

General Terms and Conditions of Purchase

EME – Elektromaschinenbau Ettlingen GmbH, Nobelstraße 16, 76275 Ettlingen

1. General

All performances (including supplies and/or work) ordered by us shall be subject exclusively to the special conditions set out in our orders, to the conditions of any applicable blanket agreement and, thereupon, to these General Terms and Conditions of Purchase. Verbal statements or agreements shall not be effective unless confirmed by us in writing.

2. Supply of Material

Material or parts furnished by us remain our sole property unless mandatory statutory regulations (§ 946 to 948 BGB [German Civil Code]) do not allow it. In the event of further machining or processing, we shall remain the sole manufacturer as defined in §950 BGB.

3. Documentation, Devices, Production Equipment etc. and their utilization

If the Contractor receives drawings, models, winding data, tools, patterns, samples or similar material for the purpose of performing our order, these items remain our exclusive property. If such items have been developed by the Contractor with our substantial assistance (tests etc.) or have been manufactured by the Contractor according to our instructions, they may only be used for the purpose of our order and will, if our exclusive property, at our request be supplied immediately to us carriage-paid Ettlingen. The exercise of a right to refuse performance is not permissible.

All items of this kind shall be maintained in operating condition by the Contractor making sure that third parties do not acquire knowledge of our trade secrets or technical knowhow. If such knowledge is provided with our written approval, the Contractor shall pass on to the third party the obligation accepted hereunder.

Whenever the Contractor has developed and/or manufactured parts for our range of products with the aid of our data and according to our documents, such parts shall not be supplied to third parties without our consent.

4. Passing of Risk/Place of Performance

In cases of delivery including installation and assembly as well as in cases of other performances, the Contractor's risk as to such performance and the resulting payment will pass upon acceptance at the place of installation/performance; in case of delivery only, the risk will pass to us when such deliveries, subject to our right of refusal, are received at the place of delivery (place of performance) stipulated by us.

5. Delivery Note, Invoice and Payment

A delivery note stating our order number, item numbers, date of dispatch, type of packing, description of goods, quantity and weight of the consignment as well as receiving address (plant No. and point of unloading) must be attached in duplicate on top of each consignment.

The invoice must be in duplicate and must give order number, order item, description of goods, quantity, individual price as well as number and date of delivery note. The value-added tax of the price shall be shown separately. Unless otherwise agreed upon each invoice shall cover one order only.

The agreed term of payment commences on the date of performance, in cases of Par. 7, last paragraph, on the agreed date of performance. If invoicing follows the above-mentioned dates, the term of payment commences upon receipt of invoice.

6. Freight and Packing

In the absence of any special agreements, the Supplier or Contractor shall use the most economical type of transport or packing. Packing shall be in accordance with the character of the goods to be shipped, the means of transport and the nature of the transport route in order to meet all demands of such transport.

7. Dates of Performance

Agreed dates and terms are binding. Dates of shipment or delivery periods are observed with the performance of service/receipt of goods at our premises or at the place of performance agreed.

If dates of performance are not observed, legal regulations shall apply including our right of partial cancellation.

Whenever a date is expressly stated in the order as being covered by a penalty, for each week or part of a week in which that date is exceeded we may demand the penalty of 0.5%, up to a maximum of 5% of the value of the order, irrespective of us reserving such right on acceptance of the performance.

Unless agreed upon otherwise, there will be no partial performance. If partial performances or successive deliveries have been agreed upon, we may, if reasonable, defer delivery dates and change quantities.

The Contractor shall inform us and provide evidence of any force majeure affecting him immediately after the occurrence thereof. Nevertheless the Contractor, at his expense, must make every effort to perform under the contract at the agreed date. In case of delays exceeding one month, we may cancel a contract either completely or partially.

We may defer the agreed dates for the Contractor's performance up to a maximum of 6 months if the need for such performance is delayed due to strikes or other disruptions of our operation, and without any right to compensation on the Contractor's part. If the delay in performance is due to force majeure and exceeds 6 months, either party may terminate a contract either completely or partially.

If reasonable in any specific case, we may accept premature performance subject to the agreed payment terms remaining valid, i.e. from the date of the agreed contract performance or the subsequent invoice date (Par. 5).

8. Prices

If the Contractor reduces his prices, the question of a price reduction for goods or services not yet rendered will be discussed. All other agreed prices are fixed prices.

9. Warranty

Unless otherwise agreed upon, the warranty term is 24 months after performance. If the warranty covers items of our range of products or covers performances related thereto, the warranty will end 24 months after such item is put into operation by the end user but not later than 36 months after unreserved acceptance by us.

In any performance, the most suitable and perfect materials shall be used which shall have the agreed characteristics or, in the absence of an agreement, be of merchantable quality. Performance shall be in accordance with legal/administrative regulations and shall be consistent with the state of technology prevailing on performance even though such state of technology may not have been introduced into technical standards and regulations pertinent for the Contractor at the place of performance.

The Contractor shall, at his own expense and preceding any performance, conduct an acceptance and parts test and, thereby, observe all stipulated quality specifications. Our quality controls and checks on incoming goods are not deemed to be a waiver of any contractual obligation of the Contractor. We shall inform the Contractor without delay of any defects in goods and services as soon as we have recognized such defects in the ordinary course of business. In this respect, the Contractor waives any right to objection on the basis of delayed notification of defects. If a defect is discovered during the course of our manufacturing process, we shall make efforts to involve the Contractor in determining the causes and discussing the best method of remedying the defect.

We may demand remedy (repair or replacement) for any defects; the remedy causing the least economic burden upon the Contractor shall be given priority providing that the chosen option provides a perfect remedy for the defect and that the schedule and requirements of the end-user do not preclude it. Where we require the Contractor to perform the remedy the Contractor shall perform without delay. The Contractor shall be entitled to claim compensation if it is ascertained later that no defect existed. If the Contractor does not immediately act upon the request to remedy a defect, we may remedy or have remedied such defect at the Contractor's expense subject to additional claims; the same applies in urgent cases where we can provide for a remedy faster than the Contractor. Unless otherwise provided for above, warranty is subject to the pertaining legal regulations.

The warranty for repaired or replaced parts is 12 months from the warranty performance, but in no case shall it expire before the end of the warranty agreed for the original performance.

The Contractor shall, in case of warranty, be liable for the resulting examination costs, all costs for dismantling and assembly, labor and materials, transport and any other cost of sending defective parts and returning replacement parts to and from the place of performance or - subject to a specific agreement - any place of operation. The Contractor is only liable for further damages in a case of warranty if he holds insurance to cover such damages or if he is responsible for the damages or if a quality or durability guarantee is not met.

The Contractor is obliged to remedy all defects occurring during the warranty period if requested to do so by us before the end of the warranty period. The barring of claims in respect of a particular defect shall be waived by the issue by EME of written notification of defect until such defect has been remedied. Such waiver shall remain in force until 3 months after receipt of a written declaration that the defect has been remedied or that the defect does not exist. The Contractor shall be liable in every respect for any defective title and infringement of proprietary rights of third parties and shall indemnify and hold us harmless from and against any claims and damages of third parties, irrespective of any knowledge we may have thereof.

The Contractor will not be liable for the infringement of proprietary rights if caused by our drawings, samples or other specifications.

10. Modifications

If the Contractor intends to modify his performance under a previous order of the same type or under a specification of a current order, this will be possible in case of an amendment subject to our written approval. If a modification affects the logistics of an end user, the Contractor shall, in case of approval, act in conformity with such logistic requirements. The Contractor warrants the modified performance considering our intended use of the goods in previous orders and observing the intended use stipulated in the current order. The Contractor therefore shall be liable whenever his modified performance proves unfit for purpose when integrated into our supplies or those of third parties.

11. Assignment

Any assignment of claims under the contract will be subject to our written approval.

12. Title

The Contractor may retain title to his goods until complete payment of each delivery of goods. We may however use the goods supplied for our purposes and we may process and pass on such goods. We also agree to a prior assignment of our claims against our customers up to an amount of any claim of our Contractor against us; such assignment may only be disclosed stating the amount of our accounts payable to the Contractor with our express approval, and only if we are in delay of payment and have not paid within a reasonable extended time period.

13. Cancellation/Termination

Subject to other rights we may, completely or partially, cancel the contract if the Contractor files a petition in bankruptcy or for settlement sub judice.

The following provisions shall apply in case of termination under § 649 BGB (German Civil Code) or in case of any cancellation or termination as agreed in the order:

We may, completely or partially, terminate at any time. The agreed price shall be paid pro rata for items which have already been manufactured. The net cost plus 4% profit shall be reimbursed for parts on which machining has commenced. In addition, all other costs incurred before the notice of termination shall be refunded.

Upon our request and payment, the title in parts will pass to us. The Contractor shall provide evidence as to the facts on which his claims are based.

14. Stock/Availability of Supplies

The Contractor warrants a stock of parts/availability of supplies during the normal life of his parts, but at least for a period of 10 years after performance. Even where such obligation to maintain a stock of supplies to us has terminated, the Contractor shall inform us in good time in advance of a discontinuation of production to allow the supply of parts for our own stock.

15. Certificate of Origin

Whenever a certificate of origin will allow tariff preferences to be claimed, the Contractor shall provide such certificate, complete and correct, using the prescribed text, the goods being described by using our own description and, if available, our own item numbers.

16. Delivery Addresses for Deliveries to Ettlingen

The address for delivery and the unloading point shall be defined in the order.

Acceptance of goods:

Monday - Friday 7:00 to 12:00 and 13:00 - 15:00.

17. Jurisdiction and Applicable Law

The Law of the Federal Republic of Germany shall be applicable to the exclusion of the Uniform Laws on the International Sale of Goods and on the Formation of Contracts for the International Sale of Goods. Place of jurisdiction for all present and future claims resulting from the business relationship shall be Ettlingen. If any provision of an agreement is or will become invalid, such provision shall be replaced by a valid provision achieving the intended purpose.

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