

General Conditions of Supply of Johannes Hübner Fabrik elektrischer Maschinen GmbH (Johannes Hübner Factory for Electrical Machines GmbH)

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I. General Conditions

1. These General Conditions of Supply are effective exclusively. They are applicable in respect of a natural or legal person, who on the conclusion of a contract is acting in the exercising of their business or self-employed business activity (Contractor) as well as legal persons under public law or a special fund governed by public law.
2. These General Conditions of Supply (GCS) are the basis of all one-sided statements of the Hübner Company (Supplier) as well as all agreements between the Hübner Company and their clients. These shall be also applicable to future legal transactions with the clients and also at the time when the supplier aware of differing or conflicting conditions is operating the delivery.
3. Conflicting General Conditions of Business or Purchase of the Client shall not be applicable even if they should not be expressly contradicted.
4. Verbal declarations before or on conclusion of the Contract as well as all statements beyond this by employees of the supplier not entitled to represent shall only be binding, if they are confirmed in writing.

II. Offer, Amendments

Offers are not binding. The documents such as diagrams, drawings, details of weights and measures related to the offer are only approximate, unless they are expressly described as binding. The Supplier reserves the right to undertake technical amendments, which they consider necessary, at any time.
Documents of the Supplier including cost estimates and drawings are their property and protected by copyright; they may not be made accessible to third parties.

III. Prices and Conditions of Payment

1. The prices are ex works Giessen (acc. to INCOTERMS), exclusive packaging.
2. Should the Supplier have taken over the erection or assembly and nothing to the contrary has been agreed, the Client shall bear all necessary extra costs such as travel costs, costs for the transport of the tools and the personal baggage as well as daily expenses in addition to the agreed payment.
3. Payments shall be made free of charges to the place of payment of the Supplier.
4. The Client may only offset such demands that are undisputed or have been legally established. For assertion of rights of retention the client is only authorized because of counterclaims within the same contractual relationship.
5. The payment of the purchasing price is due within 10 days from invoicing after deductions. After the due date interest for delay will be charged to the amount of 8% at the respective base rate per annum. The supplier reserves the right of assertion of an additional damage caused by delay.

IV. Reservation of Title

1. The supply object shall remain the property of the Supplier until full settlement of all demands, which the Supplier should incur in respect of the client, no matter on what legal grounds, on conclusion of this Contract or in future. In case of breach of contract of the client, including delay of payment, the supplier is authorized to retract the delivery item back. The reservation of title does not exclude the Client's right to sell or process the supply object in regular business, as long as he is not in arrears with his payments. The Client is not permitted to distrain or assign the supply object.
2. In the event of a further sale of the supply object, no matter whether this should be permissible or not, the Client shall now assign all demands and rights to which he is entitled from this further sale in respect of his Client to the amount of the value of the supply object to the Supplier. The Supplier shall accept this assignment. The Client is entitled to collect the assigned demands, unless the Supplier should withdraw this right. In any case the Client shall pass on the collected amounts immediately to the Supplier, insofar as the demands of the Supplier are due. On request from the Supplier the Client shall give the details, which are necessary for collection, so that the Supplier may notify the debtor of the assignment and may demand direct payment.
3. The Client shall undertake any adaptation or processing of the supply object resulting in a new object for the Supplier, without any obligations being incurred by the latter. The Client hereby already grants the Supplier co-ownership of the new object to the proportional value of the new object to that of the supply object.
4. In the event of joining, blending or mixing of the supply object with other goods not belonging to the Supplier, the Supplier shall be entitled to co-ownership of the new object to the proportional value of the supply object to the remaining goods at the time of the joining, blending or mixing.
5. The Client undertakes to keep the object free of charge for the Supplier.
6. Should the supply object be sold on together with other goods, and to be precise no matter whether without or after processing, joining, blending or mixing, the prior assignment agreed in Subsection 2 of this clause shall only be applicable to the amount of the value of the supply object, which is sold on with the other goods.
7. The value of the supply object in the sense of the above stipulation is the purchase price to be paid to the Supplier by the Client plus a supplement of 20 %.
8. The Supplier is to be informed immediately of any distraint or any other risk to the property of which the title is reserved as well as the distraint of assigned demands. The Client shall hand over all the documentation necessary for intervening. The costs of intervening shall in any case be borne by him.
9. The Supplier undertakes insofar to release the securities to which he is entitled in accordance with the above stipulation, of his choice, on request from the Client, insofar as the value of the securities should exceed the demands to be secured by 20 %.
10. The Client is obliged, if the Supplier should so desire, to insure the goods subject to reservation of title at his own expense against the usual risks.

11. Rights arising from the agreed reservation of title and all special forms thereof laid down in this Contract shall remain in effect until the Supplier has been released from all obligations, in particular also from possible accounts payable, which he has entered into in the interest of the Client (cheques/ bills of exchange transactions).
12. Should the reservation of title not be valid in a foreign state, the respective equivalent security rights of the state of destination shall be deemed to have been expressly agreed.

V. Deadlines for Deliveries; Delay

1. The meeting of deadlines for deliveries presupposes the timely receipt of all documentation, necessary authorisations and releases to be supplied by the Client, in particular plans, as well as the observance of the agreed conditions of payment and other obligations by the Client. Should these preconditions not be fulfilled in good time, the deadlines shall be extended appropriately; this shall not be applicable if the Supplier should be responsible for the delay.
2. In the event that the non-observance of the deadline may be attributed to force majeure, e.g. mobilisation, war, revolts, or to similar events, e.g. strikes or lockouts, the deadline shall be appropriately extended.
3. Should the Supplier fall behind, the Client may demand compensation – insofar as he should convincingly show that he has incurred damage there from – for every complete week of the delay of respectively 0.5%, in total however a maximum of 5% of the price for the part of the delivery, which could not be utilised in the relevant operation as a result of the delay.
4. Both claims for compensation of the Client on the grounds of delay in delivery as well as claims for compensation instead of the performance, which should exceed the limits cited in Subsection 3, are excluded in any case of delayed delivery, even following expiry of a possible time limit set for the Supplier to deliver. This shall not be applicable, insofar in cases of intent, gross negligence or on the grounds of injury to life, body or health for which liability is compulsory. The Client may only withdraw from the Contract within the framework of the statutory regulations, insofar as the delay of the delivery is the responsibility of the Supplier. An alteration in the evidence to the disadvantage of the Client is not linked to the above regulations.
5. The Client is obliged, on request from the Supplier, to declare within a reasonable deadline whether he intends to withdraw from the Contract because of the delay in delivery or insists on the delivery.
6. Should dispatch or delivery be delayed by more than a month from notification of readiness to dispatch, at the Client's request, the Client may be charged storage fees for every month commenced to the amount of 0.5% of the price of the object of the deliveries, a maximum however of 5% in total. The Contract Parties remain free to prove higher or lower storage costs.

VI. Transfer of Risk and Acceptance

1. The risk shall be transferred to the Client at the latest on dispatch of the delivery parts and to be precise even in the case of partial deliveries being implemented or the Supplier has taken over other performance, e.g. the cost of dispatch or transportation and erection. On request from the Client and at his expense, insurance cover for the consignment shall be taken out by the Supplier against theft, breakage, transport, fire and water damages as well as other insurance risks.
2. Should the dispatch be delayed as a consequence of circumstances for which the Client is responsible, the risk shall be transferred to the Client from the date of the readiness to dispatch; however the Supplier shall be obliged to effect insurance cover if the Client should so wish and at his expense.
3. Objects delivered are to be received by the Client, even if they should exhibit insignificant defects, notwithstanding the rights arising from Section IX.
4. Partial deliveries are permissible and shall be charged for in partial invoices.

VII. Acceptance

1. Insofar as an acceptance is contractually intended, the acceptance must be implemented immediately following delivery of the supply object, alternatively following notification from the Supplier of the readiness for acceptance. The Client may not refuse the acceptance on the grounds of an insignificant defect.
2. Should the Client refuse acceptance on the grounds of significant defects, the Supplier shall be entitled to implement subsequent improvements or replacement deliveries and then to declare the readiness for acceptance again. Should an acceptance from the Client, or a written declaration from the Client giving exact description of non-fulfilled points, not be submitted within a time limit of 20 calendar days the acceptance shall be deemed to have been implemented.
3. Should the acceptance be delayed or not occur as a result of circumstances, for which the Client is responsible, the risk shall be transferred to the Client, deviating from the regulation in Section VI, from the date of the notification of the readiness for acceptance, however the Supplier shall be obliged, if the Client should so desire, at his expense to effect such insurance cover which the latter should request.

VIII. Receipt

The Client may not refuse the receipt of deliveries on the grounds of insignificant defects.

IX. Material Defects

Precondition for any warranty for defects is the correct conformance according to § 377 HGB owing conditions of inspections and conditions of reprehension by the client.

The Supplier shall be liable for material defects as follows:

1. All those parts or performance, which should exhibit a defect within the time limit of the statute of limitations – without taking the duration of the operation into account – are, of the Supplier's choice, to be improved, to be newly supplied or newly performed free of charge insofar as the cause thereof was already present at the time of the transfer of risk.
2. Claims for material defects shall fall under the statute of limitations in 12 months. This shall not be applicable, insofar as the law pursuant to § 479 Section. 1 (Right to recourse) BGB should prescribe longer deadlines as well as in cases of injury to life, body or health, in the case of a violation of the obligation of the Supplier with intent or through gross negligence and in the case of deceitful concealing of a defect. The statutory regulations on the suspension of the running of time, interruption and recommencement of the time limits shall remain unaffected by this.
3. The Client shall make complaints in respect of material defects immediately in writing to the Supplier.
4. In the case of complaints in respect of defects the Client's payments may be withheld to an extent, which corresponds in an appropriate ratio to the material defects. The Client may only withhold payments, if a complaint in respect of a defect has been enforced, where there can be no doubt as to its justification. Should the complaint in respect of a defect be unjustified the Supplier shall be entitled to demand reimbursement of the expenditure incurred from the Client.
5. In the first instance the Supplier is to be given the opportunity of subsequent performance within a reasonable time limit.
6. Should the subsequent fulfilment be unsuccessful, the Client may – notwithstanding possible rights to claim compensation in accordance with Art. XII – withdraw from the Contract or reduce the payment.
7. There shall be no right to claim for defects in the case of only an insignificant deviation from the agreed composition, in the case of only an insignificant impairment of the usability, in the case of normal wear and tear or damages, which should occur after the transfer of risk as a result of incorrect or negligent handling, the object being subjected to excessive stresses or strains, unsuitable operating equipment, defective construction work, unsuitable construction ground or which occur as a result of particular external influences, which are not presupposed according to the Contract, as well as in the case of software errors which cannot be reproduced. Should improper changes or repair work be undertaken by the Client or third parties, there shall be no right to make claims for defects for the same or for consequences resulting there from.
8. The Client's claims in respect of the expenditure required for the subsequent fulfilment, in particular transport, travel, labour and material costs, are excluded. The Supplier shall only bear the expenditure for transport costs up to the contractually agreed place of delivery. Should the Client take the supply object to a foreign country, the costs for the transport shall only then be borne by the Supplier if the taking abroad should correspond to the contractual use of the supply object.
9. The Client shall only have a right to claim recourse against the Supplier pursuant to § 478 BGB (Recourse of the Contractor) insofar as the Client has not reached any agreements with his client, which go beyond the statutory right to claim for defects. For the extent of the right to recourse of the Client against the Supplier pursuant to § 478 Section 2 BGB Subsection 8 shall further be correspondingly applicable.
10. Otherwise Art. XII (Other claims for compensation) shall be applicable for compensation claims. Further or other claims of the Client against the Supplier and their vicarious agents in respect of a material defect outside those regulated in this Art. IX are excluded.
2. The Client's right to compensation shall be excluded, insofar as he should be responsible for the violation of property rights.
3. The Client's right to compensation shall be further excluded, insofar as the violation of property rights has been caused by particular guidelines of the Client, by utilisation not foreseeable by the Supplier or is caused by the fact that the Client has altered the supply or it has been deployed together with products not supplied by the Supplier.
4. In the event of a violation of property rights the stipulations of Art. IX Subsections 4, 5 and 9 shall be correspondingly applicable to the claims of the Client regulated under Subsection 1 a).
5. In the event of other legal defects the stipulations of Art. IX shall be correspondingly applicable.
6. Further or other claims of the Client against the Supplier and his vicarious agents on the grounds of a legal defect other than those regulated in this Art. X shall be excluded.

XI. Impossibility; Adjustment

1. Insofar as the supply should be impossible, the Client shall be entitled to demand compensation, unless the Supplier is not responsible for the impossibility. However the Client's right to compensation shall be restricted to 10% of the value of the respective part of the delivery, which could not be taken into the relevant operation as a result of the impossibility. This restriction shall not insofar be applicable in cases of intent, gross negligence or of compulsory liability owing to injury to life, body or health; an alteration of the evidence to the disadvantage of the Client is not linked to this. The right of the Client to withdraw from the Contract remains unaffected.
2. Insofar as unforeseeable events in the sense of Art. V Subsection 2 should considerably alter the economic significance or the content of the supply or have a considerable effect on the Supplier's operations; the Contract shall be appropriately adapted taking good faith into consideration. Insofar as this should not be economically tenable, the Supplier shall be entitled to withdraw from the Contract. Should he wish to exercise this right to withdraw, he shall notify the Client immediately on gaining awareness of the consequences of the event and to be precise even then if in the first instance an extended delivery time had been agreed with the Client.

XII. Other Rights to Compensation

1. Claims for compensation of damages or reimbursement of expenditure of the Client (hereinafter: claims for compensation), no matter on what legal grounds, in particular for violation of obligations from the debt relationship and unauthorised handling, are excluded.
2. This shall not be applicable insofar as there is compulsory liability e.g. pursuant to the Product Liability Act, in cases of intent, gross negligence, owing to injury to life, body or health or on the grounds of the violation of significant contractual obligations. The right to claim compensation for the violation of significant contractual obligations is however limited to the contractually typical and foreseeable damages, insofar as there is no liability for intent, gross negligence or owing to injury to life, body or health. An alteration of the evidence to the disadvantage of the Client is not linked to the above regulations.
3. Insofar as the Client should be entitled to claim compensation in accordance with this Art. XII, the same shall fall under the statute of limitations on expiry of the time limit for claims in respect of material defects in accordance with Art. IX Section 2. In the case of claims for compensation pursuant to the Product Liability Act the statutory regulations on the statute of limitations shall be applicable.

XIII. Place of Jurisdiction and Applicable Law and Data Protection

1. The sole place of jurisdiction, if the Client is a businessman, in the case of all disputes arising directly or indirectly from the contractual relationship is the registered office of the Supplier. The Supplier is however also entitled to take action at the registered office of the Client.
2. German material law shall be applicable under exclusion of the Agreement of the United Nations on Contracts in respect of the international purchase of goods (CISG) for the legal relationships in connection with this Contract.
3. The supplier is authorized to save the data of the client electronically and to process them. The deletion of the data has to be made in writing. Then the supplier is authorized to transfer data from contracts or necessary for accomplishment of the contract to third parties especially banks and partners of contracts whenever this serves order processing. The supplier follows the effective legal regulations.

XIV. Binding Force of the Contract

The Contract shall still be binding in its remaining parts even in the case of legal ineffectiveness of individual conditions. This shall not be applicable if adhering to the Contract should represent an unreasonable hardship for a party.

X. Industrial Property Rights and Copyright; Legal Defects

1. Insofar as not otherwise agreed, the Supplier shall only be obliged to implement the supply in the country of the place of delivery free of industrial property rights and copyrights of third parties (hereinafter: property rights). Should a third party make justified claims against the Client in respect of the violation of property rights through contractually utilised supplies implemented by the Supplier, the Supplier shall be liable towards the Client within the time limit laid down in Art. IX Subsection 2 as follows:
 - a) The Supplier of his choice and at his own expense either obtain a right of use for the supplies concerned, change them such that the property right is not violated, or make an exchange. Should this not be possible for the Supplier under reasonable conditions, the Client shall be entitled to the statutory right to withdrawal or reduction.
 - b) The obligation of the Supplier to perform compensation is according to Art. XII.
 - c) The above-cited obligations of the Supplier only exist insofar as the Client should notify the Supplier without delay in writing of the claims enforced by third parties, should not acknowledge a violation and the Supplier's right to all defence measures and conciliation proceedings is reserved. Should the Client cease the use of the supply on the grounds of mitigation of damages or on other important grounds, he shall be obliged to notify the third party that the cessation of use is not linked to an acknowledgement of a violation of property rights.