

## **General Terms and Conditions of Sale of Emitec Inc.**

*These General Terms and Conditions of Sale apply to all sales or proposals for sale by Emitec, Inc., an US corporation. The term "we" or "Emitec" herein refers to Emitec, Inc. The term "customer" refers to the company to whom the sale or proposal is made directly by Emitec.*

### **1 General**

- 1.1 Our General Terms and Conditions of Sale ("Terms and Conditions") shall be exclusively valid; we shall not recognise and we hereby reject any conflicting or additional terms and conditions or those which deviate from our own unless we have explicitly agreed to them in writing. Our Terms and Conditions shall be valid even if we make deliveries in the knowledge of other customer conditions that deviate from our own.
- 1.2 Our Terms and Conditions shall also be valid for all future business dealings with the customer.
- 1.3 Emitec has been certified in accordance with ISO TS 16949 and accordingly only those tested products with work's test certificate shall be released for delivery. Should any additional customer requirements exist, these are to be agreed in writing.

### **2 Conclusions of Contract and Contractual Amendments**

- 2.1 Our offers and quotations are subject to change without notice.
- 2.2 Unless agreed otherwise in writing, any documentation pertaining to the quotation, such as descriptions, illustrations, drawings, weight and measurement specifications, shall only be binding if these are explicitly referred to as such in writing.
- 2.3 In the case of orders of special fabrications we reserve the right to make excess or short only deliveries.
- 2.4 No amendment, addition to, alteration, modification or waiver of all or part of the agreement between the customer and Emitec shall be of any force or effect unless in writing and signed by Emitec.

### **3 Delivered Items**

Deliverables do not include manuals and technical diagrams unless agreed otherwise by Emitec in writing.

### **4 Delivery**

- 4.1 The delivery period shall result from the written agreement between the parties to the contract. Compliance on our part with this presupposes that all commercial and technical questions have been resolved between the parties to the contract and the customer has met all of his obligations such as the presentation of the requisite official certification or license or the payment of a deposit. If this is not the case then the delivery time shall be

extended accordingly. This shall not be valid should the delay be our responsibility.

- 4.2 Compliance with the delivery time shall be under the proviso that we ourselves receive correct and timely deliveries.
- 4.3 Compliance with delivery deadlines is deemed to have been achieved provided that the item has left our factory or readiness for dispatch has been notified by the time of deadline expiry. Should an inspection be required to take place, delivery is deemed achieved on the date of inspection—unless there is good reason for refusing acceptance at inspection – or by notification of inspection readiness.
- 4.4 If dispatch and/ or the inspection of the item should be delayed for reasons that are the responsibility of the customer, he will be charged for the costs caused by the delay commencing one month after he has been notified of delivery or inspection readiness.
- 4.5 Should non-compliance with delivery time be due to force majeure or other events beyond our control, the delivery time will be extended accordingly. We shall inform the customer at the earliest possible opportunity should any such circumstances come about or cease. Such circumstances may include, without limitation, acts of God, acts of the customer or a third party, hostilities, embargoes, sabotage, civil disturbance, government regulations, strikes, lock-outs or other industrial action, illness, flood, fire, impact, explosion, adverse weather, delay in delivery to Emitec or Emitec's suppliers or shortage of any services, products or materials.

### **5 Price and Payment**

- 5.1 Unless any special agreements are made, all prices are prices ex-works (EXW) under Incoterms 2010 and include loading at the works, but not include packaging, freight, postage, insurance, unloading, customs duties and other risks. The prices shall be subject to duties and taxes including where applicable sales or use tax or Value Added Tax at the relevant statutory rate. All payments are to be made in the currency in which the invoice is issued.
- 5.2 In the absence of any special arrangements, payments are to be made in full within thirty (30) days of delivery without any deduction/ thirty (30) days from the date of invoice free to our domicile.
- 5.3 The customer only has the right to retain payments or to offset counterclaims against them if his counterclaim are undisputed or have been established as being legally enforceable.

## **6 Transfer of Risk**

- 6.1 Risk shall transfer to the customer upon the item leaving the factory, even in those cases where part deliveries are being made or if on our part other services are being provided, for example assumption of freight costs or delivery and assembly. In so far as an inspection is to take place, this shall be the decisive point for transfer of risk. This shall be carried out immediately at the point of inspection or alternatively following our notification of inspection readiness. The customer is not permitted to refuse acceptance at inspection due to any immaterial defect.
- 6.2 In case an inspection is to take place, if the acceptance inspection is delayed or does not take place as a result of circumstances that are not attributable to us, risk shall transfer to the customer as of the date upon which inspection readiness is notified.
- 6.3 Partial deliveries are permissible, provided these can be reasonably expected by the customer.

## **7 Retention of Ownership**

- 7.1 We shall retain ownership of the items sold until all payments arising from the business relationship have been received. In case of deferred payments whether evidenced by notes or otherwise being accepted on our part, the receipt of payment shall be deemed to be the date upon which these are paid to our account and the balance is drawn.
- 7.2 We are entitled (but not in any way obligated) to insure the delivery item against theft, breakage, fire, water and other damages at the expense of customer insofar as there is no proof to the effect that the customer has procured such insurance.
- 7.3 the customer agrees to do all acts necessary or appropriate (or requested by Emitec) to perfect and maintain all such rights and title in Emitec, and agrees that Emitec may file a financing statement or take other action to perfect and maintain all such rights and title.
- 7.3 Should the customer act in violation of the contract, whether with regard to default in payment or any other matter, we are entitled to repossess the delivered items after setting a deadline, and the customer is obligated to surrender possession. Any use of our right to retention of ownership or repossession of the delivered item shall not terminate the contract.
- 7.5 The application on the part of the customer to open bankruptcy proceedings automatically shall entitle us to withdraw from the contract and to demand the immediate return of the delivery item.
- 7.6 The customer shall be permitted to sell or process the delivered items – over which we have ownership – as part of an

orderly business transaction.

## **8 Liability for Material Defects and Defects in Title**

- 8.1 Emitec warrants that for a period of six (6) months from the date that the customer or its agents receives delivery of products, the products shall be free from defects in material and workmanship. The absolute extent of Emitec's obligation hereunder is to either repair or replace its work or the defective products, F.O.B. Emitec's plant, if returned within six (6) months after date of delivery and provided that the customer adheres to Emitec's Return Policy. To be eligible for warranty consideration, any products that are alleged to be defective must be returned or made available for appropriate inspection by Emitec. Emitec must confirm in writing that a product is defective prior to any consideration. Any returned product that Emitec classifies as "No Trouble Found" are in no way eligible for warranty consideration, irrespective of whether the products are in a new and unused state or damaged through installation or usage on any motor vehicle or any of the customer's applications. No allowance will be granted for repairs or alterations made by the customer without Emitec's prior written approval. The warranty shall not be construed to cover the cost of any work done or services performed by the customer on material furnished by Emitec or the cost of removal or installation of product. Products and parts contained in Emitec's products and not manufactured by Emitec are warranted only to the extent and in the manner that the same are warranted to Emitec by Emitec's vendors and then only to the extent Emitec is able to enforce such warranty. There is no other warranty, expressed or implied in fact or by law. the customer may assign Emitec's warranty (as set forth above) to its customers provided there is no extension of the warranty time period.
- 8.2 THE FOREGOING STATES THE SOLE AND EXCLUSIVE WARRANTY OF BUYER AND THE SOLE AND EXCLUSIVE WARRANTY OF EMITEC. THE WARRANTIES STATED IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR VERBAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED. EMITEC'S WARRANTY DOES NOT APPLY TO ANY GOODS WHICH HAVE BEEN SUBJECT TO MISUSE, MISHANDLING, MISAPPLICATION, NEGLIGENCE,

(INCLUDING BUT NOT LIMITED TO USE OF UNAUTHORIZED PARTS OR ATTACHMENTS), OR ADJUSTMENT OR REPAIR PERFORMED BY ANYONE OTHER THAN EMITEC OR ONE OF EMITEC'S AUTHORIZED AGENTS. Emitec's agreement to sell the products is made upon the condition and agreement that, with respect to the products, there have been no representations or undertakings made by or on behalf of Emitec and Emitec makes no guarantees or warranties.

- 8.3 We shall not assume liability for defects in the following cases: inappropriate usage or usage other than that intended, faulty installation or incorrect operation by the customer or third parties, wear and tear, incorrect or negligent treatment, incorrect maintenance and unsuitable operation materials.
- 8.4 If the customer or any third party performs improper repairs, we shall not be liable for any consequences arising from the same. The same is true with regard to any modifications to the delivery item performed without our prior agreement.

## **9 Liability**

- 9.1 Emitec's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to ten percent of the contract price; and
- 9.2 Emitec shall not be liable for any loss of profit; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of contract; loss of use; loss or corruption of data or information; or any special, indirect, incidental, consequential or pure economic loss, costs, damages, charges or expenses whatsoever which arise out of or in connection with the contract.

## **10 Statutory Limitation**

Irrespective of whether Emitec agreed to perform field start-up or any other service after the delivery of the product, all claims or actions must be brought within one (1) year from the date of tender of delivery, or eighteen (18) months from the date of the customer's order, if no tender of delivery is made, notwithstanding any statutory period of limitation to the contrary.

## **11 Applicable Law & Arbitration**

- 11.1 Should any individual clause or any part of any provision within these Terms and Conditions and any subsequent agreements made be or become void, illegal or unenforceable, the validity of the remaining clauses shall remain unaffected. In any such case, the parties to these Terms and Conditions are obligated to replace that clause or those clauses that come as close as possible to the sense and spirit and

purpose of these Terms and Conditions.

- 11.2 The Parties hereby agree that all disputes arising in relation to this agreement (including, without limitation, its validity, interpretation and applicability) in connection with the

### **11.2.1 Sale of product inside USA**

shall be finally settled in the City and State of Emitec's accepting offices by arbitration in accordance with the Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **11.2.1 Sale of product outside USA**

shall be finally settled in New York, NY under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules and judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof pursuant to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

- 11.3 However, we reserve the right to choose to bring charges against the customer at the court domiciled at the place of his headquarters or of his branch or at the court at the place of fulfilment.
- 11.4 Further to these regulations, the Incoterms 2010 definitions of terms shall be valid including any supplements.
- 11.5 Our Terms and Conditions are governed by the laws of the State of Michigan, to the exclusion of the law on collision and the United Nation's Treaty on Contracts concerning the International Sale of Goods (CISG).

## **12 Reasonable Attorneys Fees.**

In the event suit or other proceeding shall be brought for the recovery of the purchase price, or any unpaid balance or the breach by the customer of any term of the agreement between Emitec and the customer, the customer shall pay to Emitec in addition to any damages provided by law, reasonable attorney's fees and costs of collection.

## **13 Cancellations**

The customer may cancel an order only upon written consent and upon payment to Emitec of cancellation charges, which shall take into account among other things expenses incurred and commitments already made by Emitec, and Emitec's profit margin.

## **14 Interpretation**

(a) Entire contract. THE TERMS AND CONDITIONS SET FORTH HEREIN CONSTITUTE THE EXPRESSION OF ALL THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT

BETWEEN THE BUYER AND THE EMITEC. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF EMITEC THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREIN SHALL BE GIVEN NO EFFECT OR FORCE.

(b) No assignment. Any assignment of the agreement between the customer and Emitec or any rights or obligation of the agreement by the customer without written consent of Emitec shall be void.

(c) No third party beneficiaries. Except as may be expressly provided to the contrary in writing the provisions of the agreement between the customer and Emitec are for the benefit of the parties hereto and not for any other person.

(d) No setoff. By accepting delivery of any goods sold by Emitec, the customer waives any future claims and rights of setoff or withholding against any payments due hereunder and agrees to pay all sums due regardless of any dispute, setoff, or cross claim.

(e) No waiver by Emitec of any breach of any provision of the agreement between the customer and Emitec will constitute a waiver of any other breach.

(f) The terms and conditions set forth above contain all of the representations, stipulations, warranties, agreements and understandings with respect to the subject matter of the agreement between the customer and Emitec, and its execution has not been induced by any representation, stipulation, warranty, agreement or understanding (Including any course of prior dealings between the parties hereto) of any kind other than those set forth above.

(g) Customer default. In addition to the rights and remedies conferred upon Emitec by law, Emitec shall not be required to proceed with the performance of any order or contract, if the customer is in default in the performance of any order or contract with Emitec, and in case of doubt as to the customer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Emitec.

(h) No delay or omission by Emitec in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar to or a waiver of any such right or remedy on any future occasion.

(i) No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection.

## **15 Export Licensing/ITAR Representation**

The customer agrees to comply with all applicable US and non-US export and import laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) governing the export of any controlled technical data provided under these terms and conditions. Any such controlled technical data is not to be placed in the public domain, exported from the US, or given to any Foreign Person in the US without the prior specific written authorization of Emitec and the US Department of State or the US Department of Commerce as applicable. A Foreign Person is any individual who is not a US citizen or lawful permanent resident in possession of an Immigration and Naturalization Service I-551 "Alien Registration" (a.k.a. "Green Card"). PLEASE BE ADVISED THAT BUYER'S PRODUCT MAY BE MANUFACTURED AT A FACILITY OUTSIDE THE UNITED STATES. AS SUCH, IT IS BUYER'S SOLE RESPONSIBILITY TO INFORM EMITEC WHETHER THE PRODUCT IS CONTROLLED UNDER ITAR OR EAR. ADDITIONALLY IT IS BUYER'S RESPONSIBILITY WHERE APPLICABLE TO PROPERLY MARK ANY AND ALL TECHNICAL DATA AS CONTROLLED UNDER ITAR OR EAR. Notwithstanding anything that may be to the contrary herein, the customer's obligation to adhere to US export and import laws and regulations shall survive the expiration or termination of this Agreement. The customer agrees to defend, indemnify, and hold Emitec harmless from all claims, fines, penalties, attorneys' fees, costs or liabilities that may arise from

- (i) the customer's failure to inform Emitec whether any product is controlled under ITAR or EAR,
- (ii) failure to properly mark any technical data as well as
- (iii) the customer's violation of any US or non-US import or export laws regarding the product.