

GENERAL CONDITIONS OF PURCHASE

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General

The General Conditions of Purchase stipulated here below ("hereinafter called "EKB") of **ematec AG Memmingerberg**, shall apply to any and all quotations and order acceptances as well as all deliveries, services and information given. The EKB shall apply both to merchants (§§ 1 cont. German Commercial Code) and enterprises (§ 14 German Civil Code); they shall also apply to deliveries made by persons who, owing to prima facie entitlement have to be dealt with as persons in the sense of the previous sentence.

Scope of application

Our purchase orders are exclusively subject to these EKB in each current version. Any deviating, opposing or supplementing general terms of the supplier are not acknowledged by us, unless their applicability is expressly acknowledged by us in writing. Any general terms and conditions of the supplier which are contrary to ours shall not become a part of the contract. Our Conditions of Purchasing shall also apply if we accept delivery without reservation, being aware of any opposing conditions by the supplier or conditions by the supplier deviating from our conditions of purchasing.

1. Order, signing of contract, power of representation

- 1.1 our purchase orders and deals shall be exclusively governed by our General Conditions of Purchase. Any other conditions shall only become part of the contract if they have been confirmed by us in writing as an addendum to our Conditions of Purchase. The acceptance of supplies or services or the payment thereof does not mean consent to the supplier's conditions of sale.
- 1.2 The supplier shall be obliged to accept our purchase order within a 2 week period.
- 1.3 All agreements made between us and the supplier for the execution of the contract shall be made in writing in this contract.

2. Prices and conditions of payment

- 2.1 If no specific agreement has been made, prices are free our works, including packaging, transport and any customs duties payable. The legal regulations shall apply to the passing of the risk.
- 2.2 Invoices shall be submitted to us separately and in duplicate, after delivery was made. Incorrect invoices shall be deemed to have been received by us only after their corrected version has been received by us.
- 2.3 Payments are made in the commercially usual way, either within 30 days with a 3% discount, or within 60 days net, counted from the contractual delivery/performance, receipt of the invoice and sending of documentation.
- 2.4 Faulty or partial shipments entitle us to withhold the entire payment until the proper completion of performance.
- 2.5 If certificates regarding material tests, test protocols or any other documents have been agreed, they shall form a material part of the shipment and shall have to be sent to us separately from the invoice. If possible, the documents shall be sent separately from the goods as well, but in any case in a separate packaging.
- 2.6 Our payments do not mean an acknowledgment of performance nor a waiver of warranty rights.

3. Dispatch and delivery

- 3.1 We will accept only the quantities or numbers ordered by us, this shall apply also to products which are specially manufactured for us. Any short or excess deliveries shall be permitted only with our prior written consent.
- 3.2 Early or partial deliveries shall require the consent of our Purchasing Department.
- 3.3 For quantities, weights and measures the values determined by our Incoming Goods Inspection shall apply.
- 3.4 Shipping and transport shall be at the supplier's risk. The risk shall pass on delivery on installation or assembly and, in the case of services, after the acceptance, even if parts intended for the contract performance are stored on our company's premises by the supplier.

4. Delivery deadline and default of delivery

- 4.1 Delivery deadlines and periods agreed upon shall be binding for the supplier. If the supplier does not perform his obligation within the period of delivery agreed upon, or if he is in default, we shall be entitled to either withdraw from the contract or to procure a replacement from a third party and/or to claim damages for non-fulfilment, without prejudice to any further legal claims. The supplier shall reimburse us for any and all additional charges resulting from delayed deliveries or services,.
- 4.2 If the supplier realises that an agreed deadline cannot be met, he shall be obliged to inform us immediately about such a delay in writing, indicating the reasons for and the presumable duration of the delay.
- 4.3 If the supplier is in delay of delivery because of force majeure, we may demand delivery/service at a later time, at the conditions originally agreed upon with the supplier; alternatively, we may either wholly or in part withdraw from the contract or terminate the contract.

- 4.4 If the supplier is in default of delivery, we are entitled to demand damages for default in the amount of 1% of the total purchase order value for each commenced week of default, in total, however, not more than 10% of the total net order value. We reserve the right to claim further damages. Lumpsum damages for default may be asserted until the final payment is made. The supplier shall have the right to give evidence that the damage claimed was in fact lower.
- 4.5 The timeliness of deliveries shall be determined by the receipt date of the goods and the appurtenant documentation at the place of receipt or usage indicated by us.
- 4.6 The timeliness of deliveries with installation and assembly as well as of services shall be determined by their acceptance and the receipt of the appurtenant documentation.
- 4.7 The supplier shall be obliged to procure for himself the documents, data and provisions necessary for the performance of the contract. If the supplier is in default of delivery he may only claim missing documents, data or provisions which should have been supplied by us if he reminded us beforehand and did not receive them within a reasonable period of time.
- 4.8 If the supplier fails to meet the agreed delivery deadline, the supplier shall be in default of delivery, without requiring a reminder from us.
- 4.9 The acceptance of a delayed consignment or service does not mean the waiver of claims for damages.

5. Workmanship and regulations to be followed

- 5.1 The supplier guarantees that he shall sell only such goods and services which meet any and all valid laws, directives, standards and prescriptions applicable and which enable us to meet the regulations binding us with regards to the goods without requiring us to take any additional measures.
- 5.2 If a CE sign or a manufacturer's declaration to machine directive 98/37/EC is prescribed, a confirmation of the risk analysis carried out to EU standard is part of our purchase order.
- 5.3 If deviations from such regulations are necessary in individual cases, the supplier must obtain our approval in writing.
- 5.4 If there are concerns regarding the type or execution we wish, we must be notified of them immediately. In addition, the supplier shall be obliged to inform us about any measures required for the integration of his product.
- 5.5 The supplier shall be liable for the environmental acceptability of the goods supplied and the packaging material, as well as for any consequential damage which results from the violation of any legal regulation for the disposal of goods and packaging material.
- 5.6 The supplier remains responsible for his supplies/services and their faultless performance even if we have signed, approved, stamped or marked with a "seen" note or similar, the plans, drawings, calculations and other execution documentation submitted by the supplier.
- 5.7 Any person who carries out work on the premises in the fulfilment of the contract, must follow the factory regulations. The regulations governing entry to and exit from the factory premises must be followed. Liability for any accidents to such persons on the works premises shall be excluded unless intent or gross negligence can be proven.

6. Warranty, warranted quality

- 6.1 The supplier warrants that the goods supplied meet the characteristics defined in the contract, particularly with regards to their function and quality.
- 6.2 The acceptance of the products and goods supplied shall be made under reservation of inspection for correctness and suitability. Any warranty complaint shall be deemed in time if it is received by the supplier within a period of 5 working days, calculated from goods receipt date or, in the case of hidden defects, from their detection.
- 6.3 The supplier or entrepreneur shall be liable for any defect in the goods or services for the duration of the warranty term, regardless whether they are identifiable immediately or at a later time.
- 6.4 Without prejudice to any other legal remedies, we shall, at our discretion, be entitled to the supply of a free replacement, free remedy of the defects or to claim a reasonable price abatement. In urgent cases we shall be entitled to remedy the defects found at the supplier's expense.
- 6.5 If faulty goods are supplied repeatedly, or if services are repeatedly rendered insufficiently, we shall be entitled to withdraw from the contract, in the case of multiple delivery contracts, we shall be entitled to terminate the contract immediately.
- 6.6 The warranty period shall be two years, without any limitations, in several shifts. It starts with the handing over of the goods supplied to us or to any third party indicated by us, at the place of receipt or usage named by us. For fixtures, machines, plants and components, the warranty period shall start with the date of acceptance at the end user, who is indicated in our written statement of acceptance. If the acceptance is delayed without any fault of the supplier, the warranty period shall start with the provision for acceptance of the goods supplied.
- 6.7 The expiry of the warranty term for defective goods shall be suspended from the date of complaint until the faultless usability of the goods supplied. For remedied or replaced parts, the warranty period shall start anew from this date on.

7. Product liability

- 7.1 If the supplier is responsible for damage to a product he is obliged to hold us harmless from any third party claims for damages, at our first request, in as far as the defect was caused by a fault of the goods supplied by him and he himself is liable towards third parties.
- 7.2 Within the framework of his exemption obligation, the supplier shall also reimburse to us any expenses pursuant to §§ 683, 670 BGB (German Civil Code). The supplier shall bear all costs for measures which are necessary for the remedy of a fault (also by way of precaution), particularly owing to our product liability. He shall mark all supplies in such a way that they can be permanently identified as his products.
- 7.3 The supplier shall take out insurance against all risks from product liability, at a reasonable amount. The supplier shall, on request, give evidence of the existence of such an insurance cover.

8. Quality assurance

- 8.1 The supplier shall carry out quality assurance measures to the type and scope meeting the latest state of the art. He shall give evidence thereof on our request. For all components to be supplied to us, the supplier shall perform a documented outgoing goods inspection with regards to all characteristics relevant to the proper function of the product.

9. Spare parts and service

- 9.1 The supplier shall undertake to supply spare parts for the products purchased from him for the period of 10 years after the expiry of the warranty period.

10. Confidentiality, advertisement

- 10.1 The parties to this contract shall keep the conclusion of the contract and all information pertaining to the order and the goods to be supplied confidential, except knowledge that is publicly accessible or known.

The supplier shall not be allowed to point out the fact that he is in a business relationship with us to any third party or
in advertising material, unless we have given our consent in writing.

11. Documents of execution

- 11.1 Any pictures, drawings, calculations, models and other information or documents the use of which was permitted to the supplier for the production of the goods to be supplied, as well as any pictures, drawings etc. made by the supplier to our information, may not be made available by the supplier to any third party or used for any third party.

- 11.2 All documents, models and samples which we handed over to the supplier for the performance of the contract, shall remain our property.

- 11.3 Ownership of all documents, models and samples made by the supplier in the performance of the contract, shall pass to us.

- 11.4 All documents, models and samples provided by us shall be used exclusively for the production on grounds of our purchase order. They shall be surrendered or returned to us immediately and at any time on our request, together with all copies or duplicates, also in electronic and/or digital form, such as disks and CD-ROM data memories.

- 11.5 The obligation to confidentiality survives this contract. It shall, however, expire if and as far as the manufacturing knowledge contained in the pictures, drawings etc. provided, becomes publicly known.

12. Third party rights

- 12.1 The supplier guarantees that any and all supplies are free from any third party rights and that the use and supply of the goods does not violate any patents, licenses or other third party industrial property rights.

- 12.2 The supplier shall defend us and our clients at his expense against all third party claims from any violation of industrial property rights in connection with the goods supplied by him and shall in that respect hold us harmless from any costs and damages imposed by legal courts. For this purpose we shall inform the supplier immediately of any such claims made against us. He shall be free to exercise any defence and compositions.

- 12.3 If any claims regarding industrial property rights have been asserted against us in connection with goods supplied by the supplier or if such claims are to be expected, the supplier shall provide us immediately with an unlimited right of usage at his expense or supply contractually complying goods which are free from any third party legal claims. If none of this is possible within a reasonable period of time set by us, we shall be entitled to withdraw from the contract and claim damages for the damage we suffered.

13. Passing on of orders

- 13.1 The passing on of orders or of material parts of our order to a third party shall not be permitted, except with our previous written consent, and shall entitle us to withdraw from the contract either wholly or in part and to claim damages.

14. Reservation of ownership

- 14.1 Any ownership rights beyond the simple reservation of ownership, particularly any extended or prolonged reservation of ownership shall be excluded.

15. Place of performance, place of jurisdiction, applicable law

15.1 Place of performance

The registered seat of our enterprise shall be the place of performance for both parties to this contract, if the client is a merchant or if he is a legal person under public law or a public-law special fund or if the client's registered seat is outside the Federal republic of Germany.

15.2 Place of jurisdiction

Memmingen shall be the place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship. We shall, however, at our discretion be entitled to sue the client at his general place of jurisdiction.

15.2 Applicable law

The contractual relationship between the supplier and ourselves shall be governed by the law of the Federal Republic of Germany. The application of the unified law for the international sale of mobile goods (EKG) as well as the United Nations Convention on the international sale of goods (CISG) shall be excluded.

16. Validity

- 16.1 If one of the provisions of this EKB is declared invalid by a competent authority, the effectiveness of the remaining conditions shall remain unaffected.
- 16.2 These terms and conditions shall be extended for repair and assembly services.
- 16.3 All former Conditions of Purchase are superseded by the present Conditions of Purchase.