

**General Sales, Delivery and Payment Terms (General Standard Terms and Conditions)
of Messrs. EMSA GmbH
(D4/ D 734)**

1. Validity of Terms and Conditions

- 1.1 Deliveries, services and quotations of EMSA GmbH (hereafter referred to as EMSA) are to be applied to business people, legal persons under public law and special funds under public law exclusively under the conditions and terms detailed herein. They are to apply to all future business relations without being especially referred to again. With the acceptance of goods/services at the latest these terms and conditions are understood to be accepted. Deviating terms and conditions of the purchaser are expressly prohibited.
- 1.2 Deviations from these terms and conditions are only effective when EMSA expressly confirms them in writing.

2. Quotations and Conclusion of Contract

- 2.1 All our quotations are subject to confirmation. A contract only becomes existent through our written order confirmation. Verbal supplementary agreements, commitments, etc., given by our employees only become valid through our written confirmation, such written confirmation becoming effective when issued by fax or email.
- 2.2 Illustrations, measurements, weights, brochure details and/or other information belonging to our quotations such as drawings, technical data, references to standards, declarations in advertising material, etc., are not considered to be details of condition. Warranted characteristics or guarantees are not given, only when these are separately agreed upon in writing.
- 2.3 EMSA reserves the right of ownership and copyright on all illustrations, presentation objects, drawings, calculations, data and other documentation; they may not be made available to any third parties without the prior written consent of EMSA. This is particularly applicable for such information and written documentation as are designated as confidential.

3. Time of Delivery and of Performance, Default

- 3.1 The dates and deadlines mentioned by EMSA are not binding unless otherwise expressly agreed upon in writing. On principle, procurements risks will not be accepted by EMSA.
- 3.2 Compliance with every delivery deadline presupposes the purchaser's fulfillment of his obligations. Terms of delivery begin at the earliest with the signing of the contract, however, not until the purchaser has produced all required documentation, clearances, technical clarification, etc. Any desires for additions and alterations made by the purchaser at a later date will correspondingly extend the delivery period. The deadline is considered as having been kept when, by their deadline, the articles of sale have left our premises or readiness for delivery has been notified should the articles of sale not have been despatched through no fault of our own. Should unforeseen events occur and/or Force Majeure by us or by suppliers applied, then the delivery period is also correspondingly extended.
- 3.3 Where call-off orders are concerned, we are entitled to produce the entire and complete purchase order quantity. Alterations cannot be considered once the order has been issued unless this had been specifically agreed upon in writing.
- 3.4 We reserve the right to make correct deliveries in good time ourselves. We shall inform the purchaser immediately should any delivery become not available and, in case of withdrawal, immediately make suitable compensation to the purchaser.
- 3.5 Should EMSA not execute a contractually due service or performance then the purchaser may not withdraw from the contract, may not make any claim for compensation for the whole of the service or performance and may not demand replacement of wasted expenditure, as far as the breach of obligation by EMSA is insignificant.
- 3.6 EMSA will only fall into default by means of an admonition unless otherwise determined by law or by the contract. To become effective, admonitions and setting the deadline by the supplier will need to be made in writing.
- 3.7 EMSA is entitled to make part deliveries of articles and services at any time.
- 3.8 Should EMSA not fulfill a due obligation or the service is not fulfilled as owed, but has fulfilled the service/performance in part, then the purchaser can only demand compensation instead of the entire service/performance as far as needed by his interests in the entire service/performance. Withdrawal from the entire contract in such

a case is only possible as far as the purchaser can prove that he has no interest in a partial delivery.

3.9 Should EMSA, for reasons for which EMSA is answerable, fall into default, then liability for damages in a case of slight negligence is excluded. The above mentioned limitation of liability is not applicable as far as the default is based upon EMSA having made a culpable and substantial breach of obligation. In all cases of liability, EMSA's liability is limited to those foreseeable damages which are typical for the contract. In a case of delivery delays for which we are answerable, the purchaser may, after giving written notification, set a suitable, protracted delivery deadline with the remark that acceptance of the articles for sale will be declined once the deadline has expired. The purchaser is, by means of a written declaration, only entitled to withdraw from the contract following the futile expiry of an extended deadline and all other legal efforts. The customer may not make claims for compensation for non-performance in the case of withdrawal from the contract.

4. Transfer of Risk, Packaging

4.1 Inasmuch as deviating agreements have not been made, delivery is agreed to be from the EMSA warehouse. The risk is considered as transferred to the purchaser as soon as the consignment has been given to the person dealing with the transportation or when the consignment has left EMSA's warehouse with the object of transportation; this is also applicable when EMSA provides transport by their own means on behalf of the purchaser.

4.2 Should the dispatch be impossible through no fault of EMSA, then the risk is transferred to the purchaser when the goods are declared to be ready for dispatch.

4.3 If the purchaser should so desire, then EMSA will insure the delivery through cargo insurance at the cost of the purchaser.

4.4 The transport packaging and all other packaging in accordance with packaging regulations will not be taken back, with the exception of re-usable transport means such as pallets, wire mesh boxes, etc. The purchaser is obliged to dispose of non-returnable packaging at his own cost. The re-usable transport packaging is given to the purchaser on loan, the purchaser is obliged to return it in a proper condition, i.e. especially without damages and empty, at his own cost and under consideration of the legal regulations concerning packaging; should the means of transportation be contaminated or damaged then the purchaser carries the costs of repair or, alternately,

he is obliged to reimburse EMSA with the value of the replacement when repair is considered to be impossible. EMSA is entitled to immediately pass the costs thus arising to the purchaser's account with EMSA's own claim for payment.

5. Prices and Payments

- 5.1 The prices in the current price lists issued by EMSA plus the current legal value-added tax are to prevail. Additional deliveries and performances will be calculated separately.
- 5.2 Prices are understood to be ex factory/warehouse including normal transport packaging plus transport costs, unless otherwise agreed upon.
- 5.3 Where there is lack of deviation, the invoice total is, without deduction, due upon delivery and upon the invoice being issued. Should the articles for sale which are ordered as call-off goods not be called for in accordance with the agreement then we are entitled, after expiry of a suitable extended deadline, to charge them as having been delivered plus storage charges. Transport and storage will then be at the cost and risk of the purchaser.
- 5.4 The interest payable on arrears of EMSA's claims for payment is to be paid by the purchaser at 8 % above the base rate of the European Central Bank. The interest is to be calculated at a higher rate when EMSA proves higher damages.
- 5.5 The purchaser only has the right to offset costs when his counterdemands have been legally determined, are uncontested or acknowledged by EMSA. Additionally, he is only entitled to execute right of retention when his counterclaim is based on the same contractual relationship.
- 5.6 Should EMSA become aware of circumstances questioning the credibility of the purchaser, then EMSA is entitled, even after conclusion of the contract, to demand deposits or securities without prejudice to further or additional legal claims. Should the purchaser not comply with the demands of deposit or security, then EMSA has the right of retention. Alternatively, EMSA may withdraw from the contract should the admonitions for adduction of deposit or security remain futile after a suitable period of time. Alongside this, EMSA is entitled to make claims for damages.
- 5.7 Cheques and bills of exchange, to whose acceptance EMSA reserves the right, are to be considered as valid as payment only upon clearance. Any discounts and bank charges arising are at the purchaser's cost.

5.8 The articles for sale are delivered according to the terms and conditions (number 7) under reservation of ownership.

As far as EMSA agrees with the purchaser to payment of the purchase price by means of cheque/bill of exchange procedure, then the reservation extends to the clearance of the bill of exchange accepted by EMSA through the purchaser and is not extinguished by EMSA crediting his account.

6. **Guarantee/Claims for Damages**

6.1 The guarantee rights of the purchaser are under the proviso that he has duly complied with examination and notification conditions in accordance with § 377 of the German Commercial Code, immediately and in writing.

6.2 The purchaser's legal right of recourse against EMSA is only valid inasmuch as the purchaser has not made any agreement with his customer above and beyond the legal right to claim damages for defects.

6.3.1. Should there be a defect in the article of sale for which EMSA is responsible, then EMSA is, to begin with, always to be given the opportunity of supplementary performance within a reasonable period. EMSA is entitled to choose between rectification of the defect or replacement.

6.3.2. Should supplementary performance fail and legal requirements be fulfilled, then the purchaser is entitled, after expiry of a further futile extended deadline, to withdraw from the rest of the contract or to reduce the purchase price. Claims for damages apart from this are excluded. Claims by the purchaser for necessary expenditure arising from supplementary performance, in particular transport, travel, work and material costs are excluded if the expenditure is increased because the articles of sale are later transported to destination other than the place of delivery; unless the transfer corresponds with the intended application.

6.3.3. Not considered valid are claims for only negligible deviation from the agreed structure, for only negligible impairment of usability, for natural wear and tear and/or for damage caused after the transfer of risk as a result of faulty and/or negligent treatment, extreme working conditions, unsuitable operating materials and/or arising from special external influences and/or particulars which, according to the contract, may not be required.

6.4 Should the instructions for use issued by EMSA and/or the manufacturer not be adhered to, or alterations be made to the products which are not of an authorised type,

parts be exchanged and/or replacement parts and/or materials used which do not correspond with the original specifications and/or guidelines, then EMSA's liability becomes inapplicable for the defaults thereby caused/or partly caused; anything else is only valid as far as the case covered by warranty can be proved not to be based on one of the above mentioned reasons for exclusion.

6.5 In cases of lightly negligent violation of obligations, our liability is excluded. In cases of serious violation of obligations or violation of obligations with intent, our liability is limited to the foreseeable damages which are typical for the contract. This is also applicable to violation of significant contractual obligations. This liability limitation is invalid for damage to lives, bodies and health.

6.6 Warranty claims fall under the statute of limitations in 12 months, provided there are no laws stating otherwise; the period beginning with the transfer of risk. We specifically object to recommencement of the limitation period in warranty cases when we, following determination of defects, instantly agree to and put into effect supplementary performance within a suitable period of time. The warranty is extended by the period of supplementary performance from the time of notification of defect through to fulfillment of supplementary performance in cases of significant and, as the case may be, considerable defects or in cases of defects influencing usability. The warranty is never less than 1 year. The terms and conditions concerning limitation period, suspension and recommencement are also valid for all other claims directed towards the same interests.

6.7 We object to any demands by the customer for any so-called quality audit.

6.8 Each claim for compensation is to be enforced within a period of 3 months from the date of our written refusal to assume liability.

7. Reservation of rights

7.1 The goods delivered remain the property of EMSA until full payment of all demands arising from the business relationship between EMSA and the purchaser has been made. The inclusion of individual demands in an open invoice together with the acknowledgement of the sum total does not affect the reservation of rights.

Payment is only considered to have been made with the acceptance of the equivalent value by EMSA.

7.2 In case of the purchaser's behaviour being in breach of the terms of the contract, in particular concerning delay in payments, EMSA is then entitled to take back the

objects of purchase. By taking back the objects of purchase by EMSA, there is no withdrawal from the contract unless specifically stated by EMSA in writing.

- 7.3 Included in the seizure of the objects of purchase by EMSA is the withdrawal from the contract. EMSA is entitled to utilisation of the objects of purchase following their seizure. The proceeds of sale are to be deducted from the purchaser's debts minus the costs of sale.
- 7.4 The purchaser is obliged to handle the articles of sale carefully; he is especially obliged to sufficiently insure their replacement value at his own cost against fire, water and theft damages. As far as maintenance and inspection work is necessary, the purchaser must carry these out in good time at his own cost.
- 7.5 In case of distraint or encroachment by third parties EMSA is to be informed in writing immediately. EMSA has the right but not the obligation to take legal action in accordance with § 771 Code of Civil Procedure. An obligation only arises when the purchaser pre-finances taking legal action at his own risk of legal costs. Insofar as the third party is not in a position to reimburse EMSA with the legal and out-of-court costs of legal action in accordance with § 771 Code of Civil Procedure, then the purchaser is liable for the loss.
- 7.6 The purchaser is entitled to sell the goods subject to reservation of title in normal business procedure; however he herewith and now relinquishes to EMSA all claims up to the amount of the invoice total (including VAT) owed to EMSA arising from the resale to his customer or third party regardless of whether the goods subject to reservation of title have been resold with or without processing. EMSA accepts the relinquishment. Should the relinquished claim against the buyer of the goods subject to reservation of title be included in a current invoice (open account) then the relinquishment also refers to the acknowledged sum total as well as, in case of the recipient's insolvency, to the then existing "causal balance". The purchaser is also entitled to collection of this claim even after relinquishment. EMSA's authorisation to collect the claim themselves remains herewith unaffected. However, EMSA promises not to collect the claim as long as the purchaser fulfills his payment obligations arising from the collected proceeds, is not in default of payment and especially when application for opening an insolvency procedure has not been made or when payment stoppages do not exist. Should this however be the case, then EMSA is entitled to demand that the purchaser makes known to EMSA the assigned claims and their debtor/recipient, that he makes known all the details necessary for collection, that he

delivers all the attendant documents and that he informs the debtor (third party) of the relinquishment.

- 7.7 The processing or remodelling of the goods subject to reservation of title by the purchaser is always executed on behalf of EMSA. Should the goods subject to reservation of title be processed together with other articles not belonging to EMSA, then EMSA thereby acquires co-ownership in the new article proportionate to the value of the goods subject to reservation of title (invoice sum total including VAT) which have been processed with the other articles at the time of processing. In other respects, that which applies to the delivered goods subject to reservation of title also applies to the article arising from such processing.
- 7.8 Should the goods subject to reservation of title be inextricably mixed with other articles not belonging to EMSA, then EMSA acquires co-ownership in the new article proportionate to the value of the goods subject to reservation of title (invoice sum total including VAT) which have been mixed with the other processed articles at the time of mixing. Should the mixing be in such a way that the purchaser's article can be considered as the main article, then it is considered as agreed that the purchaser cedes the appropriate share of co-ownership to EMSA. The purchaser will look after the thus created sole or co-property for EMSA.
- 7.9 EMSA promises to release the securities to which they are entitled at the demand of the purchaser providing the realisable value of EMSA's securities exceeds the secured claims by more than 10 %; the choice of securities to be released rests with EMSA.

8. Place of Performance / Court of Jurisdiction / Applicable Law

- 8.1 Place of performance is the place of business of EMSA in Emsdetten.
- 8.2 For all disputes arising from the business relationship including legal actions concerning bills of exchange and cheques is solely the Local Court in Rheine or, alternatively, the Regional Court of Münster. The same court of jurisdiction is to be applicable when the purchaser does not have a general court of jurisdiction in his home country, when, after conclusion of the contract, his residence or usual domicile is removed from his home country or when his residence or usual domicile is not known at the time of bringing a legal action.
- 8.3 The laws of the Federal Republic of Germany are to be applied exclusively for these terms and conditions and all legal relationships between EMSA and the purchaser. The application of the UN sales law (United Nations Convention dated 11.03.1980

concerning contracts for the international sale of goods, Federal Law Gazette 1989 II page 588, amended 1990 II, 1699) is excluded.

9 Partial Invalidity Clause

Should any condition in these terms and conditions be or become ineffective then this will be without prejudice to the effectivity of the remaining conditions. In such a case, the parties will rather agree to replace the ineffective clause with an effective one which comes closest to serving the same purpose as the ineffective one.

(Position: October 2008)