

General Terms and Conditions of the Company Emba-Protec GmbH & Co. KG

The business relationships between Emba-Protec (hereinafter referred to as the "Entrepreneur") and its contracting partners (hereinafter referred to as the "Customer") shall exclusively be subject to the General Terms and Conditions specified below in the version applicable at the time an order is placed. They shall be an integral part of any and all deliveries performed and services rendered by the Entrepreneur to its Customer. Deviating terms and conditions shall engage the Entrepreneur only to the extent that the Entrepreneur agreed in writing to their applicability in this regard.

Tool Purchase Agreement / Transfer of Rights and Obligations

1. The Entrepreneur manufactures protective packaging in particular as well as standard packaging in general and distributes said packaging on the market. The information contained in leaflets, advertisement, documentation and the like shall be subject to change without notice and be non-binding; they shall not be guaranteed qualities, unless such guarantee is granted both explicitly and in writing. The Entrepreneur shall be entitled to employ subcontractors. Customer-specific modifications of and additions to any protective packaging must be made in writing.
2. The agreement shall come into effect only by the Entrepreneur confirming the order or by the order being executed. Until then, the offers shall be non-binding.
3. The Customer shall be obliged to accept the goods. In the event that any performance of the Entrepreneur is rejected both seriously and decisively, the Entrepreneur shall be entitled to withdraw from the agreement by means of a written declaration and to claim compensation for damages due to non-fulfilment.
4. For orders for which no fixed delivery date has been agreed upon, the Customer shall be obliged to accept the goods four (4) weeks after receipt of the notification of completion at the latest.
5. If items are to be delivered in accordance with drawings, models or samples made available by the Customer, the Customer shall warrant that the manufacture and delivery do not violate property rights of third parties. If manufacture or delivery by third parties is prohibited under reference to any protective right belonging to said third party, manufacture and delivery shall be discontinued. The Entrepreneur shall not be obliged to review the legal situation. In this event, any and all claims for compensation for damages on the part of the Customer shall be excluded. The costs incurred in this respect shall be reimbursed by the Customer.
6. Samples shall be single-unit products. As with sketches, drafts, final drawings and test prints, they may be invoiced even if an order is not placed after the Entrepreneur submits an offer.
7. Upon request, the Customer shall make an appropriate advance payment for any direct and indirect damage resulting from the violation and assertion of the above-mentioned protective rights.
8. The copyright for the packaging samples, drafts, films or structures manufactured by the Entrepreneur, including the right of reproduction, shall remain with the Entrepreneur without any explicit written release. In the event that the order is not placed or if the business relationships are terminated, the samples shall be returned to the Entrepreneur. They must not be made accessible to third parties, especially not in any manner that goes beyond the business relationship.
9. If the Customer delivers accessories, the Customer shall be obliged to make them available to our plant free of charge and with a surcharge of 5-10% to cover potential rejections, depending on the respective agreement. The delivery is to be performed in due time, in perfect quality and in such quantities that processing without interruptions will be possible. To the extent that said delivery in due time and in sufficient quantities is not performed, the Customer shall be obliged to bear any additional expenses incurred in this respect. In this case, the Entrepreneur reserves the right to interrupt manufacturing and to resume production only at a later date than the one initially agreed upon.

Prices

1. The prices shall be deemed to be ex works. Additional expenses attributable to omissions on the part of the Customer shall be subject to separate remuneration.
2. The prices shall be based on the respective applicable price lists and/or bases of calculation. They shall be deemed to be exclusive of value added tax. The value added tax is to be paid additionally by the Customer at the statutory rate applicable at the time of invoicing.
3. The prices shall be deemed to be plus delivery costs. At the Customer's request, we shall take out insurance for the shipments against damage caused by robbery, breakage, fire and transport at the Customer's expense. In the event that we receive any special forwarding instruction, we shall choose the least expensive shipping method at our discretion that is customary in the industry for such shipments to ship the goods.

Payment / Default in Payment / Set-Off

1. Unless agreed upon otherwise, the following terms of payment shall apply: For deliveries of goods, payment is expected within a period of ten (10) days from the date of invoice, with 2% cash discount, otherwise thirty (30) days net at the latest.
2. The Entrepreneur shall be entitled to require payment in advance or to claim remuneration on a cash on delivery basis. Otherwise, the remuneration, the prices for ancillary services and advanced costs shall become due upon handing over the object of purchase, but not later than ten (10) days after receipt of the notification of availability and handing over or transfer of the invoice for payment in accordance with the payment terms agreed upon, and may be paid with exempting effect only directly to the Entrepreneur or to a bank or post office giro account specified by the Entrepreneur.
3. Payment authorisations, cheques and bills of exchange shall be accepted only after special written agreement and only as a conditional payment, invoicing all collection and discount charges.
4. Invoices for auxiliary means, such as printing plates (stereotypes) and tools, shall become payable without deduction.
5. In the event that the Customer falls behind with payments – two consecutive instalments for agreements on partial payments –, the Entrepreneur may, without prejudice to its further rights, withdraw from the agreement after unsuccessful expiration of an appropriate period of grace set to the Customer. The right of withdrawal shall also exist if circumstances become known that are suitable to decrease the creditworthiness of the Customer.
6. Default interest shall be invoiced at a rate of 8% above the respective base interest rate if the Customer is a natural person or a legal entity or a partnership having legal capacity who or which, at the time the agreement is concluded, is exercising its commercial or independent professional activity ("entrepreneur"). The Entrepreneur reserves the right to furnish proof of higher damage caused by default.
7. The purchase price shall become due in full in accordance with this paragraph. The Customer shall be deemed to fall behind with payment without further declarations on the part of the Entrepreneur ten (10) days after the due date, provided that the Customer did not settle the invoice. In the event that any defect exists, the Customer shall not be entitled to any right of retention, unless this is reasonably proportionate to the defects and the anticipated costs of subsequent performance (in particular any removal of defects). Moreover, the Customer shall be authorised to exercise any right of retention only to the extent that the Customer's counter-claim is based on the same contractual relationship.
8. Any set-off on the part of the Customer shall be permitted only with the explicit written approval of the Entrepreneur. The assertion of any right of retention of the Customer vis-à-vis claims on our part shall be excluded. These restrictions shall apply only to the extent that the Customer is an individual within the meaning of Section 310 Para. 1 Sentence 1 German Civil Code (Bürgerliches Gesetzbuch, BGB). Furthermore, this restriction shall not apply to the extent that claims are undisputed or have been legally established as being final and absolute.

Deliveries / Default in Delivery / Passing of Risk / Packaging

1. The Customer shall bear the costs of dispatch from the place of establishment of the Entrepreneur, unless said costs exceed the value of the performance to an unreasonable degree.
2. Delivery dates and delivery deadlines which may be agreed upon as being binding or non-binding shall be specified in writing. Delivery deadlines shall take effect upon conclusion of the agreement. In the event that written modifications to the agreement are agreed upon subsequently, a new delivery date or a new delivery deadline must be agreed upon at the same time if needed.
3. If the performance is delayed in any case of intent or gross negligence on the part of the Entrepreneur or any representative or auxiliary agent, the Entrepreneur shall be liable in accordance with the statutory provisions. In other cases of default in performance, the liability of the Entrepreneur shall be limited to the compensation for damages in addition to or in lieu of the performance to 5% of the value of the part of the delivery that is affected by said default. Further claims of the Customer shall be excluded, even after expiry of any period of grace for performance set to the Entrepreneur, if applicable. The duration of the period of grace to be set by the Customer in accordance with the law shall be defined as six weeks. The period of grace shall begin upon receipt by the Entrepreneur of the respective notification of setting of said grace period. The above-mentioned restriction shall not apply to any liability based on injury to life, body or health.
4. The Entrepreneur reserves the right to mark the goods with company logos, corporate identification numbers, etc. to the degree customary in the industry.
5. Delays in delivery caused by statutory or official orders (e.g. import and export restrictions) shall not be deemed attributable to the Entrepreneur. The same shall also apply in the event of force majeure, riot, strike, lock-out and major disruptions of operations through no fault of the Entrepreneur. The Customer may not derive any claim for compensation for damages on this basis. In the event that the service is delayed for said reasons by more than four weeks, the Customer shall be entitled to withdraw from the agreement with regard to the performance affected by said delay. Any further claim shall be excluded, unless said delay is based on at least gross negligence.
6. To the extent that delivery is impossible, the Customer may claim compensation for damages in accordance with the statutory provisions. Nevertheless, the Customer's claim shall be limited to compensation for damages in addition to or in lieu of service and to compensation for fruitless expenses of 5% of the value of the part of the delivery that cannot be used due to delivery being impossible. Further claims of the Customer based on impossibility of delivery shall be excluded. This restriction shall not apply to the extent that liability exists in cases of intent, gross negligence or based on injury to life, body or health. The right of the Customer to withdraw from the agreement shall remain unaffected.
7. In the event that the Customer is in default of acceptance or if the Customer violates any other obligation to co-operate, the Entrepreneur shall be entitled to claim compensation for the damage suffered by the Entrepreneur, including possible storage costs or other additional expenses. In this case, the risk of accidental loss or accidental deterioration of the goods shall likewise pass to the Customer upon occurrence of the default of acceptance.
8. If palletised goods are delivered, the Customer shall return to the Entrepreneur concurrently the same number of pallets of the same value as the ones the Customer received from the Entrepreneur. For the purpose of settling the exchange of pallets, the Entrepreneur shall keep a pallet account for the Customer in accordance with the shipping documents received by the Customer on the pallets received and returned. Pallets which are not returned at all or in a damaged condition shall be invoiced at the replacement price.

Reservation of Title

1. Until full payment of all goods, the Entrepreneur reserves the title to said goods.
2. The reservation of title shall also exist for all claims acquired by the Entrepreneur vis-à-vis the Customer in connection with the object of purchase, such as those based on repairs or replacement deliveries, as well as other services including subsequent ones; apart from that, the reservation of title shall also remain in effect for any and all claims to which the Entrepreneur is entitled vis-à-vis the Customer from its ongoing business relationships if the Customer is a natural person or a legal entity or a partnership having legal capacity who or which, at the time the agreement is concluded, exercises its commercial or independent professional activity ("entrepreneur"). At the Customer's request, the Entrepreneur shall be obliged to waive the reservation of title if the

Customer has fulfilled any and all claims associated with the object of purchase and if an appropriate collateral security exists for the remaining claims from the ongoing business relationship.

3. The reservation of title shall also remain in effect in the event that individual claims of the Entrepreneur are included in a current invoice and that the balance has been struck and acknowledged.
4. If the Customer is a reseller, the Customer shall be entitled to resell the goods subject to reservation of title and to lease them within the framework of their proper course of business. The Customer shall be obliged, however, to inform the Entrepreneur in writing of the purchasers, the form of selling and the location of the objects once any invoice of the Entrepreneur has not been paid in due time. The Customer shall hereby assign to the Entrepreneur in the amount of the invoice value of the goods, all of the Customer's claims for compensation to which the Customer is entitled, based on any damage caused in the above-mentioned manner, vis-à-vis the insurance company or any other party obliged to reimburse.
5. The Customer shall keep safe for the Entrepreneur the goods subject to reservation of title. The Customer shall take out adequate insurance for the goods against common risks, such as fire, robbery and water, to the degree customary in the industry. The Customer shall hereby assign to the Entrepreneur in the amount of the invoice value of the goods, all of the Customer's claims for compensation to which the Customer is entitled, based on any damage caused in the above-mentioned manner, vis-à-vis the insurance company or any other party obliged to reimburse.
6. Any pledging or chattel mortgage of the goods subject to reservation of title and/or of the claims assigned shall not be permitted.
7. In the event that the Customer on their part sells claims within the framework of any non-recourse factoring, the Customer shall assign to the Entrepreneur the claim vis-à-vis the factor that has taken the place of said claims. The Entrepreneur shall hereby accept said assignment.
8. The powers of the Customer to sell, to process or to install goods subject to reservation of title in their proper course of business shall end with revocation by the Entrepreneur as a consequence of any lasting deterioration of the Customer's financial situation, at the latest, however, upon the Customer's suspension of payment or upon application for and/or initiation of the insolvency proceedings relating to the Customer's assets.
9. In the event that goods subject to reservation of title are processed to become a new movable item, said processing shall take place for the Entrepreneur, without this resulting into any obligation on the part of the latter. The new item shall become the property of the Entrepreneur. In the event of any mingling, processing or mixing with other goods that are not the property of the Entrepreneur, the Entrepreneur shall acquire joint property based on the ration of the invoice values of their goods subject to reservation of title to the aggregate value.
10. If the value of the claims assigned to us as a collateral security exceeds our claims by more than 20% in total, we shall be obliged, at the reseller's request, to make an appropriate transfer of the difference back to the reseller in this respect. When required, the reseller shall be obliged to notify their purchasers of the assignment of the claim and to inform the Entrepreneur in writing as to what claims the reseller has vis-à-vis what purchasers. The reseller shall be authorised to collect the claims despite the assignment. Any right of the Entrepreneur to collect outstanding claims shall remain unaffected by said authorisation to collect claims. The Entrepreneur, however, shall not collect the claims itself as long as the reseller properly meets their payment obligations. The authorisation to collect claims shall expire if the reseller does not meet their payment obligations in a proper manner.
11. The printing plates (stereotypes), tools and other auxiliary means commissioned by the Entrepreneur shall remain the property of the Entrepreneur even if the manufacturing costs are invoiced either in whole or in part and paid by the Customer. The Entrepreneur shall not be obliged to surrender these objects to the Customer. The Entrepreneur shall not provide any warranty for any storage for more than three years.
12. The Entrepreneur shall be entitled to request surrender of the objects which are the Entrepreneur's property at any time, provided that the fulfilment of their claims appears to be at risk or if the Customer or the Customer's purchaser violates the obligations to be fulfilled by them. Any right of retention against said right of surrender may not be asserted.
13. In the event that the Entrepreneur takes back the object of delivery based on the reservation of title, this shall be deemed to be a withdrawal from the agreement only if said withdrawal has been expressly declared.
14. The Customer shall notify the Entrepreneur in writing and without undue delay of any access of third parties to the Entrepreneur's property or to the claims and entitlements assigned to the Entrepreneur, especially in the event of compulsory enforcement measures and seizures, as well as of any other damage caused to the Entrepreneur's property.
15. Any and all claims as well as rights from the reservation of title to all special forms defined in these conditions shall likewise remain in existence until complete release from all contingent liabilities incurred by the Entrepreneur in the interests of the Customer.

Warranty

1. The Entrepreneur shall not provide any warranty that the goods are in compliance with the special requirements of the Customer, unless the Entrepreneur gives a corresponding guarantee.
2. The Customer is aware of the fact that the products of the Entrepreneur are subject to certain changes within the framework of technical developments. The Entrepreneur thus reserves the right to deviations customary in the industry with regard to sizing, smoothness, purity of the paper, bonding, adhesion and printing, as well as other technical information.
3. The Customer is aware of the fact that defects to the goods may not be excluded with certainty. For notices of defects which are properly raised and justified on the part of the Customer, the Entrepreneur shall, at their discretion, either remedy the defect or deliver an item free of defects.
4. The Customer shall be obliged to examine the goods for possible obvious defects immediately after the goods are delivered, provided that this is possible and reasonable. If obvious defects are found during said examination, the Entrepreneur shall be informed accordingly immediately after detection, if possible in writing and documented in a comprehensible manner. If defects detected in this context are not reported without undue delay, the Customer may no longer assert any warranty claim based on defects. The regulations of Sections 377, 387 German Commercial Code (Handelsgesetzbuch, HGB), shall remain unaffected by this regulation.
5. Any kind of advice shall not justify any independent liability that goes beyond the warranty from a purchase agreement or a contract for work and labour.
6. Our warranty for material defects of new goods shall be one year from the date of delivery.
7. To the extent that the aforementioned provisions on prerequisites and consequences of non-fulfilment and the withdrawal from the agreement do not contain any regulation at all or do not contain deviating regulations, the statutory provisions to said rights shall apply.
8. In the event of any withdrawal from the agreement, the Customer shall be deemed to owe an adequate compensation for use for the time period until the time of withdrawal.
9. The claim of the Customer for compensation for damages shall be determined in accordance with Paragraph VII. below.

Compensation for Damages / Liability

1. In the event that the goods cannot be used by the Customer in accordance with the agreement due to fault on the part of the Entrepreneur as a result of bad delivery, further claims of the Customer shall be excluded and the regulations of Paragraph VII. and Paragraph VIII. Clause 2 shall apply accordingly.
2. For any damage not caused to the object of delivery itself, the Entrepreneur shall be liable, irrespective of any legal ground whatsoever, only in the case of:
 - a. intent;
 - b. gross negligence on the part of the owner or of executive staff;
 - c. culpable injury to life, body or health;
 - d. defects as well as other circumstances which have been fraudulently concealed;
 - e. or defects whose absence had been guaranteed, or to the extent that any guarantee for the quality of the goods or any other guarantee had been given.
3. In the case of any culpable violation of fundamental contractual obligations, the Entrepreneur shall also be liable for gross negligence of non-executive staff and for slight negligence; in the latter case, the liability shall be limited to reasonably foreseeable damage typical of a contract of this nature.
4. Apart from that, the Entrepreneur shall not be liable for any possible loss of profit or any other financial damage suffered by the Customer.
5. Further claims, especially any liability regardless of negligence or fault, shall be excluded.
6. The liability in accordance with the German Product Liability Act shall remain unaffected.
7. In the cases of Paragraph VII. Clause 2 Letters a) to e), all claims shall be subject to the statutory periods.

Place of Jurisdiction / Place of Fulfilment / Interpretation of the Agreement

1. The place of fulfilment and the place of jurisdiction shall be the headquarters of the Entrepreneur. However, the Entrepreneur shall also be entitled to sue the Customer at the Customer's general place of jurisdiction.
2. For any and all present and future claims from the business relationship with merchants, legal entities under public law, including bills of exchange and check receivables, the exclusive place of jurisdiction shall be the headquarters of Entrepreneur.
3. The same place of jurisdiction shall apply if the Customer does not have a general place of jurisdiction in Germany, relocates their place of residence or usual abode from Germany to another country after the conclusion of an agreement or if their place of residence or usual abode is unknown at the time the action is filed.
4. German law shall apply exclusively.
5. In the event that provisions of the present agreement are legally ineffective either in whole or in part or lose their legal effectiveness, the validity of the remainder of the agreement shall not be affected by this. The same shall also apply if this agreement turns out to contain a loophole. The ineffective regulation or the loophole shall be replaced with an appropriate regulation which, to the extent legally possible, comes closest to what the parties entering into the agreement intended or would have intended in accordance with the meaning and purpose of the agreement if they had taken this point into consideration beforehand. If the ineffectiveness of any provision is based on any measure of performance or time (deadline or date), this measure shall be replaced by a legally acceptable measure. The parties entering into the agreement shall be obliged to define any necessary amendment by means of a formal modification of the wording of the agreement. Apart from that, the statutory provisions in accordance with the German Civil Code and, if they are not legal transactions with consumers, the German Commercial Code shall apply.