

Elektroanlagen Röring GmbH - General Terms and Conditions

Section 1 Scope of application

- (1) Our General Terms and Conditions (GTC) shall apply to the goods and services we deliver and/or provide to merchants, traders, legal persons under public law or special funds under public law.
- (2) Our GTC shall apply exclusively; we will not accept any terms and conditions of the customer that may conflict with or derogate from our GTC unless we have expressly agreed in advance to their application. Our GTC shall also apply in cases where we deliver goods and/or provide services without reservation whilst being aware that the customer's terms and conditions are contrary to or derogate from our GTC.
- (3) Individual agreements made with the customer in an individual case (including ancillary agreements, side agreements, supplements and amendments) shall take precedence over the present GTC. The content of such agreements shall be subject to a written contract or our written confirmation, unless proven otherwise.
- (4) Legally relevant declarations and notices by the customer relating to the contract (e.g. setting of deadlines, notification of defects, termination, cancellation or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and other proof, for example in case of doubts regarding the powers, capacity or authorisation of the declaring party or the party giving the notice shall not be affected.

Section 2 Offer and conclusion of contract – Declarations/Notices - Prohibition of assignment

- (1) The customer's purchase order constitutes a binding offer. Offers or cost estimates previously submitted by us are, unless otherwise stated, subject to change and non-binding; this shall also apply where we have provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic form - to which we reserve property rights and copyrights. This shall also apply to such written documents which are designated as confidential. The customer must obtain our express written prior consent before passing them on to third parties.
- (2) We may accept purchase orders or contracts within fourteen days of receipt by us. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivering the goods to the customer or by performing the services.
- (3) Information provided by us relating to the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances, or technical data) as well as our illustrations thereof (e.g. drawings and depictions) shall be mere approximations only, unless usability for the purpose intended under the contract requires exact conformity.
- (4) Descriptions of the subject matter of the contract or of the scope of delivery and performance, specifications of properties and technical data shall not to be understood as a guarantee or warranty of quality.
- (5) Contractual claims are not transferable on the part of the customer without our written consent, unless the provision of Section 354 a German Commercial Code (German: *Handelsgesetzbuch* ("HGB")) applies.

Section 3 Scope of performance - customer's obligations to cooperate

- (1) Deviations that are customary in the trade or industry, and deviations that occur due to legal regulations or that constitute technical improvements, and/or the replacement of components with equivalent parts, are permitted provided they do not impair usability for the purpose intended under the contract.
- (2) All works shall be carried out during normal working hours with free access at all times to the location within one construction phase.
- (3) The customer shall provide free electricity, water, and toilets, and, starting from an assembly height of 2 metres, the customer shall also provide free scaffolding, working platforms and ladders.
- (4) The customer shall release working drawings expressly. Release of a drawing gives rise to the rebuttable presumption that it satisfies the agreed service description.

Section 4 Use of software

- (1) In case software is included in the scope of delivery and no separate licence agreement is concluded, the customer's rights to use the software shall be subject to and determined by the present Section.
- (2) Upon full payment of the price set out in Section 5 of the present GTC, the customer shall receive a non-exclusive right to use the software to the agreed extent for an unlimited period of time. The title to all and any data carriers and user documentation handed over is retained until full payment of the price according to Section 5 of the present GTC. The software may be used simultaneously by such maximum number of natural persons only as corresponds to the licences acquired by the customer. The scope of permitted use includes installation of the software, loading it into the working memory and use by the customer as intended under the contract. For the rest, the type and scope of use and the number of licences shall be determined by the licence certificate. Under no circumstances shall the buyer have the right to lease or otherwise sub-license the software purchased under the contract, to reproduce it publicly by wire or wireless means, or to make it accessible or available to any third party against payment or free of charge, e.g. by way of Application Service Providing or "Software as a Service". The buyer may only reproduce, revise or translate the software or convert it from object code into source code, if and to the extent permitted by law (Sections 69a et seq. of the German copyright act (German: *Urhebergesetz*). The customer undertakes to not remove the manufacturer's information - in particular copyright notices - and to not change them without our prior express consent.
- (3) All and any other rights to the software and the documentation, including copies, shall remain with us or with the software supplier. The granting of sub-licences is not permitted.

Section 5 Prices

- (1) The prices apply to the agreed scope of services and deliveries. Additional or special services will be charged separately. Unless expressly agreed, on-site assembly will be charged on the basis of our hourly rates plus surcharges, if any, for difficulties; the same shall apply with regard to commissioning times.
- (2) Unless otherwise agreed in individual cases, our prices in force on the date of the conclusion of the contract will apply, namely EXW (Ex Works, Incoterms 2020) Rudolf-Diesel-Straße 3, 48691 Vreden.
- (3) In the case of a sale where delivery is to a place other than the place of performance (Section 9 para. 1), the customer shall bear the cost of transport ex warehouse and the costs of any transport insurance requested by the buyer. Any customs duties, fees, taxes or other public charges shall be borne by the customer.
- (4) In the event that the delivery or service is postponed by more than four months from the date of conclusion of the contract and if the cost of wages, material, packaging material, freight, taxes and/or duties have increased in the meantime, the agreed price may be adjusted in correspondence with the impact of the foregoing cost factors. If the agreed prices are based on our price list and the delivery or service is to take place more than four months from the date of conclusion of the contract, our price list in force on the date of delivery or performance of the service shall apply (in each case less an agreed percentage or fixed discount). If the price changes by more than 5% compared to the price agreed in the contract, the customer shall have the right to withdraw from the contract if we insist on a requested price increase despite having been notified of the customer's intention to withdraw.

Section 6 Payment terms

- (1) The customer shall pay the full price immediately upon receipt of the goods or other services, without deduction of a discount.
- (2) The customer shall only be entitled to rights of set-off and retention if his counterclaims are res judicata, are undisputed or have been recognised by us. In the event of a defect in the delivered goods, the customer's counter-claims shall not be affected.
- (3) In the case of down payments or payments in instalments that are permitted by law or are agreed by contract, we may terminate the contractual relationship without notice if the customer
 - a) is in arrears with the payment of a down payment or an instalment on two consecutive dates or
 - b) is in arrears with the payment of a down payment or instalment for a period extending over more than two dates and the amount of such down payment or instalment is the equivalent of down payments or instalments due on two dates.
- (5) If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is jeopardised by the customer's inability to pay (e.g. in case of a motion to open insolvency proceedings), we shall be entitled to refuse performance in accordance with the provisions of law and, if necessary, to withdraw from the contract after setting a grace period (Section 321 German civil code (German: *Bürgerliches Gesetzbuch* ("BGB")). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the provisions of law on the dispensability of setting a deadline shall not be affected.

Section 7 Performance and performance period

- (1) For reasons of proof, dates for deliveries or services shall only be binding if confirmed by us in writing. Insofar as an obligation to cooperate on the part of the customer is necessary, an agreed performance period shall not begin to run until the customer has fulfilled such obligation.
- (2) We are entitled to make partial deliveries if this is reasonable for the customer. Reasonableness shall be assumed if
 - the partial delivery has a use for the principal within the scope of the purpose agreed under the contract, or
 - delivery of the remaining ordered goods is ensured or,
 - as a result thereof, the customer does not incur any significant additional expenses or costs (unless the customer agrees to bear the costs).
- (3) If, for reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers or from subcontractors, or do not receive the correct goods or not in good time despite being on stock, or if events of force majeure occur, we shall inform the customer in good time. In this case, we are entitled to postpone the delivery or service for the duration of the hindrance or to withdraw from the contract in whole or in part with regard to the part of the Contract not yet fulfilled, provided that to the extent we have fulfilled our above obligation to inform the customer and have not assumed the procurement risk or manufacturing risk. Force majeure shall include strikes, lock-outs, official interventions, shortages of energy and raw materials, transport bottlenecks caused through no fault of our own, interruptions of operations caused through no fault of our own, e.g. due to fire, water and damage to machinery, and any other hindrances, in particular pandemics/epidemics which, viewed objectively, are caused through our fault.
- (4) If a delivery or performance date or a delivery or performance period has been agreed as binding or if the agreed delivery or performance date or the agreed delivery or performance period is exceeded by more than four months due to events set out under paragraph (3), or if, in the case of a non-binding performance date, observance of the contract is objectively unreasonable to the customer, the customer shall have the right to withdraw from the contract with regard to the part of the contract not yet fulfilled. The rights of the customer pursuant to Section 11 of the present GTC and our legal rights, in particular in the event of an exemption from the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall not be affected.

Section 8 Liability for default – Responsibility

- (1) Default on delivery on our part shall be subject to the provisions of law. Nevertheless, in all cases a reminder by the customer is required. If we default on delivery, the customer may demand liquidated damages for the loss caused by the default. The amount of liquidated damages shall be 0.5% of the net price (value of the delivered goods) for each full calendar week of the delay, but not exceeding an aggregate sum of 5% of the value of the goods delivered late. We reserve the right to prove that the customer did not suffer any loss at all or that the loss is significantly lower than the above amount of liquidated damages.
- (2) The rights of the customer and our rights by law, in particular in the event of an exemption from the obligation to perform (e.g. on the grounds of impossibility or unreasonableness of performance and/or of subsequent performance), shall not be affected. Insofar as the item to be delivered is only determined by generic characteristics,

we shall only be liable for compensation for loss if we do not prove that we are not responsible for such subsequent performance, delay in delivery, or the defectiveness of the item. The provisions of Section 11 shall apply in addition.

Section 9 Performance – Passing of risk – Formal Acceptance – Default on acceptance of delivery

- (1) Delivery shall be EXW (Ex Works, Incoterms 2020) Rudolf-Diesel-Straße 3, 48691 Vreden, where the place of performance for delivery and any subsequent performance is equally located.
- (2) At the request and expense of the customer, the goods shall be shipped to another destination (sale with delivery to a place other than the place of performance). Unless agreed otherwise, we shall be entitled to select the type of shipment (in particular the transport company, shipping route, packaging) ourselves. We shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and at the customer's expense.
- (3) The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest upon handover of the goods. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or any other person or organisation selected to carry out the shipment.
- (4) Insofar as the parties have agreed that formal acceptance (German: *Abnahme*) shall be required, the transfer of the risk shall be contingent on formal acceptance of the goods by the customer. In all other respects, too, the provisions of the law on contracts for works (German: *Werkvertragsrecht*) shall apply mutatis mutandis to formal acceptance.
- (5) Insofar as a test run has been agreed, the risk shall pass to the customer upon a faultless test run; the test run must immediately follow operational installation and assembly.
- (6) Handover or formal acceptance shall be deemed to have taken place if the customer defaults on acceptance of delivery (German: *Annahmeverzug*).
- (7) If the customer defaults on acceptance of delivery, fails to cooperate, or delays our delivery for other reasons for which the customer is responsible, we shall have the right to claim compensation for the resulting loss and additional expenses (e.g. storage costs). As compensation, we will charge liquidated damages amounting to 0.25% of the invoiced price of the delivery items to be stored per elapsed week, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch. The right to prove higher losses, and our legal claims (in particular reimbursement of additional expenses, reasonable compensation, termination), shall not be affected; however, the liquidated damages shall be deducted from any additional monetary claims. The customer shall be entitled to prove that we have suffered no loss at all or only a significantly lower loss.

Section 10 Liability for defects – Limitation Period

- (1) The customer shall observe the obligations of Section 377 HGB. Failure to give notice of defects in due time shall preclude any claim on the part of the customer.
- (2) We will not assume any liability for public statements, recommendations or advertising by the manufacturer or other third parties; they shall not constitute a description of the quality of the goods according to contract.
- (3) Upon commencement of processing, treatment, combination or mixing with other items, the delivered goods shall be deemed to have been approved by the customer in accordance with the contract. The same shall apply in the event of onward shipment from the original place of destination.
- (4) Our liability for breaches of duty in case of defects in material is excluded if and insofar as defects and related damage are not demonstrably due to defective material, defective design, defective manufacture or defective assembly instructions. Claims based on defects resulting from, and our liability for the consequences of, improper use (in particular assembly not in accordance with the state of the art or assembly contrary to the assembly instructions) or natural wear and tear of the goods, excessive use or inadequate operating materials, and the consequences of physical, chemical or electrical influences which do not correspond to the intended, average standard influences, are excluded.
- (5) Claims of the customer for expenses incurred for the purpose of subsequent performance, in particular for transport, travel, labour and material costs, are excluded to the extent that the expenses are higher because the goods delivered by us have subsequently been taken to a place other than the customer's branch office, unless the such relocation is in accordance with their intended use.
- (6) The customer shall only have claims under a right of recourse in the event of the goods are resold if and to the extent that the customer has not entered into any agreements with its buyer that go beyond the claims for defects provided for by law.
- (7) If a notice of defect is unjustified, we shall be entitled to demand reimbursement by the customer of the expenses we incurred. In this case, a fee for testing expenses shall be charged based on our then valid price list.
- (8) The limitation period for claims for defects is 12 months. This shall not apply in the case of items which have been used for a building in accordance with their customary use and have caused its defectiveness, in the case of claims for death, bodily harm and damaged health and in the case of at least grossly negligent breaches of duty by us or one of our legal representatives or vicarious agents. Special provisions of law on in rem claims for the surrender of goods by third parties (Section 438 (1) point (1) BGB), in the event of fraudulent intent on the part of the seller (Section 438 (3) BGB) and for claims for recourse to the seller's supplier in the event of final delivery to a consumer (Section 444, 445b BGB) shall not be affected.
- (9) The following shall apply to used items: They are sold under exclusion of liability for defects in material. This exclusion does not apply to claims for damages arising from liability for defects in material caused by a grossly negligent or intentional breach of our obligations nor to claims of the customer under the German Product Liability Act (German: *Produkthaftungsgesetz*), see Section 11 (1).

Section 11 Liability for loss

- (1) We shall be liable for loss - irrespective of the legal grounds - without limitation
 - a) in the case of intent,
 - b) in the event of culpable injury to life, limb or health,
 - c) in the case of defects which we have fraudulently concealed or the absence of which we have guaranteed,
 - d) in the case of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.
- (2) In the event of culpable breach of material contractual obligations, we shall also be liable, but in the event of simple negligence limited to the damage which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen if we had exercised due care and attention and which is typically to be expected when using the delivery item for the intended purpose. Material contractual obligations are obligations which protect the legal positions of the customer which are material to the contract and which the contract is intended to grant him in accordance with its content and purpose, and obligations the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the customer has regularly relied and may rely.
- (3) Further claims are excluded.
- (4) The exclusions and limitations of liability stated in paragraphs 1 to 3 shall also apply to corresponding breaches of duty by our vicarious agents.
- (5) The personal liability for damages of our executive bodies, legal representatives, employees and other vicarious agents shall be limited or excluded to the same extent as our own liability for damages.

Section 12 Retention of title

- We reserve all title to the goods sold until all our present and future claims arising from the contract and an ongoing business relationship ("Secured Claims") have been paid in full and without any deduction.
- The goods subject to retention of title ("Reserved Goods") may neither be pledged to third parties nor assigned as security before full payment of the Secured Claims. The buyer must inform us immediately in writing in the event and to the extent that a third party has access to the goods owned by us. This also applies to impairments of any other type. This notwithstanding, the buyer must inform the third party in advance of the existing rights to the goods. The cost of our intervention shall be borne by the customer if and to the extent the third party is not able to reimburse us for such cost.
- (3) The customer is authorised to resell and/or process the Reserved Goods in the ordinary course of business. In that event, the following provisions shall apply in addition:
 - a) The retained title shall extend to the products resulting from any processing, mixing or combining of our goods at their full value and we shall be regarded as the manufacturer. If, in the event of processing, mixing or combining with goods of any third party/-ies, their right of ownership remains, we shall acquire co-ownership in proportion to the invoiced prices for the processed, mixed or combined goods. In all other regards, the same shall apply to the resulting product as to the Reserved Goods delivered.
 - b) The customer hereby assigns to us in advance by way of security its claims against third parties that may arise from the reselling of the goods or the product in total or in the amount of our possible co-ownership share pursuant to the above paragraph a). We hereby accept the assignment. The obligations of the customer set out in paragraph (2) shall equally apply to the assigned claims.
 - c) The customer will remain authorised alongside us to collect the claim. We undertake to not collect the claim provided and for as long as the customer meets its payment obligations towards us, does not default on payment, no motion for the opening of insolvency proceedings is filed, and customer is not impaired otherwise in its ability to pay. If this is the case, however, we may require that the customer disclose to us which claims have been assigned and the names of their debtors, provide all information necessary for collection, hand over the relevant documents and notify the debtors (third parties) of the assignment.
 - d) If the realisable value of the securities exceeds our claims by more than 10 %, we shall release securities of our choice at the request of the customer.

Section 13 Third Party IP

- (1) If a third party asserts claims against the buyer based on industrial property rights or copyrights ("IP") through the products delivered by us, and if, as a result thereof, Purchaser's use of the products as per the contract is impaired or prohibited, the Purchaser shall notify us without undue delay. The customer shall not recognise, acknowledge or otherwise approve the alleged infringement and shall conduct any dispute with the third party relating to the infringement of the IP only in agreement with us. If the customer discontinues the use of the product in order to mitigate damages or for other important reasons, it shall be obliged to point out to the third party that the discontinuation of use does not constitute an approval of an IP infringement.
- (2) The customer shall not be entitled to any claims for infringement of property rights if, and to the extent that, the customer is responsible for the IP infringement, the IP infringement is due to special specifications of the customer, is caused by a type of use not envisaged in the product documentation, or is caused by the fact that the product is modified by the customer or is used together with products not supplied by us.

Section 14 Choice of Law – Place of Jurisdiction

- (1) The substantive law of the Federal Republic of Germany shall apply to the exclusion of its conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) The exclusive - and international - place of jurisdiction is the court having jurisdiction at our business address. However, we shall also have the right in any case to bring an action at the place of performance defined in the present GTC or a prior individual agreement or at the general place of jurisdiction of the customer. Overriding provisions of law, in particular on exclusive jurisdiction, shall not be affected.