

## **General terms and conditions of delivery and service**

of Elektromotorenwerk Grünhain GmbH, Bahnhofstraße 12, 08344 Grünhain-Beierfeld  
("EMGR")

### **I. Scope**

(1) These terms and conditions of delivery and service apply

a) only to entrepreneurs within the meaning of Section 310 Paragraph 1 of the German Civil Code (BGB) and those who are equivalent to them (referred to in these terms and conditions of delivery as "customer" or "orderer"). This means (among other things) that they expressly do not apply to consumers.

b) for all deliveries of items and for the provision of services on orders from the customer by EMGR.

c) exclusively; general terms and conditions of the customer that conflict with or deviate from these terms and conditions of delivery do not become part of the contract unless EMGR has expressly agreed to their validity in writing.

d) even if EMGR carries out the delivery or provision of services to the customer without reservation in the knowledge of terms and conditions of the customer that conflict with or deviate from these terms and conditions of delivery. Any tacit consent or consent that can be inferred from the circumstances is excluded.

e) even if EMGR first refers to their validity in a commercial confirmation letter and the customer does not immediately object to their validity.

(2) The delivery relationship between EMGR and the customer is governed exclusively by these delivery and service conditions. The customer's general terms and conditions do not apply. To the extent that these delivery and service conditions do not apply or make provisions, the applicable statutory law applies exclusively.

(3) All individual agreements made between EMGR and the customer must be documented in writing and, if applicable, recorded in writing in the contract document. This also applies to any ancillary agreements or subsequent agreements that may be made.

(4) These delivery conditions apply to all offers from EMGR and to all orders accepted by EMGR. These delivery conditions should also apply to follow-up orders and future contractual relationships with the same customer.

### **II. Offer / offer documents / conclusion of contract**

(1) A contract is only concluded with the written order confirmation by EMGR, but at the latest when the service begins to be carried out (e.g. specific order-related ordering of materials, start of production, preparation for delivery). In the event of a possible contradiction with other service descriptions of any kind, the order confirmation from EMGR always takes precedence, unless it is immediately contradicted.

(2) EMGR's offers are subject to change and revocable until they are accepted by the customer or the service begins to be carried out in accordance with the agreement. If an error has crept into an offer (e.g. in the information about a product, the price information or

availability), the customer will be informed of this as soon as possible, who can then reconfirm the changed order. Alternatively, the order can also be canceled by EMGR

immediately, in which case EMGR is only liable for damages within the legally mandatory framework. The content of advertising brochures and public praise does not form part of the contract. Guarantees must be expressly stated as such in writing.

(3) If no period of validity was specified in the offer submitted by EMGR, the binding period is a maximum of 30 days. If an order from the customer is to be considered an offer (Section 145 of the German Civil Code), EMGR can accept it within 14 days of receipt. The period begins with receipt of the order.

(4) Without prejudice to the other provisions on confidentiality and property rights contained in these terms of delivery, EMGR reserves the copyright and all intellectual property rights to all of its designs, images, drawings, cost estimates, calculations and documents, to the work steps, results according to the order, as well as to all communications, documents and, if applicable, specific software - even in the offer stage - regardless of the respective storage form. The customer has the non-exclusive right to use standard software and company goods with the agreed performance characteristics in an unchanged form on the agreed devices. The customer may create a backup copy of the standard software without agreement. Before passing them on to third parties and before any use not provided for or permitted by the contract, the customer requires the express written consent of EMGR. If the order is not placed with EMGR, all such items and information must be returned or deleted immediately upon EMGR's request. If the customer does not expressly state otherwise when communicating information, EMGR is entitled to pass them on to its suppliers and subcontractors to the extent necessary to fulfill the order.

(5) The correct selection of the products ordered and the determination of specific technical parameters are the responsibility of the customer and are his sole risk, unless EMGR has been expressly commissioned in writing to provide advice and/or project planning. If EMGR provides advice, this is done to the best of its knowledge. All information and details about the suitability and application of the goods supplied do not exempt the customer from carrying out their own tests and trials.

(6) EMGR reserves the right to make changes to services in the interests of technical progress, provided that these do not entail significant changes. EMGR would inform the customer in advance. The documents provided with the offer as well as weight and measurement details and information are non-binding unless they are expressly designated or agreed as binding in the order confirmation.

(7) EMGR's employees and staff are not authorized to make oral side agreements or assurances that go beyond the content of the written contract or that modify it. Debt-discharging payments can only be made to the bank details provided by EMGR.

### **III. Customer obligations / handling of goods**

(1) The customer will support the fulfillment of an order or contract to the best of his ability. The customer will provide EMGR with all information, material requests and other parameters required for the performance of the ordered service as soon as possible, even without a specific request. The customer is solely responsible for information that is not provided on time or is incomplete. This also applies to information that only becomes available during the processing of the respective order. Special information within the meaning of Art. 35 II b CISG must be expressly recorded in writing in the contract.

- (2) The customer must inform EMGR of special features and exceptional risks that are not immediately apparent (such as the risk of unusually high damage, unstable conditions, urgent processing deadlines, specialist services or similar). The customer is also obliged to inform if he can recognize that misunderstandings have arisen in the technical exchange and/or in the interpretation of service parameters.
- (3) The customer must immediately inform EMGR of any errors and deviations in documents, notifications and services at every stage of the business relationship. For this purpose, submitted documents and notifications as well as all services performed must be checked in every respect with commercial care immediately after receipt.
- (4) The customer shall name a contact person who is competent in the matter and who is always available within the usual framework and who is also authorized to make any decisions that arise or to communicate them within a reasonable period of time.
- (5) If the customer does not comply with his duty to cooperate or does not provide the necessary information, materials, documents or statements, the agreed execution periods shall be postponed according to the circumstances, without prejudice to any other legal consequences.
- (6) The customer must always fulfill all of the legally required requirements for the execution of the contract and hold all permits and approvals required for his business. He shall comply with all legal regulations that may apply to him and the business and shall prove this to EMGR at any time upon request by submitting suitable documents. This includes, without limitation, all provisions of export and re-export law. He also complies with all technical, ethical and moral standards that may apply to the business. This includes, among other things, all principles relating to sustainability.
- (7) The customer must therefore do everything necessary to ensure that the contractual and delivery services can begin on time and be carried out without hindrance or interruption. He ensures that all necessary preparatory work and deliveries as well as ancillary work outside the industry are carried out on time, including the equipment and materials required for this.
- (8) Depending on the special circumstances at the place of performance, if this is outside EMGR's operations, the requirements for order and safety must be ensured and monitored. Suitable means of transport for the transport of personnel, tools, equipment and materials must be made available free of charge and the necessary permits and approvals for the import and export of products, equipment, tools, vehicles and materials must be obtained and handed over.
- (9) The customer is obliged to handle and store the delivered products properly, taking into account their specific nature. He is obliged to independently obtain knowledge of the relevant technical, legal and other requirements depending on the situation, for example regarding the manufacture, treatment, transport, storage and sale of the products.
- (10) The customer is obliged to inform EMGR immediately if products are rejected during official or other inspections or if a complaint is even suspected. The customer is obliged to request officially marked counter samples or second samples during official inspections, to keep them carefully and to send them to EMGR immediately. This applies accordingly to all other complaints, including those from possible intermediaries, end customers or other types.

#### **IV. Samples and test materials**

- (1) The production costs for individually agreed samples and test materials produced by EMGR will be invoiced separately from the goods to be delivered, unless otherwise agreed.
- (2) If the customer provides samples and test materials to EMGR, the costs for proper storage and the risk of damage or destruction will be borne by EMGR, whereby EMGR will store them with the usual care.
- (3) If the customer suspends or terminates cooperation during the production period of the samples, all costs incurred up to that point will be borne by the customer.
- (4) Goods provided for sampling must be stored by the customer for EMGR with the greatest care; sampling stickers must not be removed. Any kind of mixing or alteration of samples and test materials must be avoided. The material and external area must be left untouched in the broadest sense. Samples and test materials must not be passed on to third parties or otherwise made accessible. Residual quantities must be disposed of at the request of EMGR, which must be documented upon request. Samples and test materials are considered confidential information within the meaning of Chapter XV and are subject to retention of title in accordance with Chapter XI of these terms and conditions.
- (5) If the client accepts goods from the sampling, no price deduction will be made.

#### **V. Delivery**

- (1) In the case of delivery services, acceptance occurs by receipt of the contractual object, unless a detailed written protest is immediately raised following a proper inspection of the goods, which must be carried out immediately. This makes the claim for remuneration due in full, unless otherwise agreed, and the start of the warranty period begins.
- (2) Products that are suitable for acceptance or ready for use must be accepted with a partial acceptance at EMGR's request after notification of readiness for acceptance, unless acceptance of a partial delivery would be unreasonable for the customer.
- (3) The contract extends to the scope specified at the start of the contractual relationship. Changes requested by the customer will be accepted by EMGR in accordance with the provisions of the following Section VI if the change is possible.
- (4) Delivery periods agreed between the parties are only intended as a guide, unless expressly agreed otherwise. The delivery period begins on the day of the order confirmation (if there are several, with the last one), but not before the provision of the documents, approvals, releases, material and other supplies, etc. to be provided by the customer, as well as the receipt of an agreed payment, the opening of a letter of credit to be provided in accordance with the agreement, proof that an agreed security has been provided or the existence of other conditions or cooperation by the customer that may have been agreed or that must be observed. Provided that this is the case, EMGR will deliver within a reasonable time from the order confirmation, depending on the product. If delivery is not possible within this time, EMGR will notify the customer separately. The customer can then issue a written reminder, so that EMGR is in default upon expiry of the original delivery period, provided that the legal and contractual conditions for default are met.
- (5) EMGR is entitled to withdraw from the contract if, despite having previously concluded a corresponding purchase contract with a supplier that is trustworthy by reasonable standards, it does not receive the delivery item or other services or does not receive them on time.

EMGR's liability for culpable conduct in accordance with these provisions remains unaffected. EMGR will inform the customer immediately about the late availability of the service object and, if it wishes to withdraw, will exercise the right of withdrawal immediately. In this case, the customer will receive back any consideration already provided immediately.

(6) Unless otherwise agreed, the delivery deadline is met if the goods are made available for collection in EMGR's warehouse within the delivery period and the customer has been informed of this. The customer may not refuse to accept services due to minor defects.

(7) If specific deadlines have been set for the execution of the work, these will be extended by the period of the delay if the customer does not meet his or her cooperation or payment obligations, if the necessary permits are not available or if the customer subsequently provides information to EMGR.

(8) Indefinite contracts can be terminated with a notice period of 3 months. In the case of delivery contracts on call, unless otherwise agreed, EMGR must be notified of binding quantities in good time so that proper production and delivery is possible, but at least 1 month before the delivery date by call. Additional costs caused by a late call or subsequent changes to the call in terms of time or quantity by the customer are to be borne by the customer; the EMGR calculation is decisive and in any case the call period must be adapted to the circumstances. Call orders must be called within 6 months of the order, unless other fixed dates have been agreed. If the call is not made or not made in full within 6 months of the order or on the agreed call dates, the customer is in default of acceptance. In such a case, EMGR is entitled to demand compensation for costs and damages. EMGR reserves all other claims and rights in such a case.

(9) The objection of non-fulfillment of the contract remains reserved.

## **VI. Change to the contract - change management**

(1) If the customer requests a change to the scope or content of the contract or the procedure or working method, he will inform EMGR of this in writing, stating all information necessary to assess the change request. This applies regardless of whether changes are required due to circumstances for which the customer is responsible or not.

(2) EMGR will examine the change request and inform the customer, if possible within 5 working days, whether the desired changes can be implemented without affecting the economic and technical parameters of the order.

(3) If the changes requested by the customer affect the scope, remuneration or schedule, etc., EMGR will submit a change offer to the customer, if possible within 5 working days. If the customer accepts the change offer within 5 working days, the contract will be changed accordingly. If the customer rejects the offer or does not respond, the service will be carried out in accordance with the change request, provided that this is reasonable for EMGR, and EMGR's modified remuneration claim, which is due immediately or in accordance with the remuneration agreements made, is determined according to fairness (within the meaning of Section 315 of the German Civil Code). If the changed scope is unreasonable for EMGR, EMGR has the right to withdraw and claim damages with all other consequences provided for by law.

(4) EMGR will inform the customer in writing if it recognizes a previously unrecognizable need for additional services and additional expenses that were not agreed in writing. The parties will negotiate the amount of the adjustment to the fees agreed in the contract, with the proviso that additional services are specified and invoiced separately. If no agreement is

reached and this is reasonable for EMGR, the service will be carried out and the amount of the remuneration will be adjusted by EMGR within the framework of fairness (within the meaning of Section 315 of the German Civil Code).

## **VII. Transfer of risk / delay in acceptance**

(1) Unless otherwise stated in the order confirmation, delivery is agreed "ex works" EMGR's factory premises ("EXW" Incoterms 2010). If delivery from the relevant EMGR factory premises to another location is expressly agreed so that the place of performance is relocated or the delivery is to be made abroad, delivery will be made in accordance with FCA Incoterms 2010 EMGR's factory premises in the absence of any other express written agreement. If the delivery includes on-site installation according to the agreement, the risk is transferred at the latest at the time of completion of the installation, with an agreed test run at the time of the successful test run. Art. 58 III CISG is waived.

(2) If EMGR sends the sold item to a location other than the place of performance at the request of the customer without expressly agreeing on a different place of performance (in particular for practical reasons, as a favor), the risk of accidental loss and accidental deterioration passes to the customer as soon as EMGR has delivered the item to the freight forwarder or the person or company otherwise designated to carry out the shipment, even if EMGR carries out the journey itself. In the absence of a special agreement, EMGR chooses the means of transport and the route. Without a separate agreement, transport insurance is not owed. The customer bears the resulting costs. In the event of deviating agreements, in the event of a possible regulatory gap, the clause of the Incoterms regulations that comes closest to the agreement made applies, even if Incoterms was not directly agreed.

(3) If the conditions are met, the risk of accidental loss or accidental deterioration of the purchased item passes to the customer at the time at which the customer defaults on acceptance or payment. If a delivery date has not been expressly agreed and if it expires the customer is in default of acceptance, the time of transfer of risk is deemed to be that the risk is transferred to the customer 2 calendar days after notification of readiness for dispatch. Goods reported as ready for dispatch must be accepted by the customer immediately. Otherwise, EMGR is entitled to dispatch them at its own discretion or to store them at the customer's risk (additional costs incurred by the customer or third parties, i.e. additional costs, are borne by the customer). The customer is also liable for damage, theft or loss of materials and parts if this occurs at a location under its supervision or for which it is otherwise responsible.

(4) If shipping or delivery is delayed by more than 8 days after notification of readiness for shipping due to a request, refusal to cooperate or at the instigation of the customer of the purchaser, the purchaser may be charged storage fees of 0.5% of the price of the items being delivered for each week or part thereof, but not more than 30% in total, whereby the contracting parties are free to provide evidence of higher or lower storage costs. Depending on the circumstances, EMGR is entitled but not obliged to sell the goods in an emergency sale and to offset the proceeds. All other claims and rights that EMGR may have in such a situation remain unaffected.

(5) If the customer defaults on acceptance or culpably violates cooperation or contractual obligations and acceptance is delayed by more than just an insignificant amount as a result, the claim for payment becomes due and EMGR is entitled to demand compensation for the damage incurred, including any additional expenses. Further claims or rights remain reserved.

## **VIII. Delay in delivery**

(1) In the event of a delay in delivery by EMGR, the customer may withdraw from the contract after a reasonable grace period has been set and has expired without result. In the event of impossibility of performance or a fixed-term transaction, the customer is entitled to this right even without a grace period.

(2) In the event of a culpable delay in delivery or performance, EMGR is liable for the foreseeable, typically occurring damage caused by the delay. Insofar as the underlying contract is a fixed-term transaction, EMGR is also liable if, as a result of a delay for which it is responsible, the customer should be entitled to assert that his interest in the further fulfillment of the contract has ceased or if EMGR is responsible for the impossibility.

## **IX. Packaging costs / insurance**

(1) Transport and all other packaging will not be taken back unless this is required by the Packaging Ordinance or other special regulations require it. The customer is obliged to ensure that the packaging is disposed of at his own expense. On request, EMGR will name a third party to the customer who will recycle the packaging in accordance with the Packaging Ordinance. Labels, markings or identification must not be removed.

(2) If the delivery is made in borrowed containers, these must be emptied and roughly cleaned and returned or sent back at the time of delivery or at the latest at the time of the subsequent delivery. Loss of or damage to packaging is at the customer's expense if this is his responsibility. Borrowed packaging must not be used for other purposes or for accepting other products. It is only intended for the transport of the delivered goods. Labels must not be removed. The same applies to pallets.

(3) EMGR is only obliged to insure goods stored at its premises at the customer's expense if the customer expressly requests this in writing. EMGR may request an advance payment. The same applies to transport insurance.

## **X. Prices / Terms of payment**

(1) Unless otherwise stated in the order confirmation or other individual agreement, the prices offered by EMGR apply at the time the contract is concluded. Cost estimates are only binding if they are given in writing and expressly agreed as binding.

(2) Unless otherwise stated in the order confirmation, all prices are based on "ex works" or, in the case of a delivery agreement, "free carrier" (EXW or FCA Incoterms 2010) EMGR works. All shipments, including any returns not caused by defects, are at the customer's expense. Special agreements for freight-free delivery, insurance or other additional services require a separate written agreement.

(3) Partial deliveries can be invoiced separately. They must be paid in accordance with the provisions provided here.

(4) Delivery prices agreed for the duration of the contract will no longer be called into question during the term of the contract by subsequent cost analyses by a contractual partner or by offers from third parties, provided that the products and processes remain the same. Cost savings achieved by EMGR through the joint efforts of the contracting parties only need to be passed on if this has been expressly agreed. In this case, the cost savings will be fully offset against any price reductions agreed in advance until they are fully covered

by this offset. Cost savings in excess of this will be offset against the delivery prices to the extent that the customer has contributed to the cost savings. The customer is only entitled to inspect the supplier's documents and data to the extent that these documents and data directly relate to cost savings on the products affected by the savings. However, EMGR reserves the right to change prices appropriately for any reason, for example due to increases in wage costs or changes in material or energy prices; EMGR will provide evidence of these to the customer upon request. If a significant change in costs occurs in long-term contracts (contracts with a term of more than 6 months and open-ended contracts), each contracting party is entitled to demand an appropriate adjustment of the price taking these factors into account. If a binding order quantity has not been agreed, EMGR bases its calculation on the non-binding order quantity (target quantity) expected by the customer for a specific period of time. If the customer orders less than the target quantity, EMGR is entitled to subsequently increase the unit price accordingly.

(5) All prices are net in the currency offered. Unless otherwise agreed, they are in EURO (€). The statutory value added tax (and all other taxes, duties and fees of any kind) are not included in the prices; they are shown separately in the invoice at the respective statutory rate. EMGR must always be placed in such a way that it receives the agreed (net) price. Any government-related taxes, duties or withholdings are to be borne by the customer in addition.

(6) At EMGR's request, billing will be carried out according to the SEPA transfer and direct debit procedure, the associated legal basis for the EU and EEA states, if applicable in accordance with the international or agreed regulations. EMGR will inform you of the invoice amount due, the SEPA mandate reference and our creditor ID at least 3 days before a direct debit, unless this information is already shown on the invoice.

(7) In the case of associations with central settlement or other institutions interposed by the debtor, the administrative body is considered to be the debtor's vicarious agent; in any case, the debtor must accept any provisions agreed between EMGR and the central association.

(8) The entire invoice amount must be paid without deduction within 30 days of the invoice date, unless another date is specified on the invoice. The deduction of discounts requires a special written agreement. The weights, numbers of items and quantities determined by EMGR are decisive for the calculation if the customer does not immediately and at the latest within 24 hours of receipt, directly and immediately object to EMGR. Usual weight losses during storage and transport do not reduce the weight determined by EMGR.

(9) The customer shall be in default without any further declarations from EMGR on the day after the due date if he has failed to pay in breach of his duty. Amounts withheld due to defects must always be in reasonable proportion to the value and significance of the defect. A payment deadline shall be deemed to be revoked and the

## **XI. Retention of title**

(1) EMGR delivers without exception subject to retention of title. The following provisions apply.

(2) EMGR retains title to the reserved goods until all payments from the delivery contract and, in addition, all payments from other business relationships of the customer have been received.

(3) The customer shall store the reserved goods for EMGR free of charge. The customer is obliged to treat the reserved goods with care. The customer is obliged to insure them at their own expense against fire, water and theft damage to the full value of the goods and to the



replacement value. At EMGR's request, the customer must provide evidence of the conclusion and maintenance of the insurance. The customer assigns all claims against the insurer arising from this contract with regard to the reserved goods to EMGR at the time of conclusion of the contract or at the latest upon delivery.

(4) The customer must notify EMGR immediately upon knowledge of the threat, or if not known, at the latest at the time of occurrence, of any seizure, attachment, compulsory execution or other interventions by third parties affecting our property rights, so that EMGR can intervene if necessary. The customer must bear the costs of the measures to eliminate the interventions by third parties, in particular the costs of any intervention processes. If the third party is not in a position to reimburse EMGR for the legal and extrajudicial costs of a lawsuit, the customer is liable for the loss incurred by EMGR.

(5) The customer is entitled to resell the reserved goods in the ordinary course of business; however, he hereby assigns to EMGR all claims in the amount of the final invoice amount (including VAT) of the claim that he has from the resale against his customers or third parties, regardless of whether the reserved goods were resold without or after processing. EMGR can at any time demand that the customer inform it of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and disclose the assignment to its debtor. The customer remains authorized to collect this claim even after the assignment until revoked by EMGR. EMGR's authority to collect the claim itself remains unaffected by this. However, EMGR undertakes not to collect the claim as long as the customer meets its payment obligations from the proceeds received, does not fall into arrears and, in particular, no application for the opening of insolvency proceedings has been made or there is no cessation of payments or such a cessation is imminent or appears to be imminent based on the facts. However, if this is the case, EMGR can demand that the customer provide it with all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. EMGR's authority to collect is independent of this. (6) If the customer acts in breach of contract, in particular if payment is delayed, EMGR is entitled to reclaim the reserved goods. The customer must reimburse EMGR for any costs incurred as a result. EMGR's taking back of the reserved goods constitutes a withdrawal from the contract. After taking back the reserved goods, EMGR is entitled to sell them, but not obliged to do so. The proceeds from the sale are to be credited to the customer's liabilities - initially less reasonable costs for sale.

(7) Any processing of the reserved goods by the customer is always carried out for EMGR. If the reserved goods are processed together with other materials that do not belong to EMGR, EMGR acquires co-ownership of the new item in proportion to the value of the reserved goods (final invoice amount, including VAT) to the other processed items at the time of processing. The co-ownership rights arising from this are considered to be reserved goods within the meaning of Section 1.

(8) If the reserved goods are inseparably mixed or combined with other items not belonging to EMGR, EMGR acquires co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that co-ownership arises as a result of the mixing, EMGR acquires proportionate co-ownership; if necessary for this, the customer hereby transfers his co-ownership share to EMGR. The customer keeps the sole ownership or co-ownership thus created for EMGR. In all other respects, the same applies as for the reserved goods delivered subject to reservation.

(9) The customer also assigns to EMGR the claims to secure our claims against him that arise from the combination of the reserved goods with a property against a third party.

(10) EMGR undertakes to release the securities to which it is entitled at the customer's request.

## **XII. Warranty**

(1) The quality of the service is based on the specific contractual stipulations made, otherwise on the relevant standards and the state of science and technology. Statements made by EMGR or its possible suppliers and manufacturers, including assistants and third parties, outside the contract, in particular public statements, for example in advertising or similar publications, do not constitute a contractual quality agreement or even a guarantee. Claims for defects do not exist even in the case of only insignificant, in particular production-related or technically unavoidable deviations from specifications, samples or in quality, color, weight, etc., unless delivery true to the sample was expressly agreed.

(2) EMGR only bears the risk of suitability for the intended purpose if it was commissioned to provide the relevant advice in advance. If EMGR has to deliver according to drawings, specifications, samples, etc. from its customer, the customer always assumes the risk of suitability for the intended purpose. The decisive factor for the contractual condition of the goods is the time of transfer of risk.

(3) The customer must examine EMGR's service immediately after receipt with commercial care. The customer must assert the right to remedy any identifiable defects immediately; otherwise identifiable defects are deemed irrelevant. In the case of hidden defects, this applies from the time they are discovered. The rules of Section 377 of the German Commercial Code (HGB) and comparable provisions, such as Art. 43 CISG, apply, which are applicable depending on the circumstances.

(4) In the case of justified defects, EMGR provides a guarantee at its own expense by means of subsequent performance (repair or, in particular, full or partial replacement delivery) at its own discretion. However, costs (in particular transport, travel, labor and material costs) that arise because the goods were taken away from the place of performance after delivery are borne by the customer. The customer also bears the removal and reinstallation costs, if any.

(5) If the subsequent performance ultimately fails, whereby EMGR is entitled to two attempts, the customer can demand a reduction in the remuneration and, in the case of not only insignificant defects, alternatively the cancellation of the contract and - if the conditions for this are met and exclusively in accordance with the provisions in these provisions - compensation. However, the customer can only claim cancellation of the contract if the service provided is of no interest to him overall.

(6) If one of the two or both types of subsequent performance is impossible or disproportionate, EMGR is entitled to refuse it with the legal consequences. EMGR can refuse subsequent performance as long as the customer does not fulfill its payment obligations to it to an extent that corresponds to the defect-free part of the service. In the case of justified complaints about defects, payments from the customer may be retained to an extent that is in reasonable proportion to the material defects that have occurred.

(7) The above provisions also apply to the delivery of a different item or a smaller quantity.

(8) The warranty does not cover natural wear and tear as well as defects and damage that are not the responsibility of EMGR, such as those that are attributable to the customer's improper use and faulty or negligent handling, excessive stress and processing that is not in accordance with the intended purpose (except when carried out by EMGR), use, operating errors, abnormal or inappropriate climatic conditions (e.g. room climate, heating, ventilation),

lack of maintenance, unsuitable operating materials, operation with the wrong type of current or voltage, connection to other unsuitable power sources and non-reproducible software errors, as well as other circumstances that arise due to special external influences that are not assumed under the contract. EMGR is also not liable for fires not caused by the product, lightning strikes, product-specific explosions, network-related overvoltages or moisture of any kind, as well as for normal natural wear and tear. If the customer or third parties make improper changes or repairs or carry out troubleshooting, there are no claims for defects for these or the resulting consequences.

(9) The removal or manipulation of product labels, serial numbers and the damage to seals will result in the loss of any warranty claim. Once the delivered goods have been reworked or processed, any complaint about previously obvious defects is excluded.

(10) If complaints are made that are not based on a defect in the delivered item, EMGR can charge an expense fee for troubleshooting and tests. The expense fee is usually based on the costs incurred.

### **XIII. Liability for damages**

(1) In the event of breaches of duty and also on the basis of other possible grounds for claims, EMGR is generally only liable for damages for grossly negligent and intentional conduct and only for damages that are typically foreseeable under the contract. However, EMGR is liable for damages that are typically foreseeable under the contract in the event of a breach of duties whose fulfilment makes the implementation of the contract possible in the first place and on whose compliance the contractual partner can regularly rely (so-called "essential duties" or "cardinal duties"), even in the event of only slight negligence. In the event of a breach of pre-contractual conduct obligations, this may constitute a waiver under certain circumstances. EMGR is liable in accordance with the provisions made in the individual case in the event of a guarantee expressly assumed as such. And EMGR is liable in accordance with the statutory provisions for damages to life, body and health as well as objects of private property and in accordance with the Product Liability Act.

(2) Any liability beyond that stipulated above is excluded. The exclusion of liability also applies to our employees, workers, staff, representatives and vicarious agents.

(3) The above provisions do not involve a change in the burden of proof to the detriment of the customer.

### **XIV. Liability for the violation of other secondary obligations**

(1) If the service provided cannot be used by the customer in accordance with the contract as a result of EMGR's culpable violation of secondary contractual obligations before or after the conclusion of the contract, or if damage occurs, the provisions in these delivery conditions also apply, excluding any further claims by the customer.

(2) EMGR has a claim for indemnification against the customer if EMGR has manufactured the delivered goods according to drawings, models or other specifications provided by the customer and does not know or should not have known that this violates the intellectual property rights of third parties. The indemnification obligation refers to all expenses that the contractual partner necessarily incurs as a result of or in connection with the claim by a third party.

(3) In the event of delays and difficulties that are caused by the customer's area of responsibility (e.g. subsequently complicated processes, delayed release of parts), the customer must financially compensate EMGR for any adverse economic consequences based on EMGR's calculations.

## **XV. Confidentiality / Intellectual property**

(1) The contractual relationship is personal, individual and confidential. Any disclosure of the contract in whole or in part by the customer is excluded.

(2) Each party must keep secret all information that it receives from the other party or otherwise learns of in the course of fulfilling the order and that is marked as confidential or whose confidentiality arises from its nature and significance, and must not disclose it to third parties. Affiliated companies within the meaning of Section 15 AktG are also considered third parties. The parties will use such information exclusively for the purposes for which it was made available under the contract.

(3) The models, methods, techniques and instruments used by EMGR (including software) as well as specifications, photos, drawings, designs, calculations or other documentation used or made available by EMGR are also considered confidential information, are the intellectual property of EMGR and may only be disclosed by the customer to third parties in the above sense with the express written consent of EMGR.

(4) All rights to EMGR's intellectual property (including but not limited to copyrights, designs, registered designs and utility models and all other relevant protective rights depending on the situation) to the know-how and to all information provided, including all information and knowledge provided prior to the contract and the results of contractual services, belong exclusively to EMGR unless expressly agreed otherwise.

However, the customer is entitled to use EMGR's intellectual property to the extent necessary in return for payment of the agreed fee, insofar as this corresponds to the agreed contractual purpose. In any case, EMGR remains entitled to use the scientific teachings and fundamental knowledge gained from the execution of the order.

(5) If goods protected by trademark law are delivered, the customer may only remove the markings affixed to the goods or packaging and resell the goods under a different trademark if EMGR has given its written consent to do so.

(6) The subsequent unauthorized disclosure or use of intellectual property and information is prohibited and obligates the customer to pay compensation for damages amounting to 150% of the total gross order value in each individual case of infringement, unless EMGR proves a higher amount or the customer proves that no damage occurred or a lower amount. If the unauthorized disclosure leads to a permanent economic disadvantage for EMGR, this lump sum compensation will be payable again in each month in which the violation continues.

(7) These obligations remain in full force and effect, even if the contract ends or is terminated. However, the obligation of confidentiality does not apply, by way of exception, to confidential information which can be proven to be a) already public at the time of its transmission, b) already known to the receiving party at the time of its transmission or, to the best of its knowledge, lawfully made accessible by third parties after its transmission, c) became public after its transmission without the receiving party's involvement, d) invented or developed by the receiving party or its employees after its transmission independently of the confidential information disclosed, or e) if the recipient is required to publish or submit the information to the competent authority due to a judicial or legal obligation, in which case the

parties must agree beforehand how this obligation can best be fulfilled, or f) for which there is no longer any need to keep it confidential due to the passage of time or changed circumstances.

## **XVI. Foreign business**

(1) The products supplied by EMGR are intended for commercial use and to remain in the delivery country agreed with the customer. Unless otherwise agreed, this is the country where the customer has its place of business at the time of the order. If the customer intends to re-export contractual products, this must be reported to EMGR as soon as possible and may require approval.

(2) The customer is obliged to provide EMGR with all information and documents required for export, transfer or import. In this respect, it is the customer's own responsibility to obtain any necessary approvals from the relevant foreign trade authorities.

(3) If the customer is based outside of the Federal Republic of Germany, he is obliged to comply with import sales tax and all other tax regulations of all kinds that apply to him. Non-domestic taxes, duties and other burdens of all kinds are the sole responsibility of the customer.

(4) The customer is obliged to provide EMGR with all information and documents necessary for dealing with the authorities and competent bodies, for example with regard to his VAT identification number, status as a commercial entrepreneur, the use and transport of the goods delivered, the arrival of his end customers and with regard to the statistical reporting obligation.

(5) If special legal regulations or special factual circumstances apply in the destination country that are not immediately apparent to EMGR, the customer must inform EMGR of this in good time.

## **XVII. Extraordinary termination / force majeure**

(1) EMGR is entitled to terminate the contract without notice if there is a significant deterioration in the customer's financial situation or if such cases actually threaten to occur and the customer cannot provide sufficient security. Such a financial situation of the customer can be assumed, among other things, if the customer applies for the opening of insolvency proceedings with regard to his assets or the conditions for the opening of insolvency proceedings are met or insolvency proceedings are not opened due to insufficient assets. The customer would have the same right if these conditions applied to EMGR.

(2) Each party is entitled to terminate the contract without notice if the other party culpably breaches contractual obligations to a not insignificant extent or if there are concrete indications that this is imminent. The extraordinary termination must generally be preceded by an unsuccessful written warning with a deadline of 30 days to remedy the breach of duty, except in the case of intentional or repeated breach of duty.

(3) In the event of force majeure, the fulfillment of EMGR's obligations is suspended ("Force Majeure"). Force majeure includes, for example, politically or climatically caused interruptions to the normal delivery process, unforeseeable operational disruptions of any kind, lack of raw materials and operating materials through no fault of our own and the correct and timely self-supply, late or insufficient provision of means of transport by third parties, blockage or

obstruction of railways, shipping routes or truck traffic, strikes and blockades, virus and other attacks by third parties on the EMGR IT system, unforeseeable obstacles due to applicable national or international provisions of foreign trade law or measures based on them, such as embargoes, and all other circumstances for which EMGR is not responsible and which have occurred despite compliance with the usual commercial care, but which result in a reduction or cessation of production, in each case also at EMGR's suppliers. If the period during which EMGR cannot fulfil its obligations due to force majeure lasts longer than 60 days, both parties are entitled to terminate the contract by registered letter without incurring any obligation to pay damages, provided that an adjustment of the contract would not be appropriate.

(4) Provisions that concern or presuppose fault (e.g. Sections 276, 280 of the German Civil Code) are not affected by the provisions in this chapter.

### **XVIII. Place of jurisdiction / place of performance**

(1) The law of the Federal Republic of Germany applies, including the CISG (UN Convention on Contracts for the International Sale of Goods).

(2) The exclusive place of jurisdiction is that of EMGR's registered office; exceptions to this are, however, permitted if a judgment is not enforced in the enforcement state. In such a case, EMGR may also sue the customer at its registered office or at the location of its business activities (the customer would have the same right in such a case of non-enforceability). The jurisdiction regulation also applies to disputes in document, bill of exchange or check proceedings.

(3) Unless otherwise stated in the order confirmation or these General Terms and Conditions, EMGR's registered office is the place of performance. This also applies to payments made by the customer to EMGR.

(4) EMGR has the option of resorting to arbitration instead of state courts. The parties have agreed that the German Institution for Arbitration is the competent arbitrator (DIS Rules 2012; 3 arbitrators; language of proceedings for national proceedings is German, for international proceedings English or, at EMGR's discretion, any other language of the contract; place of arbitration Munich/Bavaria/Germany).

(5) If legally permissible, the conduct of any evidence gathering or evidence gathering procedure in accordance with the rules or in the spirit of pre-trial discovery and e-discovery is always excluded.

(6) The language of the contract is German. The German version of a contract or text always takes precedence, regardless of any translation. If the parties also use another language, the German text takes precedence. The principle of the German language also applies to contract annexes.

### **XIX. Miscellaneous**

(1) If one or more provisions of these terms of delivery are or become invalid, the validity of the remaining provisions shall remain unaffected.

(2) The headings of the paragraphs or other subdivisions in a contract are for the sole purpose of making it easier to read. They are not intended to establish, limit, modify, provide legal arguments or in any other way have legal effect.

(3) By the words "and" and "or" in a contract, the parties mean one or the other, depending on the context in which these words are used; in general, all relevant alternatives are included when one of these words is used. The same applies to the use of the singular and plural and when explanatory examples are given in a contract or the word "in particular" is used, whereby such examples and lists are by no means exhaustive. The term "claims for damages" also includes claims for reimbursement of wasted expenditure. The masculine forms include the feminine and vice versa.

(4) A contract between EMGR and the customer does not establish a partnership relationship between the parties. Nothing establishes the right for one party to act as an agent or other authorized representative for the other or to enter into or establish any liabilities at the expense of the other. The purpose of a contract is restricted to the regulation of its specific content and is limited to the purposes for which it was entered into. Repeated deliveries do not establish any continuing obligation (e.g. authorized dealer relationship) or an obligation to continue to deliver, unless otherwise expressly agreed in a special contract.

(5) Declarations are deemed to have been received if they were sent to the last known address if the customer has given up his business address without a new designation

(6) If the term "in writing" is used, the form is also fulfilled if the contracting parties communicate electronically by fax, email or in another suitable manner. Matching emails meet the requirement of written form.

(7) Customer data that is required for the proper execution of the contractual relationship may be stored and used by EMGR in compliance with the relevant legal requirements.

(8) The customer assures, to the best of his knowledge, that he has full legal capacity to enter into the intended contract and that all necessary internal company coordination has been made for this purpose.