

# General Terms and Conditions (AGB)

of the EMSFIBER GmbH, Bockhorster Str. West 7, D-26897 Esterwegen, Germany

## I. Validity, offer and conclusion

1. Our deliveries and services are exclusively rendered on the basis of these General Terms and Conditions (AGB). We expressly object to the general terms and conditions of our contracting parties.
2. Our offers are non-binding offers. Contract conclusions and other agreements shall only become binding with our written confirmation.
3. Brochures, drawings, advertisements etc. published by us as well as the data contained in those publications, such as weight, quality, dimensions, consistence and performances shall only be binding if we expressly mark them as binding.

## II. Prices

Our prices are net cash ex works plus freight and VAT, if not agreed upon differently.

## III. Time of delivery and of performance

1. Agreed times of delivery are prolonged by the time for which the client is behind schedule with his obligations towards us plus a reasonable starting period.
2. If we have guaranteed the adherence of a deadline or a time limit, we can be granted an additional period of grace by our client if we are behind schedule.  
After a futile expiry of the deadline, the client can withdraw from the contract for those quantities and services which not been delivered/rendered yet at the time of expiry of the grace period. If those partially rendered services are not of help or interest for the client, he shall be entitled to completely withdraw from the contract.
3. In case of events of force majeure, we shall be entitled to postpone our deliveries and services by the period of time of the hindrance plus a reasonable starting period, also if those events of force majeure occur for our suppliers or one of their subcontractors. Alternatively, we shall be entitled in such cases to partly or completely withdraw from the contract due to the part of the contract which has not been performed yet.  
As force majeure shall be considered strike, lock-out, mobilization, war, blockade, export and import prohibition, disturbances of traffic and other circumstances, which cannot be influenced by us and which render delivery unacceptably difficult or impossible for us.  
In these cases, our client shall have the right to ask for a statement by us on whether we withdraw from the contract or whether we will deliver within a reasonable period of time. If we do not make such a statement, the client shall have the right to withdraw from the contract.

## IV. Shipping and passing of risk

1. For lack of explicit agreement, it is up to us to decide on the shipping method and the means of transport.
2. The delivery "free place of unloading from the lorry" requires that the respective place can be easily reached via a road which is passable for a lorry. The receiver is responsible for the prompt and proper unloading. Waiting times shall be invoiced.
3. The risk passes to the buyer by handing the material over to a forwarding agent, when leaving our works at the latest and also in case of free delivery.

## V. Terms of payment/set-off

1. All payments shall be made cash and without deduction within 14 days from delivery or rendering the service, if not agreed upon differently.
2. The retention of payments or the set-off for reasons of potential counterclaims by the client which are denied by us and which have not become res judicata shall not be permissible.
3. If the client is behind schedule with the payment, interests to the amount of 5 percentage points above the respective base interest rate shall be payable from the first day of delay. If the damage due to delay turns out to be higher, we shall have the right to put this forward.

## VI. Reservation of title

1. All goods delivered shall remain our property until their complete payment (reserved goods). In case of current account, the reserved title serves for securing our accounts receivable.
2. Treating and processing these reserved goods is carried out for us as manufacturer in the sense of § 950 BGB (German Civil Code) without binding ourselves.  
In case of processing with other goods, of which we are not the owner, by the client, we shall be entitled to the co-ownership in the manufactured goods on a pro rata basis of the invoice value of our processed reserved goods and the sum of the invoice values of all other goods used for manufacture.  
In case our goods are mixed or connected with other goods, resulting in the expiry of our property in the reserved goods (§§ 947, 948 BGB), we already now stipulate that the property of the client in the mixed or uniform goods shall pass on to us to the extent of the invoice value of our reserved goods and that the client shall keep these goods for us without remuneration.  
The goods resulting from the processing or the combining or mixing shall be reserved goods in the sense of these conditions.
3. The client may sell or process the reserved goods within the scope of proper business. He shall only be entitled to resell the goods, if receivables from reselling plus ancillary rights pass on to us to the extent resulting from the following paragraphs. He shall not be entitled to other disposals.  
The incorporation into premises or buildings or the use of the reserved goods for fulfilling other work or contracts for work and material by the client shall also be considered as reselling.

4. The receivables of the client resulting from reselling the reserved goods plus all ancillary rights are assigned to us already now to the full amount – no matter whether they are resold to one or several buyers.  
If the reserved goods are sold after having been combined with or mixed or processed with other goods, of which we are not the owner, the assignment is only made to the amount of the portion of our co-ownership in the sold goods or the sold stock.  
The client shall be entitled to collect the receivables assigned to us as long as he is not behind schedule towards us. In this case, we shall be entitled:
  - a) to revoke the permission to sell or treat/process or incorporate the reserved goods and to collect the receivables assigned to us,
  - b) to notify third party debtors of the assignment.
5. The client shall engage to provide all information necessary for the assertion of our rights and to hand over the documents necessary for this.
6. In case that the value of our securities exceeds our receivables by more than 20 % in total – not just temporarily – we unblock securities of the respective value, which we will decide upon, on demand.

## VII. Defects/guarantee

1. Obvious defects must be notified within two weeks from the receipt of the goods or the completion of our performance. In order to comply with the period, the timely dispatch of the notification is sufficient.  
The defective goods shall be kept for inspection by us in the condition in which they were at the time of establishing the defect and they shall not be changed. They must not be treated or further processed.  
The client shall give us the opportunity to assess the justification of a notice of defect. He shall also be obliged to make samples of the material complained about immediately available to us upon request. In case that transport damages are caused during loading the wagon or the ship as well as during delivery of the goods by the carrier, the shipment shall be made available to the carrier or the goods office, respectively. Breakages and missing quantities shall be noted on the shipping bill/delivery note.  
A violation of these obligations results in the exclusion of all our liabilities. Furthermore, no claims based on defects can be asserted, if the defect was only given notice of after the goods had been mixed with other goods or after having been processed/treated.
2. In case of justified and timely notice of defects, we take goods back which are recognized as defective and we deliver impeccable goods instead.  
In case of justified timely notice of defects, we eliminate defects by subsequent improvement.  
If this subsequent improvement fails, the client shall explicitly have the right to reduction or to withdraw from the contract – at his free choice.
3. Claims based on defects in case of delivery of used goods are subject to a limitation period of one year.

## VIII. Liability, limitation of actions

1. We are only liable for damages resulting from a grossly negligent or intentional violation of obligations by us, our legal representatives or our vicarious agents, unless they are damages resulting from death, bodily injury or damages to health.  
Liability under the provisions of the liability act, due to the culpable violation of essential contractual obligations, due to malicious deceit and due to the lack of guaranteed characteristics remains unaffected.

## IX. Place of performance, place of jurisdiction and applicable law

Place of performance for our services shall be Esterwegen, if not stipulated differently. Exclusive place of jurisdiction shall be Esterwegen, unless the contracting party is a business man.  
The contracting parties are subject to the law of the Federal Republic of Germany. The validity of the UN Sales Convention is excluded.