

# GENERAL CONDITIONS

## OF EMC DISTRIBUTION Ltd, RUSE – REPUBLIC OF BULGARIA

### FOR PURCHASE AND SALES OF PRODUCTS FROM THE RANGE OF PRODUCTION

#### 1. APPLICABILITY OF THE GENERAL CONDITIONS

- 1.1. The present general conditions for delivery and payments apply to all offers, orders, confirmations and agreements related to the delivery of any product of EMC DISTRIBUTION Ltd and its associated companies and settle the rights and obligations of the parties, which they shall respect.
- 1.2. The general conditions shall be binding upon the Buyer from the moment of their submission. They shall also be binding if the Buyer had been aware of them beforehand or if it had been the Buyer's responsibility to become aware of them and if the Buyer has failed to immediately contest them in writing.
- 1.3. In case of discrepancy or dispute between these general conditions and any other documents, these general conditions shall prevail, unless the Parties explicitly agreed otherwise explicitly in writing.

#### 2. PARAMETERS OF THE DEAL, TERMS AND TIME OF DELIVERY

- 2.1. The sale of goods shall be done according to a written or oral order by the Buyer, which shall contain information on the type and quantity of the goods, their characteristics, price, time, place and terms of delivery.
- 2.2. Any order shall be deemed accepted only upon the Seller's written confirmation or upon the signing of a frame contract and specifications. The written form shall be deemed respected also in cases of letters, fax and/or e-mails sent confirmed by the recipient. The parties shall accept as valid any declaration of intention related to a signed and stamped contract, specification, order confirmation on a facsimile and correspondence related to the contract.
- 2.3. Tubes and profiles are produced with technical parameters complying entirely to the agreed standard.  
Any specific requirements and options which are not defined in the agreed standard should be preliminary indicated in written form by the Buyer and confirmed accordingly by the Seller.
- 2.4. Method for testing
  - 2.4.1. Flattening test - the tubes are flattened at 50%, 75% up to 80% of the diameter D, while positioning the welding seam at 0° and 90° (12 and 3 hours) to the flattening direction. The test is performed on a press with slow and smooth moving of the platen
  - 2.4.2. Expanding test - the tubes are tested with a 60° conical mandrel until expanding the diameter D with 20%  
\*For additional information, please visit [www.emc-distribution.eu](http://www.emc-distribution.eu)
  - 2.4.3. Non-destructive testing - Upon customer request for non-destructive testing, eddy current testing is performed for finding inconsistency longitudinally along the welding seam, according to EN 10246-3.  
For any extra requirements and options, not preliminarily indicated and confirmed in written form, claims are not accepted.
- 2.5. In case of a delay of the order caused by the Buyer, the delivery time of the order shall be deemed extended by the period of delay.
- 2.6. In case of delay due to force majeure, the delivery time shall be deemed extended by the period of delay.
- 2.7. The Seller shall have the right to demand payment guarantees for the completion of the order.

#### 3. PRICES AND PAYMENTS

- 3.1. The price of the goods shall be calculated on the basis of the valid pricelists or agreements concluded between the parties.
- 3.2. The Seller shall issue an invoice according to the terms and time periods set forth in the taxation and accounting legislation of the Republic of Bulgaria. The invoice shall accompany the goods, unless otherwise agreed upon between the Parties. Payment shall be effected by bank transfer. The Buyer shall complete the payment according to the commercial invoices issued that define the delivery.
- 3.3. If an increase in the prices of raw material – steel or LME value for aluminium – takes effect after the price has been agreed upon, the price increases in the same proportion as the raw material price increase. The Seller shall have the right to invoice and receive from the Buyer the proportionately increased price.
- 3.4. The Buyer may demand that the Seller purchases the raw material necessary for the performance of the contract in advance. Should the Buyer fail to order the goods within the period set, receive the goods or pay for them, the Buyer shall owe the Seller the price of the raw material purchased for the execution of its contract.
- 3.5. In case of claims, the Buyer has no right to delay the payment of the goods delivered or the orders for a future period.
- 3.6. The Seller shall have the right to demand storage costs amounting to 4 EUR per ton and per day, if the goods ordered and produced for the Buyer have to be stored in the Seller's warehouse after the delivery time by fault of the Buyer.

#### 4. DELIVERY AND TRANSFER OF RISK

- 4.1. The Seller shall deliver the agreed quantity with a tolerance of plus/minus 10% of the total and per size, at the place and within the periods agreed between the parties. Partial deliveries are allowed.
- 4.2. The Seller shall have the right, without being held responsible, to refuse to complete an order until the final fulfillment of the Buyer's prior payment duties or obligation to collect the goods.
- 4.3. The Parties may agree on delivery terms by referring to Incoterms 2010. Unless otherwise agreed, the goods shall be handed over in the Seller's warehouse.
- 4.4. The Seller has the right to select the carrier and transport vehicle.
- 4.5. The risk of loss or damage to the goods shall pass on to the Buyer in the moment the goods are handed over to the carrier or forwarder, irrespective of the moment of transfer of title, unless otherwise agreed.

#### 5. TITLE

- 5.1. The title of the goods shall pass from the Seller to the Buyer upon delivery of the goods and upon the Seller's receipt of the full amount of its due payments for the delivery (the invoice value and any penalties, compensations, interests, costs and expenses and any other obligations to the Seller).
- 5.2. As long as the reservation of title is in effect, transfer of the goods, their pledge as security or any other transfer of title of the goods shall be allowed only upon the Seller's approval.
- 5.3. If the Buyer has sold the goods to a third party as long as the reservation of the title is in

effect, the Buyer shall transfer its receivables to the Seller up to the amount due and the Buyer shall remain a joint debtor together with the third party, until the Seller's receivables have been covered.

#### 6. FORCE MAJEURE

- 6.1. If circumstances occur that hinder the complete or partial execution of the present contract, such as fire, natural disasters, non-delivery of raw material, which cause disturbances in the production process or goods transportation, any hostilities, blockades, strikes, export barriers according to the national legislation, which cannot be foreseen and are beyond the Seller's reasonable scope of control and are not the result of its negligence, the Seller shall notify the Buyer thereof and shall not be held responsible.
- 6.2. If the force majeure lasts more than 30 days, the Seller may unilaterally terminate the contract by written notice to the Buyer, without any juridical judgement or arbitration and with no obligation to indemnify the Buyer.

#### 7. CLAIMS

- 7.1. Within 10 days of receiving the goods, the Buyer is entitled to make quantity claims. The weight shall be measured in accordance with standard requirements and in the presence of a representative of an authorized independent international control organization, approved by the Seller. The costs for this reweighing the goods shall be borne by the Buyer. Checking of weight of the goods shall be effected during discharge at the place of destination on precisely calibrated scales or according to otherwise established means of an authorized independent international control organization approved by the Seller. The Buyer shall notify the Seller of the type and the date of the latest calibration of the scales used. Should the weight that has been established as a result of the reweighing of the goods at the place of destination differ from the weight listed in the bill of lading by not more than 0.5%, the bill of lading weight shall be deemed final for the settlement of accounts between the Parties. Should the difference exceed 0.5% of the entire quantity of the goods delivered under the present Contract, the Parties shall settle their accounts in accordance with the weight established by reweighing at the place of discharge.
- 7.2. Within 30 days of receiving the goods, the Buyer shall inspect them and in case of claims in respect to quality it shall notify the Seller and send pictures and a detailed description of the type of defect, lot and bundle No. and number of claimed tubes. If the Seller does not send a representative and does accept the claim as well-grounded, the Buyer shall send a certificate issued by an authorized independent international control organization approved by the Seller; the claimed goods shall be made available to the Seller for inspection and replacement within 45 days of receipt of the goods.
- 7.3. If the claim is well-grounded, the Seller shall have the right to replace the or to accept a relevant price reduction.
- 7.4. After the expiry of the 45-day period, the Buyer shall send an invoice for the value of rejected goods sold as scrap.
- 7.5. Claims are not accepted in case of specific technical requirements and options not defined in the agreed standard and not preliminarily indicated in written and not confirmed.
- 7.6. Non-complying goods of quantities up to 2% are not a ground for demanding claims.

#### 8. PENALTIES

- 8.1. In case of a delay in payment by more than 5 (five) days from the due date indicated in the respective invoice, the Buyer shall owe a penalty equal to 0.1 (zero point one) % of the due amount not paid on time for each day of the delay starting from date of the invoice, but no more than 100% (one hundred percent). In case of a delay in payment by more than 30 (thirty) days, the Buyer shall owe the Seller a penalty for the delay equal to 0.5 (zero point five) % of the due amount not paid on time for each day of delay starting from the date of the invoice, but no more than 100% (one hundred percent). The Seller shall also have the right to stop any new deliveries to the Buyer until the full payment of all due amounts.
- 8.2. The same penalty of 0.1 (zero point one) % up to the 30<sup>th</sup> day of delay and 0.5 (zero point five) % after the 30<sup>th</sup> day of delay, but no more than 100% (one hundred percent) shall also be due on the value of the goods, if the Buyer fails to order the production and delivery of the agreed quantity, refuses to collect the goods ordered or if the delivery is not made because of non-payment or delay in the payment of any receivable of the Seller, as well as if the deliveries are stopped or the contract is canceled for reasons within the Buyer's area of responsibility, including Buyer's insolvency.

#### 9. TERMINATION OF THE CONTRACT

- 9.1. The Buyer and the Seller shall be entitled to terminate the contract unilaterally by 1-month prior written notice without being held responsible.
- 9.2. Without prejudice to the penalty due, the Seller may stop the production and delivery of goods until the full payment of all duties, without being held responsible. If the delay of payment continues for more than 30 days, the Seller may terminate the contract in writing without notice.

#### 10. ARBITRATION AND APPLICABLE LAW

- 10.1. The present contract is subject to Austrian law, under the exclusion of referral norms of international private law and UN commercial law.
- 10.2. All disputes and claims arising out of or in the execution and interpretation of the present contract shall be settled amicably between the Parties.
- 10.3. If no consent is reached, all disputes arising from or related to the present contract, including all disputes arising from or related to its interpretation, invalidation, execution, alteration or termination, as well as all disputes on filling gaps in this contract or its adjustment to newly occurred circumstances shall be submitted to the International Court of Arbitration of the International Chamber of Commerce in Vienna and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce and the Austrian material law by one or more arbitrators appointed in accordance with the said Rules. The decision shall be final and binding on the Parties.
- 10.4. The above mentioned rules are in effect unless their application was expressly excluded in the contract.

#### 11. CONCLUSIVE CLAUSES

- 11.1. Any invalidation related to the concluded contract, such as order-specifications, shall be done in writing. This also applies to the cancellation of the requirement of written form itself.
- 11.2. Neither of the Parties may transfer its rights and obligations under the present contract to third parties without the prior written approval of the other Party.
- 11.3. The General Conditions are valid until modified or until the adoption of new text of this General Conditions.