

**General Terms of Delivery and Payment of Ebmeyer Werkzeugbau GmbH (EWB)****I. Area of application**

1. Our General Terms of Delivery and Payment are valid exclusively. We do not accept any adverse or dissenting conditions of customer unless we agree explicitly to their validity in writing. Our General Terms of Delivery and Payment shall also be valid if we perform unreservedly the delivery to customer being aware of customer's adverse or dissenting conditions.
2. These General Terms of Delivery and Payment shall also be in effect for all orders conferred to Ebmeyer Werkzeugbau GmbH (EWB) in future regardless of EWB referring to them in each individual case.
3. Our General Terms of Delivery and Payment shall only be in effect vis-à-vis contractors within the meaning of § 14 BGB as well as vis-à-vis legal entities under public law and public law special funds.

**II. Offer and Conclusion of Contract**

1. Offers are always subject to change. The General Terms of Delivery and Payment constitute the basis for all offers.
2. Orders must be confirmed in writing to become effective. The content of such written confirmation shall be applicable for the contractual relationship.

Subsidiary agreements must be in writing to become effective and must be confirmed by EWB in writing. Silence with regard to our General Terms of Delivery and Payment shall be deemed as acceptance of these terms in case of contract.

3. We reserve our rights of ownership in illustrations, drawings, calculations, engineering drawings and documents, models, patterns and any other bidding documents, also as CAD-data. We like to point out that we hold the copyrights in this regard and that the relevant rights of use are granted only insofar as required for the contract performance. This shall also be applicable for written documents marked "confidential". Prior to forwarding them to third parties customer is required to obtain our explicit written approval.

**III. Price**

1. If not stated otherwise in the order confirmation our prices apply "ex works" (EXW) in EUR plus legally applicable VAT at the date of delivery.
2. In addition to the tool kits agreed upon engineering drawings and documents prepared by EWB including itemized lists are included in the price.
3. Costs for freight, packing, shipping, transport and other additional expenses are not included in the price and are invoiced in addition. The packing will be invoiced to customer at self-cost.

4. Not included in the price and to be agreed upon separately are:

- supply of technological remedies, such as CAD-data, patterns prepared by EWB, models, CNC-programs, auxiliary tools, gauges, etc.
- temporary pilot production parts
- off-tool first parts, including first part test report
- wear and tear parts and spare parts
- active component coatings
- assembly and adaptation services at customer's manufacture line
- handover of tools at customer's plant

#### **IV. Payments**

1. If not agreed upon otherwise payments shall fall due as follows:

- for contract values up to EUR 50.000,00 net within 30 days after date of invoice without discounts
- for contract values exceeding EUR 50.000,00 net:  
30% after order confirmation by EWB  
30% after delivery of sample parts from the tools ordered  
30% at delivery of tools  
10% after adaptation of tools at customer's plant, at the latest 6 weeks after delivery of tools, each within 30 days after date of invoice without discounts.  
This is also applicable for invoice amounts of part-deliveries.

2. Orders for payment and bills of exchange are only accepted if agreed upon in writing. If EWB accepts orders for payment, bills of exchange or cheques this shall be considered as conditional payment and is subject to the actual credit entry.

Customer shall bear discount charges and any judicial and extrajudicial costs related to the collection of bills of exchange and cheques.

3. The deduction of cash discount must be agreed upon in writing. Cash discount granted by EWB shall be omitted if customer is in delay for the payment of previous supplies or services.

4. If the deadline is exceeded EWB shall be entitled after reminder to request interest for late payment in the amount of 9% above the basic interest rate whereby proving a higher damage caused by delay shall be possible at any time.

5. If customer is in delay for payment EWB shall be free to decide whether she will refuse the further fulfilment of contract. Moreover, the legal provisions concerning the consequences of a delay in payment shall apply.

6. EWB shall be entitled at any time, especially in case of doubts concerning customer's solvency or willingness to pay, to request security for her pecuniary claims. If customer refuses to provide such security EWB may withdraw from the contract and claim damages.

7. Irrespective of the contractual relationship all claims of EWB vis-à-vis the customer shall immediately fall due if customer is in delay for payment or a factual situation arises entitling EWB to a withdrawal in accordance with legal or contractual provisions.

8. Retention of payment or a set-off against possible counter-claims of the customer shall be excluded with the exception of uncontested or legally valid claims.

9. Regardless of customer's provisions to the contrary any received payments shall pay off costs, then interest and the principal claim at last, in case of several claims the oldest at first.

## **V. Deliveries**

1. If not agreed upon otherwise all deliveries are made ex works. EWB shall be entitled to partial deliveries. All deliveries are at customer's risk. Insurance shall only be provided for at customer's costs and explicit wish. Transport packages and any other packages are not taken back in accordance with the packaging ordinance. Customer shall arrange for a waste disposal at his own costs.

2. If a fixed delivery period is agreed upon it shall commence on the day of dispatching the written order confirmation by EWB provided that all technical and commercial details have been clarified. Delivery periods indicated by EWB refer to the delivery date and shall be considered as adhered to if the tools leave the works at that date or if the customer is informed about the readiness for delivery.

3. Customer's adherence to his duty to cooperate shall be a precondition for the observance of the delivery period. This means:

- provision of updated component data and drawings according to schedule, press documentation, engineering guidelines, models and other production tools. Customer shall be completely responsible for the accuracy and actuality of data. Additional expenses for the use of these production tools due to rework shall be borne by customer.
- timely and free of charge delivery of testing material of the quality in accordance with the contract
- immediate remedial of ambiguities during order fulfilment if customer is responsible

4. EWB shall be released from the observance of delivery periods for the duration of disruptions in case of force majeure, disruptions and similar circumstances beyond EWB's control. This is also applicable in case these events occur at a time of EWB being in delay unless EWB caused the delay with intent or through gross negligence. The contractual parties shall be obliged to disclose the relevant information immediately as reasonable and to adjust their obligations according to the changed conditions in good faith.

In such cases the customer shall particularly not be entitled to withdraw from the contract and/or to claim damages.

## **VI. Workmanship of the tools**

1. EWB assumes the complete warranty for good and neat workmanship of the tools.
2. The tools are produced in accordance with the specifications agreed upon and the state of the art.
3. The requirements for a possible active component coating, such as:
  - material selection
  - heat treatment
  - surface roughnessmust be agreed upon separately.
4. Special equipment of automation engineering, such as:
  - electronic monitoring devices
  - central lubrication in the tool
  - pneumatic equipment
  - conveyor belts, etc.must be agreed upon separately.

## **VII. Acceptance and Handover of the Tools**

1. If agreed upon the tools shall be tested prior to delivery at EWB's plant on machines available. Type samples, first sample test report and acceptance reports are sent to customer for his appraisal. If customer does not object within 10 days after receipt the tools shall be considered as accepted.
2. An acceptance and handover of the tools requested by customer and explicitly agreed upon must be carried out at EWB early enough and prior to delivery. The costs shall be borne by customer.
3. An acceptance and handover of the tools at customer's plant must be agreed upon separately.

## **VIII. Reservation of title**

1. Until the complete payment of all EWB claims towards the customer at the date of invoice is effected the tools delivered remain in EWB's ownership.
2. In case of processing or treatment of the goods subject to reservation of title EWB shall be entitled to (co-)ownership of the value of the goods subject to reservation of title prior to processing or treatment. A sale of the goods subject to reservation of title shall only be admissible in due business dealings of the customer. If customer sells the goods subject to reservation of title he shall assign the claim towards the acquiring party to EWB at the date of sale. EWB hereby accepts the assignment. Customer shall commit the acquiring party to effect payment directly to EWB within the scope of the payment liability resulting from the resale. Any exceptions must be agreed upon previously between EWB and customer in writing.
3. Furthermore, directions on the goods subject to reservation are not admissible, particularly transfer by way of security or pledging.

4. If enforcement is effected on customer's assets affecting the goods subject to reservation of title EWB must be informed immediately indicating all data required (enforcement authority, file number, enforcement records, if available).

5. Objects provided by EWB to customer and which are not part of the work performance (e.g. drafts, simulation documentations etc.) remain in EWB's ownership.

#### **IX. Warranty provisions**

1. Customer's warranty claims imply that he has duly and completely met his inspecting and complaint obligations in accordance with § 377 HGB. In either case notices of defects must be submitted in writing.

2. Warranty for defects shall comprise exclusively defects for which EWB is responsible and which occur during normal operation. EWB shall not be liable for damages occurring through normal wear out, faulty treatment or repair by customer or third parties.

3. If a defect is on hand EWB may opt for supplementary performance by way of remedy of defects or for the delivery of a new object free from defects. If the supplementary performance fails EWB shall be entitled to a repeated supplementary performance.

4. EWB shall be liable in accordance with the legal provisions insofar as customer asserts claims for damages based on intention or gross negligence, including intention or gross negligence of EWB's representatives or assistants. If any intentional breach of contract by EWB is not on hand the liability for damages shall be limited to the reasonably foreseeable, typically occurring damage. Claims for damages for consequential harms caused by a defect shall be excluded if not based on intention.

5. EWB shall be liable in accordance with the legal provisions if a significant contractual obligation is infringed negligently. In this case the liability for damages shall be limited to the reasonably foreseeable, typically occurring damage, too.

6. Liability due to negligent injury of life, body or health shall remain unaffected. The same applies to the compulsory liability in accordance with the Product Liability Act.

7. Unless otherwise specified as aforesaid liability shall be excluded.

8. The warranty period for claims for defects amounts to 1 year, counted from passing of the risk.

#### **X. Joint liability**

1. Any other liability for damages beyond as provided for in IX. shall be excluded irrespective of the legal nature of the asserted claim. This pertains in particular to claims for damages from culpa in contrahendo, due to other breaches of duty or due to tortious claims on compensation of material damages in accordance with § 823 BGB.

2. Insofar as the liability for damages is excluded or limited this shall also apply with regard to the personal liability for damages of officers, employees, staff, representatives and assistants of EWB.

## **XI. Place of performance and place of jurisdiction**

For any disputes arising directly or indirectly from the contractual relationship

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shall be the place of performance for deliveries and payments as well as place of jurisdiction, also for proceedings based on bills of exchange or cheques. EWB may choose any other local court or district court.

## **XII. Miscellaneous Provisions**

1. German law shall apply exclusively for all contracts, transactions and legal acts even if customer's residence or place of business is abroad. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded explicitly. In lieu thereof the German National Civil Law and Commercial Law shall apply.
2. If any individual provision of these General Terms of Delivery and Payment becomes ineffective – caused in particular by amended legal provisions – the remaining provisions of these Terms shall remain unaffected. The contractual parties commit themselves to replace the ineffective provisions by the agreement of such effective provisions coming nearest to the economic purpose and the actual intention of the parties.
3. Any statements affecting the effectiveness of the contractual relationship must be in writing. Any amendment of the requirement for written form must also be in writing.