

# Standard Terms and Conditions

## Herforder Elektromotoren-Werke GmbH & Co. KG



### I. Extent of Delivery and Service

- All Deliveries and services shall be rendered exclusively on the basis of these Standard Terms and Conditions. Any standard terms and conditions of the customer shall not apply, even if they have not been expressly rejected. A contract shall only be formed, unless agreed otherwise, upon a written confirmation of the supplier.
- Safety devices will be delivered, if this is requested by law or has been agreed between the parties.
- All Deliveries and services shall be rendered exclusively on the basis of the Verband Deutscher Elektrotechniker (Association of German Electrical Engineering), insofar as they come into consideration for safety purposes of the delivery or service. Deviations are valid, if the same safety level is guaranteed in another way.
- In drawings, technical papers and further information of physical and unphysical kind, also in electronic form, the supplier reserves itself vestal titles and copyright to protection without reservation. Access to third may not be given without prior agreement. Drawings and documents belonging to the offers have to be returned upon request, if the contract is not awarded to the Supplier. Sentences 1 and 2 apply accordingly to the customer. The supplier is only entitled to disclose confidential information and documents to third parties only with approval of the customer. An approval shall be deemed to be given, if the supplier has permissibly transferred the delivery and service.
- Additional agreement are only valid upon written confirmation.

### II. Price and Payments

- All prices shall be quoted in case of delivery without installation or assembly ex works and exclude packaging. All prices shall be plus the respective applicable Value Added Tax (VAT).
- Unless agreed otherwise, all payments shall be made without deduction on the account of the supplier. A payment shall only be deemed effected at the time the supplier can dispose of the amount.
- In case of default, the supplier shall be entitled to interest at an amount of 8 points above the base interest rate (§ 247 of the German Civil Code). The supplier's right to claim for higher damages remains unaffected.
- The customer is only entitled to withhold payment and offset it, in so far as his counter claims are determined as undisputed or legally valid.

### III. Terms for delivery

- Delivery and supply of service shall be made as agreed between the parties. The delivery period only begins upon delivery of all documents, all necessary permissions, clearances, timely clarification and approval of plans, as well as compliance with the agreed payment conditions and other obligations.
- The period shall be deemed observed:
  - In case of delivery without installation or assembly, if the operational goods have been dispatched or collected within the agreed delivery or performance time limit. If the delivery is delayed due to reasons the customer is responsible for, the period shall be deemed observed if the notification of readiness for dispatch was given within the agreed period.
  - In case of delivery including installation or assembly, if the work is done within the agreed period of time.
- The delivery period will be reasonably extended in case of labour disputes, in particular strikes and lock-outs, war, riots, as well as other unexpected obstacles beyond the supplier's control. The supplier will inform the customer as soon as possible about the begin and the end of these circumstances.
- If the supplier's service provision is completely or partly delayed, the customer's claims for damage and compensation are limited as to 0.5 % of the price of that part of the delivery or service, that cannot be used in time due to the delay, for every completed week of the delay. The maximum liability for delay is limited to an amount of 5% of the price of the part of the delivery or service that cannot be used in time for the intended purpose due to the delay. This shall not apply if the default is due to gross negligence or intent of the supplier. The customer's right to rescind after the expiry of an additional period for performance without result remains unaffected.
- If dispatch or delivery is delayed at the wish of the customer, the customer may be charged for storage at a rate of 0.5% of the invoiced amount for each month begun, beginning one month after notification of readiness for dispatch; the storage charges are capped at 5%, unless higher charges can be provably justified.

### IV. Transfer of risk and acceptance

- The transfer of risk passes to the customer, even if freight paid delivery is agreed:
  - In case of delivery without installation or assembly, if the operational goods have been dispatched or collected. Packaging is performed with the greatest care. Goods are dispatched at the best discretion of the Supplier. Upon request and for the account of the Buyer, the Supplier shall arrange insurance of the consignment against breakages, losses to goods in transit and loss or damage caused by fire.
  - In case of delivery including installation or assembly, at the day of taking over in the customer's own facilities. If test operation have been agreed, upon acceptable test operations. This applies on the condition that test operations and/or taking over in the customer's own facilities take place immediately after operational assembly or erection. If the customer declines the offer of test operations or taking over in his own facilities, the risk shall transfer to the customer for the period of the delay when 14 days have lapsed since this offer.
  - If the dispatch, delivery, the commencement or realisation of installation or assembly is delayed upon the request of the customer or also for reasons for which he is responsible, the risk for the period of the delay shall transfer to the customer. However, the Supplier is obliged, upon the request and for account of the customer, to arrange the insurance coverage he demands.
- Acceptance must be made initially of any objects supplied even if they are slightly defective, without this affecting any possible claims under warranty.
- Partial deliveries are permissible.

### V. Retention of Title

- The supplier retains title of the delivered goods until receipt of all payments of claims due or which may subsequently arise in the business relationship. In case of provision of assembly work, the supplier shall retain title until receipt of the amount due for the assembly or rather the part of the payment which refers to the assembly work.
- The customer is not entitled to dispose of the goods as well as to mortgage or transfer them by way of security unless prior written approval of the supplier is obtained. The customer has to inform the supplier of attachment as well as seizure or other actions by third parties.
- If the reserved goods are processed by the purchaser in order to create a new movable, this shall be deemed made for the supplier without being obligated hereby. In the event of the retained goods being processed, combined, mixed, or mingled with goods not belonging to the supplier, the supplier shall acquire co-ownership rights in the new goods in the same proportion as the ratio of the invoice value of the retained goods to that of the other goods at the point in time of the processing, mixing, or mingling.
- In the event of a breach of contract by the customer, in particular in the event of default in payment, the supplier is entitled to repossess the goods after demand for payment, and the customer is obliged to return the goods. The enforcement of retention of title as well as the attachment of the delivered goods by the supplier shall not be considered as a termination of the contract.
- The customer's entitlement to dispose, process or assemble the retained goods in the regular course of the business ends when the supplier revokes this entitlement due to a significant deterioration in the customer's financial situation, at the latest in case of suspension of payment or the application or opening of the insolvency proceedings against the customer.
  - The customer hereby assigns all claims with all ancillary rights resulting from the resale of the retained goods – including any demands for balance – to the supplier.
  - If the retained goods have been processed, mingled or mixed and has the supplier acquired co-ownership at the amount of the ratio of the invoice value, the supplier is entitled to the purchase price claim pro rata to the value of the rights of the seller to the goods.
  - If retained goods are incorporated into a property, the customer hereby already assigns the claims for remuneration to the amount of the invoice of the retained goods including all ancillary rights and the right to grant a cautionary mortgage ranking prior to the rest. If the customer sells the claim in the course of genuine factoring, the supplier's claim is immediately due and the customer assigns the claim replacing it against the factor and passes on to the supplier his sales proceeds.
  - The supplier accepts these assignments.

- The customer is entitled, as long as he fulfils his obligations, to collect the transferred claims. The entitlement to collect debts shall lapse in case of revocation, at the latest in case of the customer's default or in case of significant deterioration in the customer's financial situation. In this case, the customer hereby entitles the supplier to inform the customer's clients about the assignment and to collect the claims. The customer is obliged to provide the supplier upon request with a detailed list of all claims belonging to the customer including name and address of the client, amount of the respective claims, invoice date, etc. to provide all information necessary for asserting the claim and to allow to check the correctness of the information.
- If the value of the supplier's securities exceeds his claim by more than 20%, the supplier is obliged to release securities at his choice to cover that amount at the request of the buyer or a third party affected by the supplier's over-securing.
- The customer shall store retention of title goods free of charge to the supplier. The customer is obligated to sufficiently insure the goods which are subject to retention of title against the usual risks, like fire, theft, water damages. The customer hereby assigns his claims for compensation against insurance companies or other liable third parties resulting from the damages mentioned in the last sentence at the amount of the invoice value. The supplier hereby accepts this assignment.
- All claims and rights resulting from the retention of title and privileges resulting from these Terms and Conditions remain applicable until full release from contingent liabilities, which the supplier has accepted in the customer's interest.

### VI. Liability for defects

- Unless stated otherwise in the following provisions, the statutory provisions shall apply for the customer's rights in case of material defects and defects in title.
- The basis of liability for defects is the agreement between the parties on the quality of goods. As regards the quality of the goods, at least those product specifications which have been incorporated in the contract shall be deemed agreed upon.
- Warranty claims asserted by the customer shall be subject to him having properly fulfilled the inspection and notification obligations in accordance with §§ 377, 381 of the German Commercial Code. In the event that a defect is revealed during the inspection or at a later date, the supplier must be notified without delay. A notice shall be deemed without delay, if the notification is made within two weeks. Without prejudice to this inspection and notification obligations, the customer has to give notice of obvious defects (including mistaken and short delivery) within two weeks upon delivery. It shall be sufficient if the notice is dispatched within this period. If the customer fails to perform the proper inspection and/or the notification, the supplier's liability for defect which have not been notified is excluded.
- There shall be no liability for insignificant deviations from the agreed quality. The liability for defects shall not be applicable, if the deviations of the agreed quality results from excessive or improper use or normal wear and tear the same applies to deviations which arise due to special external influences which were not foreseen under the terms of the contract.
- If the delivered goods is defective, the supplier can choose at his own discretion whether the defect is remedied (Repair) or a good free of defects is delivered (Replacement). The repair will be conducted within a reasonable time. The customer's interests will be considered reasonably.
- The supplier is entitled to only conduct the supplementary performance if the customer has paid the purchase price. The customer is entitled to retain a reasonable portion of the price that is relative to the defect.
- The customer shall give the supplier the time and the opportunity which may be needed for the supplementary performance, in particular he has to hand over the goods being object of complaint for inspection purposes. In case of replacement, the customer has to return the defective goods in accordance with statutory provisions.
- The supplier must bear all expenses required for the purpose of supplementary performance, in particular transport, workmen's travel, work and materials costs, if there is a material defect. However, the supplier may claim reimbursement of arising costs, if the request for supplementary performance is unjustified.
- Only in urgent cases, like threats to operating safety or to prevent unreasonably high losses, the customer is entitled to rectify the defect himself or to have it rectified by a third party and to demand repayment from the supplier of the unavoidable costs incurred thereby. The supplier must be informed about these activities as soon as possible, if possible prior to the repair. There is no right to carry out rectification, if the supplier is entitled to refuse the supplementary performance according to statutory provisions.
- If the improvement is unsuccessful, the purchaser has the right to reduce the purchase price, to withdraw from the contract and/or to claim for damages and compensation as stated in § VII. The customer chooses these options within a reasonable period of time. The customer may not revoke the contract if the defect is trivial.
- All claims for material defects prescribe within one year upon delivery. The periods stated by law remain unaffected, if these provision contain longer periods for buildings and things used for a building, or in case of willful or fraudulent breach of obligations of the supplier or his legal representative or agents, in case of malicious concealment or in case of damages from injury to life, body or health.
- The provisions of §§ 478, 479 of the German Civil Code remain unaffected.
- The liability for defects is excluded for used goods. This shall not apply to the fraudulent concealment of defects or breaches of a guarantee.

### VII. Liability

- In case of breach of contractual and non-contractual obligations, the supplier is liable according to statutory provisions, unless stated otherwise in these General Terms and Conditions including the following paragraphs.
- The supplier shall be liable for damages – irrespective of the origin of the claims – only in case of intent and gross negligence. A liability for ordinary negligence only arises
  - in case of damages from injury to life, body or health;
  - in case of damages from the breach of material contractual duties (a duty whose performance is basis for the proper execution of the contract and on whose abidance the contractual partner has relied on regularly and may rely on); in this case the liability is limited to the compensation of the foreseeable and typically occurring damage.
- The limitation of liability as described in No. 2 shall not apply, if the supplier fraudulently concealed a defect or has given a guarantee for the quality of the goods. The same applies to the customer's claims under product liability legislation.

### VIII. Prescription

All customer's claims shall be prescribed within one year upon delivery. The statutory periods shall apply for willful or fraudulent conduct as well as for claims under product liability legislation. The statutory periods shall also apply to defects in a construction or to delivery items used in a construction in accordance with their normal use and causing its defectiveness.

### IX. Export

In case of cross border deliveries and service provision, the customer bears the costs for customs, taxes, fees and similar expenses unless agree otherwise in separate agreement.

### X. Miscellaneous

- All legal relations of the parties shall be governed exclusively by the law of the Federal Republic of Germany. All international and supranational conventions, in particular the United Nations Convention on International Sale of Goods (CISG) shall be excluded.
- If the customer is merchant as defined by the German Commercial Code (Handelsgesetzbuch), a legal person under public law or a public separate asset, the place of jurisdiction for all disputes, which arise during the fulfillment of this contractual relationship, is Herford, Germany. However, the supplier is entitled to take legal actions at the general venue of the customer.
- If these Standard Terms and Conditions should be incomplete or have regulatory gaps, such regulation shall apply that to the closest extent possible reflects the economic objectives and intentions of the parties and that the parties would have agreed if they had had knowledge of the regulatory gaps.
- The English version of these Standard Terms and Conditions is for information purposes only. In case of doubts, the German version shall prevail.