

I. General Conditions

- For the extent of the supplies, the mutual written agreements are applicable (hereinafter called „Supplies“) and supplementary only these general terms and conditions are valid, which the Purchaser shall accept. Any other trading conditions shall apply only after the explicit written consent of EMH or service provider (hereinafter EMH).
- For cost estimates, drawings and other documents (hereinafter called “documents”), EMH reserves all ownership rights and right of exploitation protected by, copyright. The documents may not be made available to third parties without prior consent from EMH and they shall, upon request, be immediately returned to EMH should he not be awarded the order. Clauses 1 and 2 apply as appropriate to documents owned by the purchaser; however, these may be made accessible to third parties to which EMH has made permissible deliveries.
- The Purchaser shall have the non-exclusive right to use standard software and firmware in its unchanged form with the stipulated performance characteristics for the agreed equipment. The Purchaser is allowed to make two back-up copies without EMH's expressive consent.
- Part deliveries shall be permissible insofar as these are acceptable to the Purchaser.

II. Prices and terms of payment

- Prices are EXW (Gallin) excluding packing plus the sales tax payable under the applicable law.
- Should EMH undertake to assemble or erect if not otherwise agreed, the Purchaser shall bear all necessary additional expenses (e.g. travelling expenses, any transport costs, etc).
- The Purchaser may only set off such claims which are undisputed or have been finally determined in a legally binding manner.
- EMH shall not impose any minimum order value or quantity. However, where the order value of any single delivery is less than € 200,00, EMH shall be entitled to charge the Customer a handling fee of € 150,00. Furthermore, in relation to orders comprising fewer than 10 units EMH shall be entitled to impose upon the Customer a small-quantity surcharge of € 150,00.

III. Retention of title

- The delivered goods (Secured Goods) shall remain the property of EMH until each and every claim against the Purchaser to which EMH is entitled under this business relationship has been duly satisfied.
- As long as the value of all protected rights, which EMH is entitled to exceeds the amount of all protected claims by more than 20% then EMH at the wish of the Purchaser will release a corresponding part of the protected rights. [It is suspected that the requirements of the previous sentence are fulfilled when the estimated value of the good assigned as security and the assigned claims achieve or top 150% of the value.] EMH has the right to choose the secured rights to release.
- For the duration of the retention of title, the Purchaser is not allowed to pledge or transfer ownership. The resale shall only be permissible to the Purchaser in a proper course of business and only on condition that the Purchaser receives payment. The Purchaser has to reach an agreement with the customer that the property will be transferred to the customer only after fulfillment of the obligation to pay.
- The Purchaser is allowed to process the goods subject to retention of title or to mix or combine them with other items. The processing, mixing or combining (in the following referred to singly as "processing", and, with regard to the goods subject to retention of title, as "processed") shall be carried out on behalf of EMH; the item created by processing is designated as the "new product". The Purchaser shall store the new product on behalf of EMH with due diligence. Where the new product is processed together with other items not belonging to EMH, EMH shall be assigned co-title to the new product proportionate to the ratio of the value of the processed goods subject to retention of title relative to the value of the remaining processed items at the time of processing. Where the Purchaser acquires sole title to the new product, EMH and Purchaser agree that the Purchaser shall grant EMH co-title to the new product proportionate to the value of the processed goods subject to retention of title relative to the value of the remaining processed items at the time of processing.
- In the event of sale of the goods subject to retention of title or the new product, the Purchaser hereby assigns its claims against the buyer arising from the resale, including all ancillary rights, to the EMH by way of security, without need of further explicit declaration. The assignment shall apply including any setting-off claims. However, the assignment shall only apply to the amount invoiced by EMH in respect of the delivered goods subject to retention of title. If the reserved goods are sold together with other articles without an item price having been agreed for the reserved goods, the Purchaser will assign to EMH that portion of the total price that corresponds to the price of the reserved good as invoiced by EMH. This arrangement concerning the assignment of claims also applies to new goods. In this case, however, the amount that can be assigned corresponds to the value of the processed goods. The portion of the claim assigned to EMH shall be satisfied as the priority claim.
- The Customer shall be entitled to collect the assigned claims out of the resale until the provision is rescinded. The Purchaser shall immediately forward to EMH any payments made in respect of the assigned claims up to the amount of the secured claim. For good cause, in particular in case of delay in payment, payment default, opening of insolvency proceedings, protest of a bill, or where there is justified cause to suspect that the Purchaser is over-indebted subject to impending insolvency, EMH shall be entitled to revoke the Purchaser's authority to collect payment. Moreover, after prior warning, and allowing an appropriate period of time for performance, EMH may disclose the assignment of claims, realise the assigned claims and demand that the Purchaser disclose the assignment of claims to its customer in turn.
- In cases of seizure, confiscation or other acts of intervention by third parties, EMH shall be immediately informed thereof in writing by the Purchaser.
- Where a credible, justified interest is established, the Purchaser shall furnish EMH with the information necessary to assert its rights against its customer and shall hand over the required documentation.
- In cases of breach of duty by the Purchaser, especially a delay in payment, EMH shall be entitled without any deadline to demand the return of the goods respectively the new goods and / or to withdraw from the contract; the Purchaser shall be obliged to return the purchased goods. The recovery of the reserved/ new goods or enforcement of the reservation of title or seizure of the reserved/new goods by EMH does not constitute a withdrawal declaration by EMH unless expressly declared as such by EMH.

IV. Time for delivery and delay

- A pre-condition for keeping to the stipulated time for deliveries is the timely receipt of documents, necessary permits and releases, especially of plans to be provided by the Purchaser, as well as observance of the agreed terms of payment and other obligations by the Purchaser. If these requirements are not fulfilled on time, the time for delivery will be extended accordingly. This does not apply should EMH be responsible for the delay.
- Should the non-observance of the time for delivery be due to force majeure such as
 - Force majeure, e.g. mobilisation, war, acts of terror, riots or similar events (e.g. strike, lockout, fire damage, flooding, other natural disasters, inadequate provision of raw materials, ancillary materials or transport, official decrees),
 - virus and other attacks by third parties against the IT system of EMH, insofar as these take place despite applying the usual care in the implementation of protection mechanisms,
 - impediments arising from German, American or other relevant national, EU or international controls with regard to foreign trade law or for any other reasons beyond the control of EMH, or
 - late or improper (self-)delivery of EMHis discharged from the obligation of timely delivery and performance for the duration and extend of the disruption. Such disruptions are not at the expense of EMH, even if they occur at the subcontractor or their subcontracting company, resulting that EMH will not be supplied in time and correctly. The customer will be immediately instructed from the beginning of the disruption and the extension of the delivery time or the postponement of the delivery date.
- Should EMH be responsible for a delay in delivery, the Purchaser - if he can establish credibly that a loss occurred from such a delay - may claim compensation of 0.5 % for every completed week of delay but in no event shall the aggregate of such compensation exceed a total of 5% of the price of that part of the delivery which, because of the delay, could not be put to the intended use.
- Both, claims for damage from the Purchaser due to delay of the delivery as well as claims for damage instead of the goods which exceed the limits specified in para.3. shall be excluded in all cases of delayed delivery even after expiry of an extension on time that may have been granted to EMH. This does not apply if there is a compulsory legal liability in cases of wrongful intent, gross negligence or mortal danger, bodily harm to the persons or their health. The Purchaser only has the right to terminate the contract; EMH should be responsible for the delay in the delivery. The foregoing regulations do not constitute an alteration of the burden of proof for the disadvantage of the Purchaser.
- Upon EMH's request, the Purchaser is obliged, to state within an appropriate period of time if he is going to terminate the contract because of this delay or whether he insists on the delivery.
- If dispatch or delivery is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch, the Purchaser may be charged storage costs for each month thereafter to the amount of 0.5 % of the price of the supplied goods but in no event shall the aggregate storage charges exceed a total of 5% of the price. The parties to the contract are at liberty to furnish proof of higher or lower storage costs.
- EMH is committed to an environmentally friendly disposal of products which were delivered by EMH at Purchaser's expense. The meters to be disposed of are to be delivered by the Purchaser to EMH's company at no extra charge.

V. Transfer of risk

- Even where carriage paid delivery has been agreed, the risk shall pass to the Purchaser as follows:
 - If the supply does not include assembly or erection, when goods have been delivered to or picked up by carrier. At the Purchaser's request and expense, supplies shall be insured by EMH against the ordinary risks of transport

VI. Assembly and erection

Should EMH, in addition to the obligation to deliver also take over the assembly and erection, then separate contractual terms apply.

VII. Accepting delivery

The Purchaser may not refuse acceptance of deliveries because of immaterial faults.

VIII. Defect of quality

EMH shall be liable for defects as follows:

- EMH shall, at his option and expense, repair, replace or newly provide any parts or services which show defects of quality within the statutory period of limitation - regardless of the time of operation - provided the cause for this defect of quality already existed at the time of transfer of the risk.
- Claims in respect of defects (of whatever type and/or for whatever reason, i.e. especially planning, production, series, component faults, etc.) fall under the statute of limitations 24 months following acceptance. This does not apply in the event that the legislation set out in para. 438 I clause 2 (buildings and items used for buildings), 479 I (right of recourse) and 634a I clause 2 (construction defects) of the BGB (Bundesgesetzbuch - German Civil Code) prescribes a longer period or in cases of malicious intent or fraudulent concealment of the defect, etc. The legal regulations regarding suspension of the running period, interruption and re-starting a time-limit remain unaffected.
- The Purchaser shall notify defects immediately in written form EMH in event of discovery of a defect.
- Purchaser's payments may be withheld in reasonable proportion to the noticed defect. The Purchaser may only withhold part of the payment after a defect has been asserted and there is no doubt about its justification. The Purchaser has no right of retention if its claims arising from a defect are statute-barred. Should a Purchaser's complaint be unjustified, EMH is entitled to demand reimbursement of the expenditure from the Purchaser.
- EMH shall be given adequate time and opportunity to remedy the defect.
- Should the remedying of a defect fail, the Purchaser shall have the right - irrespective of possible claims for damage in accordance with section nr.12- to withdraw from the contract or demand a reduction of the purchase price.
- The warranty does not cover minor deviation from the agreed quality, immaterial impairment of the usability, natural wear and tear or damage arising, after the transfer of risk, from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under this contract as well as from software errors which are not reproducible. The same applies if the products are inexpertly opened, especially in the case of sealing. Warranty claims are also excluded should modifications or repairs be carried out improperly by the Purchaser or by third parties and for any consequential faults.
- In case of remedying a defect, the EMH has to bear the costs for all required expenditure, in particular transport costs, labour costs, material costs. Should, when remedying the defects higher costs occur because the delivery item has been moved forward to a place other than the Purchaser's branch (hereinafter „increased expenditure“) the Purchaser shall bear such increased expenditure. EMH is entitled to refuse the repair should the Purchaser, upon EMH's request, not confirm the acceptance of the increased expenditure in writing. The Purchaser must also pay the increased expenditure in case he remedies himself.
- Defects reported to EMH following expiry of the deadline set out in VIII clause 2 can be repaired by EMH on receipt of an order to this effect from VP. Claims arising from this work are limited solely to the repaired or replaced construction elements / modules and fall under the statute of limitations 12 months following acceptance. This does not apply in the event that the legislation set out in para. 634a I clause 2 (construction defects) of the German Civil Code prescribes a longer period or in cases of malicious intent, fraudulent concealment of the defect and non-fulfilment of a warranted property. The statutory provisions on the suspension, interruption and resetting of the deadlines shall remain unaffected.
- If VP returns products to EMH under the terms of the warranty or as a repair order without first announcing its intention to do so and without enclosing with the consignment a return slip/fault description, EMH shall be entitled to charge VP a reasonable amount to cover storage costs. Furthermore, if VP then fails to send the consignment within a reasonable period, EMH can return the consignment at the expense of VP.
- Recourse claims of the Purchaser against EMH in accordance with § 478 BGB (German Civil Code = recourse of the company) only exist as far as the Purchaser has made no additional agreements with his consumer over and above the lawful warranty claims. For the extent of the Purchaser's recourse claims against the EMH according to § 478 clause 2 BGB (German Civil Code) para. 8 also applies
- Claims for damages on the part of VP due to a defect are excluded. This does not apply in the event of fraudulent concealment of the defect, non-fulfilment of a warranted property, injury to life, the body or health, and the malicious or grossly negligent breach of duty by EMH. In such cases however the amount of the claim for damages is limited to the value of the order. The above regulations do not imply a change to the burden of proof to the detriment of VP. All other claims from VP over and beyond those covered by this Art. VIII in respect of a defect are excluded.

IX. Industrial property rights and copyright

- Unless otherwise agreed, EMH is obliged to perform the delivery only in the country of the Purchaser free from industrial property rights and copyrights (hereinafter "Property Rights") of third parties. If third parties bring justified claims regarding the violation of intellectual property rights against VP as a result of the use of goods and services supplied by EMH according to the contract, EMH shall be liable to VP within the period specified under Art. VIII clause 2 as follows:
 - EMH shall, at his option and expense, either obtain for the deliveries concerned, a right of use for the product, alter it so that the exclusive right will not be violated or replace it. If this is not possible for EMH under appropriate conditions then the Purchaser is entitled to the legal right of cancellation or right to a reduction in price.
 - The obligation of EMH to indemnify is in accordance with clause XI.
 - The above obligations of EMH only exist as far as the Purchaser notifies EMH immediately in writing about asserted claims by a third party or if a violation is not repudiated and all defensive measures and settlement negotiations are reserved to EMH. If the Purchaser discontinues to use the supply for reasons of minimising losses or other important reasons, the Purchaser is obliged to point out to the third party that discontinuance of use does not constitute the acknowledgement of an infringement of Property Rights.
- Claims of the Purchaser shall be excluded should the Purchaser be responsible for the infringement of Property Rights.
- Claims from the Purchaser are also excluded should the infringement of Property Rights be caused by special requirements of the Purchaser, or by an application which was not foreseeable by EMH or by alterations of the Purchaser's delivery or by usage together with products which have not been supplied by EMH.
- With any other defective title, the conditions in par. VIII are valid.
- In case of infringement of property rights the conditions in clause VIII, para. 4.5, and 9 also apply accordingly for claims of the Purchaser provided for in para. 1a.
- Further claims or claims other than those provided for in clause IX from the Purchaser against EMH and his vicarious agent because of a defect in title are excluded.
- Regarding the software, EMH's "General conditions for the disposal of software" are valid Edition 12.03.2012. (These conditions can be found on: www.emh-metering.de)

X. Reservation of performance

Performance of the contract is subject to the reservation that no impediments arising from German, American or other relevant national, EU or international controls with regard to foreign trade law are present and that no embargos or other sanctions exist.
VP is obliged to provide all the information and documentation required for the export, shipment or import

XI. Impossibility: contract adaptation

- If delivery is impossible, the Purchaser is entitled to demand compensation unless EMH is not responsible for this impossibility. However the claims for damage are limited to 10% of the value of the part of the delivery which cannot be put into operation. These limitations do not apply where there is compulsory liability in cases of wilful, gross negligence or mortal danger, bodily harm to the persons or their health. An alteration of the burden of proof for the disadvantage of the Purchaser is not connected. The Purchaser's right to withdraw from the contract remains unaffected.
- Where unforeseeable events as described in Clause IV, para. 2., substantially change the economic importance or the contents of the Supplies or considerably affect EMH's business, the contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, EMH shall have the right to withdraw from the contract. This also applies if the required export licences are not granted or are not usable.
If EMH wants to make use of this right of cancellation, he shall notify the Purchaser in writing

- If the supply includes assembly or erection, on the day of takeover into Purchaser's own service or, if agreed, after a faultless trial run.
2. The risk shall pass to the Purchaser if the dispatch, the delivery, the beginning or completion of assembly or erection, the taking over into Purchaser's own service or the trial run is delayed for reasons within the Purchaser's responsibility, or if the Purchaser, for other reasons, defaults in taking delivery.

immediately after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery time had been agreed with the Purchaser.

XII. Further claims for damage

1. Unless regulated elsewhere in these conditions, claims for damages by VP, on whatever legal grounds, particularly due to breach of contractual obligations and unlawful acts, are excluded.
2. This does not apply if the event of mandatory liability as follows:
 - a) according to product liability legislation,
 - b) malicious intent,
 - c) gross negligence on the part of proprietors, legal representatives or management employees,
 - d) culpable injury to life, the body or health,
 - e) or the culpable breach of significant contractual obligations.
 - f) non-compliance with an accepted warranty.The maximum liability in respect of a breach of significant contractual obligations is however limited to the foreseeable damages typical for the contract and is in each case restricted to the sum of €400,000 provided that one of the situations mentioned above does not exist. As an exception to the above, the maximum liability for orders with a value of up to €50,000 will in each case be restricted to the value of the order.
3. The above regulations do not imply a change to the burden of proof to the detriment of VP.
4. Any liability for damage caused by electromagnetic fields is expressly excluded.
5. As far as the Purchaser is entitled to claims for damage in accordance with clause XI such claims fall under the Statute of Limitations valid for the defect of quality claims according to clause VIII para 2. The same applies to claims by VP associated with measures designed to avoid damage (e.g. recall actions). For claims for damage in accordance with the Product liability law the statutory limitation period is valid.

XIII. Choice of forum

1. If the Purchaser is a businessman, the sole forum for all disputes arising directly or indirectly out of the contract shall be the place of EMH's head or branch office. However, EMH is also entitled to sue at the Purchaser's office.
2. This contract including its interpretation is subject to German law to the exclusion of the United Nations treaty concerning contracts for the international sales of goods (CISG).

XIV. Validity of the contract

Should any part of this Agreement become invalid the other parts shall remain enforceable. This does not apply when adherence to the contract would represent an unreasonable severity for a party.