

TERMS OF SALE, DELIVERY AND PAYMENT OF EVOSYS NORTH AMERICA CORPORATION

Validity of the conditions and conclusion of the contract:

1. All offers, agreements, deliveries and services shall only be made based on and in accordance with the following terms and conditions. Unless otherwise agreed, they shall also apply to deliveries abroad and to all future business. Deviating terms and conditions of the customer shall not be recognized unless we expressly confirm them in writing. The confirmation requirement shall also apply if we have made the delivery to the purchaser with knowledge of the purchaser's terms and conditions. Our offer is directed exclusively to entrepreneurs.
2. Our offers are subject to change and non-binding. This shall also apply if we have provided the customer with catalogues, brochures, technical documentation - such as drawings, plans, calculations -, product descriptions or documents in whatever form. Anything else shall only apply if our offers are expressly marked as mandatory or if they contain a deadline for acceptance.
3. The order of the goods by the customer is considered a mandatory contract offer. The contract shall be concluded upon acceptance. We are entitled to accept the offer within two weeks of receipt by us, unless otherwise stated in the order. Acceptance shall be made in writing (order confirmation) or by delivery of the goods to the customer.
4. Our offers are valid under the condition that the fulfillment does not conflict with any European or US export regulations (e.g.: embargoes, sanctions lists, licensing requirements). The customer is obliged to provide all the information and documents necessary for exports, imports or other deliveries. Delays caused by any export control checks will extend the delivery times and agreed deadlines accordingly. In the event that any permits cannot be obtained or any other export restrictions exist, this offer shall be null, and void and the resulting contract shall be deemed not to have been entered into with respect to such goods and any damage resulting from such failure to meet deadlines shall be excluded, unless based on intent or gross negligence on the part of EVOSYS.

Proposal documents, copyright:

We reserve the property rights and copyrights to all documents belonging to the offer; they may not be made accessible to third parties without our prior written consent and must be returned to us immediately upon request if the order is not placed with us. Development work and designs for the creation of systems and other products remain our intellectual property and may not be made accessible to third parties by the customer, nor may they be further used for his own purposes.

Price and payment:

1. The prices are for ex-works and in each case in USD plus the respective statutory VAT and plus the costs for packaging, loading, shipping, transport insurance, customs and clearance costs. If fixed prices have not been agreed, our list prices valid on the day of delivery apply. Payments should be made free of charge to our pay agent.
2. All changes in prices agreed in the foreign currency or in the exchange rate to the USD occurring after the conclusion of the contract shall be borne by the Purchaser.
3. Payments shall only be made directly to us; in the case of non-cash payments, they shall only be deemed to have been fulfilled upon final crediting to our account. Representatives and traveling employees are not authorized to accept money. Bills of exchange shall only be accepted on account of performance by agreement and on condition that they are discountable. Discount charges shall be calculated from the date on which the invoice amount is due.
4. Invoices shall be paid net within 14 days of the invoice date, unless otherwise agreed. We reserve the right to make deliveries only against advance payment, in particular for first orders or after payment due dates have been exceeded.
5. Our claim for remuneration shall in any case become due for payment immediately if the customer becomes insolvent, if insolvent proceedings are filed against his assets or if his company is sold or if another owner takes his place.
6. If the customer is in default with the payment or a partial payment, the respective outstanding payment obligation shall be subject to interest at the statutory interest rate of 9 % points above the respective base interest rate. We shall be at liberty to assert further damage caused by default.
7. In the case of deliveries abroad, EVOSYS shall be entitled to demand 100% security of payment by letter of credit, sureties, guarantees and other means of security or advance payment, even if not mentioned in the offer. This right also exists as far as the customer is in default with the agreed.
8. The set-off with regard to the remuneration due to EVOSYS by the Customer with counterclaims not arising from the same contractual relationship is excluded, unless the counterclaim put forward for set-off has been legally established or is not disputed by EVOSYS.
9. In the cases mentioned under item 5. As well as if other circumstances become known after the conclusion of the contract, which considerably endanger the fulfillment of the contract on the part of the purchaser, we are entitled to refuse performance as well as to withdraw from the contract according to the legal regulations. We may also demand a reasonable advance payment not agreed upon by then or a reasonable increase of an advance payment already agreed upon or the provision of security in the amount of the respective outstanding liabilities. If the customer does not comply with this demand despite setting a reasonable deadline, we shall be entitled to withdraw from the contract or to claim damages instead of performance.

Place of performance, transfer of risk, shipping, freight:

1. Delivery and transfer of risk shall be ex works (1659 W Hamlin Rd, Unit G, Rochester Hills, MI 48309, USA), EXW Incoterms® 2020, which is also the place of performance.
2. If the goods are sent to the purchaser at the latter's request, the risk of accidental loss and accidental deterioration as well as the risk of delay shall pass to the purchaser upon their delivery to the shipping agent. This shall also apply to partial deliveries and regardless of whether this shipment is made from the place of performance or who bears the freight costs. If the goods are ready for shipment and the shipment or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to the customer upon receipt of the notification of readiness for shipment.
3. If delivery with installation and assembly has been agreed, the risk shall pass upon acceptance of the goods at the Purchaser's premises. If the dispatch, the delivery, the start, the execution of the assembly and erection, the taking over in the own works is delayed due to circumstances for which the Purchaser is responsible, the risk shall pass to the Purchaser.

Retention of Title:

1. The delivered goods shall remain our property until full payment of all claims to which we are entitled against the customer - including all balance claims from the current account. In case of default of payment or other, not only minor violations of the contractual obligations of the purchaser, we are entitled to take back the delivery item after withdrawal from the contract. The customer shall bear the transport costs incurred for taking back the goods. After

taking back the object of sale, we shall be entitled to dispose of it; the proceeds of such disposal shall be credited against the customer's liabilities - less reasonable costs of disposal.

2. The customer shall treat the reserved goods with care. He shall adequately insure the reserved goods at his own expense against damage by fire, water and theft at replacement value. The Purchaser shall carry out any necessary maintenance and inspection work in a timely and proper manner at its own expense.
3. During the existence of the reservation of title, the Purchaser shall not be entitled to pledge the Retained Goods, to assign them by way of security or to resell them by way of sale and leaseback. The Customer shall only be entitled to resell the reserved goods in the ordinary course of business as long as it is not in default of payment and only on condition that, in the event of resale to a third party, the third party receives payment from its customer or makes the reservation that ownership shall not pass to the customer until the customer has fulfilled its payment obligation in full.
4. The customer hereby assigns to us in full, by way of security, the claims arising from the resale of the goods subject to retention of title as well as those claims of the customer in respect of the goods subject to retention of title which arise for any other legal reason against its customers or third parties (in particular claims arising from tort and claims from insurance benefits). We accept the assignment. The share of the claim assigned to us shall be satisfied with priority. However, the customer shall be entitled to collect the claims as long as he is not in default with the fulfillment of his obligations towards us or does not fall into financial collapse. If the reserved goods are resold together with other items, the customer shall assign to us, with priority over the other claims, that part of the total price claim which corresponds to the price of the reserved goods invoiced by us. The customer must inform us immediately of the resale of the reserved goods and of any damage to or destruction of the reserved goods. He shall also notify the debtor of the assignment without delay and, at our request, provide us without delay with the information on the assigned claims required for collection and hand over any documents required for this purpose.
5. Any processing or treatment of the reserved goods shall be carried out by the customer on our behalf without any obligations arising for us. In the event of processing, combining and mixing or blending of the reserved goods with other items not belonging to us, we shall be entitled to the resulting co-ownership share in the new item in the ratio of the value of the reserved goods to the other processed goods at the time of processing, combining, mixing or blending. If the customer acquires sole ownership of the new item, the contracting parties agree that the customer shall grant us co-ownership of the new item in proportion to the value of the processed or combined, mixed or blended goods subject to retention of title and shall store them for us free of charge. If the goods subject to retention of title are resold together with other goods, regardless of whether without or after processing, combining, mixing or blending, the advance assignment agreed above shall only apply to the value of the goods subject to retention of title which are resold together with the other goods.
6. In order to secure our claims against him, the customer also assigns to us the claims which accrue to him against third parties through the connection of the delivered - possibly processed, connected, mixed or blended - item with a piece of real estate.
7. The customer must inform us immediately of any seizures, confiscations or other compulsory enforcement measures or disposals by third parties of the goods subject to retention of title or the claims assigned in advance, handing over the documents necessary for an intervention.
8. If the realizable value of the above securities exceeds the secured claims by more than 10%, we shall be obligated to release a corresponding portion of our securities at the request of the customer; we shall be responsible for selecting the securities to be released.

Terms of delivery:

1. Correct and timely self-delivery is reserved.
2. If, in individual cases, a fixed delivery period has been agreed by special arrangement, this period shall be deemed to have been complied with if the goods have left the respective factory/warehouse or notification of readiness for dispatch has been given by the time of its expiry, or, if a preliminary acceptance test has been carried out, upon its completion.
3. Partial deliveries are permissible. The delivery period shall be extended appropriately if the Customer does not provide the documents, approvals, workpieces, devices or other auxiliary work to be procured by it in good time, in the case of unforeseeable, extraordinary events which cannot be averted despite the due and reasonable care required under the circumstances of the case, such as e.g. operational disruptions, strike and lockout, export and import bans, non-granting or revocation of approvals or permits or other official measures. This shall also apply if one of the aforementioned events occurs at a supplier or other manufacturer.

Texture:

1. EVOSYS usually carries out test machining with materials provided by the customer in advance of placing the order. Unless otherwise agreed in writing, these shall be understood as tests to assess the performance of EVOSYS and not as a concrete commitment with regard to the quality of the delivery item.
2. Insofar as in individual cases by special agreement tests are carried out to prove certain performance parameters of the delivery item, the promises made by EVOSYS refer exclusively to the material mutually agreed upon in advance between EVOSYS and the Customer and provided by the Customer and the agreed dimensions and tolerances; if the Customer uses a different material or if the dimensions deviate from the agreed values, these promises shall not apply.
3. EVOSYS does not assume any responsibility for the production process or the quality of customer's end products by supplying the delivery item. In any case, the Customer shall be responsible for releasing its production and regularly monitoring the quality by suitable means. This also applies to the determination of suitable limits for any process monitoring systems included in the delivery.

Warranty:

1. The warranty period is 12 months. It begins with the delivery of the goods to the purchaser. With regard to work performance (such as installation and connection of machines), the warranty period begins with the acceptance of the work performance.
2. If the performance rendered by us is defective, which also includes the lack of the contractually agreed quality, we shall, at our discretion, either deliver a replacement or remedy the defect; in doing so, the number of attempts to remedy the defect or deliver a replacement to be granted to us may not be less than two. In the event of final failure of the repair or replacement delivery, the customer may, at his discretion, demand withdrawal from the contract or a reduction of the price.
3. Obvious defects in our performance must be notified in writing without delay - at the latest within 14 days of acceptance - and hidden defects must be notified in writing without delay after their discovery; otherwise, any warranty rights of the Purchaser with regard to the defect in question shall be excluded.
4. Only our written order confirmations or the documents referred to therein shall be authoritative for the scope of our deliveries and services. We do not give any warranty for compliance with foreign packaging and customs regulations.
5. Within the scope of his duty to mitigate damages, the customer is required to refrain from any further use of the delivery item if a defect is suspected, insofar as the defect could affect the products to be manufactured with the delivery item.

Industrial property rights and copyright:

1. In the case of items manufactured according to the purchaser's specifications, the purchaser shall guarantee that the manufacture and operation do not infringe the industrial property rights of third parties. In this case, the customer shall indemnify us against all claims of third parties based on industrial property rights.
2. In the event that third parties should assert against the Purchaser claims for infringement of industrial property rights from items of the delivery which have been established by a court of law or recognized by us as justified, we shall, at our discretion and at our expense, either obtain a license for the Purchaser, modify the product concerned accordingly free of charge, replace it with a product free of industrial property rights or, if these measures cannot be carried out or can only be carried out at unreasonable economic expense, take back the product against reimbursement of the price. Any further claims for damages shall be excluded unless we are responsible for the infringement of the property right intentionally or by gross negligence. Our liability shall then be limited to the amount of the price for the object of the delivery.
3. Our obligations set out in item 2 shall only apply if and to the extent that the Purchaser immediately informs us in writing of the claims asserted by the third party, neither concludes a settlement of the claims asserted by the third party nor acknowledges them without our prior written consent, and all defensive measures and settlement negotiations remain reserved to us. If and to the extent that the Purchaser ceases to use the delivered items to mitigate damages or for other important reasons, the Purchaser shall immediately notify the third party in writing that no acknowledgement is associated therewith
4. Claims of the purchaser arising from infringements of industrial property rights shall be excluded if and to the extent that the purchaser is responsible for the infringement of industrial property rights or the infringement of industrial property rights is caused by special specifications of the purchaser, by an application not foreseeable by us or by the fact that items of the delivery are modified by the purchaser or a third party or are used together with products not supplied by us. Claims of the Purchaser are further excluded if they were caused by the fact that the Purchaser used or resold items of the Supplies after having been informed that such use infringes third party intellectual property rights.
5. Further claims against us due to the infringement of industrial property rights are excluded. However, the following liability provision shall remain unaffected by this, as shall the purchaser's right to withdraw from the contract.

Liability:

1. We shall be liable without limitation in accordance with the legal provisions for damage to life, limb and health resulting from a negligent or intentional breach of duty by us, or our legal representatives or vicarious agents, as well as for damage covered by liability under the Product Liability Act, and for damage resulting from intentional or grossly negligent breaches of contract and fraudulent intent by us, or our legal representatives or vicarious agents.
2. To the extent that a quality and/or durability guarantee has been given with regard to the subject matter of the contract or parts thereof, we shall also be liable within the scope of this guarantee. However, we shall only be liable for damage based on the absence of the guaranteed quality or durability, but which does not occur directly to the goods, if the risk of such damage is obviously covered by the quality and durability guarantee.
3. We shall also be liable for damages caused by us through simple negligence, insofar as negligence concerns the breach of essential contractual obligations.
4. This also applies to any claims of the customer for damages instead of performance
5. Essential contractual obligations are obligations which the contract imposes on us according to its content in order to achieve the purpose of the contract, the fulfillment of which makes the proper execution of the contract possible in the first place and compliance with which the customer may regularly rely on.
6. However, we shall only be liable to the extent that the damage is typically associated with the contract and is foreseeable.
7. In all other respects, any liability on our part for damages - on whatever legal grounds - is excluded. In this respect, we shall in particular not be liable for damages which have not occurred to the delivery item itself, such as loss of profit, loss of production, tort, as well as other financial losses of the customer.
8. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, vicarious agents or representatives.

Salvatory clause:

Should individual provisions be or become invalid or unenforceable in whole or in part, or should an unintentional loophole be found in the contract, this shall not affect the validity of the contract or the remaining terms and conditions of sale, delivery and payment. The parties are obliged to replace invalid or unenforceable conditions or contractual provisions with agreements that come as close as possible to the intended purpose. This also applies to the filling of an unintended loophole.

Jurisdiction and Applicable Law:

1. As far as the purchasers are merchants - with the exception of such merchants whose business does not require a business operation set up in a commercial manner due to its nature and scope -, legal entities under public law or special funds under public law, Michigan shall be the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. EVOSYS shall also be entitled to bring an action at the place of business of the Buyer.
2. The contractual relationship shall be governed in all cases by USA law to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws.

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