



**CEMBRE**

# **CEMBRE GROUP GENERAL TERMS AND CONDITIONS OF SALE**

**Rev. n. 3/2024**



# CEMBRE

## 1. GENERAL TERMS

1.1 For the purpose of these GENERAL TERMS AND CONDITIONS OF SALE (the "Terms and Conditions"), the following definitions shall apply:

- «Seller»: CEMBRE Inc. (CEMBRE);
- «Buyer»: any professional or entrepreneur purchasing the Products from the Seller;
- «Products»: the goods manufactured and/or sold by the Seller;
- «Order(s)»: each proposal for the purchase of the Products submitted by the Buyer to the Seller in writing;
- «Sale(s)»: each single sale agreement entered into further to the receipt by the Buyer of the written order confirmation of the Seller.

1.2 These Terms and Conditions govern the sale of equipment, components, parts, and materials (the "Products") supplied by the Seller to the Buyer. Any specific supply agreement, order confirmation, quotation, these Terms and Conditions and the purchase order form the Sales Agreement ("Agreement") between the parties. In the event of a conflict between these documents, precedence shall apply in accordance with the order listed in the previous sentence.

1.3 CEMBRE's quotation, proposal or order confirmation is conditional on the Buyer's acceptance of these Terms and Conditions. Buyer's silence or acceptance/use of the Products or services related to any purchase order shall constitute tacit approval of these Terms and Conditions.

1.4 Any additional or conflicting terms included in the Buyer's request for quotation/proposal, specifications, purchase order or any other written or oral communication are not binding on CEMBRE unless separately signed by CEMBRE. CEMBRE's failure to object to Buyer's additional or conflicting terms (including the Buyer's Terms and Conditions of Purchase) does not operate as a waiver of any terms contained herein.

## 2. ORDERING PROCEDURES

2.1 Offers of the Supplier are not binding. This shall also apply if the Supplier has provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which the Supplier reserves property rights and copyrights pursuant to Clause 8.

2.2 Unless otherwise agreed, the information in offers and order confirmations shall refer to the contents of the respectively valid price

lists, catalogues or other documents - also in electronic form, including technical data sheets, of the supplier.

2.3 All orders must be sent in writing and include all the details for a correct identification of the Products and Services requested. The minimum order amount is USD 250.

2.4 The order is an irrevocable proposal to buy, but it is accepted by the Seller only following order acknowledgement / confirmation or execution.

2.5 The Buyer may request in writing to cancel or modify the order only prior to its execution and the Seller may at its own discretion accept or reject such request. Only cancellations and modifications expressly accepted by the Seller in writing shall be valid and effective.

## 3. PRICING AND PAYMENT TERMS

3.1 Unless otherwise specified in writing, Seller's quotations have a 30-day validity, after which they will automatically expire.

3.2 Prices quoted in price-lists and marketing materials are not binding and cannot be considered a "public offer". Unless otherwise agreed in writing, prices are always quoted based on delivery term EX WORKS (Incoterms latest version) net of any applicable statutory value added /goods and services tax and of any applicable taxes and duties.

3.3 The Seller reserves the right to update the price-list without prior notice; the new release of the price-list will apply to all the Orders placed after the date such new release is issued and sent to the Buyer. Invoices will be issued in accordance with the prices in force on the date of the order confirmation or as otherwise agreed in specific supply agreements.

3.4 If the Buyer does not pay within the agreed payment term, he will be in default of payment even without a reminder. In this case, the Supplier shall charge overdue interest at a rate of 9 percentage points above the prime rate - or the maximum interest rate allowed by the law, whichever is lower - and a lump sum for costs of up to USD 40.00. Any further claim for damages caused by delay shall remain unaffected.

3.5 In the event of payment arrears, suspension of payments and if circumstances become known which are likely to reduce the creditworthiness of the customer, the supplier shall be entitled, after having granted a period of grace, to declare all claims arising from the entire business relationship with the customer immediately due for payment. Discount agreements, rebates and the like shall be deemed forfeited in this case.



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- 3.6 Failure to pay or delayed payments above 30 days also entitle the Seller to suspend the delivery of the Products and terminate every single Sale entered into. The suspension of the delivery of the Products or the termination of any Sale shall not entitle the Buyer to claim for any compensation.
- 3.7 Any complaints regarding the Products and/or their delivery shall not be grounds for suspending or delaying the payment.
- 3.8 In the event of default or risk of insolvency concerning the Buyer, the Seller will be entitled to:
- demand payment in advance or suitable guarantees; and/or
  - suspend deliveries; and/or
  - demand immediate payment of all the invoices already issued, regardless of the payment term therein indicated; and/or
  - terminate any existing sale agreement.

## 4. DELIVERY

- 4.1 Except as otherwise agreed upon in writing between the parties, the Seller shall deliver the Products EX WORKS (INCOTERMS latest version). If required, the Seller shall take care of the shipment of the Products at the Buyer's costs and expenses. In this last case delivery shall be considered to have taken place when the Products are transferred to the forwarder.
- 4.2 In case of missing or damaged goods during transport, the Buyer must formulate all the necessary reservations on the delivery note of said goods at the time of delivery. Such reservations must also be confirmed in writing to the Seller within 48 hours of the date of the delivery, by registered mail with return receipt.
- 4.3 The Seller cannot be held liable for delays in deliveries in the following circumstances:
- acts of God or other extraordinary events beyond reasonable control, resulting in interruption of the manufacturing process, including shortage of energy and/or raw materials, pandemics strikes, embargoes or trade restrictions;
  - delays due to the Buyer, particularly when the Buyer failed to provide the information required to execute the order;
  - overdue payments, pursuant to Section 3.8 of these T&C.
- 4.4 Penalties for late delivery may be charged by the Buyer only when expressly agreed in a specific supply agreement, and in any case up to a maximum amount equal to the price of the delayed delivery.
- 4.5 The Buyer shall not reject partial deliveries or late deliveries. All costs resulting from the

rejection of goods will be charged to the Buyer. Excess deliveries for the purpose of rounding up to the packing quantity shall be deemed to be contractual performance and shall be paid by Buyer.

- 4.6 Goods returned at the request of the Buyer can only be accepted if the Seller has agreed in writing. The returned parts must be in their original packaging, come from the current product range and be in saleable condition. The return shipment must be carriage paid and at the risk of the Buyer. From the purchase price to be refunded, a depreciation fee will be deducted based on the actual conditions of the goods, their age and original price. Depreciation shall not apply to goods returned under section 5 and 6 hereinafter, provided that the return was authorized by the Seller. Custom-made products or articles which are not included in the current catalogue will not be taken back. Returned goods that are not accepted by the Seller will be shipped back to Buyer (freight paid by the Buyer) or scrapped upon the Buyer's authorization.
- 4.7 In the event of modifications to the order required by the Buyer, the delivery deadline will automatically be extended for the time necessary to implement the required modification.

## 5. CONFORMITY

- 5.1 Complaints about apparent defects or non-conformity of the product delivered in relation to the purchase order or the packing slip must be notified to the Seller in writing within 48 hours after receipt of the products, subject to forfeiture. The Buyer loses the right to claim if the goods are not inspected immediately after delivery.
- 5.2 In the absence of a specific agreement on quality, the features contained in a specification, a product-specific technical data sheet or an equivalent description by the Supplier shall be deemed to be the relevant quality. Insignificant deviations shall not constitute a defect.

## 6. WARRANTY AND LIABILITY

- 6.1 Unless otherwise agreed upon in writing, the Seller warrants that the Products are free from defects in material, design and manufacturing and fit for use. No guarantee is given herein by the Seller on the conformity of any Product with the law and regulations in countries outside the US. No other warranties, express or implied, are made with respect to the Products including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose.



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- 6.2 Unless otherwise agreed upon in writing, the warranty shall be valid for a period of one year from the date of delivery to the Buyer. Warranty is provided only on tools or machines with a serial number or other identification number that allows traceability. The warranty is, however, excluded if the Products have already been processed by the Buyer or incorporated in products, machinery or plants of the Buyer or of third parties.
- 6.3 Claims for defective Products shall be made in writing within eight working days from discovery.
- 6.4 The defective Products shall be returned to the Seller at the Buyer's cost upon Seller's request. The Seller's sole obligation (and Buyer's sole remedy) for any breach of warranty under the foregoing warranty shall be to repair (at location designated by Seller) or replace DAP the original point of delivery the defective goods, within a reasonable time. In the event that the Seller, for any reason, is unable to return a repaired or replaced product under warranty to the Buyer, it will proceed to refund the price paid, or replace the product with another having equal or superior characteristics. The Buyer will waive any claim for damage compensation once the warranty has been fulfilled and the Product has been repaired or replaced. The warranty shall not cover defects due to environmental or stress testing, misuse, failure to observe the Seller's instructions regarding the functioning, maintenance and the storage of the Products, repairs or modifications made by the Buyer or a third party without prior written authorization of the Seller, improper installation, transportation or handling.
- 6.5 Direct interventions on site are not included in the warranty; if expressly requested by the Buyer they are subject to charge, according to the Seller's tariffs.
- 6.6 Warranty repair/replacements may be suspended in the event of insolvency of the Buyer or overdue invoices.
- 6.7 Save for the case of fraud or gross negligence, the Seller shall bear no liability for damages to property or third parties other than that expressly provided by virtue of any mandatory law provisions. In any case, the Seller shall not be liable for indirect or consequential damages of whatsoever nature as, by way of example, production losses or unearned profits. In any case, Buyer's right to damages shall be limited to a maximum amount equal to the value of the Products showing defects or faults.

- 6.8 The Seller shall bear no liability for damages to property or third parties other than that expressly provided by virtue of any mandatory law provisions. The Supplier will not, under any circumstances, be liable for the cost of removal or reinstallation of goods or the cost of disassembly or reassembly or for loss of business or goodwill or profits or for cost of inspection or storage or for any incidental and consequential damages of any nature which may arise from the sale of goods to the Buyer. When liability cannot be excluded by virtue of mandatory law provisions, Buyer's right to damages shall in any case be limited to a maximum amount equal to the value of the Products showing defects or faults.
  - 6.9 The Seller has taken out suitable insurance policies covering general liability in connection with the Products.
  - 6.10 Cembre products are intended for professional users (B2B): the applicability of consumer protection regulations, including those related to warranty, is expressly excluded. The sale of Cembre products through channels accessible to consumers is expressly prohibited, and vendors who contravene this prohibition will assume all civil and criminal liability towards third parties and the competent authorities.
- 7. EXPORT CONTROL REGULATIONS**
- 7.1 CEMBRE shall not be obligated to fulfil this agreement if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions or restrictions.
  - 7.2 The Buyer is aware that the Products are intended to be sold and used exclusively for civil purposes, to the exclusion of any military or nuclear applications, or applications related to the development and production of chemical weapons and weapons of mass destruction.
  - 7.3 The Buyer is aware that under the EU regulations, re-exportation to Russia and re-exportation for use in Russia of goods or technologies listed in Annexes XI, XX, XXXV and XL of EU Reg. 2014/833, dual-use products and firearms and ammunition listed in Annex I of EU Regulation n. 258/2012 are prohibited. Re-export to Belarus and re-export for use in Belarus of the goods or technologies listed in Annexes XVI, XVII, XXVIII, XXX, as well as firearms and ammunition listed in Annex I of Regulation (EU) No. 258/2012 are also prohibited. The Buyer consequently undertakes to comply with the trade restrictions issued by the EU



authorities, as subsequently amended and supplemented.

- 7.4 If the Buyer transfers the Products to a third party, the Buyer shall comply with all applicable national and international (re-) export control regulations.
- 7.5 The Buyer shall cooperate with the Seller to provide the information concerning end users, destination and intended use of goods supplied by CEMBRE, in case this is necessary due to customs control activities or export control regulations.
- 7.6 Violations of this section 7 shall entitle the Seller to terminate any existing sale agreement at any time without notice.

## **8 INTELLECTUAL PROPERTY, CONFIDENTIALITY AND PRIVACY**

- 8.1 The use of CEMBRE trademarks is governed by the General Terms and Conditions, published on the website <https://www.cembre.com/en/terms-and-condition>, which the Buyer is obliged to comply with. It is prohibited to relabel and repackage the Products without CEMBRE's written authorization.
- 8.2 Each party will retain ownership of its Intellectual Property developed before or outside the scope of the sale agreement. If any Intellectual Property is developed under the sale agreement, the parties shall execute a separate agreement regarding the ownership thereof.
- 8.3 Supplier expressly reserves the copyright to its catalogues, technical documentation (e.g. drawings, plans, calculations, data sheets), other product descriptions or documents - also in electronic form. The Buyer is only granted a non-exclusive right of use.
- 8.4 All drawings and technical documents relating to the Products submitted by one party to the other shall remain exclusive property of the submitting party and can only be used for the purpose for which they were provided. The receiving party is not allowed to use such documents otherwise, to procure copies thereof, to reproduce and to disclose them to a third party without consent of the submitting party. The end user of the Products shall not be deemed as a third party for the purpose of this section.
- 8.5 Any liability of the Supplier is excluded if the Buyer is responsible for the infringement of property rights, in particular because he has modified the object of performance, used it in breach of contract or taken it to a place other than the place of destination without the Supplier's consent.
- 8.6 If the Supplier manufactures goods according to drawings, samples or other

information provided by the Buyer (OEM products) and if the property rights of third parties are infringed in the process, the Buyer shall indemnify the Supplier from all claims for damages resulting from this.

- 8.7 The Seller warrants that the personal data received from the Buyer will be processed in full compliance with the applicable data protection regulations.
- 8.8 Violations of this section 8 shall entitle the Seller to terminate any existing sale agreement at any time without notice.

## **9. APPLICABLE LAW AND JURISDICTION**

- 9.1 The place of performance for the delivery together with any subsequent performance on the part of the Supplier is the Supplier's registered office.
- 9.2 Place of jurisdiction is the registered office of the Supplier. The Supplier is also entitled to take legal action at the Buyer's registered office.
- 9.3 The legal relations between the Supplier and the Buyer shall be governed by the Uniform Commercial Code as enacted and construed in accordance with the laws of the State of New Jersey.
- 9.4 The Buyer acknowledges that the CEMBRE Group has adopted a Code of Ethics and undertakes to respect its provisions, abstaining from any unlawful conducts. Failure to comply with any of the provisions of the Code of Ethics will result in a serious breach of contractual obligations and will entitle CEMBRE to terminate the contract with immediate effect, without prejudice to compensation for damages.

## **10. FORCE MAJEURE AND HARDSHIP**

- 10.1 No failure, omission or delay of the Supplier in the performance of any obligation shall be deemed a breach of the agreement nor create any liability hereunder, if the failure, omission or delay shall arise from acts of God, laws, rules, regulations or orders of any governmental authority, floods, fires, explosions, storms, earthquakes, acts of war (declared or undeclared), rebellion, insurrections, riot, sabotage, shortages of fuel, power, energy resources, and/or raw material, invasion, epidemic, quarantine, accident, strikes, lockouts, labor disputes, or any other comparable cause beyond the reasonable control of the Supplier.
- 10.2 If, during the term of the contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the contract, thereby placing an excessive burden on the Supplier in the performance of its contractual obligations (hardship), the Supplier shall



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have the power to make any revision to the contract that it finds just and equitable in the circumstances, or to terminate the contract at a date and on terms to be fixed.