

# GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY ("GTC") OF EMCAB GMBH (HEREINAFTER REFERRED TO AS "EMCAB")

## 1. General Terms and Conditions

1.1. All deliveries, services, sales and offers of Emcab are made or effected exclusively on the basis of these GTC. They are an integral part of all contracts that the seller concludes with its customers, insofar as these are entrepreneurs within the meaning of § 14 BGB (hereinafter referred to as «Customers»), for the offered sales, deliveries or services. They apply also to all future deliveries, services or offers to Customers, even if they are not separately agreed on again.

1.2. Emcab does not accept any confirmation, counter offer or other note by the Customer referring to or including the general terms and conditions of the Customer; conflicting or deviating general terms and conditions of the Customer only apply if expressly confirmed in writing by Emcab.

## 2. Offer, Acceptance, Conclusion of Contract

All offers made by Emcab are non-binding, unless they are expressly marked as binding or if they contain a specific term of acceptance. Emcab can accept orders or commissions within (14) days after they have been received.

## 3. Price, Payment, Default and Collateral

3.1. Unless otherwise arranged, the prices are to be understood as delivered to the designated place (DAP according to Incoterms 2020) - excluding statutory value added tax, other taxes and levies, customs duties and any charges. If such taxes, customs duties or levies are incurred upon import, they have to be paid separately by the Customer. Invoicing shall take place at the time of collection of the goods. Payment shall be made immediately after invoicing by bank transfer to Emcab. Payments are due immediately, unless otherwise agreed in text form.

3.2. The deduction of cash discount requires a written agreement.

3.3. Failure to comply with the payment date will cause default of payment. During the time of default, the purchase price shall be charged with the applicable statutory default interest rate. For each reminder following the default, Emcab may claim indemnity in the amount of € 10.00 per reminder. The Customer remains entitled to prove a lower damage to Emcab. Emcab remains entitled to prove higher damages to the Customer. With respect to merchants, Emcab's claim to the commercial maturity interest (§ 353 HGB) remains unaffected.

3.4. If the claim is endangered by a deterioration of the Customer's creditworthiness, Emcab is entitled to call in its claims at any time or to demand the provision of collateral. In such situations, Emcab is also entitled to make outstanding deliveries only against advanced payment or against provision of collateral.

Deterioration of the Customer's creditworthiness is given in particular if a trade credit insurance concluded by Emcab is terminated with regard to the customer or if the insurance no longer offers or would offer coverage regarding the customer in the future. A deterioration of the Customer's creditworthiness is also given if the customer exceeds a payment deadline by more than 3 weeks or fails to meet two deadlines in a row.

#### **4. Prohibition of Assignment and Offsetting**

4.1. Emcab may set off all claims against all counterclaims of the Customer. Emcab is free to decide against which counterclaim the set-off is made.

4.2. The Customer may assign rights and claims arising from contracts with Emcab to third parties only with Emcab's prior consent.

4.3. The Customer shall only be entitled to set-off rights if its counterclaims are undisputed, accepted by Emcab or established as final as a matter of law. The Customer is only entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

#### **5. Packaging**

Unless otherwise agreed, the fiberglass is delivered on transport drums fixed on a wooden structure. The transport drums are wrapped with a layer of Drum Flex. Packaging of all other goods is carried out according to the manufacturer's guidelines. Return of the packaging material is excluded. The Customer is obliged to dispose the packaging material properly.

#### **6. Transfer of Risks, Commerce Clauses, Shipment**

6.1. Delivery by Emcab is made to the designated place (DAP according to Incoterms 2020). Incoterms 2020 shall apply to the interpretation of the commerce clauses. Means and routes of transport shall be left to Emcab's choice. Emcab also determines the forwarding agent and the carrier.

6.2. If, in deviation from clause 6.1, it is agreed that delivery shall take place ex works (EXW according to Incoterms 2020), goods notified by Emcab to the Customer as ready for shipment must be called off by the Customer without undue delay. Otherwise, Emcab is entitled to store them at the customer's expense and risk at its own discretion and to invoice them as delivered ex works. In addition, Emcab is entitled to demand compensation from the Customer for any other reasonable costs and damages.

6.3. Emcab is entitled to make partial deliveries, provided that these are customary or reasonable in the individual case, which means that the delivery of the remaining ordered goods is ensured, the partial delivery is usable for the Customer within the scope of the contractual intended purpose and the Customer does not incur any significant additional expenses or costs as a result.

6.4. The shipment shall be insured against theft, breakage, transport, fire and water damage or other insurable risks only upon express request of the Customer and at the Customer's expense.

## 7. Delivery Time, Delay in Delivery

7.1. The agreed delivery times shall be binding insofar as the Customer has fulfilled all its obligations in a timely manner (e.g. provision of the necessary official certificates, in particular any customs and import certificates, opening of a letter of credit or payment of an agreed deposit or advance payment). The agreed delivery times refer to the time of notification of readiness for dispatch. The agreed delivery times shall also be deemed to have been complied if the goods cannot be dispatched on time by no fault of Emcab.

7.2. If Emcab is prevented from fulfilling its obligations due to force majeure affecting Emcab or its suppliers and which Emcab cannot avert even with reasonable care under the circumstances of the case, e.g. war, riots, forces of nature, strikes, lockouts, accidents, official orders, other operational disruptions and delays in the delivery of essential operating materials or primary materials, the delivery period shall be extended by the duration of the impediment and a reasonable start-up period.

7.3. If delivery becomes impossible or unreasonable for Emcab due to obstructions caused by force majeure, Emcab may withdraw from the contract; the Customer has the same right if he cannot reasonably be expected to accept the ordered goods due to the delay.

7.4. A reminder from the Customer is required for a delay in delivery to occur.

7.5. Further mandatory legal claims and rights of the Customer remain unaffected.

## 8. Warranty for Defects, Period of Limitation, Installation and Assembly Instructions

8.1. The Customer has to inspect the goods immediately upon receipt for existing defects and proper condition. Obvious defects must be noted by the Customer on the delivery documents after receipt of the goods and reported to Emcab without delay. The assertion of claims due to such obvious defects is excluded if the notification of these defects was not made within the aforementioned period.

8.2. Insofar as defects of the goods were not obvious upon delivery or appear after delivery, such defects shall be notified to Emcab immediately after their discovery. The assertion of claims due to such defects shall be excluded if the notification of such defects was not made within the stated period.

8.3. Emcab may, at its own discretion, repair or replace defective goods up to two times (supplementary performance). Insofar as the second attempt of supplementary performance has also failed, the Customer may withdraw from the contract or demand a reduction.

8.4. Except in the cases specified in clauses 10.1 and 10.2, claims for defects shall become time-barred one year after delivery of the goods, but no later than fifteen months after Emcab's notification of readiness for shipment, unless pursuant to §§ 438 section 1 No. 2 or § 634a section 1 No. 2 the goods are constructions or items which have been used for a construction in accordance with their customary manner of use and have caused the defectiveness of such construction. Other special statutory provisions on the limitation period (in particular § 438 section 1 no. 1, 71 section 3, §§ 444, 445b BGB) shall also remain unaffected.

8.5. The aforementioned provisions shall apply accordingly if other goods or short quantities are delivered instead of the agreed goods.

8.6. Claims for defects by the Customer shall be excluded if the defect is based on a violation of the written assembly and installation instructions provided by Emcab or a violation of instructions from Emcab regarding restrictions on use.

### Emcab GmbH

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## 9. Retention of Title

9.1. The delivered goods remain the property of Emcab until all claims, in particular the respective balance claims, which Emcab has against the Customer within the scope of the business relationship have been fulfilled. This means that ownership does not pass to the Customer as soon as the goods are handed over to the Customer, but that Emcab retains ownership of the goods until all liabilities to Emcab have been fully settled.

9.2. The Customer is permitted to process the reserved goods in the ordinary course of business and shall do so on behalf of Emcab as manufacturer, but without obligating Emcab.

9.3. If the Customer processes, combines or mixes reserved goods with other goods, which is permitted to the Customer in the ordinary course of business, Emcab shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other processed or used goods. If Emcab's ownership expires due to combination or mixing, the Customer already now transfers to Emcab the ownership rights to the new stock or item to the extent of the invoice value of the reserved goods and shall hold them in custody for Emcab free of charge.

9.4. The Customer may resell the reserved goods only in the ordinary course of business, under its normal terms and conditions of business and as long as it is not in default of claims of Emcab, provided that it agrees with its customers on a retention of title and that the claims from the resale are transferred to Emcab by way of assignment. The Customer is not entitled to dispose the reserved goods in any other way. The use of the reserved goods for the performance of contracts of work and services shall also be deemed to be a resale.

9.5. If the Customer resells the reserved goods together with other goods not delivered by Emcab, the claims from the resale or the respective balance claims shall be assigned to Emcab in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In case of resale of goods in which Emcab has a co-ownership share according to clause 9.3, the Customer shall assign a part of the claim to Emcab corresponding to Emcab's co-ownership share.

9.6. The Customer shall remain authorized to collect the assigned claim. Emcab's authority to collect the receivables itself remains unaffected. Emcab is obligated not to collect the claims as long as the Customer is not in default of payment towards Emcab and in particular no application for the opening of insolvency or similar proceedings has been filed. If this is the case, however, Emcab may demand that the Customer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents to Emcab and notifies its purchasers of the assignment. The Customer is in no case entitled to otherwise assign the claims against his purchasers.

9.7. In the cases mentioned in Clause 3.4, Emcab is also entitled to prohibit the Customer from processing and reselling the reserved goods. In these cases, as well as in the event of a breach by the Customer of the obligations under Clause 9.4, Emcab may also demand the return of the reserved goods at the Customer's expense, excluding any right of retention of the Customer.

9.8. The Customer already now authorizes Emcab to directly or through authorized agents enter and drive on its premises and business premises, and to take possession of the reserved goods, insofar as the case of default occurs.

9.9. If the value of the existing securities exceeds the secured claims by more than 10% in total, Emcab is obliged to release securities of its choice to this extent at the Customer's request.

9.10. The Customer is obliged to notify Emcab immediately about any seizure of the reserved goods or other impairments of the reserved goods by third parties (e.g. lessor's lien).

9.11. To the extent a retention of title cannot be agreed on with the Customer under the applicable law, a lien on the goods, on the further processed goods or on the Customer's claim against third parties shall be deemed to have been agreed between Emcab and the customer. Lien means that the goods serve as security for Emcab until full payment of the purchase price and thus may be further processed or resold by the Customer only with Emcab's consent.

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## 10. Liability/Damages

10.1. In accordance with the statutory provisions Emcab shall be liable without limitation for damages resulting from culpable injury to life, body and health, from intentional or grossly negligent breach of duty, as well as from culpable breach of essential contractual obligations (the obligation whose fulfillment makes the proper execution of the contract possible in the first place and on whose observation the contractual partner regularly relies and may rely), insofar as the achievement of the purpose of the contract is jeopardized thereby.

10.2. Emcab shall also be liable without limitation for claims arising from the product liability law as well as for other claims that are indispensable according to the statutory regulations.

10.3. In all other cases, Emcab's liability for damages shall be limited to the amount of the compensation for the foreseeable damage typical for the contract, but no more than the order value.

10.4. The preceding limitations of liability shall also apply in favor of Emcab's legal representatives and vicarious agents.

## 11. Place of Fulfilment, Place of Jurisdiction, Applicable Law

11.1. Place of fulfilment is the registered office of Emcab.

11.2. The place of jurisdiction for all legal disputes arising from or in connection with these GTC is the registered office of Emcab. However, Emcab is also entitled to sue the Customer at the Customer's general place of jurisdiction.

11.3. All legal relations between Emcab and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany.

11.4. The application of the UN Convention on contracts for the international sale of goods is excluded.

11.5. In the event of any discrepancies between the German and English versions of the GTC, only the wording of the German version shall be binding.

## 12. Credit Checks and Data Transfer to Credit Agencies

Emcab transmits data to credit agencies in accordance with §§ 6 sec. 1 letter f DSGVO regarding the execution of the contract between Emcab and the Customer in accordance with the contractual provisions (in particular regarding the timely payment). The credit agencies store and use the data received, among other things, to assess the credit risk of the Customer. The credit agencies transmit the data received to their respective contractual partners in order to provide them with information for assessing the Customer's creditworthiness.

## 13. Severability Clause, Other

13.1. Should individual provisions or regulations of these general terms and conditions of business and delivery be or become invalid, the remaining provisions and regulations shall remain unaffected.

13.2. Amendments and supplements to these GTC are only effective if they are agreed on in text form. With the exception of managing directors or authorized signatories, Emcab employees are not entitled to make verbal agreements that deviate from the written agreement.

As of 10.01.2021

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