

Terms and Conditions of Purchase
of Emil Germany GmbH

1 Scope of Application

- 1.1 All our orders and the purchase and supply contracts concluded with us are based exclusively on these Terms and Conditions of Purchase. Any general terms and conditions of sale or delivery of the supplier which conflict with these Terms and Conditions of Purchase shall not apply, even if we do not separately object to their validity.
- 1.2 If any of our purchase orders or any contract to which these Terms and Conditions of Purchase apply contain provisions which conflict with the provisions of these Conditions of Purchase, the provisions of the relevant purchase order or contract shall prevail.

2 Orders

- 2.1 If our orders were not based on a binding offer from the supplier, our orders shall be deemed to be offers to purchase.
- 2.2 Our orders may be revoked at any time without compensation and without giving any reason up to the time of acceptance. The validity of our orders shall otherwise be limited to 14 days after their issue, unless we specify longer periods of validity in our orders. The receipt of the declaration of acceptance by us shall be decisive for compliance with the acceptance period.
- 2.3 Our orders, including any attachments thereto, such as product specifications and calculations, shall be checked by the supplier without delay. The supplier shall notify us immediately of any discrepancies, doubts as to the correctness or unsuitability of the ordered products for the use intended by us and of any open points in our orders or in the documents attached thereto and shall give us the opportunity to remedy them before accepting the order.

3 Deliveries

- 3.1 Unless otherwise agreed, deliveries shall be made DDP (INCOTERMS 2020) to the place of delivery specified in the order. If no place of delivery is specified in the order, deliveries shall be made to our warehouse in Salzest. 7 Industriegebiet Fackelhahn, 56424 Ebernhahn.
- 3.2 Depending on the agreement, deliveries may be made either to our warehouse or to the warehouse of a third party. The supplier shall comply with the safety and order regulations applicable at the respective place of delivery. In addition, the supplier must inform itself in good time about the access and entry possibilities at the respective place of delivery in order to avoid, as far as possible, handover problems on the delivery date. If, in the opinion

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of the supplier, our cooperation is necessary for the handover of the goods to be delivered, the supplier shall notify us in writing in good time before delivery.

- 3.3 Deliveries shall be made within 14 days of conclusion of the contract. If a different delivery period has been agreed, it shall commence upon receipt of our order by the supplier. Goods which are reported ready for despatch before the contractually agreed delivery time need not be called off or accepted by us.
- 3.4 Delivery times (dates) must be agreed in advance by the supplier with us or with the third party appointed by us to receive the delivery. We shall not be liable for any downtime of the supplier and/or the forwarders/freight forwarders engaged by the supplier, even if the delivery times are agreed.
- 3.5 The supplier may exercise a right of retention only if and to the extent that the underlying counterclaim is undisputed or has been finally adjudicated and is based on the same contractual relationship.
- 3.6 Deliveries must be made in full; partial deliveries by the supplier shall only be permitted if agreed with us in advance. Furthermore, deliveries must be made from one batch; the supplier must notify us of any deliveries from different batches (so-called batch split) prior to delivery.

In addition, the supplier shall include a delivery note with each (partial) delivery.

- 3.7 The goods shall be packed and secured for the duration of the transport in such a way as to avoid damage in transit and to be suitable for storage and onward transport by us. At our request, the supplier shall be obliged to take back packaging materials, including transport packaging, at the place of delivery during normal working hours at its own expense; otherwise the obligation to take back packaging materials shall be governed by the relevant statutory provisions.

4 Delays in Delivery and (Acceptance) Default

- 4.1 As soon as the supplier realises that it will not be able to deliver on time and/or in full, it must notify us immediately, stating the reasons and the expected duration of the delay.
- 4.2 The statutory default provisions apply.

In the event of a delay in delivery, we shall be entitled to demand from the supplier a contractual penalty of 0.1% per day, but not more than 5% of the respective net order value, from the second day of the delay in delivery. Any further claims for damages shall remain unaffected.

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4.3 The statutory provisions shall also apply to our default in acceptance. However, the supplier must also expressly offer to perform if a specific or determinable calendar date has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the supplier may only claim compensation for its additional expenses in accordance with the statutory provisions (e.g. the usual storage costs); any claims by the supplier for liquidated damages or contractual penalties are excluded.

5 Transfer of Title

5.1 Title to the goods ordered shall pass to us on delivery of the goods to us or to a third party nominated by us (e.g. carrier, customer) unless the supplier retains title to the goods ordered under a simple reservation of title.

5.2 We do not accept the validity of any extended or enlarged retention of title on the part of the supplier, nor do we accept any balance retention on the part of the supplier.

6 Prices and Payment Terms

6.1 The prices quoted in our order shall be binding. The prices stated in a quotation from the supplier or in our order are fixed prices unless otherwise stated and are inclusive of packaging and transport. VAT will be shown separately.

6.2 Price increases by the supplier shall only be permitted before our order is placed. If the supplier reserves the right to adjust the prices in its quotation after the order has been placed, such right of adjustment shall be limited to a maximum of two percent of the relevant net order value. Furthermore, the supplier shall be obliged to justify any price increases in writing and shall require our prior written consent in order to be effective.

6.3 Payment shall be made subject to proper delivery and correct pricing and calculation of the invoice to be issued by the supplier. Unless otherwise agreed, invoice amounts shall be payable within 30 days into a bank account to be specified by the supplier. Any charges levied by the remitting bank for the transfer of the amount due in a foreign currency (i.e. a currency other than Euro) or for a transfer to a bank located outside Germany shall be borne by the supplier.

6.4 In the event of late payment, we shall be liable for interest on arrears at a rate of five percentage points above the base rate; interest on arrears shall not be payable.

6.5 We shall be entitled to rights of set-off and retention to the extent provided by law. In particular, in the event of defective delivery, we shall be entitled to withhold payment in full until proper performance has been effected.

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7 Goods Inspection and Warranty

- 7.1 The supplier shall inspect the goods to be delivered to us for completeness and freedom from defects prior to delivery. The supplier shall ensure that only goods free from defects are delivered to us.
- 7.2 The supplier shall be liable in accordance with the statutory provisions for the goods delivered being free from defects as to quality and title. The term "defect of quality" corresponds to the statutory provision of para. 434 German Civil Code (*§ 434 BGB*). In the absence of a separate agreement on quality, the goods delivered shall in any case be of average type and quality (para. 360 German Commercial Code, *§ 360 HGB*).
- 7.3 Externally visible defects or transport damage as well as hidden defects shall be notified by us to the supplier within ten working days of their discovery. This period shall be reasonably extended for externally visible defects if the completion of the quality inspection takes longer due to technical or other inspection conditions.

In principle, our incoming goods inspection is limited to a comparison of the delivery note with the order. A further inspection of the delivered goods is not owed if we (intend to) resell the delivered goods to our customers without opening the packaging.

- 7.4 In the event of delivery of defective goods, the supplier shall, at our option, remedy the defect or deliver goods free from defects. The requested remedy must be made without delay, but at the latest within 5 days of notification of the defect. In addition, the supplier shall analyse the cause of the defect and take the necessary corrective/preventive measures so that a recurrence of the defect can be excluded as far as possible for future deliveries. The supplier shall immediately inform us of the cause of the defect and the corrective/preventive measures to be taken.

In the event of a replacement delivery, the warranty period shall recommence upon receipt of the faultless replacement delivery. This does not affect the supplier's obligation to take back the defective goods at its own expense.

- 7.5 We shall be entitled to the statutory rights of recourse within a supply chain (supplier's recourse pursuant to paras. 445a, 445b, 479 German Civil Code, *§§ 445a, 445b, 478 BGB*) without restriction in addition to the claims for defects. We shall also be entitled to the supplier's recourse claims if the defective goods have been processed by us or another entrepreneur, e.g. by installation in another product. The supplier is obliged to bear all expenses necessary for the purpose of remedying the defect or delivering a replacement, even if the purchased item has been taken to a place other than the place of performance.

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- 7.6 The statutory limitation periods shall apply to all warranty claims.
- 7.7 Any rights arising from a guarantee given by the supplier shall not be limited by the foregoing provisions of this sec. 7. If the goods or services are defective in breach of a guarantee given by the supplier, the supplier shall always be liable for damages, irrespective of fault and without limitation.

8 Liability and Insurance

- 8.1 The supplier's liability shall be governed by the statutory provisions unless otherwise provided in these Conditions of Purchase. Any limitations of the supplier's liability - both in terms of the reason for and the amount of the liability - shall not apply; this shall also apply to the statutory maximum liability amounts of the German Product Liability Act (*ProdHaftG*).
- 8.2 The supplier shall be fully liable to us for ensuring that the goods supplied to us do not infringe the rights of third parties, in particular the intellectual property rights of third parties. If we are nevertheless held liable for the possible infringement of third party rights, such as copyrights, patents and other property rights, the supplier shall indemnify us against such claims and against any performance in connection therewith.

The supplier shall provide us with reasonable assistance in defending such claims and shall bear all costs incurred in connection therewith, including without limitation court costs and attorneys' fees. To the extent that the defence or defence measures are reserved to us for legal reasons, we shall be entitled to a reasonable advance payment in the amount of the estimated defence costs.

- 8.3 If the supplier is prevented from properly fulfilling its contractual obligations due to force majeure, it shall notify us thereof without delay. If we suffer damage as a result of the delayed or omitted notification, which may also consist of a lack of opportunity to mitigate the damage, the supplier shall be obliged to compensate us for such damage.
- 8.4 The supplier undertakes to maintain product liability insurance with a limit of indemnity of at least EUR 5 million per personal injury or damage to property and to provide evidence of the existence of such insurance to us on request.

9 Cartel Infringement

- 9.1 In the event that the supplier participates in price agreements, quota cartels or customer allocations with other companies in violation of antitrust law and the goods delivered to us by the supplier are (also) affected by this, we shall be entitled to a lump-sum claim for damages against the supplier in the amount of 15 percent of the agreed net purchase price

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in each case (excluding transport, packaging and other costs). The supplier shall be entitled to prove that we have suffered only minor damage or no damage at all as a result of the infringement of competition law.

9.2 In addition, we shall be entitled to claim damages from the supplier in excess of the liquidated damages for the above breaches.

10 Secrecy

10.1 The supplier shall use all information received from us, irrespective of the method of transmission (written, oral, electronic), only for the purpose of performing the relevant contract and shall keep it secret in all other respects. In particular, the supplier shall only disclose the information to such employees and third parties if and insofar as they need to know the information for the performance of the contract; such employees and third parties shall be contractually obliged by the supplier to maintain secrecy to the same extent.

10.2 The obligation of confidentiality set out in sec. **Fehler! Verweisquelle konnte nicht gefunden werden.** above shall not apply to such information, if and to the extent that such information

- a) were already known to the supplier at the time of disclosure without the supplier being otherwise obliged to maintain secrecy vis-à-vis us,
- b) become known to the supplier by third parties who have received and passed on this information without breaching a confidentiality obligation,
- c) were already publicly known at the time of the announcement, or
- d) the supplier is required to disclose due to a legal obligation or an official order.

In the latter case (lit. d), the supplier must inform us of such an obligation as soon as it becomes known.

10.3 In the event that the supplier fails to comply with its obligations under sec. 10.1, the supplier undertakes to pay us for each individual case a contractual penalty, the amount of which shall be determined by us at our reasonable discretion. The amount of the contractual penalty determined by us may, at the supplier's request, be reduced to a reasonable amount by judgment; para. 348 German Commercial Code (§ 348 HGB) shall not apply in this respect.

10.4 The supplier shall not publicize the business relationship with us without our prior written consent. If we limit our consent to a certain type of publication (e.g. naming as a reference on the supplier's homepage), the supplier shall be bound by this limitation. Our consents

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are revocable at any time, even if we do not reserve the right of revocation when we give our consent.

11 Applicable Law and Place of Jurisdiction

11.1 The contract shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (UNCITRAL / CISG).

11.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Hamburg, Germany.

12 Miscellaneous

12.1 All amendments and/or additions to the contract concluded between the supplier and us must be made in writing in order to be valid; this does not affect the possibility of concluding individual agreements without complying with the written form requirement. In the latter case, the supplier shall endeavour to record the oral agreement in a written addendum to the contract.

12.2 If any provision of these Terms and Conditions of Purchase and/or the contract incorporating these Terms and Conditions of Purchase is or becomes invalid, the invalid provision shall be replaced by a provision that comes as close as possible to the economic result of the invalid provision, while maintaining the other provisions. The same shall apply to any omission in the contract.

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