

General Terms and Conditions of Delivery and Performance for EMDE Automation GmbH, Page 1/3



I. Scope

1. Our General Terms and Conditions of Delivery and Service (hereinafter referred to as GTCs) shall apply to all present and future business relations between us, EMDE Automation GmbH – hereinafter referred to as EMDE – and our customers. Our GTCs shall apply exclusively, and we shall not acknowledge any customer provisions that conflict with or deviate from our GTCs unless we have expressly agreed to their validity in writing. This requirement of consent shall apply in all cases, even if we carry out the delivery to the customer without reservation in the knowledge of conflicting customer terms and conditions of purchase. The currently valid version of the GTCs shall apply at all time.
2. Individual and express agreements with the Client shall take precedence over these GTCs. A contract or our express confirmation in text form is decisive for their content.
3. Any references to the application of statutory provisions are for the purposes of clarification only. Therefore, even without such a clarification, the statutory provisions apply unless they are directly amended or expressly excluded in these GTCs.

II. Our offers

1. Our offers are not binding. The right to make reasonable technical changes and changes to the shape, colour and/or weight of the products is reserved. In particular, EMDE is entitled to correct price errors.
2. The customer's order must be in text form and represents a binding offer, which we shall accept within two weeks by sending an order confirmation. Our order confirmation is decisive for the content of the order, unless it is objected to immediately in text form. We are entitled to declare acceptance by delivery of the goods.
3. Ancillary agreements, assurances of properties and order changes require our confirmation in text form. Public statements, claims or advertising shall not constitute a complementary contractual guarantee of specific qualities. Offer-related documentation such as images, drawings, indications of weight and dimensions are meant to be approximate, except where these have been expressly specified as binding.
4. Any contract we sign is subject to receiving proper and timely deliveries from our suppliers. This applies only in the event that the non-delivery is for reasons not attributable to us, especially in the event of the conclusion of a congruent covering transaction with the supplier. If the service is not available, we shall inform the customer immediately and refund the consideration.
5. We reserve the property rights and copyrights to cost estimates, drawings and other documents; such materials must not be made accessible to third parties and must be returned to us or destroyed upon request. Any transfer to third parties requires our express prior consent in text form.
6. The customer is responsible for ensuring that the execution drawings submitted by him do not encroach upon the industrial property rights of third parties. If claims are nevertheless asserted against us due to infringements of third-party industrial property rights, the customer shall indemnify us in full against such claims on first request.
7. If we only become aware after conclusion of the contract that the customer is in an unfavourable financial situation, we shall be entitled to demand a security for the consideration of a kind recognised in business dealings, subject to the setting of a reasonable deadline. If the security is not presented to us within the set period, we shall be entitled to withdraw from the contract.

III. Prices and Conditions of Payment

1. All prices are quoted in EUROS and are net prices. Sales tax or other local taxes or levies are not included in the purchase price. Prices are ex-works, excluding packaging.
2. Should taxes change later than six weeks after conclusion of the contract or other external costs arise or be newly incurred that are included in the agreed price, EMDE shall be entitled to adjust the price accordingly. For deliveries which take place later than six months after conclusion of the contract, we may increase the prices if they are based on changes in factors creating economic value which have occurred after conclusion of the contract. We shall notify the customer of the price increase within a reasonable period of time.
3. In order to check whether deliveries within the territory of the European Community can be made VAT-free, we require the following from the purchaser
 - a) the value added tax identification number,
 - b) the name and address of the customer,
 - c) the destination; and
 - d) all documents required for proof of tax-exempt intra-Community services (supporting documents, confirmation of receipt, etc.).

In the event that we are charged with a back-payment of value added tax due to incorrect or incomplete information from the customer, the customer shall reimburse this sum to us; we reserve the right to assert further claims for damages.

4. The customer must pay the purchase price without deduction upon receipt or acceptance of the goods, however but no later than 30 days after receipt; invoice amounts for contract work are due immediately. Within the scope of an ongoing business relationship, however, EMDE is also entitled to carry out deliveries in whole or in part only against advance payment. A corresponding reservation will be declared when the order is confirmed.
5. After expiry of the period referred to in clause 4 without it being met by the customer, the customer is automatically in default without a reminder. During the period of default,

interest shall be charged on the monetary debt in accordance with the statutory provisions; the assertion of higher damages caused by default shall remain reserved. Our claim to commercial maturity interest as applicable to merchants (Section 353 of the German Commercial Code, [HGB]) shall remain unaffected.

6. Payment orders, cheques and bills of exchange will only be accepted if this has expressly been agreed upon in advance in text form and then only as conditional payment. Collection charges and other costs shall be borne by the customer.
7. The customer shall only be entitled to rights of set-off and retention if its claims have been legally established, are undisputed and acknowledged by us.
8. If the customer defaults on its payment obligations, all our claims from the entire business relationship shall become due immediately. Further deliveries during the delay shall only be made against advance payment.
9. EMDE is entitled, without the consent of the customer, to transfer or pledge due or future monetary claims from the contractual relationship to third parties, in whole or in part. Any assignment prohibition or consent requirement in the customer's terms and conditions is expressly contradicted.

Claims by EMDE may be assigned to a factoring bank. This is the case if a factoring company is named as the payee on the invoice. In this case, payments with debt discharging effect can only be made to the factoring company. The bank details can be found on the respective invoice.
10. Payments (including instalments and payments on account) shall always be used to settle the oldest items of debt and the interest accrued thereon.
11. If the customer is domiciled in Germany, the following shall apply: In accordance with Section 94 of the German Insolvency Statute (InsO), the customer and EMDE agree on the following for offset in insolvency: In the event of the insolvency of the customer, all claims by EMDE against the customer shall become due with the opening of the insolvency proceedings, even if they would otherwise not have been due at this point in time. In the event of a court order in provisional insolvency proceedings, the due date shall be the court order. In the reverse case, this also applies to claims of the customer against EMDE.

IV. Delivery period

1. The delivery period will be agreed individually. Binding dates for deliveries must be expressly designated and agreed as such in text form. The same applies to binding deadlines.
2. The delivery period shall commence upon receipt of the order confirmation, but not before fulfilment of the customer's contractual obligations, in particular before provision of the documents, technical data, approvals or releases to be procured by the customer.
3. If delivery periods have been specified by us and made the basis for placing the order, in the event of strikes and cases of force majeure such periods shall be extended for the duration of the delay as well as a reasonable period of preparation. EMDE will notify the customer of the occurrence and expected duration of such events. The same applies if the customer does not fulfil any obligations to cooperate.
4. Unless the order confirmation requires otherwise, „delivery ex works“ is agreed as valid.
5. Delivery deadlines shall be considered to have been met if the delivery item has left our factory prior to deadline expiry or if we have informed the customer that the order is ready for shipment.
6. EMDE is entitled to make partial deliveries and to invoice them separately.
7. If, after conclusion of the contract, regulations or statutory provisions come into force which deviate from the regulations or statutory provisions applicable at the time of conclusion of the contract, the delivery period shall be extended accordingly. Any additional costs caused by this shall be borne by the customer.
8. Changes or extensions to the original scope of the order which are agreed after conclusion of the contract shall extend or postpone the original delivery periods or dates to an appropriate degree, even without the need for a separate notification.
9. In the event of force majeure and other unforeseeable, extraordinary circumstances for which we are not responsible, e.g. If we are prevented by fire, water and similar circumstances from fulfilling our obligations in time, if production facilities and machines fail, if delivery deadlines are exceeded or if our suppliers fail to deliver or there is an interruption in operations due to a shortage of raw materials, energy or labour, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions or official interventions, we shall be entitled to postpone delivery or performance for the duration of the hindrance plus a reasonable start-up period insofar as we are prevented from fulfilling our obligations in time through no fault of our own by the aforementioned circumstances. This shall also apply in the case of force majeure occurring at one of our suppliers or sub-suppliers. We are released from our duty to perform for the duration of the disturbance and to the extent of its effect, even if we are behind schedule. This is not associated with automatic dissolution of the contract. We are obliged to inform the Customer of such impediment. The contractual obligations (in particular delivery deadlines) shall be adjusted to the new circumstances in good faith.
10. The start of our delay shall be determined in accordance with the statutory provisions in any case, however, a warning is required on the part of the customer.

V. Delivery and transfer of risk

1. The dispatch of the goods takes place ex warehouse, in the name and on behalf of the customer. The risk of accidental loss and accidental deterioration of the goods is transferred to the customer when the goods are loaded. If the shipment is delayed due to the fault of the customer, the risk is transferred to the customer on the day on which EMDE has notified the customer that the goods are ready for shipment.
2. However, if a sales to destination has been expressly agreed, the risk of accidental loss and accidental deterioration of the goods and the risk of delay is transferred once the goods are handed over to the forwarder, carrier or other person or organisation conveying the goods.
3. Acceptance shall only be decisive for the transfer of risk if this has been expressly agreed. Acceptance of the goods may not be refused due to insignificant defects. The same applies for handover/acceptance if the customer is in default of acceptance.
4. Transport damage must be noted on the delivery note. Delivered items, even if they have insignificant defects, must be accepted by the purchaser without prejudice to the rights under Section VI.
5. Partial deliveries are permissible, insofar as the partial delivery is not without interest for the customer. Permissible partial deliveries shall be deemed to be a self-contained transaction.
6. If delivery or retrieval of the goods is delayed at the request of the customer, the goods shall be stored at the expense of the customer at our location in Nassau. In this case the risk of accidental loss of the goods shall be transferred to the customer at the time the goods are stored.

VI. Liability for defects

1. The customer's warranty claims require that it has fulfilled its inspection and complaint obligations in accordance with Section 377 HGB in a proper fashion. Obvious defects must be notified within one calendar week of delivery of the goods. Defects that become apparent later must be reported in text form within one calendar week of their discovery. If the customer fails to carry out a proper inspection and/or report a defect, our liability for the unreported, untimely or improperly reported defect shall be excluded in accordance with the statutory provisions.
2. Should the goods have an apparent defect, we reserve the right to choose the type of subsequent performance. The statutory right of EMDE to refuse to make such remedy remains unaffected.
3. The quality of the goods is exclusively determined by the order confirmation and the product description made by EMDE. No liability is assumed for public statements made by the manufacturer or other third parties. Other documents (e.g. brochures, catalogues, cover letters, price lists, technical data or similar) shall not lead to an agreement as to quality unless expressly agreed in text form.
4. The warranty period is one year from delivery or default of acceptance by the customer. The limitation period in the case of a delivery recourse as specified in Sections 478, 479 of the German Civil Code (BGB) shall remain unaffected. This shall not apply in the case of claims for damages, to which the following Section VII applies.
5. EMDE does not provide guarantees in the legal sense.
6. The supplier is not liable for damages due to design defects in the case of production carried out in accordance with the purchaser's drawing.

VII. Liability for Damages

1. Our liability for breach of contractual obligation and tort is limited to intent and gross negligence. This does not apply to injury to the customer's life, limb or health, claims due to the breach of cardinal obligations, i.e. of obligations arising from the nature of the contract, the breach of which puts the purpose of the contract as well as the replacement of damages caused by delay at risk (Section 286 BGB). We shall bear liability for every degree of fault in this respect. In this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage. In addition, liability in the event of simple negligence is limited to one million euros per claim.
2. The aforementioned exclusion of liability applies accordingly to breaches of duty by our vicarious agents.
3. The exclusion of liability does not apply to liability under the German Product Liability Act (ProdHaftG) or insofar as we have fraudulently concealed the defect.
4. Insofar as liability for damages is not excluded, such claims shall become statute-barred within one year commencing with the occurrence of the claim or, in the case of claims for damages due to a defect, from the handover of the item. This period shall not apply if we are liable due to intent or gross negligence or due to injury to life, limb or health.
5. Insofar as liability for damages is excluded or limited for us, this also applies to the personal liability of our staff members, employees, colleagues, representatives and vicarious agents.

VIII. Retention of title

The delivery of the goods takes place under retention of title in accordance with Section 455 BGB, with the following extensions:

- a) EMDE reserves the right of ownership of the purchase goods until receipt of all payments from the business relationship. If the customer is in breach of contract, especially if he is in default of payment, EMDE is entitled to take back the purchased goods. The seizure of the goods of sale by EMDE does not constitute a withdrawal from the contract, unless EMDE expressly declares this in writing.

The seizure of the goods by EMDE shall always constitute a withdrawal from the contract. After taking back the purchased goods EMDE shall be entitled to sell them; the proceeds thereof shall be set off against customer liabilities, less reasonable selling costs.

- b) The customer is obliged to handle the purchased goods with care. In particular, the customer is obliged, at its own expense, to adequately insure them and keep them insured for their reinstatement value against fire, water damage and theft. Insofar as maintenance and inspection work is necessary, the customer must carry this out in a timely manner and at his own expense. As long as a claim by EMDE exists, EMDE is entitled to demand information from the customer at any time concerning which goods delivered under retention of title are still in his possession and where they are located. EMDE is also entitled to inspect these goods at any time at the place where they are located. In the event of insolvency proceedings, the customer is obliged to identify the goods for any third party as the property of EMDE by means of signs or in any other way.
- c) The customer must notify us of any seizures or other third-party interference with goods to which we retain title so that EMDE can assert claims in accordance with Section 771 of the German Code of Civil Procedure (ZPO). If the third party is not in a position to pay the court and extra-judicial costs of a court action in accordance with Section 771 ZPO, the customer shall be liable for the deficient amount.
- d) In case of default of payment or application for insolvency proceedings, the reserved goods must be returned to EMDE at the instigation of EMDE, free of freight and charges, without the need for us to set a grace period or withdraw from the contract. A corresponding right of ownership expires. The same applies if the customer culpably endangers performance – e.g. due to lack of creditworthiness, lack of insurance or improper storage of the goods – and EMDE withdraws as a result.
- e) The customer is entitled to resell the item in the ordinary course of business. However, the customer hereby assigns to EMDE all receivables accruing for him from the resale to its customers or third parties, up to the sum of EMDE's final invoice amount (including VAT), irrespective of whether the purchased goods have been resold without or after processing. The customer remains authorised to collect these receivables even after the transfer. This does not affect EMDE's authority to collect the receivables itself.

However, EMDE will not collect the receivables as long as the customer meets its payment obligations from the collected proceeds, is not in arrears, and, in particular, no application has been filed to open insolvency proceedings and there is no suspension of payments. If this is the case, EMDE may demand that the customer informs it of the assigned receivables and their debtors, provides all the information needed to make collection, furnishes the corresponding documents and notifies its debtors of the assignment.

- f) The processing or transformation of the purchased goods by the customer is always carried out on the behalf of EMDE. If the goods are processed with other objects not belonging to us, we shall acquire co-ownership of the new item in the proportion of the value of the goods to the other processed objects at the time of processing. The same provisions that apply to the purchased goods under reservation shall also apply to the new object.
- g) If the purchased goods are inseparably combined with other objects not belonging to us, we shall acquire joint ownership of the new item in the ratio of the value of the purchased goods to the other processed items at the time of their combination. If the combining is carried out in a way that makes the customer's object the main part of the new object, it is hereby agreed that the customer shall make us co-owner on a pro-rata basis. The customer shall keep the sole ownership or co-ownership thus created in safe custody for EMDE.
- h) The customer also assigns to EMDE as security the claims against a third party arising from the connection of the purchased goods to a property.
 - i) In the case that the customer cooperates with a factoring bank in the course of genuine factoring, the authorisation to resell shall only apply if the claim against the factor is assigned to us in advance in place of the purchase price claim, EMDE is notified of the assignment and agrees to the factor of the assignment. EMDE accepts such assignment.
 - j) EMDE undertakes to release the securities to which it is entitled at the request of the customer to the extent that the value of the securities exceeds the claim to be assured by more than 15 %. The choice of the securities to be released lies with us.

IX. Confidentiality

1. The customer and we 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 customer and we also undertake to maintain strict confidentiality with regards to our mutual know-how. This obligation applies until five (5) years after the termination of the contractual relationship with the customer. Neither the customer nor we are entitled to use or otherwise exploit the know-how of the other party, which has been disclosed in the course of 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.

X. Limitation period for own claims

In deviation from Section 195 BGB, our claims for payment become statute-barred in five years. Section 199 BGB applies with respect the start of the limitation period.

XI. Place of performance, choice of law, place of jurisdiction

- 1. Unless otherwise provided for in the contract, the place of fulfilment and payment is our registered office.
- 2. The law of the Federal Republic of Germany shall apply exclusively to this contract; in particular, the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 3. The exclusive place of jurisdiction shall be the court responsible for our registered office. The customer may also be sued at its registered office, at EMDE's discretion.
- 4. 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 customer, unless the customer objects in writing.
- 5. These GTCs are available in German and English. If there is a deviation, the German text is takes precedence.
- 6. Should individual provisions of the GTCs be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected by this. 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.