

GENERAL TERMS AND CONDITIONS

EMUGE - FRANKEN servisní centrum, s.r.o.

as of 1 January 2024

I. Interpretation

1. In these general terms and conditions:
 - a) **“Buyer”** is any person who accepts Seller’s offer to sell Goods or whose offer to buy Goods is accepted by Seller;
 - b) **“Goods”** means goods (including Goods delivered by instalments and any part thereof) to be delivered by Seller under these Conditions;
 - c) **“Seller”** is EMUGE-FRANKEN servisní centrum, s.r.o., a company with a company number 60738707 and registered office at Molákova 2734/8, Líšeň, 628 00 Brno, Czech Republic, registered in the company register kept by the Regional Court in Brno under file no. C 18145;
 - d) **“Conditions”** means these general terms and conditions;
 - e) **“Agreement”** means agreement to buy and sell Goods;
 - f) **“In writing”** and **“written”** include email, letter and similar means of communication;
 - g) **“Civil Code”** means Czech Act No. 89/2012 Sb., the Civil Code, as amended or re-enacted;
 - h) **“Contractual Parties”** means Buyer and Seller, collectively, and **“Contractual Party”** means Buyer and Seller, individually.
2. Any reference herein to a statute or statutory provision is to be interpreted as a reference to it as amended or re-enacted.
3. Headings in these Conditions are for convenience only and do not affect the interpretation of the provisions contained herein.

II. Introductory provisions

1. In accordance with Sec. 1751 of the Civil Code, these Conditions are an integral part of each Agreement entered into by the Contractual Parties.
2. Agreements entered into by the Contractual Parties are governed by the provisions of the respective Agreement and these Conditions. Derogating provisions contained in the Agreement take preference over the respective provisions of these Conditions.
3. These Conditions take preference over those statutory provisions that are not mandatory. The Contractual Parties have agreed not to apply the provisions contained in Sec. 558 (2), second sentence of the Civil Code, stipulating that usages of trade take preference over those statutory provisions that are not mandatory.
4. No terms and conditions of sale, business terms and conditions or any other terms and conditions of the other Contractual Party unapproved by the Seller apply to any Agreement executed by the Contractual Parties, unless expressly agreed upon by the Seller in writing, such terms and conditions not to be applicable even where their provisions are not contradictory to the provisions hereof.

III. Orders and specifications

1. Offers made by the Seller are binding for the duration specified in the respective offer. Where duration is not expressly specified, the offer is conclusively presumed to be binding for a period of 5 (five) days from the day it is sent to the Buyer. Neither website content, nor content in a catalogue constitute an offer to enter into an Agreement as per Sec. 1731 of the Civil Code; however, such content is an invitation to make an offer to enter into an Agreement.
2. The Seller is to sell and the Buyer is to buy Goods as per the Seller's written offer accepted by the Buyer, or as per the Buyer's written order accepted by the Seller, such offer or order to be subject to these Conditions, which govern the Agreement. An order submitted by the Buyer is considered to be accepted only if it is confirmed by the Seller in writing.
3. Information provided while an order is being processed, i.e. prior to such an order being accepted, including operational characteristics data and other specifically designated data, is not binding unless expressly confirmed in the Agreement.
4. The Contractual Parties have agreed not to apply Sec. 1740 (3) of the Civil Code or Sec. 1751 (2) of the Civil Code, stipulating that an Agreement is executed even where manifestation of will of one of the Contractual Parties is not in complete concert with manifestation of will of the other Contractual Party. Additionally, the Contractual Parties have agreed not to apply Sec. 1757 of the Civil Code.
5. The Seller reserves the right to correct, unilaterally, any typographical, clerical or any other error or omission of important information (including, without limitation, error or omission relating to purchase price) in any sales materials, any offer, price list, offer acceptance, invoice or any other document or information, or withdraw from the Agreement. The Seller is not liable to the Buyer for any adverse effect resulting from error or omission as specified in the preceding sentence.
6. The Buyer is responsible for ensuring accuracy of the conditions of an order being submitted to the Seller (including the respective specification) and for providing the Seller with the necessary information about the Goods sufficiently far in advance to allow the Seller to perform the Agreement.
7. Quantity, quality, description and specification of Goods are data to be stated in the Seller's offer (if accepted by the Buyer) or in the Buyer's order (if accepted by the Seller).
8. The Seller reserves all rights of any nature in and to all illustrations, drawings and other documents submitted to the Buyer for the purpose of requesting acceptance; the Buyer agrees to treat all such illustrations, drawings and other documents as confidential and not to disclose them to any third party.
9. The Seller reserves the right to make changes, unilaterally, to any specification of Goods if such changes are necessary for ensuring compliance with applicable statutory requirements and/or requirements arising out of European Union law; if Goods are to be supplied as per the Seller's specification, the Seller reserves the right to make changes, unilaterally, that do not have significant impact on quality or performance.

IV. Price of goods

1. The price of Goods is the price offered by the Seller. All price offers are valid for the period of time specified in the offer. This is without prejudice to the Seller's right to request an advance payment.
2. Unless agreed upon otherwise by the Contractual Parties, the Seller becomes entitled to the price of Goods:
 - (i) On the day the Goods are handed over to the Buyer (if the Goods are handed over to the Buyer in the Seller's premises). The Seller is entitled to the price of

- the Goods under the preceding sentence even if the Buyer fails to take over the same despite being obliged to do so;
- (ii) On the day the Goods are handed over to the first carrier (if the Goods are to be delivered to a point of destination outside the Seller's premises). If the Goods cannot be dispatched on the day they are to be sent to the Buyer due to a fault of the Buyer, the Seller may require payment of the price of the Goods.
3. The Seller reserves the right to notify the Buyer at any time prior to the delivery of Goods of (i) any increase in the price of the Goods reflecting an increase in any of the Seller's expenses caused by any event or circumstance beyond the reasonable control of the Seller (including, without limitation, foreign currency fluctuations, foreign exchange control, changes to fees, significant increase in the cost of labour, materials costs and/or other production costs), (ii) any change to the delivery date(s), (iii) the quantity and specifications of the Goods required by the Buyer, and/or (iv) any delay caused by the Buyer's instructions or failure of the Buyer to provide the Seller with sufficient information and/or instructions.
 4. All prices stated are Ex Works (EXW) prices under the Incoterms 2020 rules (duty unpaid, excluding packaging, handling, insurance and transport). Where Goods are not supplied to the Seller's premises the Buyer must pay to the Seller all expenses associated with transport, packaging and insurance.
 5. All samples supplied by the Seller are to be invoiced to the Buyer subject to an agreed upon price.
 6. All prices stated exclude value added tax at the relevant rate, which is to be added thereto in accordance with the applicable value added tax laws and regulations.
 7. In addition to the price of Goods, the Seller reserves the right to bill the Buyer for any pallets and/or returnable packaging containers. The Buyer is to be refunded the full amount subject to all pallets and containers provided being returned to the Seller undamaged prior to the due date; the determination whether or not these conditions have been fulfilled is exclusively at the discretion of the Seller.

V. Payment conditions

1. All invoices (including pro forma invoices) issued by the Seller are due after a prescribed period of 14 days after the issue date, unless stated otherwise in a given invoice.
2. Without prejudice to any other right or remedy the Seller may have, if the Buyer fails to pay the relevant amount by the relevant due date the Seller may:
 - 2.1. Withdraw from the Agreement or suspend supplies to the Buyer;
 - 2.2. Set off any payment made by the Buyer in respect of these Goods or under a different legal relationship against a claim of the Seller;
 - 2.3. Claim from the Buyer a contractual penalty of 0.1 % of the amount due for each day of delay (the Seller's right to claim a contractual penalty is without prejudice to the Seller's right to claim damages).
3. The Seller may invoice the Buyer for partial performance of the obligations hereunder, in which case the Buyer must pay such an invoice by the specified due date.
4. The Buyer may not withhold payment of an invoice for any reason. The Buyer may not set off any claim it may have against the Seller without the Seller's prior written consent.

VI. Delivery

1. Goods are delivered when the Buyer takes the same from the Seller's premises on a day agreed upon or, where the Seller has agreed to a different place of delivery, when Goods are delivered to such a different place of supply.

2. All dates for delivery of Goods stated by the Seller are indicative only and the Seller is not liable for any delay in delivery of Goods caused by any event or circumstance. The Seller may deliver Goods prior to the specified delivery date, subject to proper notice thereof being sent to the Buyer.
3. Where the Seller is to deliver custom-made Goods, the Seller reserves the right to deliver up to 10 % more or up to 10 % less than the quantity ordered (though no fewer than 2 pieces) without adjusting the price and such a quantity of the delivered Goods is conclusively presumed to be the quantity ordered by the Buyer.
4. Where Goods are to be delivered by instalments, each instalment constitutes a separate Agreement and failure of the Seller to deliver one or more parts hereunder or any requirement of the Buyer in respect of one or more parts do not entitle the Buyer to regard all Agreements as having failed to be performed as a whole.
5. In case of failure of the Buyer to take delivery of Goods or provide the Seller with relevant instructions for delivering Goods by the specified delivery date (for reasons other than those beyond the Buyer's control or due to a fault of the Seller), the Seller may, without prejudice to any other right or remedy the Seller may have:
 - 5.1. Store the Goods until actual delivery and charge the Buyer reasonable storage costs (including insurance), such costs not to be less than 0.05 % of the price of the Goods for each day of storage; or
 - 5.2. Sell the Goods for the best obtainable price, less any reasonable storage costs and selling expenses, and charge the Buyer the costs incurred and the difference in the purchase prices.

VII. Transfer of risk and ownership

1. The risk of damage to, and loss of, Goods is transferred to the Buyer as follows:
 - 1.1. Where Goods are delivered in the Seller's premises: The risk of damage to, and loss of, Goods is transferred to the Buyer when the Seller notifies the Buyer of the Goods being ready to be accepted; or
 - 1.2. Where Goods are delivered in any way other than under 1.1. above: The risk of damage to, and loss of, Goods is transferred to the Buyer immediately upon handover of the Goods to the first carrier.
2. Notwithstanding the provisions hereof relating to the delivery of Goods and transfer of risk of damage to the Goods and other provisions of these Conditions, ownership of the Goods is not transferred to the Buyer until the Seller receives payment in full of the price of the Goods and of any other sum(s) owed by the Buyer to the Seller for any reason in respect of the Goods (default interest, contractual penalty).
3. The Goods are to be in the custody of the Buyer (a depositary) and the Buyer must keep the Goods separate from the Buyer's and third parties' goods and ensure they are adequately stored, protected, insured and identified as property of the Seller until ownership of the Goods is transferred to the Buyer. The Buyer may resell the Goods and/or use the same in the ordinary course of its business until transfer of ownership occurs. However, the Buyer must submit to the Seller an account stating any tangible or intangible yield or benefit in respect of the sale of the Goods or any other use of the same, including any insurance claims paid out by an insurance company, and to keep these yields separate from the Buyer's and third parties' cash and/or cash equivalents and/or assets, and where tangible yields are

present the Buyer must ensure, or cause to be ensured, proper storage, protection and insurance.

4. Where Goods still exist and have not been resold, the Seller may at any time until ownership of the Goods is transferred to the Buyer require the Buyer to deliver up the Goods to the Seller.
5. The Buyer may not pledge Goods that continue to be owned by the Seller, and where the Buyer does so, all sums owed by the Buyer to the Seller become due (without prejudice to any other right or remedy the Seller may have).
6. The Buyer may not exercise a right of retention in respect of Goods.

VIII. Complaints, liability for damage

1. As per the conditions given below, the Seller warrants that the Goods will, at the time of the passing of the risk of damage to things, comply with the specification and be devoid of any material or workmanship defects.
2. The Seller warrants the aforementioned subject to the following:
 - 2.1. The Seller is not liable for any defects in the Goods due to drawings, designs, materials and/or specifications supplied by the Buyer; the Seller is not obliged to notify the Buyer of these defects in advance unless such defects are obvious;
 - 2.2. The Seller is not liable for any defects caused by fair wear and tear, malicious damage, negligence, abnormal working conditions, failure to abide by the (oral or written) instructions from the Seller, misuse or as a result of the Goods having been tampered with or repaired without the Seller's consent;
 - 2.3. The Seller is not liable for any defects if the total price of the Goods was not paid by the due date;
 - 2.4. The liability specified above does not apply to parts, materials and/or equipment not manufactured by the Seller and designated as such. The Buyer may in such a case exercise the Seller's rights against the manufacturer.
3. If any defect is found, the Buyer is obliged to send to the Seller without undue delay a notice of complaint, such notice to include, without limitation: (i) the name of the Goods in respect of which the complaint is being made, (ii) the quantity of the Goods in respect of which the complaint is being made, (iii) a detailed description of the defect and the circumstances under which it occurred or was discovered, (iv) where and when the defect was discovered, and (v) the number of the delivery note or invoice in respect of which the complaint about the defect in the Goods is being made. The Seller has at least 90 days to make a decision about any complaint, which period starts to run on the day the relevant notice of complaint is delivered, or more if considering the complaint is technically demanding. Where a complaint is found to be justified, the period of time after a decision is made about the complaint during which the Seller must remedy the problem is to be determined by the Seller, taking into account what response is being sought and how technically demanding such a response is.
4. The Buyer must compensate the Seller for all costs incurred by the Seller due to an unjustified complaint being made.
5. The Buyer may not refuse to take delivery of Goods due to the presence of defects or withhold any payment due to the Seller for this reason.
6. If a valid claim exists in respect of Goods arising out of a quality defect in, or faulty condition of, the Goods or failure of the Goods to comply with the specification and the

Seller is notified of such a claim hereunder, the Seller may substitute such Goods (or the relevant part thereof) free of charge or refund the price (or the proportionate part thereof) of the Goods to the Buyer as it sees fit but is not liable to the Buyer in any other way and the Buyer has no other rights.

7. The Seller is only liable to the Buyer for actual loss due to the Seller's having breached its obligations by way of fault.
8. Any claim for damages for any loss or injury to person or property is subject to a limitation period of one (1) year from the day such a claim may first be made. The Seller is not liable for any economic damage suffered by any third party who is not the Seller.
9. The maximum amount of economic and non-economic damages that may be awarded is not to exceed 100 % of the price of the Goods in respect of each separate Agreement.
10. Damages to be paid by the Seller are due when paid out by the Seller's insurance company. If an insurance company refuses to pay out due to the Seller not being liable, a court having jurisdiction is to adjudicate the claim for damages.
11. The Seller is only liable to the Buyer for direct loss; loss of earnings, reflective loss, consequential loss, injury to person and other types of loss or injury to property or person is not to be compensated unless such restriction of liability for damage is contrary to legislation applicable to the Seller. In such a case, liability for damage is subject to such legislation.
12. The Seller is not liable to the Buyer for any failure to perform on time or fulfil any of the Seller's obligations in respect of Goods, and such failure is not to be regarded as breach of the Agreement if such failure or delay is due to a cause beyond the reasonable control of the Seller. Without prejudice to the general nature of the above, the following events are regarded as causes beyond the reasonable control of the Seller: a) force majeure event, explosion, flood, storm, fire or accident; b) war or risk thereof, sabotage, uprising, civil unrest or confiscation; c) directives, restrictions, regulations, local ordinances or by-laws, prohibitions or any other legislation issued by a public authority; d) import and export regulations or embargoes; e) strikes, lock-outs and other industrial actions of employees and commercial disputes (including, among others, employees of the Seller or of a third party); f) issues relating to procurement of (raw) materials, labour force, fuel, parts or machines; g) power failure or equipment power supply failure.
13. The Seller is not liable for any damage caused by advice and/or recommendations relating to storage, application or use of Goods provided to the Buyer or the Buyer's employees or representatives by the Seller or the Seller's employees or representatives if such advice and/or recommendations have not been confirmed in writing by the Seller. If the Buyer follows or acts upon such advice and/or recommendations, it does so at its own risk. In such a case, any liability of the Seller is excluded. The Seller is not liable for any errors in, or omissions of, information in documents and/or manuals relating to the Goods.
14. Where the Seller is to manufacture Goods or follow the procedure outlined in a specification supplied by the Buyer, the Buyer must indemnify the Seller for any loss, damage, costs and/or expenditures imposed upon, incurred by, paid or agreed to be paid by the Seller in respect of settling any claim arising from infringement of any patent, trademark, industrial design, brand name or any other intellectual property or industrial property rights of another person caused by the Seller's having used the specification provided by the Buyer.

IX. Withdrawal from the Agreement by the Seller

1. This article applies if:
 - 1.1. The Buyer is in material breach of the Agreement;
 - 1.2. The Buyer enters into liquidation;
 - 1.3. Criminal prosecution is initiated against the Buyer under Czech Act No. 141/1961 Sb., the Criminal Procedure Rules, as amended or re-enacted, or under Czech Act No. 418/2011 Sb., the Criminal Liability of Legal Entities and Proceedings Against Legal Entities Act, as amended or re-enacted;
 - 1.4. The Buyer is in default with payment of the price of Goods for a period of more than 15 days;
 - 1.5. The Buyer is insolvent or its insolvency is imminent pursuant to the laws of the Czech Republic or equivalent foreign laws or insolvency proceedings have been initiated against the Buyer (with the exception of manifestly frivolous insolvency petitions);
 - 1.6. The Seller has grounds to believe one or more of the events given above is imminent in respect of the Buyer and the Seller notifies the Buyer thereof.
2. If the article above applies then without prejudice to any other right or remedy the Seller may have the Seller may terminate the Agreement or suspend additional deliveries to the Buyer under the Agreement without being liable to the Seller, and where Goods have been delivered but not paid for the price thereof becomes due notwithstanding any other previous agreement or contract to the contrary.

X. Intellectual property

1. The Seller reserves all ownerships rights and copyrights to drawings and other documents; the Buyer may not provide these items to third parties without the express written consent of the Seller. Technical and commercial documentation, ways of manufacturing of goods and their design, and related costs are subject to change in accordance with new experience and technological advancement.
2. Design changes due to technical and/or technological development are reserved. Data relating to dimensions, weight etc. are subject to manufacturing and technological margins of error.
3. Where any object protected by intellectual property rights is delivered to the Buyer by the Seller under the Agreement, the Seller grants the Buyer the right to use and enjoy any such object (including, without limitation, copyrighted work) protected by intellectual property rights as per the Czech Copyright Act and the corresponding right to exercise any other intellectual property rights. Where a license is granted, such a licence is non-exclusive, unless agreed upon otherwise. The Buyer may not assign a licence to a third party without the Seller's written consent. The licence is granted by the Seller subject to the following restrictions: (i) territorial restrictions: none specified, (ii) restrictions on quantity: quantity restricted to such quantity that is customary in respect of the specific work and the specific manner of use, (iii) time restrictions: none specified.

XI. Special conditions applicable to orders where machining is ordered (finishing, redressing, redesigning and reconditioning of tools)

Where the Seller provides services to the Buyer subject to an order (e.g. finishing, redesigning and/or tool reconditioning), in addition to the Conditions, this contractual relationship is also governed by the conditions stated below.

1. Where the Seller agrees to perform work consisting in providing services in accordance with an executed agreement, such work is to be performed with the required professional standard of care and to an appropriate technical standard.
2. The Buyer agrees to cooperate with the Seller in connection with the provision of data and/or documents and to participate in coordination meetings and discussions with the Seller. The deadline by which the Seller must perform its obligations is to be postponed by the period of time, if any, during which the Buyer is in default with complying with this obligation.
3. The Buyer is responsible for providing accurate and complete data, information and documents necessary to create work. The Seller is not liable for any defects caused by the use of data, information or documents provided by the Buyer. The Seller is not obliged to check these data, information or documents.
4. The Seller is not responsible for ensuring the material supplied to the Seller has the required properties and is not obliged to check the quality thereof in any way.
5. If material becomes unusable during machining, the Buyer may not make any claim in connection therewith and no compensation is to be provided by the Seller. Liability for defects is excluded.

XII. Miscellaneous

1. The Seller may fulfil any of its obligations and exercise any of its rights stated herein itself or authorize any of its group companies to do so.
2. Any notice required by any Contractual Party hereunder or agreed by any Contractual Party to be delivered to the other Contractual Party hereunder must be in writing and must be sent to the registered office, principal place of business or to another address of the other Contractual Party as may be specified under this provision from time to time by that Contractual Party.
3. If any provision of these Conditions is held invalid or unenforceable, whether partially or wholly, by a competent authority, this is without prejudice to the validity or enforceability of the remaining provisions of the Conditions or the remaining part of the respective provision.
4. The Buyer may not assign any claim against the Seller to a third party without the Seller's consent.
5. These Conditions and all Agreements between the Contractual Parties are governed by the laws and regulations of the Czech Republic including, without limitation, the relevant provisions of the Civil Code to the exclusion of the conflict-of-laws provisions. As per Article 6 of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention), the United Nations Convention on Contracts for the International Sale of Goods is excluded as a whole.
6. The Contractual Parties agree to seek to settle their disputes arising out of, or in connection with, this Agreement amicably and in good faith. Any dispute that the Contractual Parties fail to settle within 30 days is to be submitted for final settlement to the relevant Czech court having jurisdiction (jurisdiction is to be determined based on the Seller's registered office).
7. These Conditions may be modified or supplemented by the Seller. This provision is without prejudice to the rights and obligations that arose while a previous version of the Conditions was effective.
8. These Conditions become effective on 1 January 2024.