

General Terms and Conditions for Deliveries and Performances of Engineered Material Handling GmbH

1. Applicability

All of our deliveries, performances, assemblies, sales and other auxiliary performances (hereinafter referred to as the "contract") for commercial customers are rendered on the exclusive basis of these General Terms and Conditions. Departing general terms and conditions of the purchaser do not form part of the contract, including where we have not expressly objected against them or where we have accepted a payment unconditionally. In the case of inconsistencies between the contract and these General Terms and Conditions, the provisions of the contract shall take precedence.

2. Contract establishment, scope of delivery

2.1 Our offers are always non-binding. In as far as new or amended regulation or new official requirements result in changes in the requirements for the contractually stipulated obligations after the submission of an offer, we may adjust our offer at our reasonable discretion and in consideration of the parties' mutual interests. The same applies after an offer has been accepted.

2.2 The scope of delivery is specified in our written order confirmation. If no such written order confirmation has been issued, by the information set out in our offer. We do not supply production plans for our deliveries.

2.3 We may exercise our rights pursuant to Section 321 of the German Civil Code (BGB) if it becomes apparent after establishment of the contract that our claim for payment is at risk due to the purchaser's inability to make payment, or if the purchaser is in payment default for a significant amount, or if there are other circumstances that indicate a significant deterioration of the purchaser's financial situation after establishment of the contract.

3. Prices

3.1 To the extent not agreed otherwise, prices are ex factory and exclusive of incidental costs (particularly costs such as packaging, insurance, freight, storage or external inspection costs). If we have accepted performance of the installation or assembly and nothing to the contrary has been agreed, the purchaser shall be liable to pay the agreed prices and all incidental costs necessarily incurred, particularly including costs for travel to the site, transport of tools and equipment and costs for providing electricity, water, pressurised air, assembly aides, lifting equipment, operating personnel, peening and casting works.

3.2 Prices quoted are net plus the applicable amount of VAT. The purchaser shall reimburse us for all taxes, duties and other public levies incurred for cross-border deliveries.

3.3 We are entitled to adjust our prices to reflect any change in the charges or other external costs included in the agreed price. The same applies to new charges imposed on us.

3.4 In the event the purchaser or a third party acting on its instructions causes our delivery to be delayed, the purchaser shall be liable to compensate us for all costs incurred as a result of such delay.

4. Terms of payment

4.1 Payment shall be made in accordance with the contractually agreed payment methods and payment dates.

4.2 If we do not receive payments by their due dates, we shall be entitled to charge default interest without giving prior notice in an amount corresponding to the average interest charged for commercial overdrafts, but not less than the statutory interest rate, from the day following the payment due date.

4.3 In the case of a payment default or if our claims are at risk due to a significant deterioration in the purchaser's creditworthiness, we shall be entitled to request immediate payment or collateralisation of our claims. We are further entitled to make pending deliveries subject to prepayment or collateralisation. We are authorised to assign our claims against the purchaser to third parties. If the purchaser has not settled the amount due, we shall be entitled to terminate the Contract by giving 3 months notice and to claim compensation of the resultant loss from the purchaser.

4.4 The purchaser's retention rights and set-off rights are limited to counter-claims that are either undisputed or have been established as final. In all other cases, the purchaser's retention right must stem from the same contractual relationship as our claim and be commensurate to such claim.

5. Dimensions and weights

5.1 Quality and dimensions are based on the standards applicable at the time of contract establishment or, where such standards are lacking, on the prevailing trade practices. References to standards, material data sheets or test certificates as well as information on quality, dimensions, weights and usability must not be construed as warranties or guarantees.

6. Delivery and delivery time

6.1 Firm delivery dates and deadlines must be agreed expressly in writing.

6.2 Delivery dates are subject to timely clarification of all details pertaining to an order, in particular the provision of all documents and approvals by the purchaser, release of drawings and the timely payment of any agreed prepayment, as well as the timely provision of any agreed payment guarantee. Delivery dates are further subject to the timely completion of the ordering party's construction and assembly performances prior to our performances, in particular the provisioning of electricity, gas, water, assembly aides, lifting equipment and necessary auxiliary personnel by the purchaser. The ordering party must also ensure safe access to the system, particularly including road access and a firm subsurface.

6.3 The delivery date is deemed to be the date of the notice of readiness for shipment, or otherwise the day the goods are dispatched. We shall be entitled to make partial deliveries. Defective delivery does not constitute a delivery delay.

7. Own delivery, force majeure and otherwise impeded performance

7.1 In the event we are prevented from performing our obligations due to unforeseen events affecting us or our suppliers and/or subcontractors and that cannot be averted by us exercising our reasonable diligence in the given circumstances, including but not limited to acts of war, intervention by higher authorities, domestic unrest, natural disasters, accidents, industrial action and lock-outs, other interruptions of our operations and delays in the delivery of essential operating materials or precursor materials, all agreed dates shall be deferred for the duration of the circumstances impeding our performance plus a reasonable period allowing for the resumption of our operations.

We shall be entitled to rescind the Contract if the performance of our obligation is rendered impossible or unacceptable by such impediments.

7.2 The purchaser is entitled to claim liquidated damages if it can establish that it has suffered damages caused by a delay on our part. The purchaser shall claim such liquidated damages within one month from the delivery date. The purchasers claim for liquidated damages shall lapse if it is not asserted within this period. The amount of the liquidated damages payable for each full week of us being in delay shall correspond to 0.5 % of the portion of the delivery that could not be used for its intended purpose because of the delay, but not more than 5 % in total. Claims for damages in lieu of performance exceeding the stated limits are excluded in any and all cases of delay, including after expiry of a delivery deadline set by us. This does not apply for delay caused by wilful intent, gross negligence, injury to life, limb or health or any other statutory liability.

The purchaser may only rescind the contract under the statutory provisions if we are at fault for the delay in rendering our performances. The preceding provisions do not reverse the burden of proof.

8. Shipping and passage of risk

8.1 The risk shall, including in the case of prepaid delivery as well as partial deliveries, pass to the purchaser as follows:

8.1.1 Upon surrendering the deliverable goods to the purchaser or the freight forwarder, and in any case at the time of leaving the factory or the branch.

8.1.2 In the case of delivery and installation on the day of delivery, or, if expressly agreed, following acceptance by the purchaser, and in any case no later than at the time of commissioning.

8.1.3 If the shipment, delivery, commencement, installation or assembly is delayed for reasons on the part of the purchaser, or if the purchaser is in default of acceptance for any other reasons, the risk shall pass to the purchaser and the warranty period shall commence on such date.

8.1.4 Goods reported ready for dispatch must be retrieved without delay. We shall otherwise be entitled to put them into storage at our own discretion and at the cost and risk of the purchaser and to invoice them as delivered (final account, if necessary).

9. Notices of defects

9.1 The purchaser or its designated recipient shall inspect the products delivered by us upon their delivery and without undue delay. A written notice of defects must be submitted within 14 days from receipt of the goods for apparent defects, including the lack of any guaranteed properties, and within 14 days from discovery for concealed defects. The goods shall be deemed accepted if no notice of defects is submitted in the prescribed form and within the prescribed period. A notice is deemed served in good time if it is received by us within the prescribed period.

9.2 We shall be given opportunity to assess the claimed defect before any of the defective parts are removed and before commencing any repair works. In urgent cases of a safety hazard, or to prevent disproportionately high damage, we may be required to immediately inspect the claimed defect.

9.3 The purchaser's claims under warranty lapses if the purchaser fails to perform the obligations set out in clause 10.2, or if it modifies the defective goods without our prior consent.

10. Warranty and liability for defects

10.1 We shall render subsequent improvement, replacement delivery or repeat performance for all deliveries that are found to be defective within the limitation period, provided the goods or performance were already defective at the time the risk passed. Our liability for cross-border deliveries is limited to defect-free delivery. If the purchaser requests us to provide personnel for the installation, all costs incurred in relation to such personnel shall be borne by the purchaser.

10.2 Claims for defects become statute-barred after 24 months from commissioning, and in any case after 26 months from readiness for delivery. This does not apply to the extent a longer limitation period is prescribed by a statutory liability or pursuant to Section 438 para. 1 no. 2 BGB (buildings and building materials), Section 479 para. 1 BGB (claim for recourse) and Section 634a para. 1 no. 2 BGB (building defect). The warranty period for manually operated lifting equipment, suspensions and spare parts is 12 months from the day of delivery.

10.3 The warranty period for replaced or repaired parts or subsequent improvement works is 12 months from the date of the repair or the

installation. This period expires no later than at the end of the warranty period of the original part delivered.

10.4 To exercise its warranty rights, the purchaser shall notify us of the defect in writing without undue delay and provide a detailed description of the defect and the corresponding order number following discovery of the defect. The purchaser's claim for rectification of the defect lapses if the purchaser fails to adhere to the warranty obligation set out above.

10.5 The purchaser shall initially grant us a reasonable time frame to render subsequent performance.

10.6 The parts replaced by us will become our property and shall promptly be handed over/returned to us for inspection.

10.7 The warranty provided above is subject to our delivery being operated, handled, maintained and repaired in strict compliance to the conditions and requirements set out by us.

10.8 In as far as the purchaser does not operate or equip the delivery with our original EMH contactor controls, EMH frequency inverters or other EMH control equipment, we shall not accept any warranty or liability claims for the proper functioning of such deliveries as well as for direct or indirect damages, consequential damages, property damage, machinery damage or personal damage that are caused by the purchaser's failure to use the original EMH controls. This particularly applies to cases where EMH components were installed in third party systems, or where they were installed without EMH knowing the actual intended use of the components.

10.9 The following parts are expressly excluded from warranty:

Wear parts, particularly including parts that require replacement or repair due to natural wear and tear;

consumables, including but not limited to parts such as for chain hoists:

Chain guide, load chain, rubber bumpers, sprockets, chain box, load hook, hook latches, brake pads, brake discs, control cable, runners, flanges, motor brushes (FNV suspension)

for cable hoists: Cable guide, load cable, rubber bumpers, pulleys, hook latches, brake pads, brake discs, control cable, runners, flanges;

Parts that were repaired, modified or adapted by the purchaser or a third party without our prior consent, or where such action has been commenced:

Defective parts for which a notice of defects has not promptly been submitted to us within the warranty period;

Parts that have become defective or damaged due to negligence, accidents, overstrain, incorrect installation (by a third party), incorrect operation or extreme environmental conditions, such as temperatures, humidity, soiling or corrosive substances, without us being at fault.

Parts that have been damaged without us being at fault.

10.10 If subsequent performance fails, the purchase may, without prejudice to any potential claims for damages pursuant to clause 11.13, request a reduction of the contractually agreed consideration.

10.11 Claims for defects are excluded if they are based on merely insignificant deviations from the agreed quality, merely insignificantly impeded usability, natural wear and tear or damages incurred after passage of risk resulting from incorrect or negligent handling, defective, improper, omitted or delayed maintenance, improper storage, excessive use, unsuitable operating materials, defective construction works, unsuitable construction site, or if they result from extraordinary external influences (i.e. chemical, electro-chemical or electric influences or extraordinary temperature and weather conditions) that are not provided for in the contract, as well claims stemming from software errors that cannot be reproduced. Claims for defects are also excluded for damages suffered as a result of improper modification or repairs performed by the purchaser or a third party.

10.12 Our liability is strictly limited to the statutory provisions and subject to the following conditions.

10.13 Claims for damages and claims for reimbursement of expenses (hereinafter "claims for damages"), irrespective of their legal basis and in particular including claims from the breach of contractual obligations and claims in tort, are excluded.

10.14 Our liability for indirect damages and consequential damages, such as machine downtime, lost profits, losses from business interruption and financing costs, are excluded.

10.15 The liability limitation set out above (clause 11.13 and 11.14) does not apply in the case of statutory liability, i.e. under the Product Liability Act, for wilful intent, gross negligence, injury to life, limb or health, to claims from the assumption of a guarantee for quality characteristics in an object or to claims from a breach of a material contractual obligation, the performance of which renders the proper performance of the contract possible in the first place and on which the ordering party ordinarily relied on and is entitled to rely on. Compensation for damages from the breach of a material contractual obligation is limited to the damage that was typical and foreseeable for this type of contract, unless the damages have been caused by wilful intent or gross negligence, or if we are liable for injury to life, limb or health.

10.16 The preceding provisions do not reverse the burden of proof.

11. Impossibility, limitation of liability

11.1 The purchaser is entitled to claim damages pursuant to clause 11 only to the extent the agreed delivery is rendered impossible, unless we are not at fault for the impossibility.

11.2 The purchaser is not entitled to any other claims for damages on grounds other than those set out in the preceding clauses, including claims for damages in tort or from other rights stemming from disadvantages associated with our deliveries, irrespective of the legal basis claimed by the purchaser.

11.3 Irrespective of the preceding provisions, our liability for wilful intent, gross negligence, culpable injury to life limb or health, fraudulently concealed defects as well as for personal and property damage to private property under

the Product Liability Act is limited to the maximum cover amount of our public liability insurance, currently in the amount of EUR 10,000,000.

11.4 Our total liability is limited to 100 % of the value of the respective delivery, including the liability claims and claims for reimbursement of expenses of any kind and for any cause, i.e. breach of contract, tort, strict liability, breach of guarantee or any other causes or acts. This does not apply to claims pursuant to clause 12.3.

12. Retention of title, confidentiality, data protection

12.1 We shall retain title in the delivered item (goods subject to retention of title) until all our claims against the ordering party, including outstanding balances from previous business transactions, have been satisfied.

12.2 Any processing of the goods subject to retention of title is deemed to be carried out on our behalf as the manufacturer in the meaning of Section 950 BGB. The processed goods are deemed goods subject to retention of title in the meaning of clause 13.1. If the goods subject to retention of title are processed, mixed or amalgamated with other goods, we shall acquire joint ownership in the new object in the proportion corresponding to the ratio of the objective value of the goods subject to retention of title to the objective value of the other goods involved in such action. If our title expires due to processing, mixing or amalgamation, the ordering party shall be deemed to have transferred joint ownership in the new object in the proportion corresponding to the objective value of the goods subject to retention of title and to have agreed to store them for us free of charge. Our joint ownership rights are deemed goods subject to retention of title in the meaning of clause 13.1.

12.3 The ordering party shall only be authorised to sell the goods subject to retention of title in the ordinary course of its business for as long as it is not in default and subject to the claims from reselling the goods are assigned to us pursuant to clause 13.4.

12.4 The purchaser's trade receivables from reselling the goods subject to retention of title, irrespective of whether they have been processed or amalgamated with goods not supplied by us, are deemed assigned to us in the invoiced amount or an amount corresponding to our joint ownership pursuant to clause 13.2; this also applies to any residual debit balances if the claim from reselling is deposited into a current account.

12.5 The ordering party must insure the goods subject to retention of title at its own cost against damages from theft, breakage, fire and water for the duration of its indebtedness to us and furnish us with corresponding evidence upon request. The ordering party hereby irrevocably assigns all of its rights from these insurance policies to us until all of our claims have been fully satisfied. If the ordering party fails to perform its obligations stipulated in the preceding clause, we shall be entitled to take out the aforementioned insurance cover in a cover amount deemed necessary by us at the cost of the ordering party and to arrange for the insurance policies to list us as direct beneficiaries.

12.6 The ordering party must maintain the goods subject to retention of title in a flawless condition and have any necessary repairs performed by specialist trades without delay; the ordering party shall furnish us with information on the goods subject to retention of title, particularly their respective location, upon request at any time. We shall be entitled to access the location of the goods subject to retention of title at any time; if necessary, the ordering party undertakes to grant us or our representative access to the goods subject to retention of title at any time. The ordering party shall notify us of any risk to our title in the goods.

12.7 If the purchaser breaches a material contractual obligation pursuant to this clause 12, we shall be entitled to demand immediate payment of the entire unpaid amount for the goods subject to retention of title, irrespective of the maturity of any bills of sale issued, or to alternatively request the provision of collateral. If the purchaser fails to pay the entire outstanding amount within seven days from being served a demand for payment by us, or if the purchaser fails to provide the requested collateral within said period, its right to use the goods subject to retention of title shall lapse. We shall in this case be entitled to request the goods to be surrendered immediately and at the cost of the purchaser. The purchaser's rights to retention are in waived in this case.

12.8 We shall be entitled, without prejudice to the ordering party's payment obligation, to utilise any repossessed goods subject to retention of title by way of resale for the best achievable price, or to accept restocking at the respective market price. The market price for the goods subject to retention of title shall be appraised with binding effect on us and the ordering party by an assessor appointed by the local Chamber of Commerce at our delivering factory. The proceeds from utilisation or the market price less costs incurred by us will be set-off from the amount payable by the ordering party.

12.9 The relinquishment or assertion of the retained title as well as a distraint of the delivered goods by us do not constitute a rescission of the contract by us, unless we have expressly declared rescission.

12.10 If the value of the collateral held by us exceeds the total collateralised claims by more than 10 %, we shall release collateral of our choosing in the corresponding amount upon request by the ordering party.

12.11 We reserve all copyrights and proprietary rights in cost appraisals, models, drawings and other documents.

12.12 The ordering party is obliged to keep all physical or electronically transmitted drawings, models, cost appraisals, business or company secrets as well as any other privileged information and documents confidential. They may only be made accessible to third parties with our prior consent and only to the extent necessary. This obligation to confidentiality shall bind the parties after the contract has been performed. It shall only lapse at the time and to the extent the information has become part of the public domain.

12.13 We are authorised to subcontract the processing of the personal data disclosed to us for the purposes of the respective contract in compliance with

data protection regulation. We shall comply with applicable data protection regulation.

13. Acceptance

13.1 A contractually agreed acceptance shall take place as soon as possible following notification of readiness of acceptance.

13.2 We may also request acceptance of partial deliveries.

13.3 The purchaser shall make all necessary arrangements for acceptance to take place. The purchase shall bear all costs associated with acceptance, except for the cost of our own personnel.

13.4 Without prejudice to its rights stipulated in clause 10, the purchaser shall not refuse acceptance on the basis of merely insignificant defects.

13.5 If acceptance is delayed or incomplete due to a fault on our part, the delivery shall be deemed accepted following the expiry of a reasonable deadline set by us in writing and subject to us having expressly disclosed such course of action.

13.6 Deliveries are also deemed accepted upon the delivered object being commissioned without our approval.

14. Place of performance, jurisdiction, governing law

14.1 The place of performance for all contractual obligations is the place of the company's registered office. The court at the place of the company's registered office shall hold jurisdiction for all disputes and claims, including those stemming from bills of sale and cheques. We shall also be entitled to bring legal action against the purchaser at its place of general jurisdiction.

14.2 In the case of a dispute, only the German version of these General Terms and Conditions shall have binding effect on the parties.

14.3 All legal relationships between the purchaser and us are exclusively governed by the law of the Federal Republic of Germany. Applicability of the UN Convention on the International Sale of Goods (so-called UN Sales Convention or UN Sales Treaty) is expressly excluded.

15. Partial ineffectiveness

The ineffectiveness of individual contractual provisions does not cause the remaining provisions to become ineffective. An ineffective provision shall be deemed replaced by such effective and lawful provisions as comes closest to the economic purpose and intention of the ineffective provision.

Version: December 2017