

# General Terms of Sale and Delivery

## Scope

- These Terms and Conditions shall apply to all transactions.
1. Our goods, services and quotations are provided exclusively pursuant to these Terms and Conditions. These Terms and Conditions therefore apply to all future business relations, even if not expressly incorporated. The acceptance of our goods or services, at the latest, shall imply the acceptance of these the Terms and Conditions.
  2. Confirmations by the customer which refer to its own Terms and Conditions or Purchase Conditions are hereby expressly rejected.
  3. All agreements between us and the customer regarding the performance of this contract shall be made in writing.

## II. Quotation and Acceptance

1. Our quotations do not constitute offers and are not binding. Any statement of acceptance and all purchase orders shall only be binding upon our written or electronic acknowledgement.
2. Drawings, illustrations, dimensions, weights and other specifications shall only be binding if this has been expressly agreed in writing.

## III. Prices

1. The prices we quote are net prices, ex works (Incoterms 2010). Value added tax shall be charged separately at the rate effective on the invoice date. Our prices will only be valid for the respective purchase order and not for any subsequent orders.
2. Packaging, loading, freight and insurance costs as well as installation costs and costs of commissioning will be charged separately. The same shall apply to application software. Any fees and expenses for obtaining and authenticating certificates of origin, consular invoices, approvals and similar items will be charged separately. Packaging and freight shall be charged separately at cost. Returnable pallets will remain our property and must be returned with the next delivery in flawless condition. Alternatively, pallets of equal quality and make may be returned. If the return does not occur within one month after our delivery, we will invoice them at cost. The customer may return transport packaging for goods delivered by us to our facility. The packaging must be clean, free of foreign substances and sorted by materials. Lebbing may otherwise charge the customer any additional costs for their disposal.
3. The sale of standard equipment does not include planning services, supplementary work or other engineering services, and these services are not included in the pricing. The documentation will comprise of standard operating manuals and standard flow diagrams. Wiring diagrams and plans for individual drives are not included in our services, neither are feed-ins, activation controls, external controls and interconnections.
4. Once we accept an order, we commit to the prices for four months from acceptance. If we agree to a longer period for any products or services, we may apply a prorated surcharge for any increase in material costs or wage costs on the basis of our original price calculation.

## IV. Supply of Goods and Services

1. The periods and dates for the supply of goods or services shall only be binding once we confirm them in writing. Otherwise, they shall be deemed non-binding estimates. The time limits for the supply of goods or services have been adhered to if within those time limits we notify the customer that we are ready to ship and/or agree on a date for the performance. To the extent reasonable or customary within the industry, partial deliveries and deviations from ordered quantities are permitted.
2. The delivery time shall be extended by any periods during which we are not being properly or timely supplied.
3. The agreed delivery period shall start only after the customer has provided to us the complete documentation, required approvals, releases and plans. Delivery times shall be adequately extended if the customer does not comply with the agreed terms of payment or other contractual obligations. This provision does not apply if we are responsible for the delay.
4. In the event that the supply of goods or services is delayed by occurrences that are inevitable and not reasonably foreseeable at the time the contract is concluded (e.g., disruptions of operations, governmental interventions, raw material shortages, interruptions to energy supply, or labour disputes), which we are unable to prevent despite being reasonably diligent under the circumstances, the period for our performance shall be adequately extended for up to two months. If the supply of goods or services becomes impossible for any of the foregoing reasons, we shall be released from our duty to perform. In that case, we will inform the customer immediately thereof and refund any compensation we have received.
5. We shall only be deemed in default – even if performance is to occur on a specific calendar date (Section 286 para. 2 nos. 1 and 2 of the

German Civil Code (BGB)) - if we are given a reasonable time period to perform, unless we repudiate performance.

6. If we default, the customer shall not be entitled to more than twice the order value, unless we or our subcontractors or agents acted wilfully or grossly negligent. Any liquidated damages are to count towards any compensatory damages.
7. Our liability shall be limited to the typical and reasonably foreseeable damages upon conclusion of the contract, unless we or our managers act wilfully or grossly negligent.
8. If the customer defaults on any payments or the customer's financial circumstances deteriorate not only insignificantly, we may refuse any further performance and request advance payment. A qualifying deterioration may be assumed, for example, when bills or checks are protested, payment targets are repeatedly exceeded or the limit set forth by a credit insurer has been surpassed or would be surpassed by the respective order.
9. All deliveries are ex works (Incoterms 2010). The risk of loss or deterioration passes to the customer upon delivery to the carrier, and in any case no later than when the shipment leaves the factory. If shipment is delayed for reasons beyond our control, the risk shall pass when we notify the customer that we are ready to ship.
10. For call orders, we may require acceptance within 14 days once 12 months have passed since the order was confirmed. In such event, we may invoice any goods or services that have not been accepted and charge reasonable storage and retention fees, unless otherwise agreed.
11. If the shipment or delivery of the goods is postponed at the customer's request by more than one month after we notify the customer that we are ready to ship, we may charge storage fees in the amount of 0.5% of the postponed shipment's purchase price for every one-month period at the beginning of every month, up to a maximum of 5%. The parties may prove higher or lower storage fees.

## V. Payment

1. Unless otherwise agreed, the purchase price shall be due and payable within 10 days of the invoice date. Deductions may not be applied.
2. Bills and checks, the acceptance of which is at our discretion, shall be deemed effected only when credited to our account. Any costs and expenses shall be borne by the customer.
3. If the due date is exceeded, the customer shall pay default interest in the amount of 8 percentage points above the base rate. Further losses may be claimed. This provision shall not apply if the customer proves that it is not responsible for the delay. If the customer defaults on a payment, all accounts receivable shall become due immediately unless the customer proves that it is not responsible for the delay.
4. The customer may set off our claims only with claims that are undisputed or established by final and non-appealable judgment. The set off right only relates to claims from the same contractual arrangement as the claims that may be set off. As to the latter, the customer may withhold payment only in the amount equal to the value of the defective goods or services.

## VI. Retention of Title

1. We retain title to any and all goods and services we provide until all of our current and future claims against the customer resulting from this business relationship have been settled. The retention of title applies to the respective balance of any open account. The acceptance of a product return does not imply a cancellation of the contract. We may repossess the goods without first withdrawing from the contract if the customer is in default. The goods will be credited with the actual proceeds after deducting the cost of recovery and redemption. The customer is required to insure our property against fire, water and theft. Any claims against an insurance company are to be assigned to us. If the customer fails to provide proof of insurance, when requested, we may insure the goods against theft, breakage, fire, water and other damage at the customer's expense.
2. In the event of any seizure or other enforcement action by third parties, the customer must notify us immediately.
3. The customer may process the goods in the ordinary course of business or resell them under extended or expanded retention of title. The customer shall not be entitled to any other dispositions. The customer's right to process or dispose of the goods shall lapse if the customer does not fulfil its payment obligations towards us, materially breaches any agreement with user becomes bankrupt. Bankrupt shall mean the suspension of payments, over-indebtedness, the petition to institute bankruptcy proceedings and any other serious change in the customer's financial circumstances that could endanger our collateral.
4. Goods that are subject to reservation of title shall be processed for our benefit. If goods are processed for several suppliers simultaneously, Lebbing shall be a joint owner in accordance with Section 947 et seq. of the German Civil Code. If the customer combines or commingles our

product with a product owned by the customer in such a way that customer's product constitutes the main component, the customer hereby assigns to us a co-ownership share in the main component in proportion to the pro-rated share of the value of our product to the value of the main component. Our co-owned share shall remain in the customer's possession who will hold it for our benefit.

5. By accepting these Terms and Conditions, the customer assigns to us a first priority portion of the proceeds equivalent to our interest in any claims resulting from a sale. The customer may not agree to any prohibition on assignment. If a debtor of the customer makes part payments to the customer, the debt assigned to Lebbing shall be deemed to be paid off last. The customer may collect the assigned debt in the ordinary course of business. This right will terminate in cases described under Section VI para. 3. The customer shall then be obliged to cooperate in the recovery of the debts.

We commit to release at the customer's request, at our sole discretion, any collateral to which we are entitled under the above terms and conditions, provided that the realisable value exceeds the secured debt by more than 20%.

#### VII. Warranty

1. The products will be delivered free of manufacturing defects and faults in the material; any warranty claims must be asserted within 24 months from the delivery of the products.
2. If operating or maintenance instructions are not followed, the products are modified (e.g., software changes regarding the SPS program), parts are exchanged or consumables are used that do not comply with the product specifications, any warranty claims for defective products shall be void, if the customer does not refute the substantiated claim that one of the aforementioned circumstances resulted in the defect.
3. The customer shall notify us promptly of any defects in writing, in any event within one week of receipt of the goods. Defects that cannot be discovered within this period despite diligent inspection shall be communicated immediately upon discovery.
4. If the customer notifies us of any defect, we may at our sole discretion repair the product or deliver a defect-free product.
5. If the remedy fails after a reasonable period of time, the customer may either demand a price reduction or rescind the contract.
6. Any liability for normal wear and tear shall be excluded.
7. Only our immediate customers may assert warranty claims and none such rights or claims may be assigned.
8. The warranty is excluded for used products, unless the parties agree otherwise. This warranty exclusion does not apply to cases of wilfulness or gross negligence or if liability is mandated by law.

#### VIII. Legal Defects

1. We will be responsible as mandated by law for legal defects of supplied products. Unless the parties agree otherwise, we only warrant the non-infringement of intellectual property rights and trademarks of third parties under the laws of Germany. We may not be held liable for any infringement of proprietary rights that is due to instructions given by the customer, if the infringement is caused by any unauthorized modifications of the products, or due to any use by the customer which deviates from the contractually stipulated or anticipated use.
2. The buyer shall promptly notify us if a third party claims an infringement of proprietary rights. Warranty claims shall be excluded if such information is not supplied promptly.
3. The warranty period shall be as set forth in Section VII para. 1.
4. If a legitimate third party claim is asserted during the warranty period, we may either obtain a right of use for the affected products at our expense or alter the products in accordance with the contractual specifications that proprietary rights are no longer violated, or supply comparable non-infringing products.
5. A warranty claim from the customer shall be excluded if the customer conducts direct negotiations with the third party or enters into agreements without our consent.

#### IX. Liquidated Damages

1. We shall only be liable for damages, whether the claim sounds in contract, tort or other legal theory, (i) if we, our legal representatives or agents act wilfully or grossly negligent; (ii) if we provide guarantees within the scope of such guarantees, provided that the guarantees are in writing and expressly designated as guarantees; (iii) in the event of personal injury, and (iv) in cases of mandatory statutory liability.
2. In cases of slight negligence, we shall only be liable for damages, whether the claim sounds in contract, tort or other legal theory, if material contractual obligations have been breached and if it is not a case that falls under Section IX para. 1. If material contractual

obligations have been violated with a minor degree of negligence, our liability for damages shall be limited to the compensation of typical and foreseeable damage, unless these Terms and Conditions contain further limitations (compare Section V para. 4). The customer must inform us in writing at the time the contract is signed of any special risks, atypical damage potential or extraordinary amounts of loss. Liability for consequential damages beyond the aforementioned risks, loss of profit, indirect damages and loss resulting from third party claims shall be excluded.

3. If the purchase contract defines the goods only by category and does not relate to particular goods, our liability shall be determined exclusively by the above provisions. Any liability for damages that is not based on fault is excluded.
4. The above provisions shall apply to claims for reimbursement of expenses (Section 284 of the German Civil Code).

#### X. Other Rights and Obligations

In the event we breach our obligations to take account of the customer's rights, legal interests and other interests pursuant to Section 241 para. 2 of the German Civil Code which are not directly related to the supply of the goods, the customer may claim damages or withdraw from this agreement only after we are issued a written notice for breach of duty which sets forth a reasonable period to cure the breach. No written notice is necessary if we or our legal representatives or vicarious agents have acted wilfully or grossly negligent or in cases of personal injury.

#### XI. Proprietary Rights

1. For all documents, objects and similar items that the customer provides to us for the supply of goods or services, the customer warrants the non-infringement of the proprietary rights of third parties. We will indicate to the customer any third-party rights of which we are aware. The customer shall indemnify us from any third party claim and compensate us for any resulting damages. If any third party informs us that our performance, production or supply infringes the third party's proprietary rights, we may discontinue our services without examining the legitimacy of the claim and demand compensation from the customer for our expenses.
2. Any documents, objects and similar items that we receive in connection with a project that did not result in an order will be returned at the customer's request and expense. We may otherwise destroy such items within three months after we submit our quote.
3. We reserve the rights to all samples, models, drawings, cost estimates, calculations and similar information of a tangible or intangible nature - including electronic versions. Such information may not be disclosed to third parties. If a prospective customer is provided such information in connection with a potential order, the prospective customer shall return the information at no cost to us if the contract is not concluded. Any information that we expressly designate as confidential may not be made available to any third party without our express written consent.
4. Insofar as software is incorporated in our products, the customer shall have the non-exclusive right to use it in unmodified form in the products supplied. The terms and conditions of any separate agreement will prevail.

#### XII. Miscellaneous

1. These Terms and Conditions and all legal relationships between us and the customer shall be governed by German law. The UN Convention on the International Sale of Goods shall not apply.
2. If the customer is a merchant according to the German commercial code, a public entity or a special fund under public law, Krefeld (Germany) shall be the exclusive legal venue for any litigation resulting directly or indirectly from the contractual relationship.
3. Krefeld (Germany) shall be the place of performance and payment for all obligations resulting from the legal relationship with the customer.
4. The information required for processing business transactions is stored at a central location.
5. Should any of the provisions of these Terms and Conditions or a provision under any other agreement be or become invalid, the validity of the remaining provisions or agreements shall not be affected thereby.
6. These Terms and Conditions may be published in several languages for information purposes and ease of access by our customers. It is only the German version that is the legal basis of the relationship between our customers and us and in case of any discrepancy between a non-German version and the German version of these Terms and Conditions, the German version shall prevail.

Dated: March 30<sup>th</sup>, 2013