

1. Scope of Application

1.1 Unless otherwise agreed, all orders by EMCO GmbH (hereinafter referred to as "EMCO") relating to deliveries or services shall be placed exclusively and definitively according to these Terms and Conditions of Purchase. Terms of delivery of the supplier shall not apply even when sent or quoted in an order confirmation.

1.2 Orders must be confirmed in writing within 7 days starting from the order date. Should EMCO not have received the confirmation within 14 days, it shall no longer be bound to the order. If the supplier has made an offer, the contract shall come about on these Terms and Conditions of Purchase upon dispatch of our order.

1.3 All agreements and all declarations by EMCO must be in writing in order to be valid. This requirement shall not refer to purchase orders placed orally or by fax that include a purchase order number and are subsequently acknowledged in writing by EMCO.

1.4 Taking into account the intention of both parties, the general principles of law, the general contractual and trade practices as well as the principle of transacting business in good faith shall be used for interpreting and supplementing these Terms and Conditions of Purchase - also in the event of a conflict or partial invalidity. The most current version of INCOTERMS applies for all trade terms.

2. Delivery

2.1 The delivery shall be carried out primarily according to the instructions given by EMCO, in a proper and appropriate manner and in a form that is economically most advantageous for us.

2.2 The place of performance for the delivery of goods is the final destination specified by us, and if this information is not available, the place of performance is the registered office of EMCO.

2.3 The goods shall be properly packed in a manner suitable for transport. If the packaging costs are to be borne by EMCO, the supplier may only include its own cost price in the invoice issued to EMCO, enclosing proof thereof. EMCO reserves the right to provide its own packaging. The supplier shall take back the packaging at its expense at the request of EMCO.

2.4 The insurance of the goods against damage in transit or other damage at the expense of EMCO is only possible if this has been expressly agreed in advance.

2.5 Part deliveries, premature deliveries or changed deliveries may only be carried out based on and as a result of permission granted in writing.

2.6 The supplier shall be obliged to provide properly issued proof of origin (certificate of origin) in accordance with Austrian law for the whole delivery and for agreed part deliveries.

2.7 Billing shall be carried out according to national and international accounting standards, stating the delivery date, delivery note number, full order number and article number, to EMCO's registered office.

3. Delivery default

3.1 If an agreed deadline for a delivery or part delivery is exceeded by more than 14 days or if there is a delay in transactions with a fixed date, EMCO shall be entitled to withdraw wholly or partially from the contract and assert full compensation (full satisfaction) regardless of culpability. The supplier shall also be liable for its vicarious agents and sub-suppliers.

3.2, If the deadline for delivery is exceeded for all or part of the delivery, the supplier shall pay EMCO a penalty of one percent of the total price for each commenced week of delay, but a maximum of ten percent of the total price, irrespective of whether it is negligent. If EMCO exercises its right of withdrawal due to a delay in delivery or if the supplier is no longer able to fully render performance of the contract, a contractual penalty of ten percent of the total price shall be paid in any case.

3.3 Any advance payments by EMCO to the supplier shall be immediately returned to EMCO at the expense and risk of the supplier after rescission of contract owing to delayed delivery.

4. Payment

4.1 The relevant prices are the prices quoted in the order. Unless otherwise agreed, all prices are fixed prices. Any kind of price increases, even those which have been legally authorised, shall be disclosed to us in good time in advance and are subject to our written acknowledgement. If in doubt, invoices shall be denominated in euro. The place of performance and payment for all services is the registered office of EMCO, even if the handover of the goods takes place at a different location as agreed.

4.2 Unless otherwise agreed, EMCO shall effect payments within 60 days net or within 14 days less 3% discount, at the option of EMCO by bank or postal transfer, cheque or own three-month accepted bill. In the case of payment by own accepted bill, EMCO shall reimburse the discount interest at the discount rate charged by the bank. EMCO shall be entitled to prolong its own accepted bill once for a further 3 months.

4.3 Prompt and orderly payments shall be deemed neither an acknowledgement of proper delivery nor a waiver of any rights whatsoever.

4.4 Without thereby being in default of payment, EMCO shall be entitled to offset the purchase price for the duly performed delivery against any counterclaims, in particular, a penalty payment or claims for compensation or warranty claims.

5. Warranty

5.1 We shall only be obliged to accept the delivery if it is delivered on time at the proper place and in the agreed manner. The debt-discharging deposit of goods which we have not accepted due to defects or other contract violations is excluded.

5.2 In the absence of a separate agreement, a benchmark for the quality, quantity, function, weight, size and content, instructions, etc. of the supplied goods is the samples or prototypes received, the preceding delivery, any other standards and practices which are customary in the trade as well as the Austrian legal system.

5.3 The absence of a proper certificate of origin or lack of legal authorisation lead to the delivery becoming defective in the same way as when the delivered goods are in breach of the Austrian legal system or of industrial or trading standards.

5.4 The provision of § 377 of the Austrian Commercial Code (UGB) does not apply. The defectiveness of the delivered goods can also be asserted notwithstanding that they have been used or have been processed. The warranty claims have been asserted in a timely manner if EMCO has given written notice of the defect within the warranty period. The warranty period is two years for movable items. For immovable items and for defects which only become apparent when used for the intended purpose a three-year warranty period applies in any case.

5.5 If the delivered item is defective, EMCO shall be entitled at its discretion to termination of the contract, a price reduction or corrective action through rectification or the delivery of flawless goods. The supplier shall remedy the defect at its expense within a reasonable period. After expiry of such a period, or in the case of special urgency even before, EMCO shall be entitled to rectify the defects by other means at the expense of the supplier. EMCO shall be also be entitled to terminate the contract by written declaration without setting another deadline.

5.6 For the period up until rectification of the defect the supplier has to pay a penalty by analogy with the provision in Point 3.2. If the contract is terminated, ten percent of the total price shall be payable as a penalty in any case.

5.7 In the event of damage in excess of the penalty EMCO shall be entitled to assert compensation (full satisfaction) at any time irrespective of fault. This includes transport and costs for dismantling and assembly. The supplier shall also be liable for its vicarious agents and sub-suppliers. Any disadvantage associated with a reduction in value of the defective item can also be asserted with the compensation claim.

5.8 If they are more favourable for the purchaser (EMCO), the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) also apply.

6. Product liability

6.1 The supplier shall advise EMCO without delay and at the planning stage in an understandable manner of any possible risks and of new findings and - already prior to the occurrence of any damage - of changes in the production process, in the design or in the instructions pertaining to the products supplied.

6.2 The supplier shall undertake to compensate EMCO for any damage within the meaning of the Austrian Product Liability Law and shall indemnify and hold EMCO harmless in respect of any product liability claims by third parties. This only applies to domestic suppliers if the products are manufactured abroad or the supplier does not or cannot give EMCO the name of the domestic manufacturer.

7. Data protection/Confidentiality

7.1 The supplier shall provide data for processing for the purposes of advertising and sending information and promotional material on products and invitations to events on a specific topic until further notice. The supplier expressly consents to personal data being electronically or conventionally processed and stored for the duration of the business relationship. The processing of data shall take place exclusively for the above-mentioned purpose. In accordance with the corresponding data protection provisions and data protection guidelines appropriate technical and organisational measures shall be guaranteed for adequate security when processing personal data. The declaration of consent with regard to the processing of personal data of the supplier may be revoked at any time by email to [info@emco.at]. By means of an informal request the supplier may obtain information about the stored and/or processed personal data at any time by email to [info@emco.at]. The rights of data subjects (application for the rectification of data, erasure of data or restriction of data processing) may be exerted by means of an informal request by email to [info@emco.at]. Applications shall be processed within one month and the applicant shall be informed in writing about the executed measures after completion of the handling process. Should the application not be processed or not be properly processed, the supplier shall have the option of lodging a complaint with the Austrian Data Protection Authority.

7.2 The parties shall undertake to maintain absolute confidentiality vis-à-vis third parties concerning the knowledge (data, information, sketches, etc.) they acquire from their business dealings. The supplier shall undertake to only disclose confidential information to employees or selected external persons who must have access for completion of the order. The supplier shall ensure that this obligation of confidentiality is imposed upon all persons to whom confidential information is legitimately forwarded within the meaning of this agreement.

7.3 All documents and any copies made thereof shall be returned by EMCO upon request. Rights of retention against this right of restitution of property may not be asserted. Use of the company name or company logo of EMCO for purposes other than to handle the fulfilment of the order is not permitted.

8. Place of jurisdiction and applicable law

8.1 An action may only be brought against EMCO before the court having local and subject-matter jurisdiction for the registered office of EMCO. EMCO has the option of having all disputes arising from this agreement or related to its violation, termination or nullity or any transactions concluded within the context of this agreement settled by any other court having local and subject-matter jurisdiction or by the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) in German by an arbitrator appointed in accordance with these Rules.

8.2 This agreement is subject to Austrian substantive law to the exclusion of its provisions on conflicts of international civil law and of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG), subject to Point 5.8.

Should one or several provisions of these Terms and Conditions of Purchase be invalid, the validity of the remainder of the provisions shall not be affected, rather in this case an addition shall be made based on the general principles of law and the effectively declared intentions of the parties. New or amended legal provisions as well as the discontinuation or emergence of economic or political business principles shall entitle EMCO to modify these Terms and Conditions of Purchase by written notification.

Hallein, 18 September 2018

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