

General Terms and Conditions of Sale Online-Shop for international Customers



Status: November 2018

I. General Provisions

1. These General Terms and Conditions of Sale (hereinafter referred to as "General Terms") shall apply to all transactions made through orders placed via the online shop (hereinafter referred to as "Online Shop") available on the website www.emerce-shop.com. The website and the Online Shop are operated by emerce GmbH (hereinafter referred to as "Emerce" or "we").
2. To the extent that software, service and/or warranty contracts are offered in the Online Shop, additional or conditions other than these General Terms shall apply when these additional or other conditions are displayed and expressly included during the ordering process.
3. Our General Terms shall apply exclusively. Any deviating, contrary or supplementary general terms and conditions of the customer shall only become an integral part of the contract if and to the extent that we have explicitly consented to their applicability. This requirement of explicit consent shall also apply when we unconditionally perform the delivery to the customer despite being aware of the customer's general terms and conditions.
4. In case of doubt, for the interpretation of trading terms the Incoterms® as applicable at that time shall be binding. Currently, the Incoterms® 2010 are applicable.
5. Transactions in the Online Shop are limited to business customers (B2B). The customer hereby confirms to qualify as business customer, i.e. to enter into a transaction in exercise of his/her/its trade, business or profession and not in his/her capacity as ordinary consumer (Konsument/Verbraucher).
6. Products provided by Emerce are not suitable for use in medical areas, in railway traffic or aviation. In case of doubt, the customer shall consult with Emerce prior to any use.

II. Order process and contract conclusion, deviation from legal obligation in electronic business transactions

1. The presentation of goods and services in the Online Shop is for information purposes only and does not constitute a binding offer by Emerce. A contract shall only be deemed concluded between the customer and us if and when the customer places a binding order in relation to a good or service presented in the Online Shop (as specified under Section II.2) and we accept such offer (as specified in Section II.4).
2. The customer places a binding order by selecting the button "Order Now". The order refers to the goods and services which have been added to the shopping cart.
3. After placing an order, the customer receives a confirmation of order receipt via e-mail to the e-mail address provided by the customer (indicated in the shop as invoice recipient). The confirmation of order receipt shall not represent an acceptance of the order by Emerce or qualify as contract.
4. The acceptance of the order by Emerce is deemed effected through a separate order confirmation via e-mail or by delivering the goods and subject to correct price quotation.

III. Information on goods in the Online Shop

1. The product information provided in the Online Shop and all information provided by Emerce regarding the scope of deliveries and services (including, but not limited to technical data) (hereinafter referred to as "Documentation") are only an approximation unless the usability for the contractually agreed purpose requires an exact match. Unless expressly agreed otherwise, the Documentation neither constitutes agreement on quality nor guaranteed quality characteristics, but rather descriptions or indicators of performance. Unless agreed otherwise in writing, Emerce retains all rights to the offer documents, including copies thereof. The customer is not entitled to reproduce, disseminate, issue, process or re-design Documentation provided by Emerce.
2. The suggestions in the Online-Shop how to compose a product portfolio to a kit/bundle are only non-binding suggestions for the customer which may not be complete, accurate or suitable, including with respect to the technical functionalities displayed in connection with the suggestion. We explicitly point out that the display of a portfolio is not meant as advice or recommendation. It shall be customer's sole responsibility to assess whether the suggestions are suitable and usable for his purposes. In this respect, we recommend to obtain external professional advice.

IV. Provision of goods and services, terms of delivery, default

1. Delivery is made in accordance with the Incoterms® clause selected by the customer during the ordering process (currently FCA or CIP). If, pursuant to the selected Incoterms® clause, the customer has to provide the means of transport or the freight carrier, the customer is responsible for timely provision. Any delays have to be communicated to us in due time. Any costs resulting from such delay shall be borne by the customer.
2. If Emerce accepts the order of a service and warranty contract, a contract between the customer and Emerce is concluded through the order confirmation while the exact scope of services and the warranty will be included in the specifications and conditions for these service and warranty contracts.
3. Software shall be provided in the manner indicated in the Online Shop or during the ordering process.
4. Delivery periods and delivery dates refer to the date of handover to the forwarding agent, freight carrier or any other third party commissioned to provide transport services. Any delivery periods and dates targeted by us shall only be deemed approximations irrespective of any provided fixed period or a fixed date, as the case may be. For purposes of any delivery, the customer shall provide all required cooperation, in particular the provision of approvals and releases. Otherwise, the delivery period is deemed extended by an appropriate period of time.
5. Our delivery obligations are subject to the condition of full and punctual supply to us by our own suppliers and are also subject to the condition that necessary export approvals are granted and other documents required for export are obtained.
6. Subject to Section X, any liability for any inability of any delivery or delays of any delivery to the customer shall be excluded to the fullest extent permitted by law. To the extent that any circumstances make delivery for us significantly more difficult or render it legally or practically impossible and the impediments are not only of short, temporary nature, we are entitled to withdraw from or terminate the contract by written notice. In such an event, we will refund the customer any amount paid in advance. No further claims towards us apply. In the case of impediments of short, temporary nature, the delivery periods shall be extended or the delivery dates shall be postponed by the period during which the impediments exist. To the extent that the customer cannot be reasonably expected to perform the contract, the customer may withdraw from the contract by written notice to us.
7. We shall be entitled to make partial deliveries in particular pursuant to the agreed terms of delivery if the customer has made a corresponding selection during the ordering process or if this has been agreed otherwise

between the customer and us. Even if partial deliveries were not agreed upon, we are entitled to make partial deliveries.

8. If the customer is in default of acceptance, we are entitled to damages resulting therefrom, including reimbursement of additional expenses (e.g. costs for storage/warehousing). As a lump-sum reimbursement for additional expenses, we will charge a lump-sum amount of 0.5% of the invoice amount for each full week which passed after the date on which the default of acceptance commenced, however not more than 5% of the invoice amount. We reserve the proof of higher damages and all further rights under statutory law, particularly the right to withdraw from the contract. The amount of the lump-sum compensation shall be credited to all our further monetary claims.

9. Emerce reserves the right to provide services at its reasonable discretion in countries with high security risks if such a risk has occurred after conclusion of the contract. In this context, the standards of City/Country Security Assessment Rating (CSAR), risk management UET® or similar institutions that provide risk estimates for certain regions shall apply. In such a case, Emerce is entitled to withdraw from or terminate the contract.

V. Prices, invoicing, terms of payment

1. The prices stated in the Online Shop are net amounts and do not include value-added tax or other taxes, customs duties or other levies payable under applicable laws. Any taxes, levies and customs duties shall always be borne by the customer and increase the final price unless another agreement, including in the form of Incoterms®, has been concluded. **The price stated in the Online Shop shall not comprise transport, packaging and insurance costs even if CIP is selected. These costs are calculated separately and invoiced to the customer.**
2. The invoice shall be issued by electronic transfer via e-mail in a common format (e.g. PDF file) to the e-mail address indicated in the shop by the customer as invoice recipient.
3. All payments have to be made in EURO within 30 days from the invoice date, unless agreed otherwise.
4. If the customer does not make payments when due, the outstanding amounts are subject to interest of 5% p. a. from the due date. The right to claim additional damages in the event of default remains reserved.
5. If the customer is in default or if, after conclusion of the contract, facts and reasonable doubts become known that question the customer's creditworthiness, Emerce is entitled to declare the entire outstanding amounts immediately payable, to request prepayments or the provision of securities or, after the expiry of an appropriate grace period, to withdraw from the contract, notwithstanding any other rights.
6. The customer is not entitled to set-off or to hold back due payments.

VI. Transfer of risk, place of performance

1. In the case of the sale of goods, the risk shall pass to the customer no later than upon handover of the goods to the forwarder, freight carrier or to another third party commissioned for carrying out shipment, unless explicitly agreed otherwise.
2. If shipment or handover is delayed due to a circumstance for which the customer is responsible, the risk shall pass to the customer from the day on which the delivery item is ready for shipment and Emerce has notified the customer thereof.
3. The place of performance for all obligations from the contractual relationship is Emerce's registered office, except as otherwise specified.

VII. Retention of title

1. To the extent possible under applicable laws, Emerce shall retain, and the customer hereby agrees that Emerce retains, title to the goods delivered (goods subject to retention of title) until any claims from the business relationship are fulfilled. Prior to that the transfer of title to the customer, any pledge or assignment as security of the goods is prohibited. In addition, where necessary, Emerce may register its retention of title with all competent authorities or offices and take any other action necessary or advisable to retain title to the goods delivered. Upon request by Emerce, the customer shall be required to assist Emerce to effect such retention of title [at the customer's own costs].
2. Any machining or processing work carried out in relation to the goods subject to reservation of title is performed for the benefit of Emerce without any obligations for Emerce arising from such work. In the case of processing together with third-party goods that do not belong to Emerce, Emerce shall be entitled to a co-ownership interest in the new goods based on the ratio of the invoice value of the goods subject to reservation of title relative to the other goods at the date of processing. The same shall apply if the customer obtains sole ownership. The new goods, which are stored by the customer for Emerce free of charge, shall be considered goods subject to reservation of title within the meaning of this clause.
3. The customer is entitled to resell the goods subject to reservation of title in the normal course of business subject to reservation of title.
4. The customer's receivables arising from the resale of the goods subject to reservation of title are transferred to us in advance. They serve as a security to the same extent as the goods subject to reservation of title. If the goods subject to reservation of title are sold by the buyer together with other ones not supplied by us, the assignment of the receivables from resale shall only apply to the amount of the resale value for the respective goods subject to reservation of title. In the event of the disposal of goods in which we have a co-ownership interest pursuant to section VII.2, the assignment of the claim relates to the amount of this co-ownership interest.
5. The customer is authorised to collect claims arising from resale until our revocation which is admissible at any time. We will only make use of our right of revocation if the customer does not meet his payment obligations towards us, an application for the opening of insolvency proceedings has been filed or another significant lack of solvency appears. The customer may only assign the claims - including the sale of receivables to factoring banks - subject to our prior written consent. Upon our request, the customer is obliged to notify its buyers about the assignment made to us and to give us the information and documentation which we require for collection of the claim(s). We are entitled to notify the buyers about the assignment ourselves.
6. In the case of pledges, seizure or other dispositions or interferences from third parties, the customer shall notify Emerce without undue delay.
7. In case of customer's breach of obligation including, but not limited to, payment default, we are entitled, after unsuccessful expiry of an appropriate period for performance granted to customer, to withdraw from the contract

and to take back the goods subject to reservation of title as well as, for this purpose, to enter the customer's premises and to realise the goods in order to offset the proceeds against the existing liabilities due to Emerce.

8. If the realisable value of the securities exceeds our claims by more than 10%, we release securities of our choice upon the customer's request.

9. If the existing provisions conflict with applicable laws in the country of destination, the statutory provisions regarding reservation of title apply that come closest to the foregoing.

VIII. Performance bond

In the event of a delivery abroad, for the purpose of securing the payment claims, Emerce is entitled to request from customer the provision of an unlimited, directly enforceable performance bond subject to German law that is issued by a credit institution admitted in the EU.

IX. Warranties

1. In case of material defects or defects of title, the statutory legal provisions shall apply, unless otherwise set forth in the following.

2. **Our warranty is excluded in case of the use of products in medical applications, in railway traffic, aviation or similar use. In the case of resale, the customer has to explicitly mention such lack of suitability and to impose on the buyer a corresponding obligation applying in the case of a further resale so that each buyer of products is informed about this specific circumstance.**

3. It shall be the customer's responsibility to check the delivered goods and notify us in writing about any defects or false or incomplete deliveries without undue delay, however not later than ten (10) working days after handover or, in the case of hidden defects, within ten (10) working days from the date of obtaining knowledge of the defects or the date on which the defects would have been discovered through the exercise of reasonable investigations. If the customer does not notify us in writing in due time, the delivered goods are deemed fully accepted.

4. We shall be entitled to remedy the defects of the delivered goods, in our own discretion, by repairing the delivered goods or by delivering non-defective goods. If we fail to remedy the defect, we shall, at our option, either reduce the purchase price or withdraw from the contract.

5. We are entitled to make our remedial action subject to the condition that the customer pays the remuneration that is due.

6. The customer has to provide us with appropriate time to remedy the defects and, in particular, has to handover, or to make accessible to us, the defective goods for the purpose of performing a review. In case of a replacement delivery, the customer has to return to us the defective goods in accordance with the statutory legal provisions, unless we waive our rights in this respect.

7. Our obligation to remedy the defects shall neither include the disassembly of the defective good nor the reassembly unless we have explicitly assumed an obligation to assemble in the underlying contract.

8. Customer's warranty rights shall lapse if the customer, without our consent, modifies the delivery item or has it modified and, in doing so, makes remediation of the defects impossible or unreasonably more difficult. In any case, the customer has to bear the additional costs for remediation of the defects arising from such modification.

9. The general statute of limitations for warranty claims is one year from the delivery date.

10. Customer's claims for damages or reimbursement of frustrated expenses in case of defects shall only be available in accordance with the provisions of Section X and are excluded otherwise. Section IX.9 shall remain unaffected which means that, if the requirements of this section are met, claims for damages resulting from defects shall also expire within one year.

X. Limitation of liability, disclaimer, indemnity

1. Our liability in connection with or arising out of the contractual relationship with the customer, regardless of the ground (contract or tort or otherwise) shall be limited, to the fullest extent permitted by law. In no event shall we be liable for (i) any form of negligence (including gross negligence to the extent permitted by law) by us or by any of our employees, executives or affiliates; (ii) indirect damage, consequential damage and/or loss of profits or unrealised savings; and (iii) any acts and omissions on the part of auxiliary persons of us or the supplier, be this contractual or non-contractual

2. Any liability for damages that results from the use of the goods other than for the ordinary and designated use is excluded. Upon Emerce's request, the customer shall indemnify Emerce from any third-party claims that are asserted against Emerce in connection with the use of the goods other than for the ordinary and designated use.

XI. Miscellaneous, choice of law, place of jurisdiction

1. The failure of any of us or the customer to enforce any of the provisions of the General Terms or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way to affect the validity of the contract and the General Terms, respectively. The waiver of any breach of agreement by any party hereto shall not operate to be construed as a waiver of any other prior or subsequent breach.

2. Neither the contractual agreement nor any rights or obligations thereunder shall be assigned by any party, including, but not limited, pursuant to a transfer of assets (*Vermögensübertragung*) or divestiture (*Spaltung*), without the prior written consent of the other party. The foregoing shall not apply to any rights and claims assigned by us as security to its financing sources (or common agent or representative of such financing sources).

3. If any provision of the contract including these General Terms is held to be invalid or unenforceable for any reason it shall be revised rather than rendered void, if possible, in order to achieve the intent of the parties to the fullest extent possible. In any event, all other provisions of the contract including these General Terms shall be deemed valid and enforceable to the fullest extent possible.

4. All legal relationships between Emerce and the customer in connection with this contractual relationship shall be governed by, and construed in accordance with, the substantive laws of Switzerland. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

5. Any disputes arising out of or in connection with the contractual relationship shall be submitted to the jurisdiction of the competent courts of the City of Zurich, Switzerland (and, if permitted, to the Commercial Court of the Canton of Zurich, *Handelsgericht des Kantons Zürich*), venue Zurich 1. Emerce shall also be entitled to file actions before any other competent court.