunning notices of the Buyer shall be made in writing to be valid.
4. EM-TEC shall be entitled to part performances insofar as this shall be reasonable for the Buyer. Reasonable part performance shall oblige the Buyer to pay the pro rata remuneration.

VII. Place of fulfilment, transfer of risk, acceptance and default of acceptance

1. Place of performance and place of fulfilment shall be the EM-TEC place of business (XIV.2). With the transfer of the goods to the freight forwarder or carrier, the risk of accidental loss shall be automatically transferred to the Buyer. This shall also apply to FOB and CIF transactions (Incoterms 2010).
2. Acceptance shall constitute one of the main contractual responsibilities of the Buyer.
3. Further claims of EM-TEC, in particular those for damages due to default, shall remain unaffected.

VIII. German Medical Products Law (MPG), Electrical Appliance Law

EM-TEC puts both medical and industrial products into circulation. Different provisions apply to these different areas.

VIII a. General provisions for medical products and industrial products

1. The Buyer shall ensure that products supplied by EM-TEC will only be used by individuals with the applicable professional qualifications and aptitude. The Buyer undertakes to ensure the appropriate introduction of the personnel within the scope of the respective statutory provisions.
2. Except for wilful misconduct or gross negligence on the part of EM-TEC, its representatives and vicarious agents, EM-TEC shall accept no liability for the products purchased from EM-TEC by third parties that contain substances in concentrations or applications, which may no longer be placed on the market after July 1st, 2006 pursuant to the German Law regarding the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (ElektroG), in its respective valid version. The aforementioned provision shall also apply if the acquired products have been processed or transformed by EM-TEC prior to being sold to the Buyer. Insofar as no claim can be asserted against EM-TEC as a result of the aforementioned regulation, EM-TEC already hereby assigns any claims of EM-TEC against the respective third party to the Buyer.

VIII b. Further provisions exclusively applicable to medical products

1. The Buyer shall undertake to ensure that products supplied by EM-TEC are not combined with products from other manufacturers. The aforementioned shall not apply if such combination is expressly approved in writing by both EM-TEC and the other manufacturers.
2. The Buyer shall undertake to strictly comply with the Medical Products Law (including statutory ordinances and issue of orders by authorities) of the respective country in which the products are utilised.

IX. Claims for deficiencies

1. The warranty rights of the Buyer shall be subject to immediate inspection of the goods by the Buyer pursuant to § 377 German Commercial Code (HGB) and immediate notification of deficiencies by the Buyer to EM-TEC in writing.

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2. Deviations from the agreed performance data shall be permissible according to commercial practise, if such deviations are deemed reasonable for the Buyer taking into account the interests of EM-TEC.
3. Material and product designations, in particular those according to DIN regulations, shall not guarantee the quality of the materials utilised.
4. Warranty claims of the Buyer against EM-TEC shall be, at the discretion of EM-TEC, restricted to elimination of the deficiency or delivery of a deficiency-free product. In case of failure of the subsequent performance, the Buyer may at his own discretion reduce the purchasing price or withdraw from the contract at hand.
5. For deficiency claims of the Buyer, the statutory period of limitation shall apply, in cases where the Seller has fraudulently concealed the deficiency or if it concerns goods that have been used in accordance with their customary use for a building and its deficiency was caused by such building or in the event of a delivery recourse pursuant to §§ 478, 479 German Civil Code (BGB). Otherwise, deficiency claims of the Buyer shall expire within 12 months of delivery, unless the statutory provisions provide for a shorter limitation period.

X. Neglect of duty and total liability

1. The Buyer shall only be entitled to claims for damages in the case of intent or gross negligence accountable to EM-TEC, its representatives or vicarious agents or in case of violation of essential contractual obligations by EM-TEC; this shall also apply to damages resulting from the violation of obligations during the contract negotiations. The above limitation of liability shall not apply to injuries of life, body and health and not, if EM-TEC has fraudulently concealed a defect or has granted a guarantee for the condition of the goods.
2. A liability beyond the contractual and pre-contractual liability of EM-TEC for tortuous claims shall be precluded. Any liability under the product liability law remains unaffected.
3. EM-TEC shall not assume liability for damages that are not typical for the contract or not foreseeable as long as EM-TEC, its representatives or vicarious agents did not act deliberately. The above limitation of liability shall not apply, if EM-TEC has fraudulently concealed a defect or has granted a guarantee for the condition of the goods.

4. An exclusion period of 18 months shall apply for all claims that are not subject to the statute of limitations pursuant to IX. 5.

The exclusion period commences from the time the Buyer becomes aware of the damage and the person of the damaging party.

5. Insofar as compensation for damages towards EM-TEC is precluded or limited, this shall also apply for possible personal liability for damages attributable to managers, workers, employees, representatives and vicarious agents of EM-TEC.

XI. Reservation of ownership

1. EM-TEC reserves the ownership of the goods it has delivered until all claims of EM-TEC from the business relationship with the Buyer, for whatever legal reasons, have been fulfilled.
2. In the case of a current account relationship, the reservation refers to the acknowledged balance.
3. The Buyer may resell the goods subject to retention of title in the ordinary course of business at standard terms and conditions as long as the Buyer duly meets his due payment obligations towards EM-TEC. The Buyer already herewith assigns his claims from the resale, even for the case the goods will be installed or mixed, to EM-TEC, regardless of whether there are claims arising from a contract of sale or work or unjust enrichment (extended retention of title). EM-TEC hereby accepts this assignment. The assignment shall be limited to the material value of the goods subject to retention of title, if such EM-TEC goods were connected, mixed or processed by the Buyer with other materials delivered under reservation of title.
4. The Buyer shall be entitled to demand payment from the resale despite the assignment of the claim. This right shall not apply in cases where the Buyer no longer duly fulfils his payment obligations, in particular where the Buyer is in default of payment or ceases payments, or in cases where an application for the opening of insolvency proceedings has been filed against the Buyer's assets. The Buyer shall be obliged to notify EM-TEC immediately about the submission of applications for insolvency proceedings. EM-TEC shall be entitled to request information about the debtor and the amount of the assigned claims at any time.
5. Otherwise, EM-TEC shall be entitled at any time, to notify the third party debtors of the extended retention of title.

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The Buyer shall be obliged to notify EM-TEC of the assigned claims and their debtors immediately and to provide all necessary documents (invoice copies, etc.).

6. If the Buyer defaults on payment and if this indicates that a not inconsiderable part of EM-TEC's claim is jeopardised, EM-TEC shall be entitled to withdraw from the contract and/or to retrieve the reserved goods and for this purpose, if necessary, to enter the premises of the Buyer. The retrieval shall not be assumed to be a withdrawal from the purchase contract.
7. The withdrawal of EM-TEC from the sales contract shall take place according to the statutory provisions and subject to the provisions XI.8 and XI.9.
8. Place of performance and place of fulfilment for any possible claims to restitution shall be the EM-TEC place of business (refer to clause XIV.2). The retrieval of the goods delivered under retention of title shall take place at the risk and expense of the Buyer.
9. EM-TEC shall be entitled to charge the Buyer for the processing costs for the redemption or retrieval of the goods subject to retention, i.e. 10% of the invoice amount, but at least a lump sum of EUR 100.00.
10. If and insofar as the achievable value of the existing securities exceeds the secured claims by more than 10% in total, the Buyer shall be entitled to demand the release of securities in this respect; the selection of the to be released securities resides in the responsibility of EM-TEC.
11. The Buyer shall be obliged to notify EM-TEC immediately in writing of any seizures or other impairments of the goods delivered under retention of title by a third party.
12. Insofar as the third party will be unable or unwilling to reimburse EM-TEC for the legal and out-of-court costs of a claim in accordance with § 771 German code of civil procedure (ZPO), the Buyer shall be liable for the default incurred by EM-TEC, as absolute guarantor.

XII. Withdrawal

1. In addition to the statutory reasons for withdrawal, EM-TEC shall be entitled to withdraw from the contract if the service provided by EM-TEC becomes impossible, e.g. in the absence of delivery by their suppliers, force majeure, strike, natural disasters, etc., if the Buyer provided false information on his creditworthiness or objectively has no creditworthiness, and in case of unpredictable obstacles that cannot be overcome by reasonable expenses. This shall not apply if EM-TEC is responsible for such impossibility or impediment.

2. In case EM-TEC withdraws from the contract due to a breach of duty by the Buyer, EM-TEC shall be entitled to a flat-rate claim in the amount of 25% of the contract value for damages against the Buyer. This shall not apply if the Buyer is not responsible for such breach of duty. The Buyer shall be entitled to provide evidence that EM-TEC has not suffered any damages at all or only significant lower damages. The assertion of higher damages shall remain unaffected.

XIII. Packaging

1. The goods shall be delivered unpacked, unless otherwise agreed or a specific packaging is commercial practice.
2. Packaging and transport material shall not be taken back.

XIV. Jurisdiction, EM-TEC place of business

1. Exclusive place of jurisdiction for both Contracting Parties (EM-TEC and the Buyer) shall be the competent court for the EM-TEC place of business; this shall also apply to suits filed in conjunction with cheque transactions.
2. The EM-TEC place of business is the EM-TEC registered office.

XV. Intellectual property

1. Quotation documents, estimates, drafts, drawings and calculations of EM-TEC shall remain the exclusive property of EM-TEC and may not be reproduced in text form without the consent of EM-TEC and neither be reproduced nor made available to third parties. In case the contractual relationship should not be established, the offer documents must be returned to EM-TEC immediately and completely, and any copies made must be destroyed.
2. Should inventions be made within the context of the EM-TEC business relationships, EM-TEC shall be entitled to the sole exploitation of the rights derived therefrom, in particular when resulting from patents.

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XVI. Miscellaneous

1. In the case of export deliveries, EM-TEC accepts no liability if its products should infringe third-party industrial property rights unless EM-TEC is guilty of intent or gross negligence.
2. If a Buyer should be resident outside Germany or his agent collects goods and transports or dispatches them abroad, such Buyer shall be obliged to furnish EM-TEC with the proof of export required for tax purposes. If such proof is not provided, the Buyer shall be obliged to pay the VAT rate from the invoice amount applicable for deliveries within Germany.
3. The law of the Federal Republic of Germany shall apply excluding the Vienna UN Convention on Contracts for the International Sale of Goods.