
GENERAL TERMS AND CONDITIONS



as of: 01.11.2020

I. General Part

1. General and scope of application

- 1.1. These General Terms and Conditions („GTC“) apply to all of our business relationships including all agreements concluded via our online store (www.emder-shop.de or www.emder.market.de) with our contractual partners. All offers and contracts, also in ongoing and future business relationships, shall be governed by these GTC. They only apply where the contractual partner is a Business Customer (s. 14 German Civil Code, “BGB”), a legal entity under public law or a special fund under public law.
- 1.2. Unless agreed otherwise, these GTC in the version valid at the time of our declaration of intent to conclude the contract with the contractual partner or, at least, in the version most recently communicated to the contractual partner in text form, apply as a framework agreement also for similar future contracts without us having to refer to them again in each individual case.
- 1.3. These GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the contractual partner shall only if and insofar become part of the contract as we have expressly agreed to their applicability. This requirement of express agreement shall apply in any case, even if for example we execute the order or service to the contractual partner without reservation or accept its deliveries without reservation in the knowledge of the contractual partner’s general terms and conditions.
- 1.4. Individual agreements made with the contractual partner in individual cases (including side agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.5. Legally relevant declarations and notifications of the contractual partner with regard to the contract (e.g. setting of a period, notification of defects (“Mängelanzeige”), withdrawal (“Rücktritt”) or reduction (“Minderung”) shall be made in writing, i.e. in written form (“Schriftform”) or text form (“Textform”) (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.
- 1.6. References to the applicability of statutory provisions only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless these GTC directly amend or expressly exclude them.

2. Applicable Law and place of jurisdiction

- 2.1. These GTC and the contractual relationship between us and the contractual partner shall be governed by the laws of the Federal Republic of Germany under exclusion of the international uniform law, in particular the UN Convention on the International Sale of Goods (CISG).
- 2.2. If the contractual partner is a merchant in the meaning of the German Commercial Code (“HGB”), legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Emden. The same applies if the contractual partner is a Business Customer as defined in s. 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance or general jurisdiction of the contractual partner. Overriding statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.
- 2.3. The language provided for the conclusion of the contract is exclusively German. Translations into

other languages are for information purposes only. In case of contradictions between the German text and the translation, the German text shall prevail.

II. Conditions of Sale

1. Conclusion of Contract

- 1.1. Our offers are subject to alteration and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, accounts, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyrights.
- 1.2. Information provided by us on the object of the delivery of the goods or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires precise agreement. They are not guaranteed characteristics of quality, but descriptions or identifications of the goods or services. Deviations customary in the trade and deviations which are due to legal regulations or represent technical improvements as well as the replacement of components by parts of equal value are permissible, provided they do not impair the usability for the contractually intended purpose.
- 1.3. The order of the goods by the Buyer is considered as a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days after its receipt by us.
- 1.4. The acceptance may be declared in written form (e.g. via order confirmation) or by delivering the goods to the Buyer.
- 1.5. In our online store, the Buyer receives an order confirmation, which does not, however, constitute the acceptance of the contract offer. A contract comes into existence between the Buyer and us as soon as we accept the order and/or booking by a separate e-mail or dispatch the goods.
- 1.6. In our online shop, the Buyer can select products for purchase and/or services for booking by placing them in the shopping cart via a click on the respective button. To finish the order, the Buyer can go to the shopping cart, from where he will be guided through the remaining part of the order process. Following the product selection in the shopping cart and the specification of all required order and address data in the subsequent step, the Buyer can click „Next“ to access a page that summarises the most important product details including the costs that will be incurred. Until this stage, the Buyer can correct the input or decide not to enter the contract. Only by subsequently clicking the „Order with obligation to pay“ button, the Buyer is placing a binding order.
- 1.7. The Buyer's rights under the contract may only be assigned with our prior consent.

2. Registration as User in our online store

- 2.1. The registration for our trading system will be made free of charge. A claim for an admission to our trading system does not exist. Only natural persons of full legal capacity shall be eligible. The Buyer must send us a copy of his identity card or his VAT-ID-registration number and provide us with documentation of his registration with the appropriate company's registry on our request. For admittance the Buyer must electronically fill out the application form on our website and send it to us. The information required for application shall be given by the Buyer complete and truthful. The Buyer is obliged to keep the password secret and not to disclose it to third parties.

- 2.2. The Buyer will not be obliged to buy any of the goods offered by us only due to his registration.
- 2.3. If the personal information shall change, the Buyer himself is responsible for its update. All amendments can be made online under „My Account“ after the log in.

3. Information on Adjustments

To place an order, start by placing the desired goods and/or services in the shopping cart. There you may modify at all time the desired quantity or delete goods and services completely. If you have placed goods and services in the shopping cart, by clicking on the buttons „Next“ you will get first to a website where you may enter your data and then you may choose the shipping and payment method. You can review your input on the overview page that will open up. To correct input errors (e.g. with respect to the payment method, data or quantity), click „Edit“ next to the respective field. To cancel the order process, you can simply close your browser window. By clicking the confirmation button „Order with obligation to pay“, your declaration becomes binding.

4. Delivery period and delivery delay

- 4.1. The delivery period shall be agreed individually, respectively specified by us when accepting the order. Deadlines and dates for deliveries and services are always only approximate, unless a fixed deadline or date has been expressly promised or agreed.
- 4.2. Without prejudice to our rights arising from default, we can demand an extension of delivery and performance periods or a postponement of delivery and performance dates by the period in which the Buyer does not fulfil his contractual obligations.
- 4.3. If a shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- 4.4. If we are unable to comply with binding delivery periods for reasons for which we are not responsible (non-availability of performance, „Nichtverfügbarkeit der Leistung“), we shall inform the Buyer of this immediately and at the same time inform him of the expected new delivery period. If the performance is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part. In this case, we will immediately reimburse any consideration already provided by the Buyer. A case of non-availability of the performance in this sense in particular is considered the non-timely delivery by our supplier, if we have concluded a congruent cover transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case. In the event of hindrances of temporary duration, the delivery or service periods shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period. If the delayed acceptance of the delivery or service is not tolerable for the Buyer, he may withdraw from the contract by immediate written declaration to the Seller.
- 4.5. The occurrence of our delivery delay shall be determined in accordance with statutory provisions. However, in any case a formal reminder („Mahnung“) from the Buyer is required.
- 4.6. The Buyer's rights according to cl. 9 of these GTC and our statutory rights remain unaffected, especially in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or supplementary performance).

5. Deliveries, transfer of risk, Acceptance („Abnahme“) and Default of Acceptance („Annahmeverzug“)

- 5.1. Delivery is ex warehouse, which is also the place of performance for the delivery and any supplementary performance. At the request and expense of the Buyer, the goods will be shipped

to another place of destination (sales shipment / "Versendungskauf"). Unless agreed otherwise, we shall be free to determine the mode of shipment (in particular the carrier, shipping route, and packaging material) on our own.

- 5.2. The risk of accidental destruction or deterioration of the goods shall pass to the Buyer upon Handover ("Übergabe") of the goods to the Buyer, the latest. In the case of sales shipments, however, the risk of accidental loss or deterioration of the goods as well as the risk of delay shall pass to the Buyer upon handing over of the goods to the freight forwarder, carrier or other person or institution designated to carry out the shipment. Insofar as Acceptance has been agreed, this is decisive for the transfer of risk. Also in other respects, the statutory provisions of the law on contracts for works ("Werkvertrag") apply accordingly to an agreed Acceptance. If the Buyer is in Default of Acceptance, this shall be deemed equivalent to an Handover respectively Acceptance.
- 5.3. If the Buyer is in Default of Acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge a lump sum compensation in the amount of 0,1 % of the net price (Delivery Value) per calendar day, but in total not more than 5 % of the Delivery Value, beginning with the delivery period, respectively - in the absence of a delivery period - upon notification that the goods are ready for dispatch. The proof of a higher damage and our statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The Buyer remains entitled to prove that we have incurred no damage at all or only a considerably lower damage than the above lump sum.

6. Prices and Payment Conditions

- 6.1. Unless agreed otherwise on a case-by-case basis, in each case our prices, respectively current at the time of the conclusion of the contract, apply, and this ex warehouse, plus the statutory VAT excluding packaging costs.
- 6.2. The prices specified in the order confirmation are binding in the case of delivery within four months after conclusion of the contract. In the event of a later delivery date, we are entitled to increase the prices if circumstances change after conclusion of the contract, in particular if there is an increase in the prices of raw materials and labour or transport costs. In this case, price adjustments are only possible within the scope of and to compensate for the aforementioned price and cost increases.
- 6.3. In the case of sales shipment (cl. 5.1) the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. The Buyer shall also bear custom duties, fees, taxes and other public charges, if any. In accordance with the Packaging Ordinance we do not take back transport packages or any other packages, they become the Buyer's property. Excluded from this are pallets.
- 6.4. Freight-free prices ("Frachtfrei gestellte Preise") apply under the condition of unhindered rail, road and rail traffic on the relevant railroads, motorways and waterways. Incorrect freight ("Fehlfrachten") shall be borne by the customer. The purchase price is due and payable within 14 days from invoicing and delivery or the Acceptance of the goods. However, at any time we are entitled to carry out a delivery in whole or in part only against advance payment; this shall also apply within the scope of an ongoing business relationship. We declare a corresponding reservation at the latest with the order confirmation. Upon expiry of the above payment period the Buyer is in default of payment. The Buyer has to pay interest on the purchase price during the period of default at the statutory default interest rate applicable at the time. We reserve the right to assert further damages caused by delay. In relation to merchants, our claim for commercial maturity interest (s. 353 HGB) remains unaffected. The Buyer shall only be entitled to set-off or retention rights insofar as his claim is a final and absolute adjudicated claim or is undisputed. In the event of defects in the delivery, the Buyer's reciprocal rights, in particular out

of cl. 8.6 sentence 2 of these GTC remain unaffected.

- 6.5. If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is endangered by the Buyer's inability to perform (e.g. due to an application to open insolvency proceedings), in accordance with the statutory provisions we shall be entitled to refuse performance and - if necessary after setting a period - to withdraw from the contract. In the case of contracts for the manufacture of non-fungible items (custom-made products) we may declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a period remain unaffected.

7. Retention of Title

- 7.1. Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) we reserve title to the goods sold.
- 7.2. The goods subject to retention of title shall not be pledged to third parties nor be transferred by way of security before full payment of the secured claims. The Buyer shall inform us immediately in writing if and to the extent that an application for the opening of insolvency proceedings is filed or if third parties (e.g. attachments) seize the goods belonging to us.
- 7.3. If the Buyer acts in breach of contract, in particular if he fails to pay the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title and the withdrawal. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to merely demand the return of the goods and to reserve the right to withdraw. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable period for payment without success or if such setting of a period is dispensable according to the statutory provisions.
- 7.4. The Buyer is entitled to resell and / or process the goods subject to retention of title in the ordinary course of business until revocation according to bellows c). In this case, the following provisions shall apply in addition.
- a. The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we are considered the manufacturer. If in case of processing, mixing or combining with goods of a third party, said third party's right of ownership remains in effect, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In other respects, to the resulting product the same applies as to the goods delivered under reservation of title.
 - b. The Buyer hereby assigns to us as security all claims against third parties arising from the resale or other legal reasons concerning of the goods or product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Buyer mentioned in paragraph 2 shall also apply in consideration of the assigned claims.
 - c. In addition to us, the Buyer remains authorised to collect the claim. We undertake not to collect the claim as long as the Buyer fulfils his payment obligations to us, there is no lack of his ability to perform and we do not assert the reservation of title by exercising a right according to paragraph 3. Should this, however, be the case, we can demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. If costs arise from the forwarding of the documents, these shall be borne by the buyer. Furthermore, in this case we are entitled to revoke the Buyer's authority to further sell and process the goods subject to reservation of title.
 - d. If the feasible value of the securities exceeds our claims by more than 10 %, we will release securities of our choice at the request of the Buyer.

- e. The Buyer shall book the amounts received in respect of the assigned claim separately and keep them separately.
- f. The Buyer is obliged to store and mark the goods subject to retention of title separately.

8. Buyer's claims for defects

- 8.1. The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including wrong and short delivery as well as improper installation or faulty installation instructions), unless otherwise specified below. In any and all cases, the special statutory regulations remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse according to ss. 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the Buyer or another Business Customer, e.g. by installation in another product.
- 8.2. The basis of our liability for defects is above all the agreement reached on the quality of the goods. The product descriptions designated as such, which were provided to the Buyer prior to his order or which were included in the contract in the same way as these GTC, shall be deemed to be the agreement on the quality of the goods.
- 8.3. If the quality has not been agreed upon, the statutory regulation shall be applied to determine whether a defect is present or not (s. 434 para. 1 sentence p. 2 and 3 BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) which the Buyer has not pointed out to us as being decisive for his purchase.
- 8.4. The Buyer's claims for defects require that he has complied with his statutory obligations to inspect and give notice of defects (ss. 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must - in any case - be carried out immediately before processing. If a defect is discovered during the delivery, the inspection or at any later time, we must be notified of this in writing without delay. In any case, apparent defects must be reported in writing within five working days after delivery and defects not detectable during inspection must be reported in writing within the same period from the time of their detection. If the Buyer omits to do the proper inspection and/or notification of defects, our liability for the defect not notified or not notified in time or not properly is excluded according to the statutory provisions.
- 8.5. If the delivered goods are defective, we may initially chose whether we provide supplementary performance by eliminating the defect (rectification of defects, "Nachbesserung") or by delivering a defect-free item (replacement delivery, "Ersatzlieferung"). Our right to refuse supplementary performance under the statutory conditions remains unaffected.
- 8.6. We are entitled to make the supplementary performance owed dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.
- 8.7. The Buyer shall give us the time and opportunity necessary for the supplementary performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Supplementary performance does not include the removal of the defective item nor the reinstallation if we were not originally obliged to install it.
- 8.8. We bear or reimburse the expenses necessary for the purpose of testing and supplementary performance, in particular transport, travel, labour and material costs and, if applicable, removal and re-installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified demand for the remedy of defects (in particular testing and transport costs), unless the lack of defect was not recognisable to the Buyer.

- 8.9. In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Buyer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this. We are to be informed immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding supplementary performance in accordance with the statutory provisions.
- 8.10. If the supplementary performance has failed or a reasonable period to be set by the Buyer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the price. In the case of an insignificant defect, however, there is no right to withdraw from the contract.
- 8.11. The Buyer's claims for damages or compensation for futile expenses even in the case of defects shall only exist in accordance with cl. 9 and shall otherwise be excluded.

9. Other liability

- 9.1. Unless otherwise provided for in these GTC including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- 9.2. We shall be liable for damages - regardless of the legal grounds - within the scope of liability for culpable intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; minor breach of duty):
 - a. for damages resulting from injury to life, body or health,
 - b. for damages resulting from the violation of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.
- 9.3. The limitations of liability resulting from para. 2 shall also apply to breaches of duty by or in favour of persons for whose fault we are responsible for under statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the Buyer under the German Product Liability Act ("Produkthaftungsgesetz").
- 9.4. The Buyer may only withdraw or terminate the contract on account of a breach of obligation which does not consist of a defect if we are responsible for the breach of obligation. A free right of termination by the Buyer (in particular in accordance with ss. 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

10. Time Limitation

- 10.1. Notwithstanding s. 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If Acceptance has been agreed, the limitation period shall commence upon Acceptance.
- 10.2. If, however, the goods are a building or an object that has been used for a building in accordance with its usual purpose and has caused its defectiveness (building material, "Baustoff"), the period of limitation shall be 5 years from delivery in accordance with the statutory regulation (s. 438 para. 1 no. 2 BGB). Other statutory special regulations on the statute of limitations (in particular s. 438 Para. 1 No. 1, Para. 3, ss. 444, 445b BGB) also remain unaffected.

10.3. The aforementioned limitation periods of the sales law shall also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (ss. 195, 199 BGB) would lead to a shorter limitation period on a case-by-case basis. However, claims for damages of the Buyer pursuant to cl. 9.2 sentence 1 and sentence 2 a) as well as under the Produkthaftungsgesetz shall be subject only to the statutory limitation periods.