

## Terms and Conditions of the EMKA Aluminium GmbH

### 1. Validity Different terms and conditions

- 1.1. These conditions apply to all offers, order confirmations and deliveries of EMKA Aluminum GmbH. Upon conclusion of the first contract, including the following conditions, the customer acknowledges their validity for the entire duration of the business relationship. This also applies to all - also orally - completed future follow-up business. Deviating or additional terms and conditions of the customer are not valid. This also applies if EMKA Aluminum GmbH, in the knowledge of deviating terms and conditions of the customer, carries out the delivery or other services without reservation.
- 1.2. These conditions apply only to entrepreneurs, legal entities under public law and public law special funds.

### 2. Delivery / Transport

- 2.1. If EMKA Aluminum GmbH is in default of delivery, the customer may withdraw from the contract in accordance with the statutory provisions.
- 2.2. Claims for damages and reimbursement of expenses of the customer due to delay of the performance or exclusion of the duty of performance of the EMKA aluminum GmbH are in accordance with the regulations in Ziff. 6. excluded or limited. This applies regardless of whether the customer has withdrawn from the contract, and even if such claims have arisen until the withdrawal from the contract.
- 2.3. Delivery shall be made in accordance with the clause of the Incoterms (in each case the most recent version) agreed in each individual case.
- 2.4. When picking up the object of purchase, the customer is obliged to provide fasteners and other devices for transport safe loading of the object of purchase.
- 2.5. If EMKA Aluminum GmbH supports the construction management of the customer during the supervision of the assembly or commissioning by its staff, EMKA Aluminum GmbH is only liable for the fact that it selects technically suitable personnel. The tasks and activities of the construction management, the site management, the construction supervision, the planning or the coordination as well as assembly work does EMKA aluminum GmbH not take over. Furthermore, EMKA Aluminum GmbH does not assume the professional, technical and drawing-appropriate contribution of the object of purchase.

### 3. Remuneration / Payment / Retention

- 3.1. All prices are exclusive VAT at the statutory rate on the day of invoicing. The deduction of discount requires a special written agreement.

- 3.2. Payments will be charged also in case of deviating repayment regulation of the customer exclusively according to §§ 366, 367 BGB.
- 3.3. An offsetting of the customer is only permissible with a legally established, decision-ready or uncontested by EMKA Aluminum GmbH counterclaim of the customer.
- 3.4. To the exercise of a right of denial of performance or right of retention the customer is authorized insofar as his counterclaim is based on the same contractual relationship and is legally established, ready for decision or undisputed.

#### 4. Retention of title

- 4.1. EMKA Aluminum GmbH reserves ownership of the object of purchase until full payment of the purchase price including ancillary claims. The retention of title extends to all claims resulting from the business relationship or from previous contracts between the parties until they have been fully settled.
- 4.2. In the event of default by the customer, EMKA Aluminum GmbH may withdraw from the contract without further notice and demand the return of the object of purchase.

The same applies if

- 4.2.1. the customer violates essential contractual obligations, or
- 4.2.2. a significant deterioration in the financial circumstances of the customer occurs, in particular seizures or other measures of foreclosure are instituted against him or an application to open insolvency proceedings on the assets of the customer is made, or
- 4.2.3. the customer with one or more of his creditors seeks an out-of-court settlement of the debt settlement, or
- 4.2.4. an application for the opening of insolvency proceedings against the customer's assets is dismissed or the insolvency proceedings are suspended or terminated.

The costs incurred, in particular for the return transport, are borne by the customer. If EMKA Aluminum GmbH requires according to this clause. 4.2 the return of the object of purchase, this applies in case of doubt as a withdrawal from the contract.

#### 4.2.5. Extended retention of title

The delivery is made only on the basis of the retention of title described in more detail below. This also applies to all future deliveries, even if EMKA Aluminum GmbH does not always explicitly refer to them.

1. Ownership of the delivered goods remains reserved until full payment of all claims under the delivery contract. EMKA Aluminum GmbH is entitled to take back the purchased item if the buyer behaves contrary to the contract.
2. The buyer is obliged, as long as the property has not been transferred to him, to treat the purchased goods with care. In particular, he is obliged to insure these at his own expense against theft, fire and water damage sufficiently new value Maintenance and inspection work must be carried out, the buyer has to perform this at its own expense in a timely manner.  
As long as the ownership has not been transferred, the buyer must immediately notify EMKA Aliminium GmbH in writing if the delivered item is seized or subjected to other third-party intervention. Insofar as the third party is unable to reimburse us for the court and out-of-court costs of a claim in accordance with § 771 ZPO, the buyer is liable for the loss incurred by the vendor.
3. The buyer is entitled to resell the reserved goods in the normal course of business. The purchaser hereby assigns the claims of the customer from the resale of the reserved goods to EMKA Aluminum GmbH in the amount of the final invoice amount agreed with us (including value added tax). This assignment applies regardless of whether the purchased item was resold without or after processing. The buyer remains authorized to collect the claim even after the assignment. The right of the seller to collect the claim itself remains unaffected. However, the seller will not collect the claim as long as the buyer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, has not filed for insolvency proceedings or has ceased payments.
- 4.3. The customer is not entitled to pledge the object of purchase or to transfer it as security. Seizures and other interventions by third parties are to be reported immediately to EMKA Aluminum GmbH in writing.
- 4.4. As long as the customer is not in default of payment, he is entitled to resell the object of purchase in the ordinary course of business. The customer hereby assigns to EMKA Aluminum GmbH all claims arising from the resale or for any other legal reason regarding the object of purchase in the amount of the invoice value of the object of purchase. EMKA Aluminum GmbH accepts the assignment.
- 4.5. The processing / conversion of the object of purchase by the customer is carried out for EMKA Aluminum GmbH, without EMKA Aluminum GmbH incurring obligations. If the purchased item is processed, combined or inseparably mixed with other items not belonging to EMKA Aluminum GmbH, EMKA Aluminum GmbH acquires co-ownership of the new item in proportion of the invoice value of the purchased item to the value of the other processed / combined /mixed at the Time of processing, compounding or mixing.

- 4.6. The customer also assigns to EMKA Aluminum GmbH those security claims that accrue to him from the connection of the purchased object with a property against a third party; EMKA Aluminum GmbH accepts the assignment.
- 4.7. At the request of the customer, EMKA Aluminum GmbH is obliged to release parts of the collateral to which it is entitled, as far as the realizable value of the collateral due to EMKA Aluminum GmbH not only temporarily exceeds the claims to be secured against the customer by more than 10%.
- 4.8. If the delivery of the object of purchase takes place on request of the customer to a state in which a retention of title is not recognized according to the above conditions or does not have the same security effect as in the FRG, the customer is obligated to undertake all actions and to make declarations, which to the order a comparable security interest are required. The same applies if the customer spends the object of purchase in such a state.

#### 5. Condition / Obligation to Examine / Notify / Defect Claims

- 5.1. For the condition of the object of purchase, the tolerances specified by EMKA Aluminum GmbH as well as the specified storage periods are authoritative and permissible.
- 5.2. Warranty claims of the customer presuppose that the customer has complied with his inspection and complaint obligations under § 377 HGB and has reported defects in writing within one month.
- 5.3. Claims arising from any defects in the object of purchase can only relate to the individual, defective parts of a delivery.
- 5.4. Insofar as there is a material or legal defect at the time of the transfer of risk, EMKA Aluminum GmbH is entitled to remedy the defect in the form of rectification of the defect or delivery of a defect-free product (repair or replacement), but is not obliged to do so. If the purchase price has not yet been paid for in whole or in part, EMKA Aluminum GmbH may make the subsequent performance dependent on the customer paying a part of the purchase price, taking into account the claimed defect.
- 5.5. The customer is entitled to choose between reducing the purchase price or canceling the contract if EMKA Aluminum GmbH seriously and finally refuses supplementary performance due to disproportionate costs or other reasons, the type of supplementary performance chosen by EMKA Aluminum GmbH failed or for the customer unacceptable, or the customer of EMKA Aluminum GmbH has set a reasonable deadline for subsequent performance without success.
- 5.6. In lieu of performance the customer may claim compensation under the conditions stated in ZA 5.5. after the provisions of § 6.

- 5.7. The claims of the customer for reduction, withdrawal from the contract and damages instead of performance are excluded if the defect is insignificant, in particular the suitability of the object of purchase for the contractually assumed or usual for objects of the same kind is not or only insignificantly limited.
  - 5.8. If the delivery of faulty assembly instructions constitutes a material defect, EMKA Aluminum GmbH shall be liable within the scope of para. 5.4 only the correction of the assembly instructions.
  - 5.9. Warranty claims of the customer against EMKA Aluminum GmbH become time-barred one year after delivery of the object of purchase. This also applies to warranty claims for a purchased object that has been used in accordance with its customary use for a building and has caused its defectiveness.
  - 5.10. The statute of limitation for claims based on defects is suspended as long as negotiations between EMKA Aluminum GmbH and the customer about claims for defects or the circumstances justifying them are suspended. The inhibition begins with the written notification of defects by the customer and ends with the written rejection of warranty claims by EMKA Aluminum GmbH, but at the latest two months after the last written declaration of a contracting party in the course of the negotiations.
  - 5.11. For claims for damages, the liability limitations and exclusions of no. 6.
  - 5.12. Any further liability for material defects or defects of title is excluded unless EMKA Aluminum GmbH has fraudulently concealed them or has assumed a guarantee for the quality of the object of purchase.
6. Liability / damage and reimbursement of expenses
- 6.1. All other claims of the customer beyond the claims agreed in these terms and conditions, in particular claims for damages - for whatever legal reason - namely for breach of secondary obligations, negligence in contract negotiations, other breaches of duty and tort, are excluded subject to the following conditions. In particular, EMKA Aluminum GmbH is not liable for consequential damage, indirect damage or other pecuniary loss of the customer.
  - 6.2. The EMKA aluminum GmbH is liable according to the legal regulations for damages, which are based on an intentional or grossly negligent breach of duty by the EMKA aluminum GmbH, their legal representatives or vicarious agents, as well as for damage from the injury of the life, the body or the health, which intentional or negligent breach of duty by EMKA Aluminum GmbH, its legal representatives or vicarious agents.
  - 6.3. The liability of EMKA Aluminum GmbH under the Product Liability Act remains unaffected.

- 6.4. EMKA Aluminum GmbH is liable according to the legal regulations, however limited to the foreseeable, typically occurring damages, which are based on a slightly negligent violation of essential contractual obligations by EMKA Aluminum GmbH, its legal representatives or vicarious agents.

This limitation also applies to claims of the customer for damages instead of performance or reimbursement of expenses - also in the cases of no. 5.6 in connection with para. 5.5 - based on a slightly negligent breach of a material contractual obligation by EMKA Aluminum GmbH, its legal representatives or vicarious agents.

- 6.5. EMKA Aluminum GmbH is liable in accordance with the statutory provisions if the customer asserts claims for damages due to a guarantee assumed by EMKA Aluminum GmbH for the quality of the object of purchase. However, EMKA Aluminum GmbH shall only be liable for consequential damages, in particular their lost profits, in so far as the customer is to be protected by the guarantee against damage of the kind in question.
- 6.6. In the event of default, any liability of EMKA Aluminum GmbH for delay damage shall be without prejudice to the provisions of prov. 6.2 to 6.5 in case of slight negligence only to max. 5% of the invoice value of the services affected by the delay.
- 6.7. If the liability is excluded or limited in accordance with the above provisions, then its valid also for all claims for reimbursement of expenses, claims for negligence in contract actions, breach of other obligations as well as claims arising from tort, including the manufacturer's liability in accordance with § 823 BGB.
- 6.8. The above exclusions of liability and limitations of liability also apply to the personal liability of the organs, officers, employees, representatives and vicarious agents of EMKA Aluminum GmbH.
- 6.9. Claims for damages and reimbursement of expenses of the customer against EMKA Aluminum GmbH expire after **two years**; the period begins at the end of the year in which the claim arose and the customer would have to become aware of the circumstances giving rise to the claim or would have to do so without gross negligence. Irrespective of the knowledge or grossly negligent ignorance of the customer, claims for damages and reimbursement of expenses lapse after five years from the delivery of the object of purchase. The limitation period for claims for defects (including claims for damages and reimbursement of expenses) pursuant to para. 5.9 as well as the legal limitation of the in §. Claims 6.2 to 6.5 shall remain unaffected.

## 7. Industrial Property Rights

- 7.1. If the customer delivers construction drawings, EMKA Aluminum GmbH shall liable for the use of the drawings in order to protect industrial property rights, in be particular patents, utility models, designs or copyrights, or other rights of third parties (eg on the basis of the law against unfair competition).

The customer exempts EMKA Aluminum GmbH from claims of third parties for such infringements.

7.2. All forms, assembly instructions, drawings, plans and other documents of EMKA Aluminum GmbH remain the intellectual property of EMKA Aluminum GmbH. Insofar as they are handed over to the customer, their use is only permitted within the scope of the purpose of the contract. Any further use, in particular duplication, passing on to third parties or other commercial use, is not permitted to the customer.

#### 8. Applicable law; Place of fulfillment; Jurisdiction

8.1. The law of the FRG in its current version applies. The applicability of the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods is excluded. For the application and interpretation of this contract, the German contract text is authoritative.

8.2. The place of jurisdiction for all disputes arising out of or in connection with the contract is Wuppertal, provided the customer is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in Germany. EMKA Aluminum GmbH may also file suit at the customer's headquarters or initiate other legal measures.

#### 9. Written form / Severability clause

9.1. Additional agreements do not exist. Special agreements and side agreements to the contract must be in writing. The form requirement can be waived only by express written agreement. Subsequent changes and additions to the contract are only effective if confirmed by EMKA Aluminum GmbH in writing by managing directors or authorized representatives.

9.2. Should any provision of the contract or these terms be or become invalid, this shall not affect the validity of the contract or the remainder of the terms. The contracting parties undertake to replace an ineffective provision with a provision with which the intended purpose can be achieved as far as possible. This also applies to any gaps or inconsistencies. If such an interpretation or addition is not possible, the statutory provisions apply.