

General Terms and Conditions
eviro Elektromaschinebau & Metall GmbH, Eibenstock

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I. General Conditions

1. The following general terms and conditions (herein referred to as „Contract Terms“) only apply to business people, legal persons of public law or to special assets of public law. The contractual relationship for all supplies and services between eviro Elektromaschinenbau & Metall GmbH Eibenstock (contractor) and a third party (customer) shall be determined by these contract terms.
2. The general terms and conditions of the customer shall not be applicable and are hereby expressly rejected. The customer's contract terms shall only apply with prior expressive written consent of the contractor thereto. In no case such a confirmation can be regarded as the performance of the contractual obligation or any other fulfillment of the contract.
3. The contract terms do not apply, by way of exception, to the contractual relationship, if the contract parties expressly agree upon differing and individual contract terms in written form or if they are legally forced to do so.
4. The contract terms shall also apply to all future legal transactions with the customer, provided those transactions are related to the contract. They are especially applicable in case that the legal transactions do not always refer expressly to the contract terms, but they have made known to the customer in a previous order.
5. All offers of the contractor remain subject to change, unless expressly declared binding. Furthermore, orders come into force only with a written order confirmation by the contractor.

II. Price and Payment

1. Failing a special agreement, prices apply as Ex Works inclusive loading, however, exclusive packaging. Prices do not include VAT at the appropriate rate.
2. Payments can only be esteemed timely and effected, as soon as they are credited to the account of the contractor or the amount is otherwise freely available to the contractor.
3. Prices correspond to the price situation at the time of order confirmation by the contractor. In case of price changes on the agreed delivery date, as for example the transport and storage costs, labor costs, prices for material and raw material, as well as selling expenses, the contractor reserves the right to increase the prices until the amount of the actually arisen additional costs, as long as the supply of goods or service shall not be effected within four months after conclusion of the agreement. This restriction does not apply in case of a continuing contractual obligation. The currency risk has to be borne by the customer.
4. All payments have to be made in Euro to the account of the contractor as indicated on the envelope. In case of agreed instalment payments, the contractor is entitled to withdraw or refuse output regardless of any agreed maturity dates insofar as no adequate advance payment is made and serious doubt is established to the compliance of the instalment payments agreement by the client, in case of non-payment, even of just one instalment, just as by acts of protest, by cessation of payment by the client or through other circumstances. If the customer falls behind with an instalment and the contractor has already performed its full contractual obligations, all other instalments will be due at once and immediately.

5. The agreed terms of payment are applicable. Any failure to comply with these terms of payment the customer is considered a default and does not require another request for payment or reminder issued by the contractor.
For payment default a default interest has to be paid in accordance with §288 BGB (currently at a rate of 8% above the prevailing basic interest rate, according to §288 Abs. 2BGB). Additional damages remain unaffected.
6. The offsetting or enforcement of a right of retention from the Client is only valid through an authorised or legally binding arbitrated counterclaim. The client is entitled to exercise the right of retention in so far as the counterclaim is based on the same contractual relationship.

III. Supply, Placing of Orders

1. The compliance to deadlines for supply and/or output is conditional to the timely availability of all documentation, approvals, clearances and other additions in so far as these are essential for an orderly and proper compliance to contract and that the client has fulfilled the payment terms and has completed any other advance liabilities and all other essentials, especially technical prerequisites required for the execution of order. Should these conditions not be timely fulfilled the occurrence of a time extension will be executed. This does not apply if the absence of prerequisites is due to the fault of the contractor in relation to paragraph VII. of these general terms of business or the contractor had taken on the responsibility for the guarantee of the availability of the prerequisites.
2. The deadline is considered as met:
 - a) On delivery without agreed installation or assembly or when the delivery has been sent for dispatch or has been collected. If delivery is delayed through reasons caused by the client, the delivery deadline is considered as met when the notification for despatch is issued within the agreed deadline period.
 - b) On delivery with agreed installation or assembly as long as this is fulfilled within the agreed deadline.
3. The delivery deadline can be appropriately extended through delays resulting from labour disputes, especially strikes and lockouts or by other stoppages, through mobilization, war, riots, the rejection of important parts, delays in the delivery of important raw materials and parts and other incidents that come from higher levels and cannot be predicted by the contractor and these obstacles result in or play a part in the non-adherence to the delivery deadline. Under this context the contractor will inform the client accordingly.
4. Should despatch or delivery be delayed upon the request of the Client, a storage charge of 1% of the invoice amount for each month of storage will be charged commencing one month after the issue of despatch notification. Storage costs are set to a 10% limit. Rights are reserved in the evidence of higher costs.
5. We maintain a 2% discount for non-long term clients when the invoice amount is paid as cash on delivery.
6. Part delivery is authorised in so far as no other agreement has been made.
7. When placing the orders with our suppliers we are obliged to comply with the general principles and the relevant requirements of the labour protection laws and health and safety protection laws.

IV. Retention of Title

1. All parts that have been manufactured and delivered by the contractor remain the property of the contractor until full payment of the agreed price and until fulfillment of any other claims against the customer resulting from the contractual relationship.
2. Working and re-working shall be conducted for the client exclusively by the contractor. Should contractual goods be worked with other objects not pertaining to the contractor then the contractor will acquire the joint property on the new object at cost price (at the time of working) in proportion to the invoice amount for the contractual goods.

3. The client is authorised to resell contractual goods in generally accepted business concerns. For all herefrom emerging demands towards the third party the client is obliged to transfer the sum of the prevailing invoice amount in advance (inclusive of VAT) to the contractor. Notwithstanding this transfer the client remains furthermore entitled to the withdrawal of the demands. The contractor is obliged to release securities in as much as demanded by the client in order to increase the value of demands to be secured by more than 10%.
4. The client is obliged to insure the contractual goods against insurable damage at their own expense. On the placing of orders and as a precautionary act the client transfers to the contractor all claims on insurance benefits to the amount of the contract price or assigns a bank guarantee to the amount of the balance. The client is obliged to display this to the insurer and notify the contractor. The withdrawal of transfer applies as having tacitly occurred after complete payment and the fulfilment of any other claims from the contract by the client.
5. The client may neither mortgage nor assign transfer against assurance. Subject to point III. 3 of the general terms of business the client is to promptly notify the supplier with the transfer of transcriptions and relating documents in cases arising of mortgaging, confiscation or other endangerment of the property through a third party.

V. Warranty

1. A warranty period of 24 months is given starting with the date of delivery as indicated on the delivery note or invoice. Damage occurring that can be traced back to natural wear and tear, overload or improper handling will be excluded from warranty.
2. All documents as maps, drawings, information on weight and quantity are to be considered as approximate relevance, unless clearly stated as binding. Any information, maps, expositions etc. are no warranty or guarantee, but information without any commitment, unless otherwise agreed.
3. The client is obliged to inspect the part immediately upon delivery to the place of fulfillment in so far as it is done in a proper businesslike manner and when found to be faulty promptly notify the contractor. Omission to notify renders the goods as approved unless it involves a fault that is not noticeable upon inspection. Should this fault occur at a later date, notification should follow immediately upon discovery; otherwise even in consideration of the fault the goods will be deemed as approved. The above does not apply when the contractor has fraudulently withheld the fault. The rest apply to the regulations of the civil law codes.

VI. Contractual Adaptation

Provided that no unpredictable incidents as defined in point III.3 of these general terms of business influence the economical relevance or that the contents of the delivery or output are not considerably changed both contractual parties will conform in a reasonable manner to the agreement in as far as this commensurate an act of good faith. In so far as an adaptation is not economically reasonable both parties have the right to withdraw from the agreement. In either case the contractual parties are obliged to immediately notify the relevant party within the framework of reasonability.

VII. Liability

1. The contractor takes full liability for malicious aforethought especially fraudulent intent and culpable negligence, culpable injury to life, body or health as well as by the issuance of a guarantee. Liability for negligent injury of contractual constitutive commitments is restricted to contractual representative predictable damages. Negligent liability is excluded for all others. This applies correspondingly for liability for legal representatives and assignees.
2. This limitation of liability applies for both contractual as well as tortious claims. Further claims especially negligence liability are excluded with the exception of claims from product liability laws.

VIII. Place of Performance, Court of Jurisdiction, Applicable Law

1. Changes and/or amendments to the contract have to be made in written form.
2. All contractual relationships between the parties are subject to the German law.
3. Place of performance is our business location unless the agreed content or is nature of the contractual relationship has to be performed at another location.
4. The stipulated court of jurisdiction for all disputes arising from this contractual relationship will be exclusively the business location of the customer provided the contractual partner is a businessman in the sense of the German commercial code, a legal person of public law or of special assets of public law.

IX. Miscellaneous

Should individual specifications of the agreement become Null & Void this will not affect the validity of the remaining conditions. The contractual parties are obliged to fill any thereby resulting regulation breach in a form to closely reflect the commercially intended spirit and purpose of the provisions of the Agreement.