

1. Scope of application

- 1.1 The present General Terms and Conditions of Sale and Delivery apply only with respect to entrepreneurs in the sense of § 14 BGB (Civil Code).
1.2 We provide all deliveries and performances exclusively subject to the application of these Terms and Conditions of Sale and Delivery. Any contradicting or deviating terms and conditions of the customer shall not be recognised unless we have explicitly consented to their application.

2. Offer and order

- 2.1 Our offers are without obligation and non-binding unless explicitly marked as a binding offer.
2.2 Our written order confirmation is authoritative for the order. This order confirmation can also be made by the sending of an invoice. If the customer has objections against the content of the order confirmation he must contest the order confirmation without delay. Otherwise the contract shall come into force in accordance with the order confirmation.
2.3 Verbal or telephone agreements shall only become an integral part of the contract if confirmed by us in writing.
2.4 Drawings, illustrations, dimensions, weights and other performance data outside of the offer and the order confirmation shall only be binding if this is agreed.
2.5 We reserve rights of ownership and copyright to samples, cost quotations, drawings and similar information of a physical and non-physical nature including in electronic form; these must not be made accessible to third parties. The supplier undertakes only to make information and documents marked by the customer as confidential accessible to third parties with the consent of the customer.

3. Handling and processing as well as assembly of parts sent in

- 3.1 Parts sent in for handling and processing and assembly must be sent free our plant and if required in good packing with the inclusion of a waybill and delivery note. Notification of dispatch to us must be sent indicating our order number.
3.2 The material or the technical quality of parts sent in must be notified. Pre-processed parts or parts provided for assembly must be delivered in the exact size and running within the required tolerances. Parts to be broached must not have been ready processed and must have an addition for taking the finishing cut.
3.3 In the event of failure to fulfil these preconditions we are entitled to invoice the costs of additional work as well as to compensation for prematurely worn out or damaged tools or to withdraw from the contract whereby the customer is required to reimburse the corresponding part of the selling price as well as the above mentioned additional costs. Tools and gauges that do not conform to our normal range, as well as special devices and models shall be charged in addition. They shall remain our property. Defectively pre-processed parts or defective parts provided for assembly can be repaired or returned at the expense of the customer without consultation.
3.4 Waste material from the parts sent in for handling or processing shall become our property.

4. Prices and terms and conditions of payment

- 4.1 The prices stated in the order confirmation shall be authoritative. These shall apply ex-works and do not include packing, freight, postage, insurance and value added tax.
4.2 Transport insurance shall only be taken out at the request of and at the expense of the customer. Half of the invoiced price shall be reimbursed for packing returned freight-free and undamaged.
4.3 Unless otherwise agreed payment shall be made as follows:
a) With ongoing business relations within 14 days from date of invoice less 2% discount or 30 days net.
b) For initial business dealings and for repairs in advance or upon availability for dispatch. Assembly costs shall be payable upon receipt of the invoice. Partial deliveries shall be invoiced immediately.
4.4 Should cost increases occur between conclusion of the contract and performance of the order that are not foreseeable for us e. g. as a result of increases in the wage or material costs, we shall be entitled to adjust the prices within the scope of the altered circumstances and without the charging of any additional profit.
4.5 Should it be agreed that an order is cancelled the price laid down shall be due and payable immediately subject to deduction of the direct costs of the partial work still to be carried out by us until full completion of the parts ordered.

5. Retention of title

- 5.1 We shall retain title to all goods delivered by us until full payment of all claims from previous contracts. The claims shall also include cheque and bill of exchange claims as well as current account claims. Should liability from a bill of exchange be created for us in connection with the payment, the retention of title shall not expire until the claiming against us from the bill of exchange has been excluded.
5.2 The taking back of the delivered item by us does not constitute withdrawal from the contract unless we have explicitly declared this.
5.3 The customer may neither sell or pledge the delivered item nor transfer it by way of security. In the event of seizure as well as confiscation or other disposals by third parties he must notify the supplier of such without delay.
5.4 The customer is entitled to dispose of the delivered item within the scope of the normal course of business subject to the reserve of revocation admissible for important reason. In the event of onward sale the customer hereby assigns henceforth to us all claims from the onward sale, in particular payment claims as well as other claims related to the sale in the amount of the final invoice amount (including VAT). This shall apply irrespective of whether the delivered item has been sold on without or following processing.
Until revocation by us admissible for important reason the customer is entitled to collect the claims assigned on a trust basis. In the event of important reason we are entitled to notify the assignment of the claim to the third party debtors even on behalf of the customer. Upon notification of the assignment to the third party debtor the power of the customer to collect shall expire. In the event of revocation of the power to collect we can demand that the customer notifies us of the assigned claims and their debtors, provides all information required for the collection, hands over the corresponding documents and notifies the debtors of the assignment.
5.5 Processing and transformation of the delivered item by the customer shall always be carried out for us. We shall apply as manufacturer in the sense of § 950 BGB (Civil Code) without further obligation. If the delivered item is processed with other items not belonging to us we shall acquire joint ownership of the new item in the ratio of the value of the delivered item to the value of the other items processed at the time of the processing. Apart from this the same shall apply for the item resulting through processing as for the item delivered under reserve.
5.6 If the delivered item is mixed or combined with other items not belonging to us we shall acquire joint ownership of the new item in the ratio of the final invoice amount of the delivered item to the value of the other items mixed or combined at the time of the mixing or combining. Should the mixing or combining be carried out in such a manner that the item of the customer is to be regarded as the principal item then it shall apply as agreed that the customer shall transfer pro-rata ownership to us. The customer shall safekeep the sole property or joint property for us.
5.7 At the request of the customer we undertake to release the collateral to which we are entitled at our discretion if the realisable value of such exceeds the claims to be secured by more than 20%.
5.8 The application for the initiation of insolvency proceedings shall entitle us to withdraw from the contract and to demand the immediate return of the delivered item.

6. Delivery

- 6.1 Delivery shall also be made at the risk of the customer if as an exception the assumption of the freight costs by us has been agreed. Should we select the form of dispatch, the route or the dispatch person we shall only be liable if we are guilty of gross culpability in the respective choice.
6.2 Delivery dates and deadlines indicated by us are non-binding unless agreed as binding. Even deadlines agreed as binding are not fixed deadlines unless explicitly determined as such by ourselves.
6.3 The delivery period can be seen from the agreements of the contracting parties. The adherence to this by us presupposes that all commercial and technical matters have been clarified between the contracting parties and that the customer has fulfilled all obligations for which he is responsible such as for example the provision of the necessary official certificates or the effecting of a down payment. Should this not be the case the delivery period shall be extended appropriately. This shall not apply if we are responsible for the delay.
6.4 We shall not be responsible for delays in delivery and performance as a result of force majeure and events not foreseeable for us and not caused by us which make delivery or performance fundamentally more difficult for us or impossible even in cases of dates and deadlines agreed as binding even if we are in default on delivery. The delivery period shall be extended to a correspondingly appropriate extent.
6.5 The customer can only withdraw from the contract or claim compensation for damages instead of the performance if he has previously set us an appropriate period of grace with the threat of refusal.
6.6 If dispatch is delayed for reasons for which the customer is responsible then following notification of availability for dispatch the customer shall be charged for the costs resulting from storage, in the event of storage in our plant at least 0.5 % of the invoice amount applicable to the parts taken into storage for each month. We are also entitled to store the delivered item outside of our plant.

- 6.7 Should we default and the customer suffer damages as a result of this he shall be entitled to demand lump-sum compensation for default. It shall be 0.5% for each full week of the delay, in total however a maximum of 5% of the value of that part of the overall delivery that cannot be used on time or in conformity with the contract.

Should the customer grant us an appropriate period for performance under consideration of the statutory exceptions and should the deadline not be adhered to the customer shall be entitled to withdrawal within the scope of the statutory regulations.

7. Passing of risk

The risk shall pass to the customer at the latest upon dispatch of the delivered parts ex-works and even if freight-free delivery and assembly has been agreed. However if pricing has been agreed for which the Incoterms 1990 including the extensions applicable at the time of the conclusion of the contract provide for other regulation of the passing of risk, this deviating ruling shall apply. Should dispatch be delayed as a result of circumstances for which we are not responsible the risk shall pass to the customer as from the date of availability for dispatch. Irregularities resulting from the dispatch must be notified to the supplier in writing immediately following receipt of the goods. Partial deliveries are admissible if these can reasonably be expected of the customer.

8. Material defects

- 8.1 Upon acceptance or receipt the customer is obliged to check each delivery and to notify recognisable defects to us without delay in writing. Concealed defects must be notified in writing without delay following detection. Otherwise the delivery shall apply as approved.
8.2 In the event of the presence of a defect for which we are responsible we are entitled to subsequent fulfilment by choosing at our discretion between removing the defect or delivering a defect-free item. If subsequent fulfilment is refused by us, if such has failed or cannot be reasonably expected of the customer, the customer can choose between withdrawal from the contract or demanding a reduction in the selling price.
8.3 Claims of the customer for defects shall fall under the statute of limitations as follows following delivery or provision of the performance:
• For the variable speed drives set out in the variable speed drives catalogue: 12 months in multi shift operation
• For the MGS geared motors or SMS/MGS gear units without motors set out in the MGS catalogue: 36 months in single shift operation or 18 months in multi shift operation
• For drives as well as the electrical devices POSIDRIVE® (FAS, FDS, MDS) and POSIDYN® (SDS) set out in the ServoFit® and SMS catalogues: 24 months in single shift operation and 12 months in multi shift operation.
• For goods that we have procured ourselves: 12 months.
If periods of limitation are shortened by these rulings this shall not apply if the law as per § 438 paragraph 1 no. 2 BGB (Civil Code (building works and items for building works)), as per § 438 paragraph 3 BGB (Civil Code (malice)) and § 479 BGB (Civil Code (right of recourse)) prescribes longer periods.

8.4 Defect claims of the customer for replacement parts or replacement products shall fall under the statute of limitations 12 months after delivery.

8.5 The results on our test stand shall be authoritative for running qualities of gears. We accept no liability for disturbances resulting from installation relations, incorrect care or subsequent assembly of motors by the customer or third parties.

8.6 No guarantee is granted particularly in the following cases:
Unsuitable or improper use after passage of risk, incorrect fitting including the incorrect fitting of motors or commissioning and use of substitute materials by the customer or third party, natural wear and tear, incorrect or negligent handling, maintenance carried out not in accordance with the rules, use of inappropriate equipment, unsuitable operating conditions especially with chemical, electrochemical or electrical/electromagnetic influences as well as with the influence of the weather or other influences of nature or excessive ambient temperatures - provided that they are not the responsibility of the supplier.
8.7 Should the customer or a third party repair incorrectly no liability of the supplier shall exist for the resulting consequences. The same shall apply for alterations to the delivered item made without the prior consent of the supplier.

9. Defects of title

Should the use of the delivered item lead to the violation of industrial property rights or copyright in the home market the supplier shall as a fundamental rule and at his own expense obtain the right of further use for the customer or modify the delivered item in a manner that can be reasonably expected of the customer to the extent that the violation of protected privilege no longer exists.
Should this not be possible at economically appropriate conditions or within an appropriate period the customer shall be entitled to withdraw from the contract. Under the stated circumstances the supplier shall also be entitled to a right of withdrawal from the contract. Furthermore the supplier shall indemnify the customer against undisputed or legally determined claims of the corresponding owners of the protected privileges.

10. Compensation for damages

- 10.1 We shall be liable for intentional behaviour and gross negligence. We shall only be liable for slight negligence if this concerns the violation of fundamental contractual obligations which result from the nature of the contract or the violation of which endangers the achievement of the purpose of the contract. Even then the compensation for damages is restricted to the contract-typical, foreseeable damage. Apart from this, in the event of slight negligence claims of the customer for compensation for damages are excluded irrespective of the legal ground.
10.2 The above limitation of liability shall not apply for claims from the product liability law, in the event of injury to life, body or health.
10.3 With cases of claims for compensation for damages as a result of material defects the limitation of liability shall additionally not apply if we have maliciously kept quiet a defect or have assumed a guarantee for the quality of the item. Apart from this a period of limitations of 12 months shall apply for claims for compensation for damages as a result of material defects unless longer periods of limitation are prescribed as per 8.3 in accordance with the paragraphs stated there.

11. Liability for defects in the event of the processing of parts sent in

With the handling of parts sent in – for cutting and heat treatment, grinding etc. – we shall not be liable for defects resulting from the behaviour of the material. If parts sent in become unusable during the processing as a result of material defects or other defects, the processing costs incurred by us must be reimbursed. If work pieces become unusable as a result of circumstances for which we are responsible, we shall assume the processing of identical type replacement pieces.

12. Call-off orders

Provided nothing to the contrary is agreed a period of 12 months from the date of the order confirmation is binding for both parties. If the quantity ordered is not taken by the expiration of the 12 months we shall grant a period of grace of four weeks with prior notification. If no other agreement is reached the customer shall be obliged to take and to pay for the parts not called off following expiration of the period of grace. Following expiration of the period of grace we are also entitled to invoice the quantity actually taken as per our quantity discount scale with subsequent debiting of the incorrectly high rebate granted.

13. Offsetting and withholding

The customer may only offset against a counter claim that is undisputed or has been determined as legally binding. The customer is only entitled to assert a right of withholding if this is based on the same contractual relation.

14. Right of ownership and copyright

All offer documentation, drawings, cost quotations and similar shall remain our property and must be returned on request. No right of withholding exists irrespective of the legal ground. The documents must not be made accessible to third parties.

15. Use of software

If software is included in the scope of delivery the customer will be granted a non-exclusive right to use the software supplied including its documentation. It will be let out for use on the delivered item for which it is determined. Use of the software on more than one system is forbidden. The customer may only reproduce, rework, translate the software or convert it from the object code to the source code within the statutory scope (§§ 69 a ff. UrhG (Copyright Law)). The customer undertakes not to remove manufacturer's details, in particular copyright references or to alter such without the explicit prior consent of the supplier. All other rights to the software and the documentation including the copies shall remain with the supplier or with the software supplier. The granting of sub-licenses is not allowed.

16. Place of performance, place of jurisdiction, applicable law

- 16.1 Place of performance for deliveries and performances for both parties is exclusively the legal domicile of our company.
16.2 Place of jurisdiction for both parties for all legal disputes arising from the contractual relation as well as from its coming about and its effectiveness shall be the court responsible for the legal domicile of our company in the case of merchants. We can also choose to initiate legal proceedings at the legal domicile of the customer.
16.3 The contractual relation shall be governed by German Law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.