

General Terms and Conditions of Purchase of emuco Ernst Müller & Co.OHG

1. Scope of Application

1.1 Our terms and conditions apply exclusively; we do not recognize terms and conditions of supplier in conflict with or deviating from our terms and conditions of purchase, unless we have expressly approved them in writing. Objection to deviating terms and conditions of supplier is not required. Our terms and conditions of purchase also apply if we accept goods without reservation while being aware of terms and conditions of supplier in conflict with or deviating from our terms and conditions of purchase. Our terms and conditions of purchase also apply to all future business relations, even if they are not expressly agreed again.

1.2 These terms and conditions are deemed to be accepted by supplier upon commencement of the delivery performance at the latest. They especially apply to contracts on the sale and/or the delivery of movables irrespective of whether seller produces the goods themselves or purchases them from sub-suppliers.

1.3 Our terms and conditions of purchase exclusively apply to entrepreneurs in terms of section 14 of the German Civil Code, legal entities under public law and special funds under public law.

2. Purchase Order

2.1 Our purchase orders and agreements are only binding for us if they are provided by us in writing or if they are confirmed in writing by indicating the order number after they have been provided orally or by phone.

3. Delivery Time

3.1 The agreed dates for delivery and services are binding. The ordered goods must have been received at the indicated receiving point at the agreed delivery dates; the delivery time starts running as from the date of our purchase order. If deadline shifts are to be expected upon acceptance of the purchase order, supplier will notify us immediately in writing. Furthermore, our decision on the continuance of the order is to be obtained immediately.

3.2 In case of delay in delivery, we are entitled to the statutory claims. We are especially entitled to demand damages instead of performance and withdrawal after unsuccessful expiry of a reasonable period of time.

3.3 If supplier is in delay with the contractually agreed delivery/service, we are entitled to assert 1 %, but not more than 5 % of the value of the part of the delivery/service with which supplier is in delay, as minimum amount of compensation for each full week of delay. The assertion of further damage according to 3.2 remains unaffected by this regulation. Supplier is reserved the right to furnish proof that no or considerably lesser damage has occurred.

3.4 Sub-suppliers of supplier are deemed to be their vicarious agents.

4. Delivery and Shipping

4.1 Delivery and shipping have to be made free of all expenses at supplier's cost to the receiving point indicated by us, unless agreed otherwise in writing.

4.2 All shipments have to be accompanied by a delivery note.

5. Packing

5.1 The packing has to be included within the agreed purchase price.

5.2 In accordance with the packaging regulation, suppliers are obliged to take back the packing of the delivered goods.

5.3 All damages caused by improper packaging are at supplier's cost.

6. Prices

6.1 The agreed prices are maximum prices, unless otherwise agreed in writing. All prices include value-added tax if it is not shown separately.

6.2 If in exceptional cases the prices are not shown in the purchase order the binding prices must be indicated in the order confirmation; we reserve the right to acknowledge these prices. In this case silence means acknowledgement.

6.3 Unless otherwise agreed in individual cases, the price includes all services and additional services of seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packing, transport costs including potential transport and third party liability insurance).

7. Invoices / Payment Terms

7.1 Invoices may only be issued after complete delivery, except in case of call orders. Invoices are to be sent in two copies for each delivery or service, separately according to our purchase order indicating the marks and numbers of the purchase order. They must not be added to the shipment. The second invoice copy must clearly be marked as a duplicate. If these provisions are not met, the invoices are regarded as not issued until clarification and/or completion by supplier. The same applies correspondingly to notifications of dispatch and delivery notes.

7.2 Unless other payment terms have been agreed, our payment will be made upon receipt of the complete delivery and/or service and upon receipt of the invoice, at our option: within 14 days with 2% cash discount or within 30 days net, the payment period starting with the day of receipt of the invoice.

7.3 We do not owe any due date interest. For any potential delay on our part the statutory provisions shall apply; notwithstanding the above, a written reminder by seller is required in each case.

8. Warranty

8.1 Within a reasonable period of time we will inspect the goods for any potential obvious deviations in quality and quantity. The notification of defects is made is due time if it is received by supplier within a period of 10 working days (excluding Saturdays) from receipt of the goods or, in case of hidden defects, from their identification.

8.2 Hidden defects can still be notified upon expiry of the warranty period. Defects which are only identified during processing or utilization, entitle us to claim the needlessly incurred costs as well. We are not obliged to open original packaging for the inspection of the goods. Defects which are not visible on the outer packaging are deemed to be hidden defects in terms of section 377 para 2 of the German Commercial Code. We are entitled to send back the goods to supplier's address at their cost and risk 14 days after sending the notification of defects.

8.3 Our provisions regarding dimensions, quality, embodiment etc., drawings and patterns must exactly be complied with. Any concerns supplier has with respect to them must be notified to us immediately prior to performance of the purchase order. In this case, manufacturing and delivery may only be made upon further instructions given by us.

8.4 Supplier guarantees that their deliveries and services comply with the generally accepted rules of technology, provide the features indicated in the purchase order and are free from errors or defects. Weights, dimensions, forms and qualities are deemed to be guarantees of quality in terms of section 443 of the German Civil Code.

8.5 Unless otherwise indicated in the purchase order, the warranty period is 3 years as from transfer of risk. The 3-year limitation period applies accordingly for claims based on defects of title; the statutory limitation period for real rights for return of third parties (section 438 para. 1 no. 1 of German Civil Code) remains unaffected. Moreover, claims based on defects of title do never become statute-barred as long as the third party can still assert the right against us, particularly in the absence of limitation.

Aforementioned limitation periods shall apply to all contractual claims for defects. As far as we are also entitled to non-contractual claims for damages due to defects, the regular statutory limitation (sections 195, 199 of German Civil Code) applies, unless the application of the CISG limitation periods leads to a longer period in individual cases.

8.6 Deliveries and services that are not in compliance with the provisions and agreements entitle us – even if the testing has been limited to samples – to assert the statutory warranty rights forthwith at our option. If subsequent improvements to an extent unreasonable for us become necessary, we are again entitled to the statutory warranty claims or to a claim for cost-free replacement delivery.

8.7 If supplier fails to provide subsequent improvement or cost-free replacement delivery within a reasonable period of time set by us, we may claim substitute performance upon unsuccessful expiry of this period at supplier's cost. In this case the warranty period is extended by the duration of the downtime and starts again for the subsequent improvement works and replacements. If setting a deadline is unnecessary, we are entitled to this right even without setting a deadline.

8.8 In urgent cases we are also entitled to remove the defects ourselves at supplier's cost.

8.9 The costs incurred by supplier for the purpose of inspection and subsequent improvement (including potential dismantling and installation cost) are borne by supplier even if it turns out that no defect was actually present. Our liability to pay damages in case of unjustified demand to remove defects remains unaffected; however, we are insofar only liable if we have recognized and not recognized in grossly negligent manner that there have not been any defects present.

9. Accident Prevention Regulations

All machines, devices, facilities, vehicles and the like to be delivered must be in compliance with the accident prevention regulations of the industrial trade associations applicable at the time of delivery and must be provided with the necessary safety devices, even if this is not expressly requested in the purchase order. Electrical equipment must comply with the VDE (Association for Electrical, Electronic and Information technologies) regulations. The provisions of TA Lärm (Technical Instructions on Noise Protection) applicable to the respective operating site must be met as well. For the performance of works in our plant, the accident prevention regulations of the Accident Prevention and Insurance Association for Trade and Distribution of Goods as well as of supplier's trade association are applicable.

10. Patent Infringement

Supplier is obliged to indemnify us from all claims based on the violation of industrial property rights to the delivered goods and to compensate us for any possible resulting damage.

11. Samples

11.1 Drawings, standard specification sheets, artwork, models, tools and the like that remain our property and are to be returned immediately upon completion of the purchase order jointly with potentially made copies as well as goods manufactured according to them may not be passed on to third parties or used for these purposes or for advertising purposes or for supplier's personal purposes without our written consent. They must be protected against unauthorized inspection or use. Non-compliance obligates to full compensation and entitles us to rescind the contract forthwith in whole or in part and without compensation.

11.2 Tools, forms and the like manufactured at our cost in whole or in part become our property upon manufacturing. They are carefully stored, maintained or replaced free of charge by supplier so that they can be used at any time. We are entitled to demand their delivery at any time.

12. Product Liability

12.1 As far as supplier is responsible for a product damage, they are obliged to release us from any claims for damages of third parties insofar as the cause lies in their area of control and organization and they are liable themselves in relation to third parties.

12.2 In this connection, supplier is also obliged to compensate us for all costs related to recall measures carried out by us.

12.3 Supplier is obliged to maintain a product liability insurance with a lump sum insured of 10 million Euros per personal injury/property damage; if we are entitled to further claims for damages, these remain unaffected.

13. Rights and Obligations

Rights and obligations based on a purchase order may only be transferred to third parties upon our written consent.

14. Place of Performance

Place of performance for delivery is the place respectively indicated in our purchase order, place of performance for payments is Köln.

15. Choice of Law and Place of Jurisdiction

15.1 The law of the Federal Republic of Germany excluding international uniform law, especially the UN sales law, applies to these terms and conditions and all legal relations between supplier and us.

15.2 The courts responsible for Köln are deemed to be agreed as place of jurisdiction.