

## Terms and Conditions of Delivery and Payment of Steinert Elektromagnetbau GmbH

### 1. General, Conclusion of Contract

1.1 These terms and conditions apply to all current and future contracts with the Buyer. This applies in particular to future orders that are placed by the Buyer and/or accepted by us verbally, by e-mail or by fax. At the latest, these terms are considered accepted by the Buyer upon acceptance of the goods or services. We hereby expressly reject any of the Buyer's terms and conditions which may deviate herefrom. Without our written consent, general terms and conditions of third parties are not incorporated in any contract, even if they counter these terms and conditions.

1.2 Contracts shall only come into existence based upon our order confirmation. In the event of conflicting provisions, the provisions governing the order confirmation have priority over the provisions set out in these terms and conditions. Any change, side-agreement or guarantee of certain characteristics requires written form under all circumstances. This also applies to any cancellation of the requirement of written form.

### 2. Quotation, Prices and Payment

2.1 Our prices apply ex works, plus the statutory value added tax applicable at the time of invoicing, but excluding any required packaging or assembly costs.

If at the time of ordering reference is made to illustrations, drawings or plans, any dimensions or weight specifications included therein merely represent approximate values, unless explicitly agreed otherwise. Minor deviations establish rights on the part of the Buyer only if tolerances were expressly excluded or if such deviations result in an unreasonable detriment to the Buyer.

Unless agreed otherwise, we furthermore reserve the right to undertake design modifications at any time; we are, however, not obligated to implement any such changes on products which have already been delivered.

Furthermore, we comply with technical specifications provided by the Buyer, in particular regarding dimensions, weights and quality of workmanship according to the following standards: if the Buyer has special technical requirements and if these deviate from the standard data either quoted or offered in the catalogue, the data and details arising from such special requirements can only be based on our experience. Unless otherwise agreed, opposing rights of the Buyer are excluded if and to the extent to which such special requirements lead to a deviation from standard data quoted or offered in the catalogue by more than 20%.

2.2 Our price quotations are based on the cost situation prevailing at the time of issuing the quotation or, in the absence of a quotation provided by us, at the time of concluding the contract. If, in the case of an agreement for a fixed price, there is an unforeseeable increase in cost factors for which we are not responsible (wages, energy costs, input materials, ancillary/operating materials) after contract conclusion but before the date of delivery, we are entitled to adjust our prices accordingly. If the price adjustment exceeds the original price by more than 5%, the Buyer is entitled to withdraw from the contract without any rights to compensation arising therefrom.

2.3 We accept bills of exchange only upon express agreement on account of performance. The costs of collection, as well as bank interest and charges are paid by the Customer or Buyer.

2.4 In the event of default in payment on the part of the Buyer, we charge - without prejudice to other statutory rights - interest at an annual rate of 8% above the European Central Bank's rate of interest for main refinancing transactions on the first banking day of a calendar half-year, plus any value added tax charged, unless the Buyer proves that actual damages are lower.

2.5 Each additional dunning letter sent to the Buyer after the first one shall be charged at a rate of 5 € (up to a maximum of three notifications).

2.6 The Buyer has a right to offset or retain payments only if the counterclaims are res judicata or undisputed. The Buyer is also, however, entitled to retain payments based on counterclaims arising from the same contractual relation.

2.7 Should, after contract conclusion, the creditworthiness of the Buyer deteriorate to an extent that endangers the performance of the contract, we are entitled to demand, at our own discretion, either advance payment or the provision of securities for due receivables arising from all existing contracts and to refuse performance until such advance payments or securities have been received.

If we fail to receive either an advance payment or securities within a reasonable period of time, we are entitled to withdraw from this and other existing contracts.

### 3. Delivery

3.1 Delivery periods quoted refer to the scheduled time of departure ex works. Fixed delivery dates must be expressly agreed at the time of placing/confirming the order.

Agreed delivery periods are extended by a reasonable period of time in the event of unforeseeable impediments that are beyond our control, such as e.g. labour disputes, interruptions of operation, force majeure, or delays in the delivery of necessary input materials, regardless of whether the impediments are suffered by us or our suppliers.

If, as a consequence of these circumstances, it becomes impossible for us to deliver, both contractual parties are entitled to cancel the contract for good cause or to declare withdrawal from the same.

3.2 Any delivery period begins at the earliest on the date of order confirmation. Under no circumstances, however, does it begin before all matters of major importance to manufacturing and delivery have been mutually agreed between the contract partners, unless we are at fault in failing to contact the Buyer without delay to clarify such matters.

3.3 Adherence to our delivery commitment presupposes the proper and prompt performance of the duties of cooperation incumbent upon the Buyer. Otherwise, we are entitled to set a new date for delivery, including under threat of withdrawing from the contract. In such a case, the new date set for delivery must be reasonable.

3.4 We are entitled to make reasonable partial deliveries which may be invoiced separately. We may also deliver quantities that are higher or lower by up to 10 %, provided that this does not constitute an unreasonable burden to the Buyer.

3.5 Delivery is made ex works, i.e. the Buyer bears all costs and risks of loading and transport. Packaging is not taken back.

3.6 If we are in default with delivery, the Buyer may set a reasonable extension period in writing, during which the contract is to be completed. After such period, he may withdraw from the contract, if it has not been fulfilled.

3.7 In the event of default in acceptance by the Buyer, we charge either the warehouse costs we have incurred or store the goods elsewhere at the Buyer's expense. The risk associated with the consignment passes to the Buyer at the time default occurs.

### 4. Retention of title

4.1 The goods delivered by us remain our property until all our current claims against the Buyer have been fully satisfied. The same applies to any future claims which arise in connection with the delivered goods. If a current account has been agreed with the Buyer, the retained title acts as security for the claim to the balance of account.

4.2 Any processing or transformation of the reserved goods is performed on our behalf. We are considered the manufacturer within the meaning of §950 BGB, without this obligating us.

If our reserved goods are processed, combined or mixed with other goods by the Buyer, we acquire co-ownership of the newly produced object in the same proportion as the invoice value of the reserved goods to the invoice value of the other goods used.

If our ownership expires due to processing, combining or mixing, the Buyer here and now assigns to us any future rights of ownership accruing to him in the new asset or item to the amount of the invoice value of the reserved goods. The rights of co-ownership arising hereunder are deemed to be reserved goods as defined in Article 4.1, which the Buyer shall store on our behalf free of charge with due care and attention.

4.3 The Buyer is entitled to resell the reserved goods in the normal course of business, as long as he is not in default.

The Buyer here and now assigns to us all receivables resulting from such resale, regardless of whether the reserved goods were sold before or after processing or whether they are combined with land or a movable object or not. If the reserved goods are resold after processing or together with other goods that do not belong to us, or if they are combined with land or a movable object, the Buyer's receivables against his customer are here and now assigned to us in the amount of the invoice value agreed with us for the reserved goods.

If goods are sold in which we have a co-ownership share as per Article 4.2, the receivable is assigned to us to the same extent as to which co-ownership accrues to us.

4.4 An assignment of the Buyer's claims against his customers as a result of the resale of the reserved goods to third parties, regardless of whether without or after processing, combination or mixing with movable objects or land, is excluded, if this has the effect of reducing the value of the total securities available to us on the basis of our receivables.

This does not apply in the event that assignment takes place within the scope of a genuine factoring agreement and we are notified of co-operation with a factoring bank and given the name of the bank and notification of the accounts held there. In this case, our receivable shall become due immediately upon payment or issuing of the credit note by the factor, without regard to any other agreement.

The Buyer here and now assigns to us his current and future claims against the factor arising from the purchase of resale receivables, insofar as these concern the goods delivered by us.

The Buyer undertakes to notify the factor of this assignment and to instruct the latter to undertake payment only to us.

4.5 Until our revocation, which may occur at any time, the Buyer is entitled to collect receivables arising from the resale as per Articles 4.2 to 4.4. We shall not exercise the right to revoke this consent for as long as the Buyer continues to properly meet his payment obligations and there is no indication of any deterioration in the creditworthiness of the Buyer.

At our request, the Buyer shall without delay notify his customers of the assignment to us and provide us with all information and documents required for collection. In the event of refusal, we are also entitled to notify any such customers.

4.6 Should the Buyer fail to meet his obligations on time, we are entitled to take immediate possession of the reserved goods and, if appropriate, also the goods resulting from processing, combining or mixing, after withdrawal from the contract.

4.7 We hold a lien on materials given to us for processing regarding any outstanding receivable arising from business relations with the Buyer. If we deliver items that we have processed before they have been paid for in full, the Buyer assigns title to the same to us to secure any outstanding receivable. Articles 4.1 to 4.6, 4.8 to 4.10 apply accordingly.

4.8 If the material processed by us has been supplied to the Buyer by a third party which has reserved the title to the material, then the expectant right is transferred to us instead of title by way of security in such a way that we can acquire title to such material by satisfying the third party.

If the Buyer transfers title to the material processed by us to a third party by way of security, the Buyer previously assigns to us his right of return transfer.

- 4.9 In the event that our equitable lien expires for whatever reason, we acquire any rights of compensation available to the Buyer against third parties as substitute for our title or our co-ownership shares in the processed material.
- 4.10 We undertake, upon request and at our discretion, to release securities available to us, if their value exceeds the receivables to be secured - insofar as these receivables are still outstanding - by more than 20%.
- 5. Notices of Defects, Warranty, Compensation for Damages, Liability**  
We are liable for defects in the delivery, excluding all further claims, as follows:
- 5.1 New machines
- 5.1.1 Our products must be inspected carefully immediately after transfer to the Buyer or a designated third party. They are considered to be approved, unless we receive a written notice of defect regarding obvious and other defects, which were noticeable in the course of an immediate, careful inspection, within seven (7) days after delivery or, in all other cases, within seven (7) days after detection of the defect. Based on our instructions, the relevant parts must be sent either to us or to the delivery factory free of charge. If the notice of defect is justified, we will reimburse the costs for the most cost-effective shipping method. This does not apply to the extent that costs increase because the product is located at a place differing from the place of intended use. Under all circumstances, additional costs for air freight or express delivery are borne by the Buyer. Either we or personnel authorized by us will perform the removal of defective parts and the installation of newly delivered parts free of charge, unless it is reasonable and appropriate to have the Buyer perform the removal and installation himself.
- 5.1.2 In the event of material defects of our products, we are obligated and entitled to, at our discretion and within a reasonable period of time, either remedy free of charge (rework) any parts (including software), which have become unusable as a consequence of such defects or the usability of which was considerably impaired thereby, or to deliver new parts at own cost and risk, albeit with duties unpaid, to the international destination or international port (spare part delivery). The Buyer's right to rescind the contract (rescission) or to reduce the purchase price is determined by Article 6.
- 5.1.3 If we are responsible for the material defect, the Buyer can demand compensation subject to the requirements specified in Article 8.
- 5.1.4 For improvement work and installed replacement parts, we grant a warranty to the same extent as for the original object delivered. Replaced parts become our property.
- 5.1.5 We warrant that our products are free from defects for a period of one (1) year from the date of delivery. For improvement work and installed replacement parts, the warranty period ends with that of the original object delivered.
- 5.1.6 To undertake necessary improvement work or for the removal of defective parts and the installation of newly delivered parts, the Buyer must grant the necessary time and opportunity,
- a. provide auxiliary staff, devices and operating equipment and perform ancillary work.  
Additional costs incurred for working outside of normal working hours are at the expense of the Buyer.
- 5.1.7 The warranty does not cover natural wear and tear or parts which, because of their material characteristics or their purpose, are subject to premature wear; moreover it does not extend to damage resulting from improper storage, treatment or use of unsuitable operating materials, defective construction work or substructure or unsuitable building foundation, chemical, electrochemical or electrical influences. The same applies to other circumstances that occur after the risk has passed, which arise without any fault on our part.
- 5.1.8 The Buyer can only put forward warranty claims against us if
- a. the erection and commissioning of the delivered object was performed by personnel authorized by us,  
b. defects covered by warranty were notified to us in writing without delay,  
c. our instructions regarding the treatment and maintenance of the object delivered were followed and, in particular, any prescribed examination was properly performed,  
d. no improvement work was performed without our consent,  
e. any spare parts fitted were our own original spare parts or parts authorised by us,  
f. no unauthorised modifications were made on the object delivered.
- 5.1.9 In all other cases, Article 8 applies.
- 5.2 Used and reconditioned machines  
All warranty claims are excluded for used and rebuilt machines or machine parts unless, in exceptional circumstances, we have given a written warranty. All claims for warranty that go beyond the extent defined in any written warranty given are excluded.
- 5.3 Right of refusal and exclusion of warranty claims
- 5.3.1 We are entitled to refuse to eliminate defects without compensation for as long as the Buyer fails to perform his obligations.
- 5.3.2 In the event of damages, the Buyer is obligated to undertake every reasonable effort required to preserve any rights of recourse against third parties (e.g. documentation of facts by railway officials, certification of quantity shortfalls). Should the Buyer culpably breach this duty or other duties of co-operation (which may also include a duty to mitigate damages), claims based on defects are excluded. This does not, however, apply in the event of infringement of merely nonessential ancillary duties or if the breach of duty or obligations entails no or merely unsubstantial economic or legal disadvantages to us.
- 5.3.3 Insofar as a defect is caused by material provided by the Buyer, all warranties expire.
- 5.3.4 If material is delivered to us for processing, the quantity received is deemed to be the quantity documented at the time of receipt at our facility. The Buyer has no right to object to deviations of up to 3 % of this quantity.
- 5.3.5 Upon further processing by the Buyer, all warranty for defects detectable at the time of delivery expires.
- 5.3.6 If we deliver products that we have not exclusively manufactured ourselves, we assume no liability for damages resulting from the fact that the material delivered to us was defective or did not correspond to the state of the art. We assign any claims we may have against our suppliers to the Buyer. As a result, we are released from all liability. The Buyer is not entitled to any further claims.
- 6. Buyer's Right of Withdrawal and Price Reduction**  
The Buyer may withdraw from the contract by written declaration only
- a. if performance of the contract becomes completely impossible for us. In the event of partial impossibility, the right of withdrawal exists only if the partial delivery is verifiably of no use to the Buyer; otherwise, he may demand a reasonable reduction in the purchase price. If impossibility arises during default in acceptance or through the fault of the Buyer, the latter remains obliged to pay consideration in return. If neither contractual party is responsible for the impossibility, we are entitled to receive the part of the purchase price that corresponds to the part we have performed.
- b. if the requirements stipulated by Article 3.6 are fulfilled.
- c. The Buyer can demand the rescission of the contract or a reasonable reduction of the purchase price if the Buyer has set a reasonable extension in writing for elimination of a defect for which we are responsible and which we have acknowledged in accordance with Article 5.1, and that we have attempted to remedy unsuccessfully, with the express declaration that he rejects any further attempts at improvement after the period has elapsed and if it was our fault that this extension was not adhered to.
- d. In the case of b. and c., the Buyer can only withdraw from the contract if the defect is not insignificant.
- e. In all other cases, Article 8 applies.
- 7. Right of Rescission**  
We may withdraw wholly or partly from the contract if unforeseeable events cause a major change in the economic significance or content of our services without any fault on our part or have a considerable effect on our business and/or if there is a major deterioration in the financial circumstances of the Buyer. This also applies, if an extension of the delivery period was initially agreed with the Buyer. If we intend to exercise the right of withdrawal, we shall notify the Buyer without delay after becoming aware of the consequences of the event.
- 8. Scope of Buyer's Rights and Claims**
- 8.1 The Buyer's claims for damages or reimbursement of unnecessary expenses are governed by this Article 8, regardless of the legal nature of any such claim.
- 8.2 Our liability for damages caused by us or one of our agents or legal representatives due to intent or gross negligence is unlimited. In the case of damages from injury to life, body or health, our liability is unlimited, including in the event of a simply negligent breach of duty by us or one of our agents or legal representatives.
- 8.3 Otherwise, we are liable for slight negligence only if a duty was violated the fulfilment of which is necessary to enable a proper performance of the contract and on the fulfilment of which the Buyer therefore relies on and may rely on (essential contractual obligation). Unless circumstances as described in Article 8.2 apply, the liability in the case of a breach of essential contractual obligations is limited to damages which are typically to be expected within the scope of the contract.
- 8.4 Our liability under the Product Liability Act (§ 14 ProdHG) remains unaffected.
- 8.5 All further rights and claims not listed in these Terms and Conditions or in the text of the contract are excluded.
- 9. Non-transferability of the Contractual Rights**  
The Buyer may not assign his contractual rights to third parties without our express written consent.
- 10. Place of Performance and Court of Jurisdiction**  
The place of performance is Cologne.  
The exclusive court of jurisdiction for any dispute between the parties resulting from or in connection with this agreement is Cologne, or, at the plaintiff's choice, the defendant's place of general jurisdiction.
- 11. Applicable Law and Binding Nature of the Contract**
- 11.1 The contractual relations are governed by German law, excluding the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.2 If any part of the contract is invalid, this shall not affect the remainder of the contract, provided that the invalidity does not affect the fundamental principles of the contract. An alternative reasonable provision shall apply instead of the invalid provisions by way of adjustment that comes closest to the original economic intent.

As at: 21 November 2011