

I. General

1. All order placements, regardless of the reason (deliveries, work deliveries and work performances) between the Supplier and EMDE Automation GmbH – hereinafter referred to as EMDE – shall be governed exclusively by these Conditions of Purchase. We do not accept the Supplier's terms and conditions unless we have expressly agreed to their validity in text form. This shall also apply if we unconditionally accept the Supplier's delivery in the knowledge that the Supplier's terms and conditions conflict with or deviate from our Conditions of Purchase.
2. Our Conditions of Purchase shall also apply to all future transactions with the Supplier without these having to be included again in future transactions. The version valid at the time is authoritative.
3. Individual and express agreements with the Supplier shall take precedence over these Conditions of Purchase. A contract or our express confirmation in text form is decisive for its content.
4. If, due to the nature of the Supplier's performance or corresponding agreement, the result of the performance is subject to acceptance, acceptance shall replace delivery in these Conditions of Purchase.
5. Any references to the application of statutory provisions are for the purposes of clarification only. The legal regulations thus apply even without such clarification, unless they are directly changed or expressly excluded in these Conditions of Purchase.

II. Offer, offer documents

1. Our orders are placed in text form. Deviations from these Conditions of Purchase also require our express confirmation in text form. Verbal ancillary agreements are not valid.
2. The Supplier is under obligation to point out obvious errors and incompleteness in the order; otherwise the contract shall be deemed not to have been concluded. Our order must be accepted within five days with binding confirmation of the delivery time. The declaration of acceptance must be received by us in text form by the stated deadline in order to be effective. Should an acceptance be declared belatedly, the belated acceptance represents a new offer which requires the express acceptance by us in text form.
3. We reserve ownership rights and copyrights to drawings, illustrations, calculations, descriptions and other documents and aids provided by us to the Supplier. This applies in particular to data stored on electronic data carriers or data transmitted by remote data transmission. Without our express consent, the Supplier may not make these data or objects accessible to third parties, either as such or with regard to their content, nor disclose them, nor use them himself or through third parties for purposes other than those specified by us. The Supplier must delete these data without being asked and destroy documents as well as any printouts and copies he has made himself if they are no longer required by him in the ordinary course of its business. At the request of EMDE, the Supplier is obligated to surrender the data and data carriers. The confidentiality obligation does not expire until and insofar as the knowledge contained in the documents has become public knowledge.

The same applies, with the necessary changes, to materials or substances provided as well as to tools, templates, samples or other items provided by EMDE. Processing, mixing or combination of the provided objects by the Supplier is carried out on behalf of EMDE. Should the property rights of third parties thereby remain valid, EMDE acquires co-ownership of the new object in the ratio of the value of the provided objects to the value of the new objects.
4. The Supplier is only be entitled to have the order or essential parts thereof executed by third parties acting independently if we have granted our consent to this in text form.
5. EMDE can subsequently demand changes to the object of performance with corresponding adjustment of the consideration if the change is customary in the trade, is reasonable for the Supplier in the specific case or EMDE presents significant grounds that were unforeseeable at the time of conclusion of the contract, which shall also include a substantially changed order situation.

III. Delivery periods and deadlines, delay

1. The delivery period stated by us is binding. The Supplier is obliged to inform us immediately in writing if he is unable to meet the agreed delivery date or wishes to deliver earlier. This obligation to inform does not prejudice our rights with regard to delay in performance. The date of receipt of the goods by EMDE or at the place of performance specified by us is decisive for compliance with the delivery date.

2. If the Supplier does not provide his service or does not do so within the agreed delivery period or if he is in default, the rights of EMDE are determined according to the statutory provisions; this applies in particular to withdrawal and damages. This shall not affect the provisions of the following clause.
3. If the Supplier is in default, EMDE can, without prejudice to further claims, demand liquidated damages for the damage caused by default to the sum of 0.2% of the net price (delivery value) per completed calendar day, limited to 5% of the delivery value of the goods that are delivered late. The Supplier reserves the right to demonstrate that no damages or only minor damages have occurred. EMDE reserves the right to prove that the damages are higher.

IV. Packaging, dispatch, transfer of ownership and delivery

1. Unless otherwise agreed, delivery shall be made free of charge to the shipping address stated in the order. In this respect, the place of performance or fulfillment obligation is the delivery address. If a shipping address is not specified, the delivery must be made to our place of delivery in Nassau.
2. The goods to be delivered must be packaged in a manner customary in the trade and in such a way that damage during transport is avoided. It is essential to comply with the delivery address. Should the delivery nevertheless be delivered incorrectly, we shall charge you the transport costs incurred, with, however, a minimum charge of EUR 50.00. At our request, the Supplier shall take back the packaging or we shall dispose of the packaging at the Supplier's expense.
3. The transfer of ownership of the ordered goods to EMDE takes place unconditionally and regardless of the payment of the corresponding price. All forms of extended or prolonged retention of title are excluded in any case, so that any possibly valid retention of title effectively declared by the Supplier shall only apply until payment of the delivered goods. We are in any case entitled to process the goods delivered or to dispose of them in any other way without further preconditions, in particular without consent or notification.
4. The delivery must always be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (number of items, marks and numbers of the packages) and our order identification (date and number). If the delivery note is absent or incomplete, we shall not be held responsible for any resulting delays in processing and payment.
5. EMDE shall only be in default of acceptance in accordance with the statutory provisions. However, the Supplier must expressly offer the goods if a specific or determinable time has been agreed for an action or cooperation by EMDE.
6. The risk of accidental loss or deterioration of the ordered goods transfers to us when delivery is made to the stipulated place of performance. Insofar as acceptance has been agreed, this shall be decisive. In all other respects, the statutory provisions of the legislation covering a contract to produce a work shall apply. Default of acceptance by us shall be equivalent to delivery or acceptance.

V. Warranty and subsequent performance

1. In the event of material defects and defects of title as well as other breaches of duty and disruptions of performance by the Supplier, the statutory provisions shall apply without restriction.
2. All product descriptions which are subject matter of the respective contract or have been included in the contract in the same way as these Conditions of Purchase – in particular by designation or reference in the order by EMDE – shall be deemed to be the agreed quality, whereby it shall be irrelevant from whom the product description originates.
3. Defects shall be deemed to have been notified in good time if the purchaser sends the notification of defect to the Supplier within 10 calendar days of receipt of the goods or, in the case of concealed defects, within 10 calendar days of discovery of the defect. Notification by fax or e-mail shall also be deemed to have been received in good time. With regard to the commercial duty to inspect and notify of defects, our duty to inspect shall be limited to defects which become apparent during the incoming goods inspection subject to external inspection including the delivery documents or which are recognisable during random quality inspection. There are no further inspection obligations.
4. §442 para. 1 sentence 2 BGB (German Civil Code) notwithstanding, we are entitled to claims for defects without restriction even if the defect remained unknown to us due to gross negligence at the time of conclusion of the contract.

5. In the case of services that are subject to acceptance, there is no obligation to check incoming goods.
6. We are entitled to the statutory warranty claims in full. In particular, we shall be entitled, at our discretion, to demand that the Supplier remedy the defect or deliver a new object of performance. In such case, the Supplier shall bear all the costs relating to the corrective action or replacement of the defective item. The right to compensation, in particular for non-performance, is expressly reserved for every degree of fault. The warranty period shall be 36 months, calculated from the transfer of risk, unless a longer warranty period is stipulated by law.

VI. Invoicing and payment

1. The price stated in the purchase order is binding as a fixed price and shall include all Supplier services and ancillary services (e.g. also assembly and installation) as well as all ancillary costs (e.g. packaging, transport and insurance).
2. Verifiable invoices shall be sent to us in a single copy and bearing our order number.
3. Unless otherwise agreed, payments shall be made net within 90 days after receipt of invoice or at the discretion of EMDE within 14 days after receipt of invoice less a 3% discount. If a delivery is accepted prematurely, the due date shall be determined in accordance with the agreed delivery date.
4. We retain the full rights of set-off and retention and to objection for non-fulfilment or incomplete fulfilment of the contract. In particular EMDE is permitted to withhold payments - including due ones - insofar as and as long as EMDE is still entitled to claims deriving from defective deliveries.
5. The Supplier is not entitled to assign his claims against EMDE to third parties or to have them collected by third parties without the prior consent of EMDE in text form, which may not be unreasonably refused. In the event of an extended retention of title, this consent shall be deemed granted.

VII. Further liability; in particular manufacturer's liability and recourse against the suppliers

1. The Supplier shall be liable to us for any damage caused by him or his vicarious agents in the full amount and for any degree of fault in accordance with the statutory provisions. This also applies to damage due to inadequate packaging and transport damage.
2. Insofar as the Supplier is responsible for product damage, he agrees to indemnify and hold us harmless from any third-party claims upon first request and to accept liability for the same. Within the scope of this indemnity obligation, the Supplier shall reimburse expenses such as may arise from such third-party claims, including any product recalls EMDE is obliged to implement, in accordance with Sections 683, 670 BGB. EMDE shall inform the Supplier of the recall campaign as far as reasonable and possible and provide the opportunity to comment.
3. The Supplier undertakes to maintain a product liability insurance policy for an insured - fixed - sum of at least EUR 2.5 million per personal injury/property damage. Insofar as we are entitled to further claims to damages, these shall thereby remain unaffected.
4. EMDE is entitled to the statutory rights of unlimited recourse within a supply chain, in addition to the claims based on defects. In particular, we shall be entitled to choose the type of subsequent performance which we owe to our customer. This shall not restrict the statutory right of choice.
5. Before we acknowledge or fulfil our customer's claim for defects, we shall notify the Supplier and request a statement with a brief description of the facts. If no statement is made within a reasonable period of time and no amicable solution has been reached, the claim for defects actually granted shall be deemed to be owed to our customer. In such case, the Supplier shall be responsible for providing proof to the contrary.
6. The above clauses 4 and 5 shall also apply if the goods have not been delivered to a consumer, for whatever reason. The same shall apply if the goods have only been delivered to a consumer after transformation or further processing by us or other recipients. The same applies to any installation by us or third parties.

VIII. Rights of use and property rights; defects of title

1. Insofar as the delivery contains software, rights or other items, the use of which is only permitted on the basis of corresponding rights of use, the Supplier is obliged to transfer the necessary rights of use to EMDE without surcharge. The Supplier is liable for the existence, transferability and enforceability of the rights of use.
2. The Supplier warrants that its deliveries do not breach any third-party rights. In addition to rights of use, this shall also include third-party copyrights or industrial property rights (e.g. patents, utility models, trade names or trademarks).
3. The Supplier shall be required on first written request to hold us harmless from any third party claims arising in this respect. The Supplier's obligation for such claims also extends to any necessary expenses incurred by us as a result of or in connection with the same.
4. Supplier liability in the event of defects in title exist if third parties can assert rights against EMDE with regard to the delivery item which the Supplier cannot assert against EMDE. Moreover, insofar as a right is subject of the contract, the same applies for its existence, assignability and enforceability.
5. If there is a defect in title, the Supplier must provide us with the right to use or, at the discretion of EMDE, modify the subject matter of the contract in such a way that is reasonable for us so that the defect in title no longer exists, or to indemnify us and hold us harmless from all third party claims in accordance with Clause 3.
6. The Supplier is obliged to pay compensation for damages and expenses even if he was not aware of the defect of title or is not otherwise responsible. The right to reduction and withdrawal from the contract remains unaffected by this.

IX. Minimum wage

The seller warrants EMDE that it complies with the provisions of the German Minimum Wage Act and monitors subcontractor compliance with the same. The Minimum Wage Act applies to all employment relationships in Germany, including, for example, domestic installations by foreign entrepreneurs and employment of foreign employees in Germany. If EMDE is held jointly liable with the Supplier or its subcontractors due to non-compliance with the minimum wage law, EMDE shall be released from this liability by the Supplier upon first request. EMDE may require that compliance with the minimum wage regulations and the associated documentation and reporting obligations be demonstrated to us. EMDE may also require that subcontractors who appear unreliable no longer be employed. Further claims by EMDE and the right to terminate the contract without notice remain unaffected.

X. Confidentiality

1. The Supplier and EMDE mutually undertake to keep the content of the business relationship and the content of the respective order confidential as well as all information and documents exchanged for this purpose (in particular all illustrations, plans, calculations, execution instructions and product descriptions). Such documents are to be used by both parties exclusively for the contractual service/delivery and, after the termination of the contractual relationship and at the request of the other party, are to be returned or destroyed by the receiving party within a reasonable period of time at the expense of the other party, insofar as statutory retention provisions do not conflict with this. In the case of documents that cannot be returned that contain confidential information, such as hard disks or the like, the corresponding documents must be deleted or otherwise destroyed by the receiving party. At the request of the other party, the receiving party shall immediately confirm in writing that all documents and records have been returned, deleted or destroyed in accordance with the above obligation.
2. The Supplier and EMDE also undertake to maintain strict confidentiality with regards to our mutual know-how. This obligation applies for a period of seven (7) years after the termination of the contractual relationship with the Supplier. Neither the Supplier nor EMDE are entitled to use or otherwise exploit the know-how of the other party that has been disclosed in the course the contractual relationship, either during or after the termination of the contractual relationship.
3. The obligation to keep confidential the information exchanged in accordance with Clause 1 does not apply if

- a. such obligation has been waived by the express and written consent of the other party; or
 - b. the information was already known to the other party prior to our disclosure or that of the Supplier and this is immediately communicated to the other party; or
 - c. the information is or becomes publicly available to everyone through publication or in some other way; or
 - d. the information becomes known to us or the Supplier without directly or indirectly being derived from the other party; or
 - e. it must be disclosed based on an official or judicial order or decision.
4. Without our prior written consent, the Supplier may not refer to the business relationship in advertising material, brochures, etc. and may not exhibit product objects made for us.
 5. The provisions of Section II. Clause 2 thereby remain unaffected.
 6. The Supplier shall clarify and obligate his subcontractors in accordance with this Section X.

XI. Statute of limitations

The mutual claims of the parties shall become time-barred in accordance with the statutory provisions, with the exception of Section V. Clause 5. Reductions of these deadlines are expressly rejected.

XII. Final provisions

1. The place of performance and payment shall be our place of business.
2. The place of jurisdiction for any disputes arising from the contractual relationship shall be the court responsible for our place of business. EMDE is, however, entitled to file a suit at the Supplier's place of business.
3. The relations between EMDE and the Supplier are subject exclusively to the law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods, unless otherwise agreed in text form.
4. Should individual provisions of the Conditions of Purchase be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not thereby be affected. The partly or completely invalid or unenforceable provision shall be replaced by a provision with an economic effect that comes closest to that of the invalid or unenforceable provision. The same applies in the event of a loophole.
5. These Conditions of Purchase are available in German and English. If there is a deviation, the German text takes precedence.
6. EMDE reserves the right to update and adapt these Conditions of Purchase at its reasonable discretion and within a reasonable time. The current version shall apply to the business relationship with the Supplier, unless the latter objects in writing.