

# General Terms and Conditions of EMX Company B.V. B2C and B2B

## 1. Identity

The private limited company EMX Company B.V., with its registered office at Zonedauw 2, 5953 MS Reuver, the Netherlands, also trading as EMX Company.

## 2. Definitions

In these General Terms and Conditions ('the Conditions'), the terms below are defined as follows:

**EMX Company:** EMX Company B.V.

**Agreement:** any agreement between EMX Company and the Customer for the sale of Products and services.

**Customer (B2C):** a natural person not acting for purposes relating to their trade, commercial, craft, or professional activities and who enters into an Agreement with EMX Company.

**Product:** All goods offered by EMX Company that are the subject of an offer, quotation, Agreement, or other legal act between EMX Company and the Customer. In particular, EMX Company offers an electric motocross bike, assembled on the Customer's instructions. The Customer is aware that this electric motocross bike may not be ridden on public roads and may only be used properly in a designated area.

**Conditions:** these general terms and conditions that apply between EMX Company and the Customer.

**In Writing/Written:** by means of a document signed by authorized representatives of EMX Company B.V. (and/or the Customer).

**Selling Price:** the price that EMX Company and the Customer have agreed through offer and acceptance for the purchase of the Product.

**Pre-Order:** see Article 5.1 for the definition.

**Order Proposal:** order confirmation from EMX Company under which conditions it can sell the Product to the Customer.

**Right of Withdrawal:** the Customer's option to decide not to proceed with the distance agreement within the cooling-off period.

**Ex Works:** the Product is delivered where it is assembled from time to time and/or where EMX Company's sales take place.

**EU:** for the purpose of these Conditions, the 'EU' is defined as the Member States of the European Union and the countries of Israel, Norway, Turkey, and the United Kingdom.

**Dealer:** the natural person or legal entity that has concluded an agreement with EMX Company to sell, service, or repair the Product (on EMX Company's behalf).

**Dealer Network:** the Dealer connected to EMX Company's network to sell, service, or repair the Product on EMX Company's behalf in a particular country or region.

## 3. Applicability

- 3.1 These Conditions apply to every offer by EMX Company and to every Agreement concluded between EMX Company and the Customer.
- 3.2 These Conditions were made available to the Customer before the Agreement was concluded and the Customer has received these Conditions.
- 3.3 The applicability of the Customer's general terms and conditions is rejected.

## 4. Offers/quotations

- 4.1 All offers and quotations by EMX Company are without obligation unless the quotation specifies a deadline for acceptance. A quotation or offer ceases to apply if the Product to which the quotation relates is no longer available. Illustrations, drawings, statements of weights, dimensions, colours, and so on are only approximate.
- 4.2 If an offer has a limited period of validity or is made subject to conditions, this is stated in the offer.
- 4.3 Obvious mistakes or errors in the offer do not bind EMX Company.

## 5. Pre-Order

- 5.1 When the Customer places an order for the Product through the EMX Company website, they must pay a deposit/reservation amount of €950 in advance, referred to below as the Pre-Order.
- 5.2 EMX Company will then administer this Pre-Order and check whether it is possible for EMX Company to supply and deliver the Product to one of its affiliated Dealers in the Customer's country at the offered Selling Price. If there is no Dealer in the Customer's country, delivery can only be made 'Ex Works'.
- 5.3 If EMX Company confirms that it can deliver the Product to the Customer, it will send an Order Proposal to the Customer stating the expected delivery period of the Product. After the Order Proposal signed by the Customer has been received, EMX

Company will assemble the product – or have it assembled – on the Customer's or its instructions.

- 5.4 The delivery period mentioned above will always be indicative as EMX Company depends on its suppliers.
- 5.5 If EMX Company believes that it cannot deliver the Product for reasons of its own, it must inform the Customer as soon as possible and return the deposit/reservation amount for the Pre-Order.

## 6. Agreement

- 6.1 The Agreement is concluded when the order is placed and the Order Proposal, which EMX Company will send to the Customer after the Pre-Order, has been signed.
- 6.2 An Agreement is concluded by EMX Company's Written acceptance of an order, registration, or instruction from the Customer or by delivering the ordered Products and/or sending the invoice.
- 6.3 If the acceptance deviates from the offer made in the quotation, it does not bind EMX Company. Unless EMX Company states otherwise, the Agreement will not be concluded in accordance with this different acceptance.
- 6.4 The Customer must report any inaccuracies in the order confirmation to EMX Company in Writing within five business days of the date of the order confirmation.
- 6.5 The Customer is responsible for providing the correct contact and payment details and any changes to them to EMX Company.
- 6.6 For the purpose of the Agreement, an electronic message is equated with a Written message.
- 6.7 EMX Company may hire third parties for the purpose of performing the Agreement.

### Excluding the Right of Withdrawal

- 6.8 Because the Product has been custom-made on the Customer's instructions and due to the nature of the Product (EMX Company cannot warrant how the Customer has used the Product and therefore cannot resell it to third parties), EMX Company excludes the use of the Right of Withdrawal.

## 7. Delivery

- 7.1 Unless expressly agreed otherwise in Writing, any agreed delivery period or delivery date of EMX Company through the Dealer Network or Ex Works is indicative and not a strict deadline.
- 7.2 If the agreed delivery period is exceeded, this does not entitle the Customer to terminate the Agreement, to compensation, or to fail to fulfil any of their obligations under this Agreement.
- 7.3 The Product is delivered through the Dealer Network or Ex Works after it has been fully assembled on the Customer's instructions and the Customer has paid the full Selling Price and any additional costs to EMX Company.
- 7.4 If EMX Company requires information from the Customer to perform the Agreement, the completion period will not commence before the Customer has provided this information to EMX Company correctly and completely.
- 7.5 For delivery within the EMX Company's Dealer Network to a Dealer, the shipping costs of the Product are included in its Selling Price.  
Any other delivery (i.e. not through an affiliated Dealer in the Dealer Network or outside the EU) will be made Ex Works only after coordinating with the Customer by making the Product available to the Customer at the place designated by EMX Company under any additional conditions or costs set by EMX Company. The Customer will also be responsible for the transport. This article applies in all cases unless the Parties have agreed otherwise in Writing.

## 8. Performing the Agreement

- 8.1 The Customer must collect the goods when they are made available to them. If the Customer refuses to take delivery or fails to provide information or instructions necessary for the delivery, EMX Company may store the goods at the Customer's expense and risk.
- 8.2 Delivery is deemed to have occurred:
  - For Products collected by or on behalf of the Customer: by receipts for the Products;
  - For deliveries through a commercial carrier: by the transfer of the Products to that carrier;
  - For deliveries on transport by EMX Company: by delivery to the Customer (read: Dealer) or the Customer's warehouse (read: Dealer).

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- 8.3 EMX Company may perform the Agreement in several phases and invoice the part thus performed separately.
- 8.4 If the Agreement is performed in phases, EMX Company may suspend the performance of the parts that belong to a subsequent phase until the Customer has approved the results of the previous phase in Writing.
- 8.5 If it appears during the performance of the Agreement that its proper performance requires an amendment or addition, the Parties will adapt the Agreement promptly and by consultation. If the nature, scope, or content of the Agreement is amended, at the request or on the instructions of the Customer, the competent authorities, or otherwise, and the Agreement is qualitatively and/or quantitatively changed as a result, this could also have consequences for what was originally agreed. An amendment to the Agreement can change the initial completion period. The Customer accepts the possibility of amending the Agreement, including a change in price and the completion period.
- 8.6 The Agreement must always be amended if:
- there are relevant changes in government or other regulations or decisions;
  - there are relevant changes in the schedule of requirements or the original order;
  - the Customer requires changes or variants to work that has already been approved, or is part of a phase that has already been approved;
  - the shipping costs for transport to a Dealer have increased by more than 10% compared to the normal transport costs for the Product;
  - additional work appears necessary while executing the order.
- 8.7 If the Agreement is amended, including by way of an addition, EMX Company may wait to implement this until it has been approved by an authorized person of EMX Company and the Customer has agreed to the price and other conditions stated for the performance, including the completion period to then be determined. Failure to perform the amended Agreement or to do so on time does not place EMX Company in default or constitute a ground for the Customer to terminate the Agreement. Without being in default, EMX Company may refuse a request to amend the Agreement if this will have consequences for the work to be performed or the goods to be delivered in this regard.
- 8.8 If the Customer fails to properly fulfil its obligations towards EMX Company, they will be liable for all damage (including costs) that EMX Company incurs directly or indirectly.
- 9. Price**
- 9.1 Prices for the Products mentioned in the offer are in euros and exclude VAT, any shipping and administrative costs, and other government levies.
- 9.2 Prices are based on raw and other material prices, rates, wages, taxes, duties, and charges existing during the Agreement. If one or more of these costs increase, EMX Company may change the agreed prices accordingly.
- 9.3 If EMX Company agrees a fixed price with the Customer, it may still increase the price without the Customer being entitled to terminate the Agreement if the price results from a statutory or regulatory power or obligation, has been caused by an increase in the price of raw materials, wages, etc., or on other grounds that could not reasonably have been foreseen at the time the Agreement was concluded.
- 9.4 If the price increase, other than as a result of an amendment to the Agreement, amounts to more than 10% and occurs within three months of the Agreement being concluded, the Customer may unilaterally terminate the Agreement with a Written statement unless EMX Company is still prepared to perform the Agreement based on the original Agreement, the price increase is the result of a statutory power or obligation of EMX Company, or it has been stipulated that the delivery will be more than three months after the purchase.
- 10. Cancellation costs**
- 10.1 The Customer may cancel the order in Writing before the completion and delivery of the Product. However, the Customer will owe 50% of the Selling Price in that case.
- 10.2 If the Customer has specific requirements for the assembly of the Product (i.e. custom-made), they must, notwithstanding the previous paragraph, pay the full purchase and assembly costs relating to the specific requirements of the assembly.
- 11. Term**
- 11.1 The Agreement between EMX Company and the Customer is entered into for an indefinite period unless the nature of the Agreement dictates otherwise or the Parties expressly agree otherwise in Writing.
- 11.2 Offers and quotations do not apply automatically to future orders.
- 12. Payment**
- 12.1 The payment term is 14 days after the invoice date. EMX Company may require periodic advance payments or invoice periodically. For delivery of the Product Ex Works or through one of EMX Company's affiliated Dealers, the full Purchase Price of the Product must be paid on or before the day of delivery Ex Works or delivery through the Dealer. If the full Purchase Price for the Product has not been paid, the Product will not be delivered to the Customer. All payments only by bank transfer.
- 12.2 Unless EMX Company states otherwise, payment must be made without discounts or deductions, and without the right to apply setoff to the amount owed to EMX Company.
- 12.3 If the Customer continues to fail to meet their obligations and does not pay on time, they are in default by law and owe interest of 2% per month on the amount due unless the statutory interest rate is higher, in which case the statutory interest is payable. The interest on the amount due will be calculated from the date the Customer is in default until the date of payment in full. The date of payment is the date on which the amount is credited to EMX Company's account.
- 12.4 If the Customer continues to fail to meet their obligations or is in default and does not perform on time, they must pay all costs related to collecting the invoiced amounts (including extrajudicial collection costs). If the Customer is established in the Netherlands, the extrajudicial collection costs amount to at least 14% of the principal sum, subject to a minimum of €55, all excluding VAT. Outside the Netherlands, the extrajudicial collection costs amount to at least 16% of the principal amount, subject to a minimum of €90, all excluding VAT. The actual costs qualify for reimbursement. The Customer must also pay any judicial and enforcement costs.
- 12.5 EMX Company may apply the Customer's payments first to reduce the costs, then to reduce the default interest and, lastly, to reduce the principal sum and the current interest.
- 12.6 Submitting a complaint, notice of a defect, or other objection does not suspend the Customer's obligation to pay.
- 13. Shipping/delivery outside the EU**
- 13.1 EMX Company will specify the countries to which it can ship the Product on its website. If the Product is not delivered Ex Works or through an affiliated Dealer, the Customer will be responsible for shipping the Product themselves, and all shipping and additional costs will be at the Customer's expense and risk.
- 13.2 If a Customer wishes to purchase the Product and ship it to a country not listed on the website, EMX Company will contact the Customer to find out if shipping is possible, under which delivery and other conditions, and at which additional costs.
- 13.3 EMX Company may decide not to proceed with the Customer's order if it later transpires that shipping to the Customer's designated location/country is not worth the costs and time that EMX Company would need to incur to organize this shipment. For a delivery to a Customer outside the EU, EMX Company will also assess whether this delivery is compatible with its policy or whether it is well-advised to deliver the Product to the Customer in that country.
- 14. Termination**
- 14.1 EMX Company may suspend fulfilling its obligations or terminate the Agreement if:
- the Customer does not, does not fully, or does not punctually comply with their obligations under the Agreement;
  - EMX Company becomes aware of circumstances after the Agreement has been concluded that give it good reason to fear that the Customer will not fulfil their obligations;
  - the Customer is requested to give a guarantee for fulfilling their obligations when the Agreement is concluded and this guarantee is either not given or is inadequate.
  - if EMX Company can no longer be required to perform the Agreement under the originally agreed conditions because of a delay by the Customer, it may terminate the Agreement.
- 14.2 EMX Company may also terminate the Agreement if circumstances of such a nature arise that complying with the Agreement is impossible or if other circumstances of such a nature arise that complying with the Agreement is impossible or reasonably cannot be required of EMX Company.

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- 14.3 If the Agreement is terminated, EMX Company's claims against the Customer are immediately due and payable. If EMX Company suspends fulfilling its obligations, it retains its claims under the Agreement.
- 14.4 If EMX Company suspends or terminates, it will not be liable in any way for resultant damage and costs.
- 14.5 If the termination is attributable to the Customer, EMX Company will be entitled to compensation for the damage, including the costs it has had to incur directly and indirectly.
- 14.6 If the Customer fails to fulfil their obligations under the Agreement and this failure justifies termination, EMX Company may terminate the Agreement immediately and with direct effect with no obligation on its part to pay any compensation or indemnification, while the Customer must pay compensation or indemnification for breach of contract.
- 14.7 If the Customer is put into liquidation, petitions for or is granted a moratorium, petitions for or is declared bankrupt, has their assets attached – if and as soon as the attachment has not been lifted within three months – has their debt restructured, or any other circumstance occurs as a result of which the Customer can no longer freely dispose of their assets, EMX Company may terminate the Agreement immediately and with direct effect or cancel the order or the Agreement, with no obligation on its part to pay any compensation or indemnification. EMX Company's claims against the Customer become immediately due and payable in this case.
- 14.8 If the Customer cancels all or part of an order, a cancellation fee of 50% of the order will be charged to the Customer (under Article 10.1 of this Agreement).
- 15. Retention of title**
- 15.1 All Products that EMX Company delivers under this Agreement remains its property until all obligations under the Agreement concluded with EMX Company have been properly fulfilled.
- 15.2 Products that EMX Company delivers and which come under the retention of title may not be resold and may never be used as a means of payment. The Customer is not authorized to pledge or otherwise encumber the goods under the retention of title.
- 15.3 The Customer must do everything that may reasonably be expected of them to safeguard EMX Company's retention of title.
- 15.4 If third parties attach the goods delivered under retention of title or wish to establish or assert rights to them, the Customer must inform EMX Company of this immediately.
- 15.5 The risk relating to the Products passes to the Customer at the moment of delivery.
- 15.6 The Customer must insure and keep the Products delivered under retention of title insured against fire, explosion, water damage, and theft and make the policy for this insurance available for inspection immediately on request.
- 15.7 If EMX Company wishes to exercise its property rights under this article, the Customer gives unconditional and irrevocable consent in advance to EMX Company and its designated third parties to enter all places where EMX Company's property is located and to repossess this property.
- 16. Force majeure**
- 16.1 EMX Company need not comply with any obligation if it is prevented from doing so because of a circumstance that is not its fault and for which it cannot be held accountable by law, a legal act, or generally accepted standards. In that situation, it may suspend its obligations for as long as the force majeure continues or terminate the Agreement by Written notification to the Customer, with no obligation to pay any compensation unless this would be unacceptable under the given circumstances according to standards of reasonableness and fairness.
- 16.2 Force majeure on the part of EMX Company also means every circumstance independent of EMX Company's control and action, as a result of which EMX Company reasonably cannot be expected to perform, including a lack of personnel, strikes, late delivery or unsuitability of materials, government measures, a lack of or unavailability of infrastructure (e.g. digital accessibility) and transport options, and a failure to perform by EMX Company's suppliers as a result of which the EMX Company reasonably cannot fulfil its obligations towards the Customer or any other event as a result of which the Customer loses the free disposal of their assets.
- 16.3 EMX Company may invoke force majeure if the circumstance preventing performance or continued performance occurs after EMX Company should have complied with its obligation.
- 16.4 If EMX Company has already partially fulfilled its obligations when the force majeure occurs, or can only partially fulfil its obligations, it may separately invoice the part already delivered or the part that can be delivered. The Customer must pay this invoice as if it were a separate contract.
- 17. Intellectual property rights**
- 17.1 All of EMX Company's intellectual property rights, including copyrights and know-how in relation to this Agreement and the Products it delivers, vest in EMX Company and/or its suppliers. Unless agreed otherwise, there is no transfer of any intellectual property rights under the Agreement.
- 18. Conformity**
- 18.1 The Customer must check the purchased Products on delivery, or as soon as possible afterwards, for any defects and/or shortcomings. The Customer examines whether the quantity and quality of the delivered Products correspond to the order and their wishes.
- 18.2 The Products that EMX Company delivers meet the usual requirements and standards that can reasonably be set at the time of delivery and for which they are normally used in the Netherlands. The Customer is aware that the Product may be used only as a motocross bike in a designated area. If Products are delivered outside the Netherlands, the Customer is responsible for verifying that they are suitable for use there as a motocross bike in a designated area and meet the conditions set for this purpose.
- 18.3 The warranty referred to in 18.2 of this article applies until the delivery date unless the nature of the delivered item dictates otherwise or the Parties have agreed otherwise. If the warranty that EMX Company provides concerns a third-party item, the warranty is limited to that given by the producer of that item unless stated otherwise. The Customer is aware that the Product has been assembled from loose parts on their instructions. To enable the loose parts to be placed in the chassis of the Product, EMX Company has had to modify the suppliers' parts, as a result of which the manufacturer's warranty for these loose parts normally cannot be invoked. The Customer indemnifies EMX Company against the fact that they cannot invoke the manufacturer's or other warranties relating to these modified parts.
- 18.4 Because the Product by its nature will be used as a motocross bike in a designated area, EMX Company cannot verify the circumstances under which the Customer and/or third parties will use the Product. Given this fact, it is impossible for EMX Company to provide any form of warranty after the delivery date because it cannot verify whether any defect is caused by damage resulting from improper use by the Customer.
- 18.5 Any form of warranty will cease to apply if a defect results or arises from injudicious or improper use, incorrect storage, or incorrect or irregular maintenance by the Customer and/or third parties, if the Customer or third parties have made changes or tried to make changes to the item without EMX Company's Written consent, if other items have been attached to the item that should not have been attached to it, or if it has been modified or processed in a way other than prescribed. The Customer also is not entitled to any warranty if the defect has arisen from or is the result of circumstances beyond EMX Company's control, including weather conditions or exposure to extreme conditions.
- 18.6 Any visible defects must be reported to EMX Company in Writing within two days of delivery. Hidden defects must be reported to EMX Company within six months of delivery. Reported defects must be described in detail, clearly describing how the non-conformity was discovered and clear pictures of the defect if the non-conformity is visible, so that EMX Company can respond adequately to this notice of non-conformity. The Customer must also send a copy of the purchase receipt. The Customer must give EMX Company the opportunity to investigate a complaint or defect. If a defect is reported later, the Customer will no longer be entitled to repairs, a replacement, or compensation.
- 18.7 The Customer undertakes that they will not use the Products contrary to any applicable law or regulation and/or in breach of any provision of the Agreement. The Customer indemnifies EMX Company against all third-party claims, damage, and costs arising from, related to, and/or resulting from a breach of this undertaking.
- 18.8 The Customer is not bound by any warranty if and for as long as the Customer fails to fulfil their obligations under the Agreement with EMX Company or fails to do so properly or punctually. EMX

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Company likewise has no warranty obligation if the delivered Products are alienated, modified, or processed, or if and when changes are made to them, all without EMX Company's prior Written consent.

- 18.9 If it has been established that a Product is defective (and the defect has not arisen from damage caused by the Customer) and the Customer complained about the defect in time, EMX Company will at its discretion – within a reasonable period of receiving the Product back or, if returning it is not reasonably possible, having been notified about the defect by the Customer – replace or arrange for repairs to the Product or pay the Customer a replacement amount for it. If the Product is replaced, the Customer must return and transfer ownership of the replaced Product to EMX Company unless EMX Company states otherwise. EMX Company reserves the right to replace defective parts with new parts or parts refurbished in its factory. If it is established that a Product is defective, the Customer must pay the transport costs to send the Product to EMX Company for replacement or repair.
- 18.10 If it is established that a complaint is unfounded, the Customer must pay all the resultant costs that EMX Company incurs, including the costs of investigating the complaint.
- 18.11 After the warranty period expires, all repair or replacement costs, including administration, shipping, and transport costs, are charged to the Customer.
- 18.12 The expiry period for all claims and defences against EMX Company and the third parties involved in the Agreement is six months.

### 19. Dismantling the Product

- 19.1 If the Customer dismantles, repairs, alters, or performs any other work on the Product without EMX Company's prior Written approval, any claim under the warranty ceases to apply.
- 19.2 The Customer is aware that dismantling can cause irreparable damage to the Product and injury to the person dismantling the Product because battery acids and electrical current may still be present. The Customer indemnifies EMX Company against any damage (both direct and indirect) that may occur if they dismantle the Product.
- 19.3 The Customer may contact only EMX Company's affiliated Dealer for maintenance or servicing. If the Customer has another garage perform the maintenance or service, all warranties on the Product will cease to apply. Product parts must always be replaced with original EMX Company parts; if original EMX Company parts are not used, all warranties on the Product cease to apply.

### 20. Indemnity

- 20.1 The Customer indemnifies EMX Company against any claims by third parties that suffer damage relating to the performance of the Agreement whose cause is not attributable to EMX Company.
- 20.2 If EMX Company is held liable by third parties for that reason, the Customer must assist EMX Company both in and out of court and immediately do everything that may be expected of them in that case. If the Customer fails to take adequate measures, EMX Company may do so itself with no notice of default. All resultant costs and damage incurred by EMX Company and third parties are at the Customer's full expense and risk.

### 21. Liability

- 21.1 If EMX Company is liable, its liability will be limited to what has been arranged under these Conditions.
- 21.2 EMX Company is not liable for damage of any kind that arises because it has relied on incorrect and/or incomplete information provided by the Customer when the Agreement was concluded.
- 21.3 EMX Company also excludes any liability for direct and indirect damage unless this has been caused by its intent or wilful recklessness.
- 21.4 If EMX Company is liable for any damage, its liability will be capped at the paid invoice value of the order, or to that part of the order to which the liability relates. EMX Company's liability is always capped at the amount that its insurer pays in the specific case.
- 21.5 EMX Company is liable for direct damage only. Direct damage solely means the reasonable costs of determining the cause and extent of the damage, insofar as the determination relates to damage under these Conditions, any reasonable costs incurred to have EMX Company's defective performance conform to the Agreement, insofar as these costs can be attributed to EMX

Company, and reasonable costs incurred to prevent or limit the damage, insofar as the Customer demonstrates that these costs have limited direct damage as referred to in these Conditions.

- 21.6 EMX Company will never be liable for indirect damage, including consequential damage, loss of profit, lost savings, and business interruption losses.

### 22. Personal data

- 22.1 EMX Company and the Customer process personal data only in accordance with the applicable regulations. The processing of personal data by EMX Company and the Customer for the purpose of performing the Agreement and the provision of EMX Company's services are in accordance with the applicable laws and regulations.
- 22.2 EMX Company and the Customer must act in accordance with the regulations and adequately secure the personal data provided to them. EMX Company and the Customer must implement appropriate technical and organizational measures to secure the personal data against loss and against any form of unlawful processing. Having regard to the state of the art and the cost of their implementation, these measures ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.

### 23. Disputes

- 23.1 Only Dutch law applies to Agreements between EMX Company and the Customer. Any disputes that arise between the Parties to the Agreement will be submitted to the competent court in the judicial district of Limburg, the Netherlands.
- 23.2 The applicability of the Vienna Sales Convention is excluded.

### 24. Miscellaneous

- 24.1 If one or more provisions of these Conditions are fully or partially void or voided at any time, the remaining provisions of these Conditions will continue to apply in full. The Parties must consult to replace the void or voided provisions with a new provision, taking account of the aim and purpose of the original provisions as much as possible.
- 24.2 If a situation arises between the Parties that is not specifically covered in these Conditions, it must be assessed in line with these Conditions.
- 24.3 EMX Company reserves the right to amend and/or supplement these Conditions.

Version: 1.1

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## 1. Identity

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**Dealer Network:** the Dealer connected to EMX Company's network to sell, service, or repair the Product on EMX Company's behalf in a particular country or region.

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- 6.7 EMX Company may hire third parties for the purpose of performing the Agreement.

## 7. Delivery within the EU

- 7.1 Unless expressly agreed otherwise in Writing, any agreed delivery period or delivery date of EMX Company through the Dealer Network or Ex Works is indicative and not a strict deadline.
- 7.2 If the agreed delivery period is exceeded, this does not entitle the Customer to terminate the Agreement, to compensation, or to fail to fulfil any of their obligations under this Agreement.
- 7.3 The Product is delivered through the Dealer Network or Ex Works after it has been fully assembled on the Customer's instructions and the Customer has paid the full Selling Price and any additional costs to EMX Company.
- 7.4 If EMX Company requires information from the Customer to perform the Agreement, the completion period will not commence before the Customer has provided this information to EMX Company correctly and completely.
- 7.5 For delivery within the EMX Company's Dealer Network to a Dealer, the shipping costs of the Product are included in its Selling Price.  
Any other delivery (i.e. not through an affiliated Dealer in the Dealer Network or outside the EU) will be made Ex Works only after coordinating with the Customer by making the Product available to the Customer at the place designated by EMX Company under any additional conditions or costs set by EMX Company. The Customer will also be responsible for the transport. This article applies in all cases unless the Parties have agreed otherwise in Writing.

## 8. Performing the Agreement

- 8.1 The Customer must collect the goods when they are made available to them. If the Customer refuses to take delivery or fails to provide information or instructions necessary for the delivery, EMX Company may store the goods at the Customer's expense and risk.
- 8.2 Delivery is deemed to have occurred:
  - For Products collected by or on behalf of the Customer: by receipts for the Products;
  - For deliveries through a commercial carrier:
    - by the transfer of the Products to that carrier;
    - For deliveries on transport by EMX Company:
      - by delivery to the Dealer or the Dealer's warehouse
- 8.6 EMX Company may perform the Agreement in several phases and invoice the part thus performed separately.
- 8.7 If the Agreement is performed in phases, EMX Company may suspend the performance of the parts that belong to a subsequent phase until the Customer has approved the results of the previous phase in Writing.
- 8.8 If it appears during the performance of the Agreement that its proper performance requires an amendment or addition and/or if changes occur in the principles or other circumstances that formed the basis for the Agreement, the Parties will adapt the Agreement promptly and by consultation. If the nature, scope, or content of the Agreement is amended, at the request or on the

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instructions of the Customer, the competent authorities, or otherwise, and the Agreement is qualitatively and/or quantitatively changed as a result, this could also have consequences for what was originally agreed. An amendment to the Agreement can change the initial completion period. The Customer accepts the possibility of amending the Agreement, including a change in price and the completion period.

- 8.9 The Agreement must always be amended if:
- there are relevant changes in government or other regulations or decisions;
  - there are relevant changes in the schedule of requirements or the original order;
  - the Customer requires changes or variants to work that has already been approved, or is part of a phase that has already been approved;
  - the shipping costs for transport to a Dealer have increased by more than 10% compared to the normal transport costs for the Product;
  - additional work appears necessary while executing the order.
- 8.10 If the Agreement is amended, including by way of an addition, EMX Company may wait to implement this until it has been approved by an authorized person of EMX Company and the Customer has agreed to the price and other conditions stated for the performance, including the completion period to then be determined. Failure to perform the amended Agreement or to do so on time does not place EMX Company in default or constitute a ground for the Customer to terminate the Agreement. Without being in default, EMX Company may refuse a request to amend the Agreement if this will have consequences for the work to be performed or the goods to be delivered in this regard.
- 8.11 If the Customer fails to properly fulfil its obligations towards EMX Company, they will be liable for all damage (including costs) that EMX Company incurs directly or indirectly.

## 9. Price

- 9.1 Prices for the Products mentioned in the offer are in euros and exclude VAT, any shipping and administrative costs, and other government levies.
- 9.2 Prices are based on raw and other material prices, rates, wages, taxes, duties, and charges existing during the Agreement. If one or more of these costs increase, EMX Company may change the agreed prices accordingly.
- 9.3 If EMX Company agrees a fixed price with the Customer, it may still increase the price without the Customer being entitled to terminate the Agreement if the price results from a statutory or regulatory power or obligation, has been caused by an increase in the price of raw materials, wages, etc., or on other grounds that could not reasonably have been foreseen at the time the Agreement was concluded.
- 9.4 If the price increase, other than as a result of an amendment to the Agreement, amounts to more than 10% and occurs within three months of the Agreement being concluded, the Customer may unilaterally terminate the Agreement with a Written statement unless EMX Company is still prepared to perform the Agreement based on the original Agreement, the price increase is the result of a statutory power or obligation of EMX Company, or it has been stipulated that the delivery will be more than three months after the purchase.

## 10. Cancellation costs

- 10.1 The Customer may cancel the order in Writing before the completion and delivery of the Product. However, the Customer will owe 50% of the Selling Price in that case.
- 10.2 If the Customer has specific requirements for the assembly of the Product (i.e. custom-made), they must, notwithstanding the previous paragraph, pay the full purchase and assembly costs relating to the specific requirements of the assembly.

## 11. Term

- 11.1 The Agreement between EMX Company and the Customer is entered into for an indefinite period unless the nature of the Agreement dictates otherwise or the Parties expressly agree otherwise in Writing.
- 11.2 Offers and quotations do not apply automatically to future orders.

## 12. Payment

- 12.1 The payment term is 14 days after the invoice date. EMX Company may require periodic advance payments or invoice periodically. For delivery of the Product Ex Works or through one of EMX Company's affiliated Dealers, the full Purchase Price of the Product must be paid on or before the day of delivery Ex

Works or delivery through the Dealer. If the full Purchase Price for the Product has not been paid, the Product will not be delivered to the Customer. All payments only by bank transfer.

- 12.2 Unless EMX Company states otherwise, payment must be made without discounts or deductions, and without the right to apply setoff to the amount owed to EMX Company.
- 12.3 If the Customer continues to fail to meet their obligations and does not pay on time, they are in default by law and owe interest of 2% per month on the amount due unless the statutory interest rate is higher, in which case the statutory interest is payable. The interest on the amount due will be calculated from the date the Customer is in default until the date of payment in full. The date of payment is the date on which the amount is credited to EMX Company's account.
- 12.4 If the Customer continues to fail to meet their obligations or is in default and does not perform on time, they must pay all costs related to collecting the invoiced amounts (including extrajudicial collection costs). If the Customer is established in the Netherlands, the extrajudicial collection costs amount to at least 14% of the principal sum, subject to a minimum of €55, all excluding VAT. Outside the Netherlands, the extrajudicial collection costs amount to at least 16% of the principal amount, subject to a minimum of €90, all excluding VAT. The actual costs qualify for reimbursement. The Customer must also pay any judicial and enforcement costs.
- 12.5 EMX Company may apply the Customer's payments first to reduce the costs, then to reduce the default interest and, lastly, to reduce the principal sum and the current interest.
- 12.6 Submitting a complaint, notice of a defect, or other objection does not suspend the Customer's obligation to pay.

## 13. Shipping/delivery outside the EU

- 13.1 EMX Company will specify the countries to which it can ship the Product on its website. If the Product is not delivered Ex Works or through an affiliated Dealer, the Customer will be responsible for shipping the Product themselves, and all shipping and additional costs will be at the Customer's expense and risk.
- 13.2 If a Customer wishes to purchase the Product and ship it to a country not listed on the website, EMX Company will contact the Customer to find out if shipping is possible, under which delivery and other conditions, and at which additional costs.
- 13.3 EMX Company may decide not to proceed with the Customer's order if it later transpires that shipping to the Customer's designated location/country is not worth the costs and time that EMX Company would need to incur to organize this shipment. For a delivery to a Customer outside the EU, EMX Company will also assess whether this delivery is compatible with its policy or whether it is well-advised to deliver the Product to the Customer in that country.

## 14. Termination

- 14.1 EMX Company may suspend fulfilling its obligations or terminate the Agreement if:
- the Customer does not, does not fully, or does not punctually comply with their obligations under the Agreement;
  - EMX Company becomes aware of circumstances after the Agreement has been concluded that give it good reason to fear that the Customer will not fulfil their obligations;
  - the Customer is requested to give a guarantee for fulfilling their obligations when the Agreement is concluded and this guarantee is either not given or is inadequate.
  - if EMX Company can no longer be required to perform the Agreement under the originally agreed conditions because of a delay by the Customer, it may terminate the Agreement.
- 14.2 EMX Company may also terminate the Agreement if circumstances of such a nature arise that complying with the Agreement is impossible or if other circumstances of such a nature arise that complying with the Agreement is impossible or reasonably cannot be required of EMX Company.
- 14.3 If the Agreement is terminated, EMX Company's claims against the Customer are immediately due and payable. If EMX Company suspends fulfilling its obligations, it retains its claims under the Agreement.
- 14.4 If EMX Company suspends or terminates, it will not be liable in any way for resultant damage and costs.
- 14.5 If the termination is attributable to the Customer, EMX Company will be entitled to compensation for the damage, including the costs it has had to incur directly and indirectly.
- 14.6 If the Customer fails to fulfil their obligations under the Agreement and this failure justifies termination, EMX Company may terminate the Agreement immediately and with direct effect

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with no obligation on its part to pay any compensation or indemnification, while the Customer must pay compensation or indemnification for breach of contract.

- 14.7 If the Customer is put into liquidation, petitions for or is granted a moratorium, petitions for or is declared bankrupt, has their assets attached – if and as soon as the attachment has not been lifted within three months – has their debt restructured, or any other circumstance occurs as a result of which the Customer can no longer freely dispose of their assets, EMX Company may terminate the Agreement immediately and with direct effect or cancel the order or the Agreement, with no obligation on its part to pay any compensation or indemnification. EMX Company's claims against the Customer become immediately due and payable in this case.
- 14.8 If the Customer cancels all or part of an order, a cancellation fee of 50% of the order will be charged to the Customer (under Article 10.1 of this Agreement).

### 15. Retention of title

- 15.1 All Products that EMX Company delivers under this Agreement remains its property until all obligations under the Agreement concluded with EMX Company have been properly fulfilled.
- 15.2 Products that EMX Company delivers and which come under the retention of title may not be resold and may never be used as a means of payment. The Customer is not authorized to pledge or otherwise encumber the goods under the retention of title.
- 15.3 The Customer must do everything that may reasonably be expected of them to safeguard EMX Company's retention of title.
- 15.4 If third parties attach the goods delivered under retention of title or wish to establish or assert rights to them, the Customer must inform EMX Company of this immediately.
- 15.5 The risk relating to the Products passes to the Customer at the moment of delivery.
- 15.6 The Customer must insure and keep the Products delivered under retention of title insured against fire, explosion, water damage, and theft and make the policy for this insurance available for inspection immediately on request.
- 15.7 If EMX Company wishes to exercise its property rights under this article, the Customer gives unconditional and irrevocable consent in advance to EMX Company and its designated third parties to enter all places where EMX Company's property is located and to repossess this property.

### 16. Force majeure

- 16.1 EMX Company need not comply with any obligation if it is prevented from doing so because of a circumstance that is not its fault and for which it cannot be held accountable by law, a legal act, or generally accepted standards. In that situation, it may suspend its obligations for as long as the force majeure continues or terminate the Agreement by Written notification to the Customer, with no obligation to pay any compensation unless this would be unacceptable under the given circumstances according to standards of reasonableness and fairness.
- 16.2 Force majeure on the part of EMX Company also means every circumstance independent of EMX Company's control and action, as a result of which EMX Company reasonably cannot be expected to perform, including a lack of personnel, strikes, late delivery or unsuitability of materials, government measures, a lack of or unavailability of infrastructure (e.g. digital accessibility) and transport options, and a failure to perform by EMX Company's suppliers as a result of which the EMX Company reasonably cannot fulfil its obligations towards the Customer or any other event as a result of which the Customer loses the free disposal of their assets.
- 16.3 EMX Company may invoke force majeure if the circumstance preventing performance or continued performance occurs after EMX Company should have complied with its obligation.
- 16.4 If EMX Company has already partially fulfilled its obligations when the force majeure occurs, or can only partially fulfil its obligations, it may separately invoice the part already delivered or the part that can be delivered. The Customer must pay this invoice as if it were a separate contract.

### 17. Intellectual property rights

- 17.1 All of EMX Company's intellectual property rights, including copyrights and know-how in relation to this Agreement and the Products it delivers, vest in EMX Company and/or its suppliers. Unless agreed otherwise, there is no transfer of any intellectual property rights under the Agreement.

### 18. Conformity

- 18.1 The Customer must check the purchased Products on delivery, or as soon as possible afterwards, for any defects and/or shortcomings. The Customer examines whether the quantity and quality of the delivered Products correspond to the order and their wishes.
- 18.2 The Products that EMX Company delivers meet the usual requirements and standards that can reasonably be set at the time of delivery and for which they are normally used in the Netherlands. The Customer is aware that the Product may be used only as a motocross bike in a designated area. If Products are delivered outside the Netherlands, the Customer is responsible for verifying that they are suitable for use there as a motocross bike in a designated area and meet the conditions set for this purpose.
- 18.3 The warranty referred to in 18.2 of this article applies until the delivery date unless the nature of the delivered item dictates otherwise or the Parties have agreed otherwise. If the warranty that EMX Company provides concerns a third-party item, the warranty is limited to that given by the producer of that item unless stated otherwise. The Customer is aware that the Product has been assembled from loose parts on their instructions. To enable the loose parts to be placed in the chassis of the Product, EMX Company has had to modify the suppliers' parts, as a result of which the manufacturer's warranty for these loose parts normally cannot be invoked. The Customer indemnifies EMX Company against the fact that they cannot invoke the manufacturer's or other warranties relating to these modified parts.
- 18.4 Because the Product by its nature will be used as a motocross bike in a designated area, EMX Company cannot verify the circumstances under which the Customer and/or third parties will use the Product. Given this fact, it is impossible for EMX Company to provide any form of warranty after the delivery date because it cannot verify whether any defect is caused by damage resulting from improper use by the Customer.
- 18.5 Any form of warranty will cease to apply if a defect results or arises from injudicious or improper use, incorrect storage, or incorrect or irregular maintenance by the Customer and/or third parties, if the Customer or third parties have made changes or tried to make changes to the item without EMX Company's Written consent, if other items have been attached to the item that should not have been attached to it, or if it has been modified or processed in a way other than prescribed. The Customer also is not entitled to any warranty if the defect has arisen from or is the result of circumstances beyond EMX Company's control, including weather conditions or exposure to extreme conditions.
- 18.6 Any visible defects must be reported to EMX Company in Writing within two days of delivery. Hidden defects must be reported to EMX Company within six months of delivery. Reported defects must be described in detail, clearly describing how the non-conformity was discovered and clear pictures of the defect if the non-conformity is visible, so that EMX Company can respond adequately to this notice of non-conformity. The Customer must also send a copy of the purchase receipt. The Customer must give EMX Company the opportunity to investigate a complaint or defect. If a defect is reported later, the Customer will no longer be entitled to repairs, a replacement, or compensation.
- 18.7 The Customer undertakes that they will not use the Products contrary to any applicable law or regulation and/or in breach of any provision of the Agreement. The Customer indemnifies EMX Company against all third-party claims, damage, and costs arising from, related to, and/or resulting from a breach of this undertaking.
- 18.8 The Customer is not bound by any warranty if and for as long as the Customer fails to fulfil their obligations under the Agreement with EMX Company or fails to do so properly or punctually. EMX Company likewise has no warranty obligation if the delivered Products are alienated, modified, or processed, or if and when changes are made to them, all without EMX Company's prior Written consent.
- 18.9 If it has been established that a Product is defective (and the defect has not arisen from damage caused by the Customer) and the Customer complained about the defect in time, EMX Company will at its discretion – within a reasonable period of receiving the Product back or, if returning it is not reasonably possible, having been notified about the defect by the Customer – replace or arrange for repairs to the Product or pay the Customer a replacement amount for it. If the Product is replaced, the Customer must return and transfer ownership of the replaced

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Product to EMX Company unless EMX Company states otherwise. EMX Company reserves the right to replace defective parts with new parts or parts refurbished in its factory. If it is established that a Product is defective, the Customer must pay the transport costs to send the Product to EMX Company for replacement or repair.

- 18.10 If it is established that a complaint is unfounded, the Customer must pay all the resultant costs that EMX Company incurs, including the costs of investigating the complaint.
- 18.11 After the warranty period expires, all repair or replacement costs, including administration, shipping, and transport costs, are charged to the Customer.
- 18.12 The expiry period for all claims and defences against EMX Company and the third parties involved in the Agreement is six months.

## 19. Dismantling the Product

- 19.1 If the Customer dismantles, repairs, alters, or performs any other work on the Product without EMX Company's prior Written approval, any claim under the warranty ceases to apply.
- 19.2 The Customer is aware that dismantling can cause irreparable damage to the Product and injury to the person dismantling the Product because battery acids and electrical current may still be present. The Customer indemnifies EMX Company against any damage (both direct and indirect) that may occur if they dismantle the Product.
- 19.3 The Customer may contact only EMX Company's affiliated Dealer for maintenance or servicing. If the Customer has another garage perform the maintenance or service, all warranties on the Product will cease to apply. Product parts must always be replaced with original EMX Company parts; if original EMX Company parts are not used, all warranties on the Product cease to apply.

## 20. Indemnity

- 20.1 The Customer indemnifies EMX Company against any claims by third parties that suffer damage relating to the performance of the Agreement whose cause is not attributable to EMX Company.
- 20.2 If EMX Company is held liable by third parties for that reason, the Customer must assist EMX Company both in and out of court and immediately do everything that may be expected of them in that case. If the Customer fails to take adequate measures, EMX Company may do so itself with no notice of default. All resultant costs and damage incurred by EMX Company and third parties are at the Customer's full expense and risk.

## 21. Liability

- 21.1 If EMX Company is liable, its liability will be limited to what has been arranged under these Conditions.
- 21.2 EMX Company is not liable for damage of any kind that arises because it has relied on incorrect and/or incomplete information provided by the Customer when the Agreement was concluded.
- 21.3 EMX Company also excludes any liability for direct and indirect damage unless this has been caused by its intent or wilful recklessness.
- 21.4 If EMX Company is liable for any damage, its liability will be capped at the paid invoice value of the order, or to that part of the order to which the liability relates. EMX Company's liability is always capped at the amount that its insurer pays in the specific case.
- 21.5 EMX Company is liable for direct damage only. Direct damage solely means the reasonable costs of determining the cause and extent of the damage, insofar as the determination relates to damage under these Conditions, any reasonable costs incurred to have EMX Company's defective performance conform to the Agreement, insofar as these costs can be attributed to EMX Company, and reasonable costs incurred to prevent or limit the damage, insofar as the Customer demonstrates that these costs have limited direct damage as referred to in these Conditions.
- 21.6 EMX Company will never be liable for indirect damage, including consequential damage, loss of profit, lost savings, and business interruption losses.

## 22. Personal data

- 22.1. EMX Company and the Customer process personal data only in accordance with the applicable regulations. The processing of personal data by EMX Company and the Customer for the purpose of performing the Agreement and the provision of EMX

Company's services are in accordance with the applicable laws and regulations.

- 22.2 EMX Company and the Customer must act in accordance with the regulations and adequately secure the personal data provided to them. EMX Company and the Customer must implement appropriate technical and organizational measures to secure the personal data against loss and against any form of unlawful processing. Having regard to the state of the art and the cost of their implementation, these measures ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.

## 23. Disputes

- 23.1 Only Dutch law applies to Agreements between EMX Company and the Customer. Any disputes that arise between the Parties to the Agreement will be submitted to the competent court in the judicial district of Limburg, the Netherlands.
- 23.2 The applicability of the Vienna Sales Convention is excluded.

## 24. Miscellaneous

- 24.1 If one or more provisions of these Conditions are fully or partially void or voided at any time, the remaining provisions of these Conditions will continue to apply in full. The Parties must consult to replace the void or voided provisions with a new provision, taking account of the aim and purpose of the original provisions as much as possible.
- 24.2 If a situation arises between the Parties that is not specifically covered in these Conditions, it must be assessed in line with these Conditions.
- 24.3 EMX Company reserves the right to amend and/or supplement these Conditions.

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