

# Purchase Terms and Conditions of the EMAG Group



## 1. Scope

1.1 These general purchase terms and conditions apply to orders for deliveries and services that companies of the EMAG group (hereinafter "Contracting Body") place with suppliers.

1.2 The purchase terms and conditions also apply to contracts that the Contracting Body enters into with the supplier. Once the supplier has approved these terms and conditions after having viewed them, they also apply to future contracts with the supplier.

1.3 Terms and conditions of the supplier are excluded. They apply only if and insofar as the Contracting Body has given written approval.

1.4 If the Contracting Body receives or accepts deliveries or services, this shall not constitute consent to the general terms and conditions of the supplier.

## 2. Offers

2.1 Offers and cost estimates shall be provided free of cost to the Contracting Body and shall not obligate the Contracting Body to receive deliveries or services.

2.2 If the supplier requires clarification of technical prerequisites prior to the submission of an offer, this can be done after making an appointment with the Contracting Body via a specialist for technical questions.

## 3. Conclusion of a contract

3.1 Orders and changes or modifications to them as well as other agreements made in connection to the conclusion of a contract shall be made or confirmed in writing.

3.2 The order in identical form shall be confirmed by the supplier in writing. If contents of the supplier's order confirmation deviates from the order, the contract shall not be concluded, provided that a binding offer of the supplier has not been accepted in identical form along with the order. The acceptance of the order from the supplier must contain the order number and other order specifications.

## 4. Drawings, models, documentation and other materials provided

4.1 All drawings, models, samples, tools and other items provided to the supplier by the Contracting Body remain the property of the Contracting Body. Copyrights and property rights must be respected.

4.2 Without prior written approval from the Contracting Body, the supplier is prohibited from transferring the materials as described in Clause 4.1 to third parties, either for inspection or usage. They remain property of the holders of the respective rights and shall be returned to the Contracting Body upon request. The supplier shall especially respect these existing copyrights and other industrial property rights.

4.3 The materials transferred to the supplier from the Contracting Body shall be kept properly and sufficiently insured against all damages, e.g. caused by fire, water, burglary and sabotage. After termination of the contractual cooperation, they shall be immediately released to the Contracting Body upon request.

4.4 The agreement of the Contracting Body concerning calculations, drawings and other documentation of the supplier shall not affect the liability of the supplier in case of breaches of obligations or rights.

## 5. Monitoring of work progress

Provided that the supplier is contracted to manufacture individual parts, the Contracting Body has the right to view the implementation via representatives, subject to advance notice. The Contracting Body is in such cases entitled to inspect the implementation of the contract by the supplier.

## 6. Subcontractors

The supplier is not entitled to engage third parties for the implementation of services owed without prior written consent from the Contracting Body. Subcontractors approved by the Contracting Body may only be replaced by subcontractors that have been approved by the Contracting Body.

## 7. Deadlines, time limits and penalties

7.1 The supplier shall observe the deadlines and time limits agreed upon. For deliveries, the arrival of non-defective goods at the place of destination is relevant. For services, the completion at the place of implementation is relevant. If an acceptance by the Contracting Body of deliveries or services is agreed upon or provided by law, the Contracting Body's declaration of acceptance after successful acceptance is relevant.

7.2 Delivering or performing services ahead of schedule requires the written consent of the Contracting Body.

7.3 If the supplier recognizes that the deadlines and time limits agreed upon cannot be adhered to, the Contracting Body shall be immediately informed of this, including reasons for and the anticipated length of the delay. The legal rights of the Contracting Body shall not be affected in case of default.

7.4 If the supplier defaults, the Contracting Body is entitled to charge a contractual penalty for every working day elapsed in the amount of 0.2 % up to at most 5 % of the total net value of the contract. If the penalty becomes due, the Contracting Body may assert the contractual penalty until the final account has been settled, even when the reservation of the penalty for receipt/acceptance of late goods or services has not been declared. The right to assert claims for damages above and beyond this or for unnecessary expenses and the right to withdraw from the contract subject to the fulfillment of the legal requirements remain unaffected by this.

## 8. Partial, excess or short deliveries

8.1 Partial deliveries or partial performance of services require the prior consent of the respective orderer. These shall not substantiate claims to a premature due date of payments. In such cases, the supplier shall carry any additional costs arising from travel or transport.

8.2 The Contracting Body reserves the right to accept excess or short deliveries on an individual basis. If excess deliveries are made without prior approval from the Contracting Body, the Contracting Body can refuse receipt, return the delivery at the expense and risk of the supplier, or store the delivery.

## 9. Codes of conduct for outside companies

For services to be performed on the company premises of the Contracting Body, the supplier shall ensure that the persons carrying this out observe the applicable company and safety regulations which shall be made available to the supplier prior to the beginning of work.

## 10. Prices, terms and conditions of delivery and payment, shipping

10.1 Agreed prices shall be binding. The prices exclude the applicable legal sales tax.

10.2 Deliveries shall be made DDP to the named place of destination, Incoterms® 2010, insofar as an acceptance is not legally provided for or agreed upon.

10.3 Payment shall be made by bank transfer within 14 calendar days with 3 % discount or net payment within 90 days. Payment and discount periods, including those agreed upon that deviate from Sentence 1, commence from receipt of invoice, not however before complete, non-defective delivery, completion of services owed, or acceptance if this has been agreed upon or is legally provided for.

10.4 The place of payment shall be the respective business location of the Contracting Body.

10.5 Deliveries shall be shipped free of charge and at no expense to the Contracting Body for freight and packaging, and at the risk of the supplier to the place of destination. Insofar as other delivery conditions are arranged and the Contracting Body is the freight payer or carries the risk of transport for the deliveries, the Contracting body shall be a self-insurer.

10.6 Deliveries shall be packaged appropriately in accordance with the respective applicable regulations for type of packaging and transport safety, provided there are not any specific agreements.

## 11. Set-off and retention rights, assignment

11.1 The Contracting Body assumes all legal set-off and retention rights provided by law.

11.2 The supplier shall not be entitled to assign claims of the Contracting Body to third parties without prior written consent from the Contracting Body, or allow them to be collected, provided that these claims are undisputed, approved or legally binding.

## **12. Transfer of risk, notification of defects**

**12.1** Risk shall be transferred to the Contracting Body for deliveries upon arrival at the agreed place of destination. For deliveries with obligations for setup or installation or with other contractual obligations when an acceptance is agreed upon or legally provided for, the risk shall be transferred to the Contracting Body at the time of official acceptance.

**12.2** Insofar as the commercial obligations to examine the goods and to give notice of defects in acc. with § 377 of the German Commercial Code apply, the obligations of the Contracting Body shall be limited to the inspection of the delivery with regard to amount and identity, externally visible transport and packaging damage, and samples to determine the existence of characteristic features.

**12.3** When the commercial obligations to examine the goods and to give notice of defects apply, the Contracting Body shall give notice of externally visible defects within 10 working days after delivery. Notice shall be given of other defects immediately upon their discovery.

**12.4** If an acceptance is agreed upon, the inspection for defects shall be made in connection with the acceptance.

## **13. Material defects and defects of title, period of limitation for warranty claims**

**13.1** The supplier is obliged to provide deliveries and services free of defects. These must comply with the current state of the art, the generally accepted codes of practice for technical safety regulations and occupational health regulations from both the proper authorities and professional or trade associations. A CE marking is required on all machines, devices and systems. The agreed certificates of origin must be included in all deliveries and must state the agreed point of origin.

**13.2** If the supplier has any concerns about the agreed type of implementation, these must be immediately communicated to the Contracting Body in writing.

**13.3** The Contracting Body is entitled to the legal warranty claims if the agreed characteristic features or guarantees are not adhered to. Warranties that go above and beyond the statutory provisions governing claims shall remain unaffected by this clause. The supplier's obligation of subsequent performance refers to all measures to be taken by the supplier and to the bearing of costs at the place of performance.

**13.4** In the event of defects, the Contracting Body is entitled to fully exercise the corresponding legal rights. For this, the Contracting Body is entitled to oblige the supplier to subsequent performance by rectification, replacement or remanufacturing, at the discretion of the Contracting Body.

**13.5** If the subsequent performance in case of defect is not completed by the supplier within an appropriate grace period, if the subsequent performance is unsuccessful, or if the set extension of time is superfluous, the Contracting Body can withdraw from the contract or can demand compensation, compensation in lieu of performance or reimbursement of needless expenditures or can abate the price of the delivery or service.

**13.6** If the supplier does not fulfill the obligations for subsequent performance within an appropriate grace period without having the right to refuse the subsequent performance, the Contracting Body shall be, in case of risk of high damages and if the supplier is not available, entitled at the expense of the supplier to remedy the defects or have the defects remedied by a third party. The obligation of the supplier to remedy defects in such cases shall nevertheless remain in force.

**13.7** The Contracting Body shall keep deliveries subject to complaint ready for inspection by the supplier.

**13.8** The period of limitation to which the Contracting Body is entitled for making claims against the supplier shall be 24 months from the date of delivery. Exceptions to this are subassemblies, machines and systems, whose period of limitation begins only after successful acceptance by the orderer, if such is agreed upon or legally provided for. The Contracting Body has a 48 month period in which to claim defects of title, insofar as a longer period is not legally provided for.

## **14. Other liabilities, property rights of third parties, insurance**

**14.1** The supplier's liability for reasons other than those described in Clauses 13 or 7 is governed by the relevant statutory regulations. The supplier shall release the Contracting Body from all claims made on grounds of extra-contractual product liability, when these result from an error in deliveries made and/or services performed and when the cause of the error originates within the supplier's sphere of

control. If the Contracting Body is obligated by law or regulatory authorities to make a recall, the supplier shall reimburse the Contracting Body for expenses arising from this, if it is due to a culpable breach of duty. The Contracting Body's right to assert damages against the supplier shall remain unaffected by this. The Contracting Body shall inform the supplier about such measures within a reasonable amount of time and offer the supplier the opportunity to make a representation of the technical issues.

**14.2** The supplier shall ensure that the Contracting Body does not violate the copyrights, patents or other property rights of third parties when using deliveries or services in compliance with the contract. The supplier shall release the Contracting Body from any and all third party claims which are made against them due to breach of commercial property rights or copyrights in case of use in compliance with the contract and shall bear the costs incurred by the Contracting Body to safeguard these rights, when the third party claims arise due to culpable conduct.

**14.3** The supplier shall ensure sufficient insurance cover against the liability risks from the contracts concluded with the Contracting Body. Upon request of the Contracting Body, the supplier shall provide evidence in the form of a written confirmation by the insurance company of the insurance cover and the amount of the respective sum insured with reference to specific damages

## **15. Property, respecting copyrights and commercial property rights of provided documentation**

**15.1** The Contracting Body objects any and all provisions or declarations of reservation of title by the supplier, insofar as these go beyond a simple reservation of title. These shall require the prior written consent of the Contracting Body on an individual basis. If the Contracting Body's preliminary suppliers assert property rights, joint ownership rights, rights of lien or measures for debt enforcement, the Contracting Body shall assert claims against the supplier for any and all damages arising from this.

**15.2** The processing or transformation of materials provided to the supplier shall be done for the Contracting Body, and the Contracting Body shall become owner of the new or transformed goods. If the processing includes blending or mixing with other goods of the supplier, thus resulting in joint ownership, the supplier shall store the new goods for the Contracting Body with the due diligence of a prudent business person.

## **16. Confidentiality, data privacy**

**16.1** The supplier shall treat as confidential all information gained in connection with the contractual cooperation with the Contracting Body, especially concerning internal information and expertise or business plans of the Contracting Body, regardless of whether this becomes available through the cooperation or documentation. The supplier may only make this information available to third parties when this is unavoidable for performing services that according to the contract are owed to the Contracting Body. This shall apply to parts that the supplier manufactures specifically according to the Contract Body's requirements or with the collaboration of the Contracting Body. The supplier's employees involved as well as those deployed from third parties who are approved by the Contracting Body shall also be obligated to confidentiality.

**16.2** The supplier shall comply with the data privacy regulations for data acquired in connection with the contractual cooperation. The Contracting Body is entitled to save data transferred from the supplier for the purposes of fulfilling the conditions of the contract and to process the data within the scope of the data privacy regulations, as long as this is necessary for contractual purposes.

## **17. Place of performance, jurisdiction, applicable law**

**17.1** The place of performance for deliveries is the place of destination, for services to be accepted it is the place of acceptance.

**17.2** The place of payments shall be the business location of the Contracting Body.

**17.3** The jurisdiction is the respective competent court of law for the business location of the Contracting Body. The Contracting Body is also entitled to sue the supplier at the general court of jurisdiction of the supplier.

**17.4** German law applies with the exclusion of the United Nations Convention on the International Sales of Goods (UN Sales Convention; CISG)