



General Purchase and Delivery Terms

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General Purchase and Delivery Terms

of EMW Filtertechnik GmbH

I. Application, General

All deliveries and services are made exclusively on the basis of the present Purchase and Delivery Terms.

Contrary or deviating business terms of the Buyer are hereby waived except if the Supplier has explicitly agreed to their validity in writing.

The present Purchase and Delivery Terms if served to the Buyer by the Supplier at an earlier confirmed order apply to all business links including future transactions even when no explicit reference is made to them.

The present Purchase and Delivery Terms apply only to companies, public-law corporations or public-law special funds.

Offers of the Supplier are without obligation and not binding. Dates quoted in offers of the Supplier and records accompanying the offer such as pamphlets, illustrations, drawings, plans, computations as well as dimensional and weight tables are considered to be only approximate. Orders become binding only with the written order confirmation of the Supplier. The written order confirmation of the Supplier defines all agreements on the contract contents with finality which are binding unless the Buyer objects to them promptly in writing. Verbal undertakings and amendments require a written confirmation of the Supplier.

II. Prices

If not stated otherwise in the order confirmation, prices apply ex works but are in all cases exclusive of freight, customs duties, import charges, packing and statutory value-added tax where applicable.

If major costing factors change between the submission of the offer or contract confirmation and delivery, Supplier and Buyer shall seek an amicable settlement on revising prices and the costs of moulds.

If the price is agreed to be a function of the weight of parts, the final price shall be computed from the weight of approved pattern samples.

In the event of a follow-up order, the Supplier is bound by the price of the preceding order.

III. Delivery and Acceptance Obligations

Delivery dates quoted by the Supplier are not binding except if binding dates have been explicitly quoted in the written order confirmation. Their observation by the Supplier presupposes that all commercial and technical questions between the contract parties have been clarified and that the Buyer has fulfilled all obligations incumbent upon him, as e.g. the collection of required official permits or approvals, or the supply of a downpayment. If this is not the case, the delivery time shall be adequately extended. This does not apply if the delay is attributable to the Supplier. The observation of delivery dates is conditional on correct and timely delivery to the Supplier. The delivery date is deemed met if the goods have left the works or shipping readiness has been notified by the delivery date except if exceptionally agreements were made to the contrary. Where acceptance is required, the acceptance date is relevant – except in the case of a justified refusal of acceptance – or alternatively the notification of acceptance readiness. If the shipment is delayed or rendered impossible without fault of the Supplier, the delivery date is deemed met with the notification of shipping or acceptance readiness.

If due to a culpable fault of the Supplier, the agreed delivery date is not met or if the Supplier is in arrears and this results in damage to the Buyer, the Buyer, after the expiry of an adequate grace period and excluding further claims and provided the Supplier has not acted with premeditation or gross negligence, is entitled to demand a lumpsum compensation for the delay. The lumpsum compensation for delay is 0.5% for every full week of delay up to a maximum of 5% of the invoice value of the portion of the overall delivery or service which due to the delay could not be used contractually or in time. Further claims of the Buyer also after the expiry of a deadline set for the Buyer for delivery or the supply of a service are excluded whereby this limitation does not apply in the case of premeditation or gross negligence on part of the Supplier. The foregoing limitation likewise does not apply to liability for injury to life and limb. The above provisions do not entail a reversal in the onus of supplying proof to the detriment of the Buyer.

Unless agreed otherwise, partial deliveries and partial services are permitted except if the partial delivery or partial service is of no interest to the Buyer.

With call-off orders not involving an agreed delivery date, production batch sizes and acceptance dates, the Supplier is entitled to demand a binding definition at the latest three months after order confirmation. If the Buyer fails to meet this request within three weeks, the Supplier is entitled to set a 2-week grace period and withdraw from the contract and/or demand compensation after its expiry.

If the Buyer fails to meet his acceptance obligation, the Supplier irrespective of other rights is no longer committed to the provisions on sale, i.e. he is free to sell the goods on his own after prior notification of the Buyer. If the shipment or acceptance of the goods is delayed for reasons attributable to the Buyer, costs resulting from the delay will be billed starting one month from report of shipping or delivery readiness.

Events of force majeure entitle the Supplier to postpone the shipment or service for the duration of the obstruction plus an adequate lead time or to withdraw from the contract in whole or in part on account of the undelivered portion; such events are not deemed to be the responsibility of the Supplier. Even when delivery periods and dates have been bindingly agreed, delays in deliveries and services resulting from force majeure or events which render the delivery or service substantially more difficult not merely temporarily or impossible altogether shall not be deemed the responsibility of the Supplier. Strikes, lock-outs or unforeseeable and unpreventable circumstances as e.g. plant breakdowns which render the timely delivery or service impossible for the Supplier in spite of reasonable efforts are deemed equivalent to force majeure; the onus of their proof is on the Supplier. This also applies if the above-quoted obstructions occur during a delay or at a subcontractor.

The Buyer may require the Supplier to declare within two weeks whether he will withdraw or make delivery within an adequate supplementary period. If the Supplier fails to make such a declaration, the Buyer is entitled to withdraw from the undelivered portion of the contract.

The Supplier shall promptly notify the Buyer of any case of force majeure. He must keep the effects on the Buyer as limited as possible, e.g. by supplying the moulds for the duration of the obstruction.

The Supplier reserves the right to departures from physical and chemical quantities when these are customary in the trade or technically unavoidable including of colours, formulations, processes and the use of raw materials as far as this is reasonable to the Buyer. Moreover, the Supplier is entitled also without the approval of the Buyer to depart from plans and descriptions supplied with his offers and order confirmations when this results from manufacturing considerations or enhancements, experience and technical progress and provided no additional costs are charged by the Supplier on this account.

IV. Packing, Shipment, Transfer of Risk and Delay of Acceptance

If not agreed otherwise, packaging, shipping method and shipping route are at the discretion of the Supplier.

The transfer of risk to the Buyer takes place after the goods have left the works, also in the case of partial deliveries or if the Supplier undertakes to supply other services as e.g. the shipping costs, delivery to the site and erection. If acceptance is required, it must be performed promptly on the acceptance date or alternatively after the Supplier has notified acceptance readiness. The Buyer may not deny acceptance due to the presence of a minor defect.

If shipment or acceptance is delayed or fails to materialize due to circumstances not attributable to the Supplier, the risk is transferred to the Buyer on the date of reporting shipping or acceptance readiness.

At a written demand of the Buyer, the goods shall be insured for his account against the risks quoted by him.

V. Reservation of Title

All deliveries remain the property of the Supplier up to the fulfilment of all claims of the Supplier against the Buyer even after the purchase price for a specific claim has been paid. With current accounts, reservation of title to deliveries (reserved goods) acts as a collateral for payment of the balance to the Supplier. If a bill of exchange liability is created in connection with the payment of the purchase price, the reservation of title does not expire before the payment of the bill by the Buyer.

Processing or compounding by the Buyer is made on instructions of the Supplier and excludes the acquisition of ownership as per Sec. 950 BGB; the Supplier becomes the co-owner of the new product in a ratio to the invoice value after tax of his goods to the invoice value after tax of the goods being processed or compounded which then serves as reserved goods to secure the claims of the Supplier as per Subsec. 1.

The provisions of Secs. 947, 948 BGB shall apply to any processing (compounding/mixing) by the Buyer with other goods not belonging to the Supplier with the result that the co-ownership of the Supplier of the new product now becomes the reserved goods in the sense of the present terms.

The Buyer is permitted to resell reserved goods only as part of his ordinary business transactions and subject to the proviso that he also agrees on a reservation of property as per Subsecs. 1 to 3 with his own customers. The

resale of reserved goods is permitted to the Buyer only if he is not in arrears with his payments. The Buyer is not entitled to any other type of disposal of reserved goods, in particular their supply or assignment as collateral.

In the event of a resale, the Buyer assigns to the Supplier already at this time and up to the satisfaction of all claims of the Supplier, all receivables and other justified claims against his own customers with all subsidiary rights resulting from the resale. The Supplier accepts this assignment already at this time. On demand on the Supplier, the Buyer must hand over to the Supplier promptly any information and records required to assert the rights of the Supplier vis-à-vis the customers of the Buyer.

If the reserved goods are resold by the Buyer after processing as per Subsec. 2 and/or 3 together with other goods not belonging to the Supplier, the assignment of the purchase price claim as per Subsec. 5 applies only to the amount of the invoice value of the reserved goods of the Supplier.

If the value of securities held by the Supplier exceeds that of his total claims by more than 10%, the Supplier must on demand of the Buyer release the excess value of the securities at his discretion.

Attachments or seizures of reserved goods by a third party must be reported promptly to the Supplier. Possibly resulting costs for an intervention if not borne by a third party shall at all times be for account of the Buyer.

In the event of, among other reasons, non-contractual conduct of the Buyer, in particular late payment, the Supplier is entitled to retrieve the goods. If the Supplier retrieves the goods under the foregoing provisions, he is entitled to freely sell or auction the goods. Invoking the right of ownership and in particular the demand for the return of the goods do not constitute contract rescission except if the Supplier has explicitly declared so in writing. The return of the reserved goods is made at the price obtained for them but at most at agreed delivery prices. Further claims for compensation, in particular for lost profits, are reserved. An application for the opening of insolvency proceedings entitle the Supplier to withdraw from the contract and demand the immediate return of the goods.

The Buyer is obligated to carefully store the reserved goods, to keep them in a proper state of maintenance or repair them at his expense and to adequately insure them for his account at their procurement value against theft, breakage, fire and water damage on behalf of the Supplier. He hereby assigns his claims under the insurance contracts to the Supplier in advance who accepts the assignments already at this time.

The Buyer shall submit proof of adequate insurance coverage to the Supplier with-

out separate request. If the Buyer has demonstrably failed to adequately insure the goods, the Supplier is entitled but not obligated to have the goods insured for account of the Buyer against theft, breakage, fire and water damage.

VI. Liability for Vices and Defects

The pattern samples submitted by the Supplier at the request of the Buyer are relevant for the quality and workmanship of the products. Any reference to technical standards is used for purposes of specification and must not be interpreted as a quality guarantee.

If the Supplier has counselled the Buyer in addition to his contract performance, he shall be liable for the functional integrity and the adequacy of the goods only on an explicit prior written undertaking.

If no formal acceptance at the Buyer takes place, product defects must be reported promptly in writing but no later than within 15 working days from the arrival of the goods at the Buyer with an accurate description of the defect. With concealed defects, the written claim must be made promptly on their detection. The onus of proof of a concealed defect is on the Buyer.

Defect claims of the Buyer are limited initially to the right to supplementary performance. If the claim is substantiated – whereby the pattern samples approved in writing by the Buyer determine the expected quality and workmanship – the Supplier is obligated to supplementary performance. To do so, the Buyer must grant the Supplier reasonable time and opportunity to remedy the defect. The geographical distance from the seat of the Buyer must be taken into due account. Replaced parts become the property of the Supplier. The Supplier may refuse to remedy a defect if the Buyer fails to meet his obligations.

If the Supplier fails to meet his obligation to supplementary performance within an adequate period or if a remedy fails in spite of repeated attempts, the Buyer may – within the limits of applicable legal provisions – reduce the purchase price or, at his option, withdraw from the contract. If the defect is only minor, the Buyer is entitled merely to the right of reducing the purchase price. The claim to a reduction and the exercise of the right of withdrawal are excluded after the claim for supplementary performance has become time-barred. Further claims, in particular the reimbursement of expenses or compensation of damage on ac-

count of defects or consequential damage will be entertained only within the limits of the provisions of VII. On demand, replaced parts must be returned to the Supplier at the latter's expense.

Arbitrary reworking and unauthorized handling entail the loss of all defect claims. The Buyer is entitled to remedy after prior notification of the Supplier and to demand the reimbursement of adequate costs only to avert unreasonably large damage or in the case of late repair by the Supplier. Claims of the Buyer for expenses required for supplementary performance, in particular travel, transport, labour and material costs are excluded if expenses are increased because the goods have subsequently been shipped to a place other than the registered address of the Buyer except if such shipments are in line with the intended use.

No liability is accepted for consumables, unsuitable or improper handling, defective assembly and/or operation and maintenance by the Buyer or a third party, natural wear, faulty or negligent treatment – in particular excessive use – unsuitable operating media, replacement of materials, defective construction works and unsuitable subsoil. Liability is likewise excluded if the Buyer or third party carry out repairs unprofessionally or modify the goods without the consent of the Supplier.

Regress claims as per Secs. 478, 479 BGB are entertained only if their assertion by the Consumer was justified and only to the statutory extent, but not in cases of accommodation agreed with the Supplier, and presuppose fulfilment of obligations of the regress beneficiary, in particular his compliance with defect reporting requirements.

Any warranty must be agreed in writing. A warranty is effective only if it adequately describes the contents of the warranty as well as the length and geographical restrictions of its coverage.

VII. General Liability Limitations

In all cases in which the Supplier in departure from the above conditions is obligated under contractual or legal bases to provide compensation or reimburse expenses, he shall be liable only if he, his leading executives or vicarious agents are guilty of premeditation or gross negligence or of an injury to life, limb or health. Liability under the Product Liability Act as well as liability for compliance with a quality guarantee or when the Supplier has maliciously concealed a defect remain unaffected irrespective of the fault. Liability for culpable breach of major contract obligations also remains unaffected; however, except in the cases of

S. 1, liability is restricted to the foreseeable damage typical for the contract. The above provisions do not entail a change in the onus of proof to the detriment of the Buyer.

VIII. Time Limitations

All claims of the Buyer – irrespective of the legal reason – become time-barred after 12 months. Thus, defect claims as per Section VI also lapse 12 months after the transfer of the risk. In the case of premeditation or gross negligence or for claims under the Product Liability Act, the statutory limitation periods apply. These also apply to defects in a building or for goods which due to their typical use were incorporated into the building and have caused a defect in the latter.

IX. Payments Terms

All payments must be made exclusively to the Supplier in € (EURO) and are deemed received only with their valuation at the bank accounts of the Supplier.

If not agreed otherwise, the purchase price for deliveries or other services is due within 14 days from date of invoice with a 2% cash discount and within 30 days without a discount. The granting of a discount requires the payment of all earlier undisputed invoices. No discount is granted on possible payments with bills of exchange.

If the agreed payment term is exceeded, interest in the amount of the legal interest rate of 8 percentage points above the respective basic interest rate of the ECB will be charged. It shall be lower if the Buyer demonstrates a lesser damage; the Supplier is entitled to prove a larger damage.

The acceptance of cheques or bills of exchange is reserved. Cheques and renegotiable bills are accepted only for the sake of performance and all costs in connection with them are for account of the Buyer.

The Buyer may offset or assert a right of retention only if his claims are undisputed or been declared legally final. In the case of a defect, the Buyer does not have a right of retention except if the shipment is obviously defective and/or if the Buyer obviously has a right to refuse the acceptance of the works; in such a case, the Buyer is entitled to retention only if the amount retained is in a reasonable ratio to the defects and to the anticipated costs of supplementary performance (in particular of the repair of defects). The Buyer is not, however, entitled to assert any claims or rights on account of a defect if he has failed to make payments due and if the total due (including payments possibly made) is in a reasonable ratio to the value of the defective shipment or works.

The persistent non-observation of payment terms or circumstances which allow serious doubts as to the creditworthiness of the Buyer entail the immediate maturity of all claims of the Supplier. In addition, the Supplier is in such a case entitled to demand advance payments for outstanding deliveries or to withdraw from the contract after the fruitless expiry of an adequate grace period.

X. Moulds (Tools)

The price for moulds also includes the costs for one-time sampling not, however, the cost for testing and processing devices as well as for any modifications requested by the Buyer. The costs for further samples requested by the Supplier are for his account.

If not agreed otherwise, the Supplier remains to the owner of the moulds produced for the Buyer either by the Supplier himself or by a third party appointed by him. Moulds are used exclusively for the orders of the Buyer when this was contractually agreed and as long as the Buyer meets his payment and acceptance obligations. The Supplier is required to replace the moulds free of charge only when these are required to meet the production quantity assured by the Buyer. The obligation of the Supplier to store moulds expires two years after the last parts shipment made with the mould and after prior notification of the Buyer.

If it is agreed that the Buyer is to become the owner of the moulds, the ownership passes to the latter on complete payment of the purchase price. However, the handover of the moulds to the Buyer is replaced by their storage on behalf of the Buyer. Irrespective of the statutory surrender claim of the Buyer and the service life of the moulds, the Supplier is entitled to their exclusive possession up to the termination of the contract. The Supplier must mark the moulds as foreign property and at the request of the Buyer must have them insured at the latter's expense.

For moulds owned by the Buyer as per Subsec. 3 or supplied by the Buyer on loan, the liability of the Supplier for their storage and upkeep is restricted to the care expended on his own property. The costs for the maintenance and insurance shall be borne by the Buyer. The obligations of the Supplier are met if the Buyer on completion of the order and after a respective demand fails to collect the moulds within an adequate period. As long as the Buyer fails to meet his contractual obligations to the full extent, the

Supplier has a definite right of retention to the moulds.

XI. Supply of Material

If materials are supplied by the Buyer, they must be supplied at his expense and risk with an adequate premium of at least 5 % in good time and flawless conditions.

If these preconditions are not met, the delivery time shall be adequately extended. Except in the case of force majeure, the Buyer must bear the resulting extra costs, incl. for production shutdowns. Further claims remain reserved.

XII. Industrial Property Rights and Legal Vices

If the Supplier is required to deliver the goods as per the plans, models, samples or using parts supplied by the Buyer, the Buyer warrants that the property rights of a third party in the country of destination of the goods will be not affected thereby. The Supplier shall inform the Buyer of any rights known to him. The Buyer must keep the Supplier free from third-party claims and compensate the resulting damage. If the manufacture or delivery is prohibited by a third party quoting a industrial property rights, the Supplier – without investigating the legal situation – is entitled to suspend the works until the legal situation is clarified by the Buyer and the third party. If the delay should render the continuation of the order unreasonable to the Supplier, he is entitled to withdraw from the contract.

Plans and samples supplied to the Supplier and not resulting in an order must be returned on request; otherwise the Supplier is entitled to destroy them three months after the submission of an offer. This obligation applies analogously to the Buyer. He shall moreover not give a third party access to the plans and samples except with the explicit written consent of the Supplier. The Party entitled to destruction must inform the other Contract Party of its intention to destroy in good time in advance.

The Supplier is entitled to all copyrights and possible industrial property rights, in particular all rights of use and utilization of models, moulds, devices, designs and plans elaborated by him or by third party on his instructions.

The Supplier reserves the ownership and copyright to all records. These must not be supplied to a third party or used for advertising purposes and must be returned on demand.

Sections VI to VIII apply analogously to any other legal vices.

XIII. Place of Fulfilment and Court of Jurisdiction

The place of fulfilment is the location of the Manufacturer.

The court of jurisdiction at the option of the Supplier is his registered seat or the seat of the Buyer, also for documentary, bills of exchange and cheque proceedings.

All legal links between the Supplier and the Buyer shall be subject exclusively to the laws of the Federal Republic of Germany governing the legal links between domestic parties. The UN Convention on Contracts for the International Sale of Goods shall be excluded.

If any provision in these Purchase and Delivery Terms or a provision as part of other agreements should be or become invalid, the validity of all remaining provisions or agreements shall not be affected.