

## **General Conditions of Purchase of Emitec France S.A.S.**

*Applicable to transactions with private entities (personnes physiques ou personnes morales de droit privé).*

### **1 General**

- 1.1 Our Conditions of Purchase apply exclusively; we do not recognise any of Supplier's general terms and conditions of business that conflict with or deviate from or merely supplement our Conditions of Purchase, as a whole, unless we expressly consent to their validity in writing. Our Conditions of Purchase shall also apply even if we accept or pay for deliveries of products and services from Supplier (hereinafter referred to as "subject of the contract") in full knowledge of the fact that Supplier's conditions differ or deviate from our Conditions of Purchase.
- 1.2 Our Conditions of Purchase shall also apply to all future dealings with Supplier.

### **2 Contract Conclusion and Amendments**

- 2.1 Purchase orders, contracts and calls for delivery, as well as amendments and supplements thereto, shall be valid only if made in writing. Purchase orders and calls for delivery may also be placed by remote data transmission or fax.
- 2.2 Oral agreements made prior to or at the time of conclusion of the contract shall be valid only if confirmed in writing by the Purchasing Department. This shall not affect Clause 2.1, Sentence 2.
- 2.3 Oral agreements made after conclusion of a contract, particularly subsequent amendments and supplements to our Conditions of Purchase – including this stipulation requiring written form – and side agreements of any kind shall likewise be valid only if confirmed in writing by the Purchasing Department.
- 2.4 Cost estimates shall be binding and free of charge, unless expressly agreed otherwise.
- 2.5 If Supplier does not accept a purchase order within two weeks of receipt, we shall be entitled to cancel. Calls for delivery shall become binding if Supplier does not object to them within five working days of receipt.

### **3 Delivery**

- 3.1 Deviations from our contracts and purchase orders shall be permitted only with our prior written consent.
- 3.2 Agreed dates and deadlines shall be binding. The decisive factor for compliance with the delivery date or delivery deadline shall be the receipt of the goods on our premises or the successful performance of the service.
- 3.3 If Supplier has assumed responsibility for set-up or assembly, and unless otherwise agreed, Supplier shall, subject to deviating regulations, bear all necessary additional costs, such as travel costs, provision of tools and separation allowances.
- 3.4 If agreed dates are not complied with, the statutory rules shall apply. If Supplier foresees difficulty with regard to manufacturing, primary material supplies, compliance with the delivery date or similar circumstances that may prevent Supplier from making a timely delivery or delivery in the agreed quality, Supplier shall immediately notify our Purchasing Department in writing.
- 3.5 If dates or deadlines are not complied with for a reason for which Supplier is responsible, we shall be entitled to demand a contractual penalty in the maximum amount of 5 per cent of the entire value of the purchase order

without having to furnish evidence of a corresponding loss. If no other agreement was concluded by the parties in an individual case, 0.3 per cent of the value of the order shall become due for each working day for which delivery is delayed. Working days in terms of this provision are Monday till Friday.

We may assert our claim for the contractual penalty until payment of the final invoice. We reserve the right to assert a claim for compensation for any losses beyond this.

- 3.6 The unconditional acceptance of a delayed delivery or service shall not indicate the waiving of any compensation claims to which we may be entitled due to the delay in the delivery or services; this shall apply up to complete payment of the amount owed by us for the delivery or service in question.
- 3.7 Partial deliveries are generally impermissible unless we expressly agreed to them or they can be considered reasonable.
- 3.8 With regard to quantities, weights and dimensions, the figures determined by us during receiving inspection – subject to other documentary evidence – shall be decisive.
- 3.9 In addition to the right to use the software and associated documentation included in the product delivery to the legally permissible extent (cf. French Intellectual property code, notably art L121-1 and follows) and without any additional fees, we shall also have the unrestrictedly transferable and sub-licensable right of use for all known and unknown types of use (notably like representation, reproduction, loading, displaying, execution, access, transmission or storing of the software) for the whole duration of the intellectual property rights, for the worldwide territory and content with the agreed features and to the extent required for use of the product in conformity with the contract. We shall also, without any additional fees, be permitted to make back-up copies in the number customary for the use of the software in accordance with the designated purpose without an express agreement.

### **4 Force Majeure**

*Force majeure*, industrial actions, operational disruptions beyond the control of the party obligated to perform, civil unrest, acts of government and other unavoidable events shall entitle us to rescind the contract in part or in full – without affecting our other rights – as long as they are of significant duration and result in a considerable reduction in our demand.

### **5 Shipping Notice and Invoice**

The specifications in our purchase orders and calls for delivery shall apply. A single copy of the invoice, showing the invoice number and other identifying information, is to be issued to the individual printed address in each case. It may not be included with the shipments. Supplier shall be obligated to quote our order number on all shipping papers.

### **6 Pricing and Transfer of Risk**

Unless agreed otherwise, prices shall be delivery duty paid in accordance with 15 of these Conditions of Purchase (DDP as per Incoterms 2010), including packaging. Value-added tax shall not be included. Supplier shall bear the risk of accidental loss, destruction or deterioration until the goods are accepted by us or our agent at the location to which the goods are to be delivered as specified in the order. For subjects of contracts involving set-up services, the risk shall pass to us upon acceptance.

**7 Payment Terms**

Unless agreed otherwise, the invoice shall be settled either within 14 days less a 2 per cent discount or within 30 days as of the invoice issue without deduction. Default shall occur 30 days after the invoice becomes due and is received and the subject of the contract is received or rendered. Payment shall be made subject to verification of the invoice. We have our own transport insurance. Therefore, if Supplier charges us for such insurance, we shall deduct such amounts from the invoice amount.

**8 Warranty Claims and Recourse**

- 8.1 Acceptance shall be subject to an inspection for absence of defects, particularly also for correctness, completeness and suitability. We shall be entitled to examine the subject of the contract to the extent that and as soon as this is expedient in the ordinary course of business. We shall report any defects without delay upon discovery; obvious defects shall be reported two weeks after acceptance at the latest. In this respect, Supplier shall not object on grounds of belated notification of defects.
- 8.2 We are generally entitled to select the type of subsequent performance. Supplier shall be entitled to refuse the type of subsequent performance selected by us if this type of subsequent performance will necessarily entail disproportionately high costs.
- 8.3 If Supplier fails to begin to remedy the defect without delay after our request to do so, we shall be entitled, after having set an appropriate deadline – a short one in urgent cases, particularly to avert acute risks or avoid major damage – to remedy the defect ourselves or to have it remedied by a third party at the expense of Supplier. Subject to French mandatory law, claims based on defects shall become time-barred in three years unless the object has been used in the usual manner for a building structure and has caused a defect in the building structure. The limitation period for claims based on defects shall begin upon delivery of the subject of the contract (transfer of risk). The other legal responsibilities notably for hidden defects (art 1641 and follows of the French civil code) shall be governed by French law mandatory provisions.
- 8.4 In the event of defects in title, Supplier shall also indemnify us from any existing third-party claims. The limitation period for defects in title shall be 5 years.
- 8.5 For parts of the delivery that are repaired within the limitation period for our claims based on defects, the limitation period shall begin anew from the time when Supplier has completely satisfied our claims for subsequent performance.
- 8.6 Supplier shall bear any costs incurred by us as a result of any defective delivery of the subject of the contract, particularly costs for transport, travel, labour and material, or in the event of a culpable defective delivery, costs for incoming inspection exceeding the usual amount or other costs.
- 8.7 If we take back goods manufactured and/or sold by us as a result of a defect in the subject of the contract delivered by Supplier, or if our customer reduces the purchase price for this reason or we are held liable in any other way as a result thereof, we reserve the right to take recourse against Supplier, no deadline having to be set for our claims based on defects in this case, as otherwise required.
- 8.8 We shall be entitled to demand compensation from Supplier for any expenses we have been

forced to bear in the relationship with our customer because such customer has a claim against us for compensation for expenses incurred for the purpose of subsequent performance, particularly costs for transport, travel, labour and material.

- 8.9 In all other respects, the provisions of French law mandatory provisions shall apply notably legal warranty for hidden defects.

**9 Product Liability and Recall**

If claims are asserted against us on the basis of product liability law, Supplier shall be obligated to indemnify us from such claims if and to the extent the damage was caused by a defect in the subject of the contract delivered by Supplier and Supplier itself would bear direct liability. In cases of liability based on fault, however, this shall apply only if the fault lies with Supplier. If the cause of the damage falls within Supplier's area of responsibility, Supplier shall bear the burden of proof in this respect. In such cases, Supplier shall assume all costs and expenses, including the costs for any legal action or recall campaigns. In all other respects, the provisions of statutory law shall apply.

**10 Execution of Work**

Persons who perform work on our premises in order to fulfil the contract must follow the rules of the currently applicable plant regulations.

**11 Product and Environmental Regulations**

- 11.1 In accepting our order, Supplier shall undertake to comply with all relevant product and environmental regulations that are currently applicable within the Internal Market of the European Union.
- 11.2 Pursuant to 11.1, the following acts and regulations, in particular, are to be heeded with regard to the products to be used for the ordered subject of the contract: Toxic Substances Act (*Chemikaliengesetz*) with statutory instruments, Water Management Act (*Wasserhaushaltsgesetz*), Ordinance on Industrial Safety and Health (*Betriebssicherheitsverordnung*) and REACH Regulation, CLP Regulation and other hazardous substances regulations.
- 11.3 If EC safety data sheets with respect to the materials to be used in the ordered subject of the contract exist or are required, up-to-date versions are to be sent to us without separate request and without delay after conclusion of the contract.

**12 Retention of Title, Provision of Materials, Tooling**

- 12.1 Goods ownership shall be transferred to EMITEC as of their delivery unless if supplier may assert rights based on an extended or expanded reservation of title against us and if reservation of title was stipulated and agreed by EMITEC explicitly in writing.
- 12.2 We shall retain title to any materials, parts, containers and special packaging materials provided by us. They may be used only as intended. The processing of materials and the assembly of parts shall be carried out on our behalf. It is agreed that goods produced using our materials and parts, which are held in safekeeping for us by Supplier, shall be co-owned by us in the ratio of the value of the materials provided to the value of the overall product.

12.3 We retain title to any tools; Supplier is under an obligation to use the tools exclusively for manufacturing the goods ordered by us. Supplier shall be obligated to insure tools belonging to us at replacement value against damage due to fire, water and theft at its own expense. It shall be obligated to carry out any necessary maintenance and inspection work at its own expense and in due time. Supplier shall notify us immediately of any incidents; culpable failure to do so shall have no effect on compensation claims.

### **13 Intellectual Property**

13.1 Supplier shall be liable that the delivered subject of the contract is free of third-party rights, particularly patents, trademarks, utility patents or similar rights. Supplier shall be liable that the subject of the contract delivered by Supplier does not infringe any national or international intellectual property rights.

13.2 Should Supplier become aware of a third-party right as defined in 13.1, Supplier shall inform us of this without delay.

13.3 Supplier shall undertake to indemnify us and our customers from any losses resulting from an infringement of third-party intellectual property rights, if the intellectual property rights have been published in Supplier's home country, the Federal Republic of Germany, by the European Patent Office, in another European country or the United States of America.

13.4 Supplier shall undertake in particular to compensate us for procedural costs arising from litigation resulting from infringements of third-party rights.

### **14 Documentation and Confidentiality**

14.1 Any and all business or technical information made available by us (including features shown in any provided objects, documents or software and any other knowledge or experience) shall be kept secret from third parties as long as and to the extent that it is not demonstrably public knowledge; it may be made available only to persons in Supplier's own organisation who must be involved in its use for the purpose of the delivery to us and who are likewise obligated to maintain confidentiality. We retain exclusive title to such information. Information of this kind may not be copied or used for commercial purposes – except for deliveries to us – without our prior written consent. If so requested by us, all information originating from us (including any copies or records made) and any objects provided on loan shall be returned to us without delay and in full or destroyed. We retain all rights to such information (including copyrights and the right to file applications for industrial property rights, such as patents, utility patents, etc.). If this information has been made accessible to us by third parties, this reservation of rights shall also apply in favour of such third parties.

14.2 Products manufactured in accordance with documents drafted by us, such as drawings, models and the like, or in accordance with our confidential specifications or using our tools or tools modelled thereon may not be used by Supplier itself or offered or delivered to third parties. This shall also apply *mutatis mutandis* to our print orders.

### **15 Place of Performance**

The place of performance shall be the location for delivery of the goods as specified in the order.

### **16 General Provisions, Place of Jurisdiction, Applicable Law**

16. Should a provision of these Conditions or of any further agreements made, be or become invalid, this shall not affect the validity of the remaining Conditions. The parties hereto shall be obligated to replace the invalid provision with an arrangement that most closely reflects its economic intent.

16.2 If Supplier is a merchant, place of jurisdiction for all legal disputes arising from contractual relationships based on these Conditions of Purchase shall be the Commercial court of Paris (France). We shall also be entitled to take legal action against Supplier at the court of Supplier's domicile or branch office, or at the court of the place of performance.

16.3 We reserve the right to obtain credit insurance for business transactions and to provide the insurer with the necessary data concerning Supplier.

16.4 The definitions in the Incoterms 2010, including any and all supplements thereto, shall apply in addition to these Conditions.

16.5 The contractual relations shall be governed exclusively by French law, excluding the law concerning conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).