

General Terms and Conditions (GTC) No. 105
last updated: 13/07/2021
of Emile Egger and Co. GmbH, Wattstr. 28, 68199 Mannheim-Neckarau

§ 1 General provisions, scope of application

1. These General Terms and Conditions only apply to persons who, at the time of conclusion of the contract, are acting in the exercise of their commercial or independent professional activity, as well as to legal entities under public law and separate estates under public law.
2. All deliveries and services on our part are made on the basis of these General Terms and Conditions, except to the extent deviating provisions have been agreed in writing in individual contracts. This also applies, in particular, if we are prompted on supplier portals – due to their design – to formally give our consent to third-party general terms and conditions.
3. Our General Terms and Conditions apply to the exclusion of the validity of any terms and conditions of the customer which conflict with or deviate from these General Terms and Conditions. Our General Terms and Conditions also apply if we carry out deliveries or services without reservation in the knowledge of such customer general terms and conditions.

§ 2 Offer, offer documents, conclusion of contract

1. Offers on our part are only binding if they are made in writing and expressly designated as such. The acceptance of an offer must be made in writing.
2. If a written order from a customer qualifies as an offer within the meaning of § 145 BGB (*Bürgerliches Gesetzbuch* – German Civil Code), we may accept it by written declaration up to the point in time at which the customer may expect acceptance under normal circumstances.
3. A conclusion of contract in supplier portals is only sufficient if it is expressly confirmed in writing.
4. After conclusion of the contract, ancillary agreements and other amendments to the contract also require written confirmation.
5. The information contained in our price lists, catalogues, illustrations, drawings and tables serves solely as a general description of the range of products and services and does not constitute a guarantee, an agreed quality or a representation. They only become part of the contract if we expressly refer to them in writing.
6. Documents pertaining to an offer, such as illustrations and drawings, but also weight and dimension specifications are only approximately authoritative; the tolerances permissible in this respect result from the relevant DIN standards. In no case do they constitute guarantees, agreed qualities or representations. We reserve the right to make technically necessary changes, provided that the technical usability of the delivery item remains unchanged for the customer after the changes have been taken into account.
7. We reserve the property rights and copyrights to calculations and other documents prepared by us – also in electronic form; they may not be made accessible to third parties without our written consent. This applies, in particular, to information which we designate as “confidential”, which constitutes business secrets within the meaning of the German Business Secrets Act (*Geschäftsgeheimnisgesetz*) and to which the requirements of this Act apply.

§ 3 Prices, invoices, payment terms

1. Unless otherwise agreed, the prices quoted by us apply subject to FCA Incoterms 2020 ex warehouse/works including loading, but excluding packaging and unloading. Packaging will be invoiced separately. Unless expressly agreed otherwise in writing, we will take out transport insurance for the delivery, the costs of which have to be borne by the customer.
2. The statutory value added tax is not included in our offers and will be shown separately in the invoice at the statutory rate on the day of invoicing.
3. We only issue invoices in electronic form. The invoices will be sent to the customer by e-mail to an e-mail address to be specified by the customer.
4. Unless otherwise agreed with the customer, the purchase price is due net for payment (without any deductions) within 30 days of the invoice date. The statutory provisions apply, including those governing the consequences of default in payment.
5. If payment in instalments has been agreed, the entire remaining claim becomes due if the customer defaults on one of the instalments.
6. The customer is only entitled to withhold payments or to offset them against counterclaims to the extent that his counterclaims are undisputed or have been finally established.

§ 4 Performance, time of delivery

1. At the customer's request, we will start planning the delivery item according to the customer's specifications. The result of the planning is then the basis for the production of the delivery item. We are therefore dependent on the customer's specifications and information on the requirements profile for the delivery item being accurate in terms of content. While we check the specifications and information provided to us by the customer for obvious errors and gaps and point these out in the event that we notice errors or gaps, the customer remains responsible for the correctness and completeness of these specifications and information. We assume no liability in this respect. As a result of our planning activities, we provide the customer with a data sheet for the delivery item, which then forms the basis for the conclusion of the contract and subsequently for the production of the delivery item. The customer checks the data sheet before concluding the contract and releases it with the order. The customer has to point out to us any errors in the data sheet which are recognisable to him. The customer is obliged to keep secret the results of our planning activities which have been communicated to him. In this respect, § 2(6) applies.
2. Upon conclusion of the contract, we will inform the customer of the expected delivery time for the delivery item. As a rule, we can state the delivery time in weeks, starting from the time of the conclusion of the contract, and we will endeavour to keep to the delivery time. As a rule, we cannot bindingly promise a fixed delivery date for the manufacture of machines at the time of the conclusion of the contract.
3. Observance of the delivery time requires the timely receipt of all documents still to be supplied by the customer after conclusion of the contract, in particular the necessary approvals, releases, the timely clarification and approval of the plans as well as the observance of the agreed terms of payment. If the aforementioned prerequisites are not fulfilled, the delivery time will be extended appropriately, unless we are responsible for the delay.
4. Furthermore, observance of the delivery time presupposes that we, for our part, are supplied correctly and on time by our suppliers. If delays become apparent in this respect, we will inform the customer immediately and will always make reasonable efforts to avoid delivery delays or to keep their effects on the customer as low as possible.
5. Unforeseen events such as cases of force majeure, operational disruptions, strikes and lockouts will extend the agreed delivery time accordingly. An extension of the delivery time may also result from material defects becoming apparent during the processing of castings for which we are not responsible. In such cases, we will inform the customer of these circumstances without delay and endeavour to keep the delay as short as possible.
6. A delivery date promised by us will be deemed to have been complied with if we have dispatched the delivery item to the customer by the expiry of the delivery date – the date on which the delivery item leaves our branch office or the factory shall be decisive – or if we have notified the customer that the delivery item is ready for dispatch.
7. If the customer is in default of acceptance or violates any other duty to cooperate, we are entitled to claim compensation for any damage incurred by us in this respect, including extra expenses, if any. In this case, the risk of accidental loss or accidental deterioration of the delivery item also passes to the customer at the point in time at which the customer is in default of acceptance. Where an acceptance is required, the acceptance date is decisive – except in the case of justified refusal of acceptance – alternatively the notification of readiness for acceptance. After the setting and unsuccessful expiry of a reasonable deadline for acceptance of the delivery item, we are entitled to withdraw from the contract and to assert claims for damages in addition.
8. If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the customer will be charged for the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch or acceptance. This includes, in particular, the costs incurred by the storage at a flat rate of 0.5% of the net invoice amount per month, but at least EUR 250.00 per month, which will be invoiced to the customer separately.

§ 5 Transfer of risk, taking receipt

1. The risk passes to the customer at the latest upon dispatch of the delivery item to the customer. This also applies if partial deliveries are made or if we have assumed other services, such as shipping costs or delivery and installation.
2. If a formal acceptance has to take place, such acceptance is relevant for the passing of risk. It takes place on the agreed acceptance date, otherwise after our notification of readiness for acceptance. The customer may not refuse acceptance based on a non-material defect. The latter applies accordingly to taking receipt in those cases in which no acceptance has to take place.
3. In the event of shipment or acceptance being delayed for reasons for which we are not responsible, risk passes to the customer upon notification of readiness for dispatch. In this case, we will take out the insurance policies requested by the customer at the customer's expense. If the delay necessitates the storage of delivery items outside our business premises, the customer must observe our storage and preservation regulations for storage at construction sites and similar locations contained in the operating instructions. We assume no liability for any defects or damage resulting from non-compliance with these requirements.
4. Partial deliveries are permissible to the extent they are reasonably acceptable for the customer.

§ 6 Inspection, acceptance test and receipt of deliveries by the customer

1. We constantly check the production of the delivery items in our factory within the scope of what is customary in the industry. If the customer requires further tests or acceptance tests in our factory, or tests specifically tailored to his requirements, these must be agreed in writing and paid for separately by the customer.
2. If the customer requests an acceptance test in our factory and this is not carried out on the specified date for reasons for which we are not responsible, we are entitled to demand that the acceptance test be carried out in our factory within one month. After expiry of the deadline, we may carry out the acceptance test in our factory without the customer's presence.
3. The customer must inspect our deliveries immediately upon receipt and in particular check them for completeness and any defects. If the delivery turns out not to be in conformity with the contract during such inspection, the customer must notify us of this immediately and report the defects found to us in writing. The provisions of § 377 HGB (*Handelsgesetzbuch* – German Commercial Code) also apply in this respect.
4. For tax and customs reasons, the customer must confirm to us the receipt and future location of the delivery item in the case of a delivery abroad.
5. The place of performance is Mannheim.

§ 7 Retention of title

1. We reserve title of ownership of delivery items until receipt of all payments under the supply agreement.
2. In the event that the customer acts in breach of the contract, in particular in the event of default in payment, we are entitled to take back the delivery item or parts thereof from the customer. Our taking back of the item does not constitute a withdrawal from the contract, unless we expressly declare this in writing. Following the taking back of the delivery item, we are entitled to realisation of the latter; the realisation proceeds will be credited – less adequate realisation costs – to the liabilities of the customer.

3. The customer is obliged to treat the delivery item with care, and in particular to insure it adequately at its own expense against damage by fire, water and theft at the replacement value. If maintenance and inspection work is required, the customer is obliged to carry out such work in good time at its own expense.
4. The customer may neither pledge the delivery item nor assign it as security. In the event of attachment or other interventions by third parties, the customer must inform us immediately in writing so that we can take legal action in accordance with § 771 ZPO (*Zivilprozessordnung* – German Code of Civil Procedure). To the extent that the third party is not capable of reimbursing us for the costs – in court and out-of-court – of an action pursuant to § 771 ZPO, the customer is liable for the expenses incurred by us. In the event of conduct by the customer in breach of the contract, in particular default in payment, we are entitled to take back the delivery items after issuing a reminder setting a deadline, and the customer is obliged to surrender them. The assertion of the reservation of title as well as the attachment of the delivery item by us are not to be construed as a withdrawal from the contract.
5. The customer is entitled to resell the delivery item in the ordinary course of business if he is not in default of payment. The customer assigns to us all claims in the amount of the gross invoice amount (including VAT) of our claim which accrue to him from the resale against his customers or third parties, irrespective of whether the delivery item has been resold without or after further processing. The customer remains authorised to collect this claim also after the assignment. This does not affect our power to collect the claim ourselves. However, we undertake not to collect the claim as long as the customer fulfils his payment obligations from the proceeds collected, is not in default of payment and, in particular, has not filed an application for the institution of insolvency or composition proceedings and there is no suspension of payments. If such case occurs, we are entitled to demand that the customer discloses to us the assigned claims and the respective debtors, provides all information required for the collection of the claims, hands over the relevant documentation and notifies the debtors of the assignment.

6. The processing or alteration of the delivery item subject to retention of title by the customer is always conducted on our behalf. In the event that the delivery item is processed together with other goods that are not our property, we acquire a co-ownership interest in the new product in accordance with the proportion of the value of the delivery item to the other goods processed at the time of the processing. Other than that, the same applies with regard to the object created by processing as is the case with the delivery item delivered subject to retention of title.
7. We undertake to release the collateral to which we are entitled at the customer's request to the extent that the realisable value of our collateral exceeds the claims to be secured by more than 20%. The selection of the collateral to be released is incumbent on us.
8. The customer declares his consent that the persons commissioned by us to collect the goods subject to retention of title may for this purpose enter and drive onto the property or building on or in which the goods to be collected are located.

§ 8 Service, maintenance and repair work

1. If we perform service, maintenance and repair work on the customer's premises or at other locations, the customer is obliged to take the applicable statutory occupational safety measures.
2. Particularly in the case of service, maintenance and repair work, but also in the case of other work activities at customers' premises, our employees are entitled to terminate a work assignment at a customer's premises if they find that occupational safety measures have not been taken or have not been taken sufficiently. In this case we will charge for the services rendered including travel costs.

§ 9 Claims for defects

1. In the event of a **quality defect**, we may, at our discretion, either repair parts that prove to be defective as a result of a circumstance that occurred prior to the transfer of risk or replace these parts with defect-free parts. The customer has to notify us immediately in writing of any defects discovered. Replaced parts will become our property unless we reject this transfer of ownership.
2. The new product must give us the necessary time and opportunity to carry out all repairs and replacement deliveries that we deem necessary. Otherwise, we are released from liability for any consequences arising therefrom. Only in urgent cases, such as the endangerment of operational safety or to prevent disproportionately large damage, the customer has the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from us; in such a case, we must be notified of this immediately.
3. Of the direct costs arising from the repair or replacement delivery, we will bear the costs of the replacement item, including shipping, to the extent the complaint proves to be justified. We will also bear the costs of dismantling and installation as well as the costs of any necessary provision of the necessary fitters and assistants, including travel costs, to the extent this does not result in a disproportionate burden for us.
4. The customer is entitled to withdraw from the contract within the framework of the statutory provisions if we – taking into account the statutory exceptions – allow a reasonable period of grace set for us for subsequent performance due to a quality defect to expire fruitlessly. If the defect is only insignificant, the customer is only entitled to reduce the contract price. The right to reduce the contract price otherwise remains excluded.
5. We will not be liable in cases of unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable foundation soil or chemical, electrochemical or electrical influences – to the extent these circumstances are not attributable to our fault.
6. If the customer or a third party carries out improper repairs, we are not liable for the resulting consequences. The same applies to changes made to the delivery item without our prior consent.
7. In the event of **defects of title**, as a general rule we will procure for the customer, at our expense, the right of further use in the event that a third party asserts claims based on alleged infringements of industrial property rights or copyrights in Germany due to the use of the delivery item. Alternatively, we will modify the delivery item in a manner that is reasonably acceptable for the customer in such a way that the infringement of property rights ceases to exist. If this is not possible for us on commercially reasonable terms or within a reasonable period of time, the customer is entitled to withdraw from the contract; in that case, we, too, have a right to withdraw from the contract.
8. In addition, we will indemnify the customer with regard to claims of the concerned owners of intellectual property that are undisputed or have been recognised by a court of law in a final and binding manner.
9. These obligations are exhaustive in cases of infringement of intellectual property or copyrights, subject to the liability limitation in § 10.
10. In any case, the prerequisite for our liability for defects of title is that the customer informs us immediately of any alleged infringements of industrial property rights or copyrights, supports us to a reasonable extent in the defence against claims raised or enables us to carry out the modification measures, that all defence measures including out-of-court settlements are reserved for us, the defect of title is not based on an instruction of the customer and is not based on the fact that the customer has modified the delivery item on his own authority or in a manner not in accordance with the contract.
11. The customer assumes sole responsibility for the documents to be provided by him and warrants that these documents do not infringe the property rights of third parties. We are not obliged to the customer to check whether the submission of offers on the basis of documents sent to us infringes the property rights of third parties. Should liability on our part nevertheless result from facts giving rise to a claim, the customer is obliged to indemnify us.

§ 10 Liability, limitation of liability

1. We will only be liable for damage not occurring to the delivery item itself, irrespective of the legal grounds, in the event of intent and gross negligence and – in the event of injury to life, limb or health – in the event of any culpable breach of contract.
2. We will also be liable for defects which we have fraudulently concealed or the absence of which we have warranted, and for defects in the delivery item, to the extent liability exists under the German Product Liability Act (*Produkthaftungsgesetz*) for personal injury or property damage to privately used items.
3. In the event of a culpable breach of material contractual obligations, we will also be liable for intentional or gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to reasonably foreseeable damage typical for the contract.
4. We are only obliged to reimburse necessary expenses for the purpose of subsequent performance if we are at fault in this respect.
5. Liability for quality defects is limited to the respective order value.
6. Our liability for further claims is excluded.
7. To the extent that our liability is excluded or limited, this applies also to the personal liability of our personnel, employees, staff, representatives and vicarious agents.

§ 11 Statute of limitation

1. All claims of the customer – based on whatever legal reason – become subject to limitation 12 months after commissioning, at the longest 18 months after transfer of risk. Wear parts are excluded.
2. In the case of intentional or fraudulent conduct and in the case of claims under the German Product Liability Act, the statutory periods shall apply.

§ 12 Compliance, export control

1. We are committed to professional and honest conduct and to compliance with legal regulations and ethical standards. We also expect business partners to behave accordingly. In the event of violations of legal regulations by the customer, in particular in the event of corrupt or fraudulent actions, we are entitled to terminate the contract without notice. We reserve the right to claim damages.
2. The customer undertakes to comply with all applicable export control regulations and embargoes. The customer must inform us immediately if the delivery item is to be delivered for final use in a country or to a natural or legal person that is subject to export restrictions or embargoes. The same applies if the customer subsequently becomes aware of this fact. The customer is responsible for obtaining the relevant export permits, unless we have expressly assumed responsibility for obtaining them. In any case, delivery will only take place after the relevant permit has been granted; the delivery dates will be adjusted accordingly in an appropriate manner. If a permit is not granted within a reasonable period of time, the parties are entitled to terminate the contract.

§ 13 Place of venue

The place of venue for all disputes arising from and in connection with the contractual relationship is Mannheim. In addition, we are also entitled, at our own discretion, to bring an action at the customer's principal place of business.