

# General Terms and Conditions of emstex GmbH

## § 1 Scope of validity

- (1) These terms of sales apply exclusively to contracts for the delivery of goods between the buyer and emstex GmbH, Unterer Sundern 11, D-32549 Bad Oeynhausen. Any contrary or deviating conditions of the customer shall only be accepted, if we explicitly confirm acceptance in writing.
- (2) All quotations and these General Terms and Conditions are exclusively intended for commercial customers (B2B). We do not supply end users as defined by §13 BGB (German Civil Code).
- (3) These purchase conditions shall also apply to all future transactions with the customer, provided these are related legal transactions.

## § 2 Quotation and formation of a contract

- (1) The customer (hereinafter also referred to as "buyer") shall make us (hereinafter referred to as "emstex GmbH") an offer to enter into a contract by way of an order by phone, in writing or through electronic means. The contract shall be deemed effective, once emstex GmbH has accepted the order in writing within 14 days or delivery is complete. Once the buyer has made an order, it is binding. An order placed by phone is binding for the buyer, even if it is not confirmed by mail, e-mail or fax. emstex GmbH shall be entitled to withdraw from the contract in the event of typing, printing and calculation errors.
- (2) emstex GmbH does not assume any procurement risk. emstex GmbH is entitled to withdraw from the contract if it does not receive the delivery item itself despite entering into a purchasing contract for it beforehand; this does not affect the responsibility of emstex GmbH for intent and gross negligence as defined in provision § 7 section 2. emstex GmbH will immediately inform the buyer if the delivery item is not available on time and, if it intends to exercise its right to withdraw, will do so without delay. emstex GmbH will return the buyer's payment if it withdraws from the contract.
- (3) In cases of doubt, the product descriptions and statements of emstex GmbH (e.g. performance description, reference to technical standards) etc. do not constitute a guarantee. In cases of doubt, only an explicit written declaration by emstex GmbH constitutes a guarantee. emstex GmbH reserves the right to change the structural design at any point, provided this does not decrease the product value.
- (4) The buyer is obligated to accept the shipment. Should acceptance of the shipment be seriously and definitively refused, emstex GmbH has the right to withdraw from the contract by way of written declaration and to demand compensation for failure to perform.

## § 3 Disclosed documents

We retain the property rights and copyright to all documents disclosed to the customer in the context of placing the order such as calculations, drawings, etc. These documents may not be disclosed to third parties, unless we give the customer explicit written authorisation to do so. If we do not accept the customer's offer within the period indicated in § 2, the documents must be returned to us without undue delay.

## § 4 Payment terms

- (1) Unless otherwise agreed in writing, our prices are to be understood ex works, plus statutory VAT at the time of order placement or order confirmation plus the cost for packaging, shipping and any customs fees. Packaging costs shall be invoiced separately.
- (2) The purchasing price is due on receipt of the invoice. The statutory VAT shall be listed separately on the invoice.
- (3) The purchasing price shall be paid exclusively onto the account indicated on the invoice. A discount shall only be accepted if a written, separate agreement (quotation) was made.

## § 5 Price adjustments

- (1) If no fixed price agreements were made, we reserve the right to make appropriate price adjustments due to changed employment, material and shipping costs for deliveries made 3 months or more after entering into the contract.
- (2) We also reserve the right to adapt the offered prices with a suitable transition period in the event of exchange rate fluctuations.

## § 6 Delivery period, performance period

- (1) The delivery dates and delivery periods indicated in the order confirmation and the quotation are generally non-binding.
- (2) Should the customer fail to accept a shipment or otherwise culpably violate the obligation to cooperate, we shall be entitled to compensation for any incurred damage including any additional expenditure. We reserve the right to assert further claims. Should the above-mentioned prerequisites apply, the risk of accidental loss or accidental deterioration of the purchased goods shall be transferred to the customer at the point at which the customer is in default of acceptance or payment.
- (3) In the case of non-delivery through no fault of our own due to force majeure, we reserve the right to inform the customer of a suitable subsequent delivery.
- (4) Claims for damages shall not be accepted due to item (3).

## § 7 Transfer of risk during shipping

If the goods are shipped to the customer on the customer's request, the risk of accidental loss or accidental deterioration of the goods shall be transferred to the customer on dispatch to the customer, but no later than at the point when the goods leave the factory/warehouse. This shall apply irrespective of whether the goods are shipped from the place of performance or who bears the freight cost.

## § 8 Reservation of title

- (1) We reserve title to the supplied goods until all claims arising from the delivery contract have been paid in full. This also applies to all future deliveries, even if we do not always explicitly state so. We have the right to take back the purchased goods, if the customer violates the contract.
- (2) The customer is obligated to treat the purchased goods with care while title has not yet been transferred to the customer. In particular, the customer is obligated to insure the purchased goods against theft, fire and water damage for the replacement value at the customer's own expense. While title has not yet been transferred, the customer is obligated to inform us in writing without delay, if the delivered object is seized or otherwise subject to intervention by third parties. Should the third party be incapable of compensating us for the expenses incurred in and/or outside of court due to a lawsuit in accordance with § 771 ZPO (German civil process procedure), the customer shall be held liable for the loss incurred by us.
- (3) The customer is entitled to sell on the reserved goods in the course of normal business. The customer shall assign the claims of the purchaser from further sale of the reserved goods to

us in the amount of the agreed final invoice (including VAT) on signing this contract. This assignment shall apply irrespective of whether the purchased good were sold on with or without further processing. The customer shall remain entitled to collect the receivables even after transfer. Our right to collect the receivables ourselves shall remain unaffected. We shall, however, refrain from collecting the receivables, provided the customer complies with the payment obligation associated with the proceeds received, is not in default and no application to initiate insolvency proceedings has been submitted and no suspension of payment applies.

- (4) Processing or conversion of the purchased goods by the customer shall always be on our behalf and in our name. In this case, the expectant right of the customer to the purchased goods shall be maintained for the converted goods. If the purchased item is processed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of the objective value of our purchased item to the value of the other processed items at the time of processing. The same applies to mixing. If the mixing process is such that the customer's item is regarded as the principal item then it shall be deemed to have been agreed that the customer shall transfer joint ownership to us on a pro-rata basis and shall keep the solely owned or co-owned item safe on our behalf. To secure our claims against the customer, the customer shall also assign claims incurred against third parties due to connection of the reserved goods with a landed property to us and we shall accept this assignment on signing this contract.

## § 9 Warranty and notice of defect

- (1) Our liability for material defects of the purchased item presupposes that the customer has duly fulfilled the duties of inspection and notification laid down in § 377 HGB (German Commercial Code).
- (2) emstex GmbH shall be liable in all cases of intent or gross negligence, including of a representative or vicarious agent, in line with legal regulations. Otherwise, emstex GmbH shall only be liable in accordance with product liability law or due to injury to life, body or health or due to culpable violation of major contractual obligations. However, the damages for violation of major contractual obligations shall be limited to contract-typical, foreseeable damage. Liability for damage caused by the delivered item to the buyer's objects of legal protection, e.g. damage to other items, shall not be accepted under any circumstances.
- (3) The provision of section 2 above also applies to claims for damages in addition to performance and in place of performance, irrespective of their legal basis, in particular due to defects, violation of contractual obligations or unlawful acts. It also applies to reimbursement of fruitless expenditure.
- (4) emstex GmbH shall respond to notice of defects made in the proper manner with justification by way of replacement delivery or rectification of defect. If supplementary performance has failed or emstex GmbH is unable to perform, the buyer is entitled to withdraw from the contract or reduce the purchasing price.
- (5) Warranty claims shall not be accepted, if the buyer or a third party has water-proofed the goods, applied treatments such as anti-bacterial or anti-static treatment or has applied an additional backing and has therefore changed the properties of the goods.
- (6) In the event of delays in delivery, emstex GmbH shall be liable to a limited extent in the amount of a lump-sum compensation of a maximum of 5 % of the net value of goods delivered, unless the delay in delivery is due to intent or gross negligence.

## § 10 Data storage

The buyer's data shall be stored in the IT system of emstex GmbH. The data shall remain exclusively within the area of accountability of emstex GmbH.

## § 11 Place of jurisdiction / place of performance / contract interpretation / applicable law

- (1) The place of performance shall be the registered office of emstex GmbH.
- (2) The exclusive place of jurisdiction for any current or future claims from the business relationship with registered traders, including cheque claims, shall be the registered office of emstex GmbH.
- (3) The same place of jurisdiction shall apply if the buyer has no general domestic place of jurisdiction, moves their place or residence or habitual residence to another country after entering into the contract or the habitual place of residence is unknown at the time of commencement of an action.
- (4) Should provisions in this contract be fully or partially unenforceable or lose their legal validity, this shall not affect the validity of the contract as a whole. The same applies if a gap in this contract becomes apparent. The unenforceable provision or gap shall be replaced or filled by a suitable provision that is legally valid and comes closest to the original intent of the parties hereto or the intent of the parties hereto, if they had considered this point in the first place. If the invalidity of a provision is due to a measure of performance or time (period or date), a legally permissible measure shall be chosen to replace it. The parties to the contract are obligated to make any necessary changes through a formal change of the phrasing in the contract. Moreover, the legal regulations of BGB (German Civil Code) and HGB (German Commercial Code) apply.
- (5) The law of the Federal Republic of Germany applies exclusively. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## § 12 Creditreform as a cooperation partner

Our company regularly checks customers, including existing ones, for creditworthiness whenever contracts are concluded and also in certain cases when there is a legitimate interest. We therefore collaborate with Creditreform Herford & Minden Dorff GmbH & Co. KG, Krellstraße 68, 32584 Löhne, Germany – which provides us with the relevant data. For this purpose, we send your name and contact details to Creditreform. Further information on the data processing conducted by Creditreform can be found here <https://www.creditreform.de/herford/datenschutz>

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