



# GENERAL TERMS OF ACQUISITION AND PURCHASE

EMPL Fahrzeugwerk Gesellschaft m.b.H. / Austria, Kaltenbach

## 1. General

Unless other agreements have been made expressly and in writing in individual cases, the following general terms of acquisition and purchase shall apply to all business transactions during which we (EMPL Fahrzeugwerk Gesellschaft m.b.H.) shall purchase goods or services or place orders.

## 2. Definitions

These terms of acquisition shall apply to purchase agreements as well as for contracts for services and contracts for work and materials. The terms "Supplier, contract, order etc. that are used in these terms of delivery also comprise and mean the "Seller, Contractor or purchase contract and contract for services".

## 3. Contract conclusion

Conflicting general terms of business that the Supplier may use, are only valid if these have been expressly acknowledged by us in writing. Sales proposals are free of charge. The performance data and product description stated in the offer and/or attached documents shall be deemed binding, unless they are defined differently in the order.

The contract concluded with the Supplier must not be transferred to a third party without our written consent.

Each order is to be confirmed in writing within 7 day including a list of the complete order details. If the order confirmation deviates from our order or other written agreements, we shall not be bound by these deviations.

The legal transaction (as a result of our order) shall be concluded by the offer and the acceptance (also conclusive); on this basis the legal transaction shall also be deemed concluded, if the Supplier does not send us an order confirmation.

## 4. Terms of Delivery

The delivery date stated in the contract, which is principally the day of arrival at the location determined by us, shall be binding. In the event of an anticipated delay in delivery and/or services, we should be informed in writing immediately with the details of the cause as well as the period of delay. If the Supplier does not observe the delivery date, we shall be entitled to withdraw from the contract without first providing an extension period. At our own discretion we shall, in the event of non-observance of the delivery date, be entitled to charge a "penalty" of 5 percent of the final contract value (incl. VAT) or deduct this amount on payment, the maximum charge however, not exceeding 5 percent, for each commenced week of the delay without compromising our right to further claims for compensation.

## 5. Transport, Handover

Unless other agreements have been made, the delivery shall take place carriage free to the premises of the recipient of the goods at the risk of the Supplier.

It is the responsibility of the Supplier to secure the goods during transport, so that these will reach us undamaged. The Supplier shall be held liable – independent of culpability – for damages occurring during transport.

Transport papers and test certificates with a list of the complete order details are to be handed over on delivery. Expenses that we shall incur as a result of non-observance of these rules shall be charged to the Supplier.

The Supplier is obligated to inspect all quality characteristics.

With products or materials requiring storage in accordance with specific regulations, or with a limited storage life, the relevant paperwork must be handed over on delivery.

Delivery schedules:

Monday to Thursday:	07.30 – 11.30 hrs, 13.00 – 15.00 hrs
Friday:	07.30 – 10.30 hrs

## 6. Delivery of samples:

In the following cases, the Supplier must provide samples:

- a) If new or modified base materials, semi-finished goods or single parts are to be processed.
- b) If the production facilities know to us change or if there is a significant change in the Supplier's manufacturing process. Series production shall not commence, before we have approved the samples. Subsequent to the sample inspection, the Supplier shall be notified in writing of the approval. Our approval however, shall not release the Supplier from his responsibility to provide quality.

## 7. Invoicing

After the delivery has been made, invoices are to be sent to us separately by post in duplicate and with details of the order.

## 8. Payment

Unless other agreements have been made, the payment shall be after the arrival of faultless goods and on receipt of the invoice within 30 days with 3% discount. Payments can also be made by crossed cheque. The payment by cheque is deemed paid on the day that our cheque arrives at the address of the Supplier.

Bank charges for foreign transactions shall be divided (domestic charges for the account of EMPL, foreign charges to the account of recipient).

We shall only be obligated to pay on receipt of faultless deliveries. If the Supplier must repair defects, the payment shall be made within 30 days commencing from the completion of the repair with 3% discount.

We shall solely be obligated to pay 5% default interest in the event of culpable default of payment.

## 9. Guarantee, Compensation

Defects of ordered goods, that were reported during the guarantee period, including the lack of ensured features, must be resolved by the Supplier immediately and free of charge; this includes all additional costs that may arise. In the event that the Supplier does not comply with this request, we shall be entitled to repair the defects ourselves or have them repaired at the cost of the Supplier. It is at our discretion, to repair the defects ourselves or have them repaired by a third party and to charge the full costs to the Supplier without the requirement of prior notification. This applies in particular if parts or components of the delivery are integrated in the equipment manufactured by ourselves and are already being used by the customer. As far as we provide services, we shall be entitled to offset all hourly rates that we charge to our customers; the hourly rate of our Managing Director shall be calculated as the highest hourly rate. With replacement deliveries or repair of defects within the guarantee period, the guarantee period for repaired and replaced parts shall commence with the reacceptance of the goods. We shall be entitled to charge to the Supplier any expenses or additional expenses we have incurred by the customer as a result of a lack of ensured features of the ordered goods.

As far as we have been obliged to give our customers a guarantee for defect that are the responsibility of the Supplier, we shall be entitled, including after the expiry of the guarantee periods, to demand a guarantee from the Supplier, whereby the two-year guarantee period for the recourse of guarantee shall commence on the date that we are notified by the customer of claims under guarantee.

In the event that we do not inspect the delivered goods within the statutory or common commercial time limits, and if we do not report the recognized defects within the statutory or common commercial time limits, our full entitlement to guarantee and compensation claims shall still be upheld and therefore the failure to inspect and/or report faults shall not compromise these claims.

## 10. REACH, RoHS and other European regulations related to restricted substances

The contract party confirms that they have complied with all the current legal requirements, especially those of the Directives no. 1907/2006 dated 18/12/2006 (REACH Regulation), no. 863/2015 (RoHS 3), no. 1272/2008 (CLP Regulation) with regard to the products in the contract and that they have transmitted any relevant required information in full and in a legally compliant manner to EMPL Fahrzeugwerk Gesellschaft m.b.H. and that therefore legally compliant use and processing as well as legally compliant marketing of the products in the contract through EMPL Fahrzeugwerk Gesellschaft m.b.H. is permissible.

Furthermore, the contract partner confirms that the classification, labelling, registration, authorisation and/or notification concerning the products in the contract have already been carried out where required.

If customers, competitors or authorities make claims against EMPL Fahrzeugwerk Gesellschaft m.b.H. due to infringements against the REACH and RoHS regulations which can be attributed to a product from the contract party, then EMPL Fahrzeugwerk Gesellschaft m.b.H. is authorised to demand from the contract party to release EMPL Fahrzeugwerk Gesellschaft m.b.H. from these claims or pay compensation for the damage caused by the lack of REACH compliance.

## 11. Force Majeure

Operational stand-offs, operational breakdowns or similar as well as force majeure shall release us from the inspection and/or acceptance of the delivery in any case for the time period and the extend of the interruption and in these cases, the Supplier shall not be entitled to make any claims as a result of the legal consequences of default of acceptance or for compensation.

## 12. Technical Records

All drawings, sketches and calculations provided or produced by the Supplier on our behalf, shall remain our property and must not be used by the Supplier for any other purpose or copied or disclosed to third parties. They are to be returned to us on request. We shall reserve the right to the industrial property rights of all drawings and records provided to the Supplier.

With produce manufactured on the basis of our technical records, manufacturing contracts may only be given to subcontractors with our prior consent.

## 13. Trademarks, Observing Standards

The Supplier shall be legally responsible for the observation of patent, licensing, or trademark laws of third parties. It is expressly agreed that the ordered goods must comply with the relevant statutory regulations, rules, standards, guidelines and registration terms of Austria. All identification rules are to be observed.

## 14. Place of execution, Jurisdiction and applicable Law

The place of execution for both parties is A-6272 Kaltenbach. The jurisdiction for all disputes directly or indirectly related to the contract (including bill-of-exchange and cheque receivables) shall be the relevant local Austrian Court in A-6272 Kaltenbach. For disputes with regard to contracts, Austrian Law shall apply. The application of UN purchasing law is excluded.

Only in the event that the agreement of applicable Austrian Law is invalid (e.g. within court proceedings in a state belonging to the "third world") shall UN purchasing law (Treaty of the United Nations for contracts relating to international purchase of goods, BGBl (German Federal Law Gazette) 1988/96) apply.

The contract language is German.

## 15. Partial invalidity

In the event that individual rules of these terms of purchase are or shall become legally invalid, the validity of all other rules of these terms of purchase shall not be affected. A valid rule containing the stipulations that are nearest to the economical purpose of the relevant invalid rule shall replace the invalid rule