

## TERMS AND CONDITIONS OF SALE AND DELIVERY

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### General

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

#### 1. General, scope of validity

- 1.1 Our supplies and services are exclusively subject to these AVLB in each current version. Any deviating, opposing or supplementing general terms and conditions of the customer are not acknowledged by us, unless their applicability is expressly acknowledged by us in writing. Any general terms and conditions of the client which are contrary to ours shall not become a part of the contract. Our terms of sale shall even apply if we carry out a delivery without reservation, being aware of conditions of the client which are contrary to or deviating from ours.
- 1.2 In the case of any changes, deletions and/or amendments to any of our conditions, the remaining conditions shall remain in full force. This shall also apply if one or several of our conditions are legally invalid or become invalid.
- 1.3 Our AVLB shall, within the framework of current business relations, also apply to future deliveries and services even if they were not explicitly agreed upon.
- 1.4 In terms of ownership rights and copyrights we reserve the unlimited right to exploit the cost estimates, drawings and other documents (e.g. application solutions) provided by us. Such documents may not be made available to third parties without our prior written consent, they have to be returned to us if the order in question is not placed.
- 1.5 The ordering party shall consent to the storage and evaluation of order data and purchaser's data in accordance with the regulations of the Bundesdatenschutzgesetz (BDSG/Federal Data Protection Act).

## 2. Quotation and purchase order/contract

- 2.1 Our quotations are subject to change without notice and are subject to sale. They shall only become binding upon their acceptance by the client and our written order acknowledgment.
- 2.2 If the delivery has already been made, our invoice or the bill of delivery shall be deemed an order acknowledgment.
- 2.3 Any indications of dimensions, weight, colour, material and equipment shall be approximations, unless they are explicitly indicated as binding in the order acknowledgment.
- 2.4 We reserve the right to customary technical or design changes deviating from quotations and brochures of the goods to be delivered, provided that they do not place an undue hardship on the purchaser and provided that they do not in any way affect the usability of the goods to be delivered.
- 2.5 The order acknowledgment or the quotation which was accepted by our client without reservation, as well as our conditions are the qualifying elements for the contents of the contract. Any agreement deviating from them shall be void unless we give our explicit consent and confirmation in writing.
- 2.6 We reserve the right to any engineering, design or build changes, in particular to improvements of the goods to be delivered after the order acknowledgment has been issued or during the term of delivery, unless the goods to be delivered are fundamentally changed by this as far as the communicated use is concerned, and in as far as the client can be reasonably expected to accept them.
- 2.7 If there is a statement from us designated either as performance description or product description, the characteristics or quality of the goods to be delivered are definitely and extensively determined.
- 2.8 We reserve the ownership of and copyright to cost estimates, drawings and other documents. Documents which are usually or recognisably subject to confidentiality shall be made accessible to any third party only after we have given out consent.

## 3. Prices and conditions of payment

- 3.1 Our prices shall be ex works, unless otherwise stated in the order acknowledgment or our quotation. They shall exclude packaging, loading and shipping and any other ancillary costs, all of which will be charged separately.
- 3.2 Invoices shall be issued in EURO at the prices valid on the date of shipment, provided that no other agreement has been made.
- 3.3 Our prices do not include the value-added tax. VAT will be shown separately on the invoice, at the legally applicable amount valid on the date of the invoice issue. The same shall apply to any import duties or other country-specific charges. Cash discount may be deducted only if previously agreed upon. The prices agreed upon shall not apply to re-orders, which have to be re-negotiated on a case by case basis.
- 3.4 The prices agreed upon shall be based on the current production costs and refer to the agreed delivery date. We reserve the right to change prices in the case of any delay in delivery for which we are not responsible, if, after the agreement was made, there are cost increases and/or material or energy price increases, which would not have increased our procurement or production expenses if the delivery had taken place in due time. We shall give evidence of such costs on request.
- 3.5 If the client's payments are overdue, we shall charge the legal interest on delay, reserving the right to assert further damages for delay.

- 3.6 We reserve the right to accept bills of exchange, provided that they are discountable. Any discount fees shall be borne by the purchaser.
- 3.7 Any right to retain moneys due to any counterclaims not acknowledged by us from any other contractual relationship shall be excluded. Setting off any counterclaims shall only be permissible with counterclaims which are legally established, undisputed and acknowledged by us.
- 3.8 The buyer shall only be entitled to the right of retention if his counterclaim results from the same (individual) purchase order or, in the case of call-off orders, from the relative individual call-off.
- 3.9 The client's credit-worthiness shall form the basis of every delivery. If we become aware of any negative aspects concerning the client's credit-worthiness and if our payment claim is in jeopardy or, if the client fails to make payment in compliance with the terms and conditions, of the amounts fallen due, all our outstanding amounts with the client shall become due immediately. In addition, we shall have the right to request payment in advance, request security or withdraw from existing contracts.
- 3.10 Our invoices shall be paid within 20 days from the invoice date, without any deduction, free the payment office indicated or by the issuance of an irrevocable confirmed Letter of Credit (or bank guarantee) of a West European bank. We may also request payment in advance.
- 3.11 Any discounts or rebates may only be deducted if they were explicitly agreed upon in writing. The deduction of any discount shall only be possible if all payments from the order are received by us within the period for which the discount is granted.
- 3.12 Means of payment other than cash or money transfer shall be accepted only after prior agreement and only on account of performance. If payment is made by cheque / bill of exchange, only the endorsement of the last bill of exchange shall lead to fulfilment. The acceptance of a bill of exchange only implies an extension of the payment period if it is agreed upon explicitly and in writing; any interest and costs shall be borne by the buyer.
- 3.13 If the buyer's payments are overdue for more than four weeks or if a cheque or bill of exchange is protested or if an execution is carried out on it, we shall be entitled to carry out any outstanding deliveries to the buyer from other orders or from call-off orders only against advance payment.

#### **4. Time of delivery, delay in acceptance of goods, shipment**

- 4.1 All shipments shall be made ex works.
- 4.2 The choice of route and type of shipping lies with us in such cases where we pay the freight costs.
- 4.3 The delivery times indicated by us shall in case of doubt only serve to inform the client and shall not be binding. Delivery deadlines or terms shall be binding only if we explicitly indicate them as binding. We reject any fix deals, that is, in case of doubt, no such fix deal may be deemed to be agreed. The terms of delivery indicated by us shall be deemed kept if our shipments have left our works at the time indicated or if the client was informed of our readiness to ship.
- 4.4 The delivery time indicated by us starts after clarification of all technical issues, the compliance with all our delivery obligations, the timely and proper fulfilment of the client's obligations, also including the provision of any document, permit and release to be provided by him. If any delay emerges, we shall notify the client of it as soon as possible. If import licenses or other permits are required in the country of destination, the client shall notify us of their number, permit date and term of validity when placing the order.

- 4.5 If shipment is delayed by any circumstances unforeseeable by us and for which we are not responsible, (e.g. by labour disputes, plant interruption, transport obstacles, raw material shortage due to breach of contract by our suppliers, measures and interference by public authorities, riot, war - also if our suppliers are affected by them - as well as untimely self supply), we shall be entitled to withdraw from the contract either wholly or in part or to postpone the delivery for the duration of the obstacle, as we deem suitable. In this case we will inform the client immediately of such an obstacle and will immediately return any performance received in the case of a withdrawal from the contract.
- 4.6 If the delivery time originally agreed upon is exceeded by more than one month, the client shall have the right to withdraw from the contract. Any claim to damages shall be excluded.
- 4.7 If the client sets a reasonable period of grace after we are in default, also threatening to withdraw from the contract, he shall be entitled to withdraw from the contract after such period of grace has expired fruitlessly. Any claim for damages or expenses due to infeasibility or delay of performance/delivery shall be limited to the amount of damage foreseeable at the time of the signing of the contract. Our liability under the above shall be excluded in the case of simple negligence, it shall not be excluded if the timely delivery was made an essential contractual obligation (cardinal obligation). Liability because of intent and injury to life, body and/or health shall remain unaffected.
- 4.8 The liability limitations according to para.4.5 and 4.6 above shall not apply if a commercial fix deal was agreed; the same shall apply if the client can assert that owing to a delay for which we may be held responsible, his interest in the fulfilment of the contract has become obsolete.
- 4.9 If the client is in delay of acceptance or if the client violates any of his obligations to cooperate, we shall be entitled to claim the damage incurred by us including any additional expenses.
- 4.10 If shipment is delayed on the client's request, we shall be entitled to invoice the shipment, to store the goods at the client's risk and to charge the costs incurred through such storage to the client. If we store goods in our plant, we shall charge the client at least 0.5% of the invoice amount for every month of storage. The client's right to prove that no damage or considerably less damage has occurred, remains unaffected.
- 4.11 Any partial shipment and/or premature shipments shall be permissible if the client can be reasonably expected to accept them. If partial deliveries are usable independently, they shall be deemed independent deliveries as far as due dates of payments are concerned.

## 5. Passing of risk and acceptance

- 5.1 The risk shall pass to the buyer as soon as the goods to be delivered have been handed over to the buyer or the person commissioned by him, or the forwarder or transport agency commissioned by him. This shall also apply if partial shipments are made or if we perform other services, e.g. take over shipping costs, or if delivery and installation are performed by us
- 5.2 If dispatch or acceptance of the goods is delayed or if goods are not dispatched, for reasons that lie outside our responsibility, the risk shall pass to the buyer from the day the readiness for shipment or acceptance was advised. At the client's request, however, we shall be obliged to insure the goods at the client's expense against damage from breakage, loading, transport, fire and water.
- 5.3 If an acceptance needs to be made, it shall be decisive for the passing of the risk. The buyer shall not be entitled to refuse acceptance on grounds of a non-essential defect.

- 5.4 If delivery of the goods is not taken by the buyer or his representative on the fixed date of delivery, we shall be entitled to ship the goods for the account and risk of the buyer.
- 5.5 The goods delivered shall be accepted by the buyer without prejudice to the rights in para. 4, even if they show unessential defects.

## 6. Reservation of ownership

- 6.1 The goods delivered shall remain our property until the purchase price has been fully paid, including any interest and all costs incurred by us, as well as any claims from transactions with the client that we still may have, if not otherwise agreed hereinafter. If the client is in default of payment, we shall be entitled to withdraw from the contract.
- 6.2 The inclusion of individual claims into a current invoice shall not affect the right to ownership in any way.
- 6.3 If the buyer fails to meet the contractual obligations, particularly if he is in default of payment, we shall be entitled to take back the goods delivered. We shall be entitled to satisfy ourselves in this way by way of enforcement or direct offering. The costs of an enforcement and realization, particularly also any repair costs, shall be borne by the buyer.
- 6.4 For the duration of the reservation of ownership, the goods delivered shall, upon our request, be insured by the buyer against fire, water, machine breakage and other damage as well as theft. The insurance claims shall be assigned to us and the insurance certificate shall be handed over to us. We shall also be entitled to pay the insurance premium to the debit of the client.
- 6.5 The buyer shall be obliged to keep the goods delivered in a proper condition for the duration of the reservation of ownership and to have any necessary repairs carried out on them.
- 6.6 The buyer shall not pledge or assign the goods under reservation of ownership. In the case of a levy of execution as well as seizures or other third party dispositions, we shall be notified immediately, e.g. in order for us to lodge an appeal pursuant to § 771 ZPO (Code of Civil Procedure). The costs of eliminating such measures shall be borne by the buyer.
- 6.7 If third parties seize the goods under reservation of ownership, our client shall inform them of the reservation of ownership and notify us immediately.
- 6.8 As long as the supplier's reservation of ownership exists, any sale or assignment based on other legal reasons shall be allowed to a buyer only in the normal course of business, even if the condition of the goods under reservation of ownership was altered.
- 6.9 The client shall assign already now to us any and all claims in the amount of the invoice value (i.e. including VAT) from any resale of the goods under reservation of ownership or from the goods produced by machining or processing the goods delivered.
- 6.10 If the goods under reservation of ownership are inseparably mixed, blended or joined with other goods acc. to § 947 German Civil Code (BGB), we shall acquire co-ownership in the unified goods, at a rate which corresponds with the value of our goods under reservation of ownership to the value of the goods at the time of mixing, blending or joining. If the goods under reservation of ownership are machined or processed, we shall acquire ownership of the new goods; and the client shall keep them in store for us.

- 6.11 Of the claims from sales of goods in which we acquired co-ownership due to mixing, blending or joining, the client already now assigns the first-ranking partial amount to us which corresponds to our co-ownership ratio of the goods sold.
- 6.12 If the client sells goods which are owned or co-owned by us, for a total price together with other goods not owned by us, the client already now assigns that portion of the goods under reservation of ownership to us, which corresponds to the first-ranking partial amount of this total claim. A declaration of assignment in individual cases shall not be required.
- 6.13 Under reservation of revocation, the client shall be entitled to collect the assigned claims from the resale of goods. Our right to collect the claims ourselves shall not be affected by this. We undertake, however, not to collect the claims as long as the buyer properly fulfils his payment obligations and is not in default of payment. If the buyer is in default of payment, we may request that he names the assigned claims and their debtors immediately. He shall also give all information necessary for the collection, and hand over all documents pertaining to this, as well as notify the debtors (third parties) of the assignment.
- 6.14 If the value of all security rights to which we are entitled exceeds the value of all secured claims by more than 10%, we will release the relative portion of the security rights on the buyer's request - but at our discretion.
- 6.15 If the buyer has signed a preferential partial assignment also in favour of other commodity lenders, this paragraph shall apply on condition that the buyer may collect the partial claim assigned to us simultaneously with such preferential partial claims.

## 7. Repurchase

- 7.1 A repurchase of properly delivered goods may only be made with our previous written consent. For goods returned properly and with our consent, we may deduct from the credit note a reasonable lumpsum for administration costs, inspection and repackaging. No credit shall be issued for damaged goods.

## 8. Warranty claims, notification of defects

- 8.1 The client's right to complain presupposes that he has fully met the examination and notification obligations according to § 377 HGB (German Commercial Code).
- 8.2 Complaints regarding consumable goods entitle the client only to an abatement of the purchase price. Complaints regarding other goods entitle the client only to request subsequent fulfilment; in as far as such a subsequent fulfilment cannot be achieved within a reasonable period of time, or is not possible owing to the quality of the goods, the client shall have the right to withdraw from the contract or claim abatement of the purchase price.
- 8.3 The regulations of § 478 BGB (German Civil Code) remain unaffected. The client must inspect the goods immediately after their receipt with regards to defects, quality, workmanship and is obliged to note any obvious defects on the receipt voucher. As for the rest, in relations to enterprises, § 377 HGB (German Commercial Code) shall apply.
- 8.4 Any transport damage shall not entitle the client to refuse acceptance of our goods.
- 8.5 Warranty claims shall always be made in writing, indicating the defect as accurately as possible and also indicating the purchase order number.



- 8.6 We shall, at our discretion, either supply such parts free of charge or remedy the defects in parts, which have become unusable or whose usability is considerably impaired owing to circumstances that are proven to have occurred before the passage of risk. Such circumstances are in particular faulty designs, bad material or faulty workmanship.
- 8.7 The buyer shall agree with us the time for the performance of any rework or replacement that we deem necessary, and give us the opportunity to carry out such rework or replacement. If the client refuses to do so, we shall be exempt from any liability for faults. The buyer shall have the right to remedy the defect himself or have it remedied by a third party and claim reimbursement from us only in urgent cases, when safety of operation is at risk or for the prevention of disproportionately high damage.
- 8.8 The buyer shall have the right to withdraw from the contract within the scope legally provided, if we let expire a reasonable period for the performance of rework or replacement for redhibitory defects, taking into account any legal exemptions. If there is an unessential defect, the buyer shall only be entitled to claim an abatement of the contract price. For the rest, the right to an abatement of the contract price shall be excluded.
- 8.9 If the client by applying the law on contracts for work and services, wishes to claim damages instead of services, or if he wishes to remedy the fault himself, a failure of subsequent fulfilment shall exist only after a second unsuccessful attempt was made. The legal cases of dispensability of a setting of a period shall remain unaffected.
- 8.10 In the case of remedies or alterations carried out inexpertly by the client or a third party, any liability for defects shall be excluded, unless the client can prove that the defect was not caused by such inexpert remedy or alteration.
- 8.11 Liability for defects does not cover wear and tear. It does not include damage caused after the passage of the risk by faulty or negligent handling, excess usage, unsuitable operating supplies or chemical, electrochemical or electrical influences, which are not part of the contract.
- 8.12 In as far as the costs for remedies increase due to the fact that the goods were delivered to a place other than the place of performance, and this is not in accordance with the intended use of the goods supplied, any extra costs shall be borne by the client.
- 8.13 If not otherwise agreed, warranty claims shall become statute-barred 12 months after handing over of the goods to the client. A fault remedy does not reinitiate the period of limitation, except with regard to newly installed parts or remedied parts.
- 8.14 The client shall observe his contractual obligations, particularly also those referring to the agreed payment conditions. The client has no right to withhold payment on grounds of a defect, except if he made a warranty claim in due time. In such a case the payment withheld must be at a reasonable ratio to the scope of the defect occurred.
- 8.15 Any warranty claim against us shall be made only by the direct client and shall not be assignable. The application of § 478 BGB (German Civil Code) shall remain unaffected.
- 8.16 Any further right or claim by the client or his vicarious agents due to defect of the goods shall be excluded, particularly claims for any damage which was not caused on the goods themselves. This shall not apply in the case of injury to life, body and health, in the case of intent and if the defect causing the damage is the subject of a separate agreement between us and the client or in the case of malicious silence with regard to the defect. The regulations of § 478 BGB (German Civil Code) and liability under the product liability act shall remain unaffected.

- 8.17 If our product is equipped with accessories from third parties and the third party's conditions of liability for such accessory are enclosed with our product, they will be taken over by us as far as they are not more unfavourable for us than the conditions stated herein.
- 8.18 We shall be liable for warranty claims for one year, except in cases acc. to §§ 438 clause 1 No. 2 and 634 a, clause 1, No. 2 BGB (German Civil Code). Towards our client we shall be liable in the sense of § 14 BGB (German Civil Code) only for public statements, in particular in advertisements, which we use for our own purposes and have explicitly included in the contract.

## 9 Liability

- 9.1 Any claim for damages by the client shall be excluded, irrespective of the legal grounds, particularly claims for damages because of breach of obligation under the debt relation and from unlawful acts. This does not apply as far as liability is legally prescribed, in particular in case of intent and gross negligence, injury to life, body or health, because of taking over of a guarantee for the existence of a characteristic, in the case of breach of material contractual obligations or under the product liability law. A change of the burden of proof to the client's disadvantage is not connected with the above regulations.
- 9.2 Our liability for impossibility or delay of delivery/performance shall be exclusively governed by para. 4.6 of these Terms and Conditions of Sale and Delivery.
- 9.3 We shall also be liable to an unlimited extent in all cases of deliberate or grossly negligent violation of obligations. For damage to property and economic loss owing to slight negligence, we shall be liable only in such cases where material contractual obligations were violated (cardinal obligations), but limited to the typical damage foreseeable at the time of signing the contract. Any further claims for damages shall be excluded.
- 9.4 All claims of the client - regardless for which reason, with the exception of claims from §§ 438 clause 1 No. 2 BGB (German Civil Code) and § 634 a clause 1 No. 2 BGB (German Civil Code) shall become statute-barred after 12 months. For deliberate and malicious conduct as well as claims under the product liability act, the legal period shall apply.

## 10. Place of performance, place of jurisdiction, applicable law

- 10.1 Place of performance  
The registered seat of our enterprise shall be the place of performance for both parties, if the client is a merchant or a legal person under public law or a public-law special funds or if its seat is outside the Federal Republic of Germany.
- 10.2 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 also be entitled to sue the client at his general place of jurisdiction.
- 10.3 Applicable law:  
The law of the Federal Republic of Germany shall apply to the contractual relationship between the client and us. The application of the unified law on international purchases of movable goods (EKG) as well as the Convention of the United Nations on contracts for the international sale of goods (CISG) shall be excluded.



## 11. Validity

- 11.1 If any condition of these AVLB is declared void by a competent authority, the validity of the remaining conditions shall remain unaffected.
- 11.2 If repair and assembly services are rendered, the conditions herein shall be extended and supplemented.
- 11.3 All former conditions of sale and delivery are superseded by the present Conditions of Sale and Delivery.