

I. GENERAL

1. All our sales contracts are subject exclusively to the present General Terms and Conditions ("GTC"); the said shall apply, unless otherwise expressly agreed in writing. "In Writing" shall always mean communication by document signed by the parties, or by letter, fax or electronic mail.
2. In case of conflicts between our GTC and other special written agreements between the parties, the latter shall prevail. General Terms and Conditions or forms of Buyer shall by no means be accepted or become part of the contract, regardless whether we knew them or not, whether we have contradicted their validity or not and irrespective of whether they are in opposition to our GTC or not. In case of continuous business transactions, our GTC shall be applicable even without special reference to the said.
3. Quotations are always subject to change. A contract is not formed until our written order confirmation is sent to Buyer. Solely the order confirmation shall be decisive for the content and the scope of the contract. Buyer may declare its acceptance either explicitly or by conduct.
4. As far as quotations are based on the information issued by Buyer (e.g. technical data, drafts, drawings, plans, samples), we shall not be held liable with regard to accuracy and/or completeness of such information. Alterations after formation of the contract can only be accepted, if they are reasonable and only on the condition that all resulting consequences (in particular delivery time and price) are duly considered.

II. DOCUMENTATION AND PLANS

1. Any drawings or technical documents submitted to Buyer prior or subsequent to the formation of the Contract remain our exclusive property. They may not, without our written consent, be utilised by Buyer or copied, reproduced, transmitted or communicated to a third party. They are to be returned immediately on our request if the order is not carried out.
2. Any sales documents, specifications and price lists shall be strictly confidential and must not be made available to third parties.

III. OBLIGATIONS TO INFORM AND TO COOPERATE

1. Prior to the formation of the contract, Buyer shall inform us about statutory, official and other regulations which may affect the performance of the contract, such as those regarding delivery, assembly, operation, health protection and accident prevention, currency controls, and export and import restrictions. Buyer shall obtain all necessary official permits at its own cost and risk.
2. Buyer shall undertake all measures necessary to ensure that the work is started on time and performed without hindrance or interruption. Buyer shall particularly be responsible for performing any site and other preparatory work timely in a workmanlike manner at its own cost in accordance with the [General Conditions for Erection and Start-up](#), which form an integrating part of the contract (available on the web at www.engeiglobal.com). Buyer shall compensate any extra costs (e.g. by dwell time) incurred by a breach of its obligation to cooperate.

IV. EQUIPMENT

1. The equipment shall exclusively conform with the specifications of the order confirmation. The drawings, descriptions and other data included in catalogues, prospectuses, circulars, advertisements and other general information, whether in electronic or any other form, are only exemplary. These data shall not be binding, unless otherwise explicitly stated by us in writing.
2. The equipment shall be in accordance with the applicable mandatory safety laws and regulations of the Republic of Austria. Other laws and regulations, such as those applicable at the country of destination, shall not be binding for us, unless the said have been expressly declared as binding. We shall not be liable for the equipment being fit for a particular purpose supposed by Buyer, unless such purpose was explicitly defined in the order confirmation.

V. SOFTWARE

Buyer shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the delivered equipment. Buyer may make only one back-up copy without our express consent. For software licences hereunder the General Terms & Conditions issued by the association of the Austrian Electrical and Electronics Industry (also available on the web at <http://www.feei.at/service/softwarebedingungen/>) shall apply [subsidiarily](#).

VI. PRICES AND TERMS OF PAYMENT

1. Our prices apply, failing any agreement to the contrary, ex works, including a equipment-in-transit insurance, but exclusive of packing, loading, carriage and assembly; value added tax shall be added at the then applicable rate.
2. If the rate of the invoice currency changes in relation to the EURO, particularly as a result of the devaluation or revaluation of one of the currencies, the purchase price charged is based on the exchange rate between the two currencies on the date of conclusion of contract.
3. Unless otherwise agreed upon by the parties in writing, Buyer shall pay the purchase price in three equal parts, viz. 1/3 upon formation of the contract, 1/3 upon notice of readiness of dispatch and 1/3 within 30 days of the date of delivery (transfer of risk).
4. Payments are to be made by interbank payment without any kind of deduction and free of transaction charges to the designated bank account of ENGEL AUSTRIA GmbH in the currency specified in the invoice. No cheque or bill of exchange will be considered as fulfilment of the payment obligation.

5. A payment is held to have been made on the day we have it at our disposal. A possible acceptance of check or bank draft shall be only on account of payment ("*Zahlungshalber*"). All interest and expenses associated with the aforesaid (for example collection and discount expenses) are at the expense of Buyer. Payments of Buyer – independent of the respective payment reference – are initially accounted for interests and collection costs and then for the respectively oldest debt of Buyer.
6. It may be agreed between the parties that Buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to us). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits in the current version at the date of formation of the contract (currently UCP 600). Unless otherwise agreed, the documentary credit shall be irrevocable and payable at sight and shall allow partial shipments and transshipments. Acceptance of letter of credits shall be only on account of payment [in German: "*Zahlungshalber*"].
7. From the due date interest in the legal amount shall accrue subject to applicable law. In case Buyer is in default with a payment, with an obligation to cooperate or with the acceptance of delivery longer than 14 days, we are entitled to declare the contract avoided without further notification and may claim for damages resulting from non-performance. Without prejudice to further claims for damages, a CONTRACTUAL PENALTY EQUAL TO 1/2 (ONE-HALF) OF THE NET CONTRACT PRICE will become due. The same shall apply, if Buyer withdraws from the contract without cause in law.
8. Buyer may invoke set-off or exercise a pledge or right to retain only, if its claims have been accepted by us in writing or have been adjudicated by court.

VII. DELIVERY TIME

1. Dates and deadlines set for contractual performance can only be observed if the order is clarified (clarification of all technical/commercial details) and if all documents to be supplied by Buyer, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of Buyer, including but not limited to obligations to inform and cooperate, are duly fulfilled.
2. The period or date of delivery is deemed to be met, if the equipment has left our factory or if we gave notice of our readiness for dispatch on time. If a formal acceptance is agreed upon by the parties, the acceptance shall be carried out at the assigned date, alternatively shortly after our notice of readiness for acceptance.
3. If the delivery or the acceptance is delayed or omitted due to circumstances we are not responsible for, all legal consequences arising out of or in connection with the delivery or acceptance (including but not limited to due dates for payment, passing of risk or start of warranty-period) will come into effect with the date of the notice of our readiness of dispatch resp. for acceptance. Acceptance must not be refused due to defects other than fundamental. The delivery date shall be extended adequately if the delay is caused by circumstances beyond our control and can not be overcome by using commercially reasonable efforts, in particular because of natural disasters or other cases of force majeure, governmental interference or employment conflicts. If such impediment exists for longer than three (3) months, the contract may be terminated by either party with immediate effect. If delivery or acceptance is delayed or omitted due to circumstances Buyer is responsible for, we will be entitled to claim the incurring costs (e.g. storage and financing costs) and/or exercise the rights in accordance with Article 6 para. 7.

VIII. DELAY

1. If the parties have agreed upon a contractual penalty / liquidated damages, the following shall apply:
In case Buyer demonstrably suffered a loss by a delay in delivery due to reasons within our control and responsibility we shall pay to Buyer as liquidated damages zero point five percent (0,5%) of the part of the net contract price assigned to the respective equipment not delivered in time per each expired week of delay. The maximum total amount of liquidated damages for delay shall be five percent (5 %) of the respective part of the net contract price. Buyer may not, as long as liquidated damages accrue, declare the contract formed hereunder avoided. In any case, payment of liquidated damages for delay shall constitute full and final settlement of all of Buyers claims possibly resulting from the delay.
2. Without prejudice to the aforesaid, Buyer shall only be entitled to declare a contract formed hereunder avoided if the delay is due to our fault and not before expiration of a reasonable period of grace without result, of which Buyer gave us notice in writing.

IX. TRANSFER OF RISK AND USE

1. Irrespective if the parties agreed upon a formal acceptance or erection and start-up of the equipment by us or not, the risk of loss or damage to the equipment (risk as to price and performance) shall pass to Buyer in accordance with the agreed trade term, which shall be construed in accordance with the INCOTERMS in force at the date of formation of the contract. Aberrant from the aforesaid risk of loss or damage to the equipment shall pass to Buyer, if Buyer is in default with the performance of its obligations [in German: "*Gläubigerverzug*"].
2. If the parties have agreed upon a formal acceptance, Buyer shall not be entitled to use the equipment or any part thereof before the acceptance-protocol is duly signed. If Buyer does so without our express consent, acceptance shall be deemed to be made without any reservation.

3. Notwithstanding any provision herein, Buyer shall not be entitled to use the equipment any longer, if it defaults in the due payment of any moneys payable to us. Without prejudice to our other rights or remedies under the Agreement or at law, we shall have the right to (temporarily) deprive Buyer from the use of the equipment by shut down of the equipment as long as Buyer is in default.

X. RETENTION OF TITLE

Notwithstanding passing of risk as to price and performance or any other provision herein, the property in the equipment shall not pass to Buyer until we have received payment in full of the price of the equipment. Until such time as the property in the equipment passes to Buyer, Buyer shall hold the equipment as our fiduciary agent, and shall keep the equipment properly stored, protected, serviced, maintained and suitably insured. The equipment is to be labelled in order to be easily recognizable as our property to third parties. Buyer shall, at our request, assist us in taking any measures necessary to protect our title in the equipment in the country concerned by, as the case may be, registering or, if the title in the equipment can not be retained according to applicable mandatory statutory law, by granting us appropriate security rights.

XI. WARRANTY

1. Unless otherwise agreed by the parties in writing, the warranty period shall be six (6) months upon transfer of risk.
2. To the exclusion of any further claims, Buyer may exercise the following rights in case of any lack of conformity, which evidentially exists at the time of transfer of risk, even though the lack of conformity becomes apparent only after that time, provided that we were duly notified by Buyer in accordance with applicable law within the warranty period:
 - a. The remedy of defects may be, at our discretion, carried out by repair or replacement of the defective parts. Hereby incurring costs for material and labour shall be borne by us, other incurring costs to be borne by Buyer. The remedy shall have no effect on the expiration and the length of the warranty period.
 - b. If the lack of conformity can not be remedied by us due to physical-technical reasons or if such remedy can not be considered as economically reasonable ("irremediable defect"), Buyer may, whether or not the price has already been paid, reduce the price in the same proportion as the value that the equipment actually delivered had at the time of transfer of risk bears to the value that a conforming equipment would have had at that time.
 - c. In case of fundamental irremediable defects, Buyers' sole remedy shall be to declare the contract avoided, whereupon each party shall concurrently make restitution of whatever it has received from the other party under the contract. In the course of restitution Buyer shall in addition to the restoration of the equipment pay an appropriate usage fee equal to the depreciation of the equipment under due consideration of the concretely achievable utilisation degree. The basis for such calculation shall be a monthly depreciation equal to 3 % (three per cent) of the net contract price.
3. Buyer shall be entitled to claim for warranty only, if it demonstrates that it operated, maintained and serviced the equipment in keeping with the provided documentation and according to state-of-the-art and that the lack of conformity is not due to any cause other than ordinary use or conventional application. The application is considered to be non-conventional, especially when Buyer uses materials or additives or makes modifications in the equipment resp. in the machine settings, which have not been approved by us. The warranty shall not cover parts subject to normal wear and tear.
4. The exclusive provisions of this Article shall be applicable irrespective of a certain wording in the order confirmation (e.g. "guarantee"), which shall by no means constitute further liabilities.

XII. INTELLECTUAL PROPERTY RIGHTS

1. We warrant to the best of knowledge that the equipment does not infringe any right or claim of a third party based on industrial property or other intellectual property ("IPR") under the law of the State where Buyer has its place of business, of which at the time of the conclusion of the contract we knew or could not have been unaware.
2. Buyer loses the right to claim an infringement of IPR if it does not give us notice specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim. On request, Buyer shall give us authority to conduct negotiations or the legal dispute with the third party for our account and in our own responsibility.
3. In case of an infringement of IPR adjudicated by court, we will at our sole discretion either obtain free of charge the required permissions (licenses) or change the equipment in keeping with the contractual targets in such a way that an infringement is no longer given, provided that (i) we are responsible for the infringement of IPR and (ii) Buyer has duly observed its obligations under this Article.
4. Claims of Buyer based on an infringement of IPR shall not be admissible, if Buyer itself was responsible for such infringement. Neither shall claims of Buyer be admissible if the infringement of IPR is caused by (i) specifications made by Buyer, (ii) a type of use or process not foreseeable by us, (iii) a machine modification or settings made by Buyer or (iv) a combined use with products not provided by us. Buyer shall indemnify, defend, and hold us harmless against all third-party claims based on an infringement of IPR, for which we are not liable in accordance with this Article.

XIII. LIMITATION OF LIABILITY

1. Buyer shall only be entitled to claim for damages, irrespective whether it concerns damages for breach of contract or ex delictu if Buyer can prove that we are guilty of gross negligence. Notwithstanding anything provided herein, we shall not be liable to the Buyer due to ordinary negligence, nor shall we be liable for any claims for loss of profit, loss of orders, loss of use, loss of production, stoppage, loss of (anticipated) savings and interest, penalties, recourse claims or any (other) indirect, incidental, special or consequential loss or damage. Mandatory statutory claims of Buyer are not affected hereby; this applies, above all, to claims due to harm done to a person's life, body or health and liability for defective products pursuant to the Austrian Product Liability Act [PHG]. However, claims for recourse resulting from such bodily injuries shall not be admissible, unless the claimant proves that the product defect is attributable to our performance and that we are guilty of gross negligence.
2. To the extent that Buyer is entitled to claim for damages hereunder, the said shall be time-barred upon expiration of 2 (two) years after transfer of risk.

XIV. APPLICABLE LAW / PLACE OF JURISDICTION / ARBITRATION CLAUSE

1. Our legal relationship with Buyer shall be subject to substantive Austrian law to the exclusion of the conflict of law rules of Austrian international private law as well as the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
2. Subject to the provisions of the next paragraph all disputes, disagreements or any claim arising out of or in connection with a sales contract formed hereunder including any issue regarding its existence or validity shall be referred to the competent court in Linz, Republic of Austria; independent thereof, we may also bring action against Buyer at the competent court of law at its principle place of business.
3. If, however, Buyer's principal place of business is outside the European Union, all disputes arising out of or in connection with a sales contract formed hereunder or related to its violation, termination or nullity shall be – to the exclusion of recourse to ordinary courts of law – finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with the said rules. The place of the arbitration shall be Vienna.

XV. DATA PROTECTION AND CONFIDENTIALITY

1. We reserve the right to store, to communicate, to process and delete person-related data of Buyer in the framework of our business relations. We shall also be entitled to publish this data and pictures of the equipment as reference, unless contradicted by Buyer.
2. The parties shall undertake to keep a secret of any commercial and industrial information obtained in the course of the business relationship as far and as long as such information has not become part of the public domain.

XVI. MISCELLANEOUS

1. Place of performance for any obligation arising out of the sales contract shall be our principal place of business.
2. Messages sent to us shall be binding only, if they are written in German or English language. Messages may be transmitted by facsimile or by electronic means. They shall become effective at the point in time when they have reached the recipient or would have reached the said under normal circumstances with the type of transmission chosen. Messages which reach us on Saturdays, Sundays or one of our legal public holidays shall become effective only on the next working day.
3. The contract concluded subject to these delivery terms shall remain effective, even if one of the clauses is null and void or becomes null and void. In such a case, the void or ineffective clause shall be replaced by such a clause which comes closest in an effective manner to the economic purpose of the ineffective clause. The same applies, by analogy, to any gap in the contract.

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