

General terms and conditions

of ESA Elektroschaltanlagen Grimma GmbH

Status: March 2023

I. General provisions

1. The legal relationship between the Supplier and the Purchaser in connection with the deliveries and/or services of the Supplier (hereinafter called "Deliveries") is subject exclusively to these General Terms and Conditions (GTC). The Purchaser's General Terms and Conditions only apply to the extent that the Supplier has expressly agreed to them in writing. The mutually agreed written declarations are decisive for the scope of the Deliveries.
2. The Supplier reserves without limitation its rights of use and exploitation under property and copyright law to cost estimates, drawings and other documents (hereinafter: Documents). The Documents may only be made accessible to third parties subject to the Supplier's prior consent and, if the order is not placed with the Supplier, must be returned immediately upon request. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's documents; these may, however, be made accessible to third parties to whom the Supplier has permissibly made Deliveries.
3. The Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed performance features in unchanged form on the agreed devices. The Purchaser may make a backup copy of the standard software without express agreement.
4. Partial deliveries and partial services are permissible insofar as they are reasonable for the Purchaser.
5. The term "claims for damages" in these GTC also includes any claims for reimbursement of futile expenses.
6. Assurances, additional agreements and amendments must always be made in writing.

In addition, installation services shall be subject to the following:

7. The agreed installation service shall be invoiced at the hourly rates valid at the time, unless otherwise agreed in writing. In addition, the Purchaser shall bear all necessary ancillary costs, such as travel expenses, transport costs and allowances. The travel time of personnel shall be considered as working time. If the Purchaser wants a binding price, a quotation designated as binding shall be required.
8. If the proper execution of the work results in cost-incurring measures, which cause the price not designated as binding to be exceeded by more than 10%, the Purchaser shall be informed thereof. The Purchaser's consent to the measures shall be deemed to have been given if the Purchaser does not object to them after a reasonable period of time set by the Supplier, which refers to the approval effect of the lack of objection.

9. If, after a binding or non-binding quotation has been submitted or a fixed price has been agreed upon, it turns out that the details provided by the Purchaser and the details on which the calculations are based are not correct, the price shall be adjusted accordingly.

The same shall apply to circumstances which have not been communicated and have thus caused costs or for changes due to constraints which subsequently become apparent within the Purchaser's scope of responsibility or due to delays for which the Supplier is not responsible and which fall within the Purchaser's scope of responsibility.

10. Unless otherwise agreed, installation work shall be remunerated separately. The installation costs include in particular travel expenses, daily allowances and working hours of the installation personnel including surcharges for overtime (25%), night work (50%) and work on Sundays and public holidays (100%). Preparation, travel, wait and commuting time shall be charged as working time. If the installation times are delayed through no fault of the Supplier, the Purchaser shall bear all costs for the wait times and for further necessary travel.

II. Prices, terms of payment and offsetting

1. Unless otherwise agreed, the prices given in the Supplier's price list valid at the time of formation of the contract shall apply (insofar as relevant).
2. The prices are ex works and do not include packaging or the applicable statutory value added tax.
3. If the Supplier has undertaken the installation or assembly and nothing else has been agreed, the Purchaser shall bear all necessary ancillary costs such as travel and transport costs as well as allowances in addition to the agreed remuneration.
4. Payments shall be made free to the Supplier's office of payment.
5. The Purchaser may only apply such claims, which are undisputed or have been legally established, for the purposes of offsetting.
6. The prices do not include customs duties or other import taxes; they shall be borne by the Purchaser. If, by way of exception, the Supplier has assumed these costs at fixed rates, any increases, e.g. due to changes in the law, shall be borne by the Purchaser.
7. We charge a small volume markup of EUR 25 for orders with a total value of less than EUR 500.
8. Unless otherwise agreed, our invoices are due and payable within 14 calendar days without deduction. The payment period begins with the invoice date.

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III. Retention of title

1. The items of the Deliveries (goods subject to retention of title) shall remain the property of the Supplier until all claims against the Purchaser arising from the business relationship have been settled. If the value of all security interests, to which the Supplier is entitled, exceeds the amount of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interests at the request of the Purchaser; the Supplier shall be entitled to choose between different security interests when releasing.
2. For the duration of the retention of title, the Purchaser is not permitted to pledge or transfer ownership by way of security and resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from its customer or makes the reservation that ownership is not transferred to the customer until the latter has fulfilled its payment obligations.
3. If the Purchaser resells goods subject to retention of title, it hereby assigns as a security to the Supplier its future claims from the resale against its customers together with all ancillary rights, including any balance claims, without any further special declarations being required. If the goods subject to retention of title are resold together with other items without an individual price having been agreed for the goods subject to the retention of title, the Purchaser shall assign to the Supplier that part of the total price which corresponds to the price of the goods subject to retention of title as invoiced by the Supplier.
4.
 - a) The Purchaser is permitted to process the goods subject to retention of title or to mix or combine them with other items. The processing shall be carried out for the Supplier. The Purchaser shall keep the resulting new item for the Supplier with the due care of a prudent businessman. The new item shall be deemed to be goods subject to retention of title.
 - b) The Supplier and the Purchaser hereby agree that in the event of combination or mixing with other items not belonging to the Supplier, the Supplier shall in any case be entitled to co-ownership of the new item in the amount of the share resulting from the ratio of the value of the combined or mixed goods subject to retention of title to the value of the other goods at the time of combination or mixing. In this context, the new item shall be deemed to be goods subject to retention of title.
 - c) The provision on the assignment of claims according to No. 3 shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed goods subject to retention of title as invoiced by the Supplier.
 - d) If the Purchaser combines the goods subject to retention of title with real estate or movable property, it shall also assign its claim to which it is entitled as remuneration for the combination, together with all ancillary rights, to the Supplier by way of security in the amount of the ratio of the value of the combined goods subject to retention of title to the other combined goods at the time of the combination.
5. Until revoked, the Purchaser is authorized to collect assigned claims from the resale. In the event of good cause, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency on part

of the Purchaser, the Supplier shall be entitled to revoke the Purchaser's collection authorization. In addition, the Supplier may, after prior warning and observing a reasonable period of time, disclose the assignment by way of security, utilize the assigned claims and demand the disclosure of the security assignment by the Purchaser to the customer.

6. In the event of seizures, attachments or other dispositions or interventions by third parties, the Purchaser shall notify the Supplier without delay. If a justified interest is substantiated, the Purchaser shall immediately provide the Supplier with the information required to assert its rights against the customer and hand over the necessary documents.
7. In the event the Purchaser neglects its duties, in particular in the event of default in payment, the Supplier is entitled to withdraw from the contract in addition to taking back the goods subject to retention of title after a reasonable grace period set for the Purchaser has elapsed without result; the statutory provisions on the unnecessary of setting a grace period remain unaffected. The Purchaser shall be obliged to surrender the goods. Taking back or asserting the retention of title or the seizure of goods subject to retention of title by the Supplier shall not constitute a withdrawal from the contract, unless the Supplier has expressly declared this.

IV. Deadlines for Deliveries and delays

1. Adherence to deadlines for Deliveries requires the timely receipt of all documents to be provided by the Purchaser, necessary approvals and releases, in particular of plans, as well as adherence to the agreed terms of payment and other obligations by the Purchaser. If these prerequisites are not fulfilled in good time, the deadlines shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.
2. If non-compliance with the deadlines is due to
 - a) force majeure, e.g. mobilization, war, acts of terrorism, epidemics, riots, or similar events (e.g. strike, lockout),
 - b) viruses and other attacks by third parties on the Supplier's IT system, insofar as these occurred despite complying with the usual care in terms of protective measures,
 - c) obstacles posed by German, US or other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which the Supplier is not responsible, or
 - d) failure to deliver to the Supplier in due time or due form, the deadlines shall be extended accordingly.
3. If the Supplier is in default, the Purchaser may - provided that it can credibly demonstrate that it has suffered a loss as a result - claim compensation for each full week of delay of 0.5%, but in no case more than a total of 5% of the price of that part of the Deliveries which could not be used as intended because of the delay.
4. The Purchaser's claims for damages due to delay in Deliveries as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed delivery, even upon expiry of a time period set for the Supplier to make delivery. This shall not apply in cases of liability for intent, gross negligence or injury to life, limb or health. The Purchaser may withdraw from the contract within the scope of the statutory provisions only if the Supplier is responsible for the delay in delivery. The above provisions do not constitute a change in the burden of proof to the Purchaser's disadvantage.

5. At the Supplier's request, the Purchaser is obligated to declare within a reasonable period of time whether it withdraws from the contract due to the delay in delivery or insists on delivery.
6. If dispatch or delivery is delayed at the request of the Purchaser by more than one month after notification of readiness for dispatch, the Purchaser may be charged storage costs amounting to 0.5% of the price of the items of the Deliveries for each additional month or part thereof, but not exceeding a total of 5%. The contracting parties are free to provide evidence of higher or lower storage costs.

V. Transfer of risk

1. Even in the case of carriage paid delivery, the risk shall pass to the Purchaser as follows:
 - a) in case of delivery without installation or assembly, when it has been brought for dispatch or collected. At the request and expense of the Purchaser, the delivery shall be insured by the Supplier against the usual transport risks;
 - b) in case of delivery with installation or assembly on the day of acceptance in the Purchaser's own company or, if agreed, after successful test run.
2. If the dispatch, delivery, start, performance of the installation or assembly, acceptance in the Purchaser's own company or test run is delayed for reasons for which the Purchaser is responsible or if the Purchaser is in default of acceptance for other reasons, the risk is transferred to the Purchaser.

VI. Installation and assembly

1. The Purchaser shall assume and provide in good time at its own expense:
 - a) All earthworks, construction work and other ancillary work outside the trade, including the skilled and unskilled labor, building materials and tools required for this;
 - b) The items and materials required for assembly and commissioning, such as scaffolding, lifting gear and other devices, fuels and lubricants;
 - c) Energy and water at the point of use, including connections, heating and lighting;
 - d) Sufficiently large, suitable, dry and lockable rooms at the installation site for the storage of machine parts, equipment, materials, tools, etc. and appropriate work and recreation rooms for assembly personnel, including sanitary facilities appropriate to the circumstances; otherwise, the Purchaser must take the same measures it would take to protect its own property to protect the property of the Supplier and the assembly personnel on the site;
 - e) Protective clothing and protective devices that are required as a result of special circumstances at the installation site.
2. Prior to commencement of the installation work, the Purchaser shall provide the necessary information relating to the location of concealed electricity, gas and water lines or similar installations as well as the required structural data without being requested to do so.
3. Prior to commencement of installation or assembly, the materials and objects required for the commencement of the work must be available at the installation or assembly site and all preparatory work must have progressed to such an extent that installation or assembly can be commenced as agreed and carried out without interruption. Access roads and the installation or assembly site must be levelled and cleared.

4. If installation, assembly or commissioning is delayed as a result of circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for wait times and any additional travelling of the Supplier or the installation personnel.
5. The Purchaser shall immediately certify to the Supplier on a weekly basis the duration of the working hours of the installation personnel and the completion of the installation, assembly or commissioning.
6. If the Supplier requests acceptance of the delivery after completion, the Purchaser shall carry this out within two weeks. Acceptance shall be deemed to have taken place if the Purchaser allows the two-week period to elapse or if the delivery has been put into use, possibly after completion of an agreed test phase.

VII. Receipt

The Purchaser may not refuse to accept Deliveries due to insignificant defects.

The following also applies to installation services:

If the Supplier demands acceptance of the performance after completion, the Purchaser shall carry this out within two weeks. If this does not occur, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the delivery has been put into use, possibly after completion of an agreed test phase.

Acceptance cannot be refused due to insignificant defects.

VIII. Material defects

1. All parts or services showing a material defect shall, at the Supplier's discretion, be repaired, replaced or provided again free of charge, provided that the cause of the defect already existed at the time of the transfer of risk.
2. Claims for subsequent performance shall become statute-barred 12 months after the statutory commencement of the limitation period; the same shall apply to withdrawal and reduction. This limitation period shall not apply:

- if the law pursuant to §§ 438 Para. 1 (2) (Bauwerke und Sachen für Bauwerke (*Buildings and things used for buildings*)) and 634a Para. 1 (2) (Baumängel (*Structural defects*)) of BGB (*German Civil Code*) specifies longer periods,
- in case of intent,
- in case of fraudulent concealment of the defect, as well as
- in case of non-compliance with a quality guarantee.

Claims for reimbursement of expenses on part of the Purchaser in accordance with § 445a of BGB (Rückgriff des Verkäufers) (*Seller's right of recourse*) shall also become statute-barred 12 months after the statutory commencement of the limitation period, provided that the last contract in the supply chain is not a purchase of consumer goods. The statutory provisions on suspension of expiration, interruption and recommencement of limitation periods shall remain unaffected.

3. Notices of defects by the Purchaser must be made in writing without delay.
4. In the event of claims for defects, payments by the Purchaser may be retained to an extent that is in reasonable proportion to the material defects that have occurred. The Purchaser shall have no right of retention if its claims for defects are statute-barred. If the notice of defects is unjustified, the Supplier shall

be entitled to demand reimbursement from the Purchaser of the expenses incurred by it.

5. The Supplier shall be given the opportunity to remedy the defect within a reasonable period of time.
6. If the attempt to remedy the defect fails, the Purchaser may withdraw from the contract or reduce the compensation without prejudice to any claims for damages according to No. 10.
7. Claims for defects do not exist in the case of only insignificant deviations from the agreed quality or insignificant impairment of usability, natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable building site or which arise due to particular external influences which are not included under the terms of the contract, as well as non-reproducible software errors. No claims for defects resulting from any improper changes, installation or disassembly work or repairs carried out by the Purchaser or a third party or the resulting consequences are accepted.
8. Claims by the Purchaser for expenses incurred for the purpose of supplementary performance shall be excluded to the extent that expenses increase because the object of delivery was subsequently taken to another location than the Purchaser's premises, unless doing so complies with its intended use. This shall apply mutatis mutandis to the Purchaser's claims for reimbursement of expenses in accordance with § 445a of BGB (Seller's right of recourse), provided that the last contract in the supply chain is not a purchase of consumer goods.
9. The Purchaser's rights of recourse against the Supplier in accordance with § 445a of BGB (Seller's right of recourse) only exist to the extent that the Purchaser has not entered into any agreements with its customer exceeding the scope of the statutory claims for defects.
10. Claims for damages by the Purchaser due to a material defect are excluded. This shall not apply in the event of fraudulent concealment of the defect, non-compliance with a quality guarantee, injury to life, limb or health and in the event of an intentional or grossly negligent breach of duty by the Supplier. The above provisions do not constitute a change in the burden of proof to the disadvantage of the Purchaser. Further or other claims of the Purchaser than those provided for under this Art. VIII on account of a material defect are excluded.

In addition, the following shall apply to installation services:

11. The Purchaser may remedy the defect itself and demand reimbursement of the costs if this is necessary to avert an urgent risk and considerable damage. However, the Supplier shall be requested to remedy the defect beforehand if possible.

Self-remedy of defects is still possible if the Supplier unjustly refuses to remedy the defect, if a reasonable period for remedying the defect has expired without success or if such remedy of the defect has failed.

IX. Industrial property rights and copyrights, defects in title

1. Unless otherwise agreed, the Supplier shall be obligated to provide the Deliveries only in the country of the place of delivery without violating any third party's industrial property rights and copyrights (hereinafter "IPR"). If a third party asserts a legitimate claim against the Purchaser based on a violation of an IPR by the Deliveries made by the Supplier and used in accordance with the contract, the Supplier shall be liable to the Purchaser within the period stipulated in Art. VIII (2) as follows:
 - a) The Supplier shall, at its option and expense, either obtain a right of use for the relevant Deliveries, modify them so that the IPR are not infringed or replace them. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to the statutory rights of rescission or reduction.
 - b) The Supplier's obligation to pay damages is based on Art. XII.
 - c) The aforementioned obligations of the Supplier only exist insofar as the Purchaser immediately notifies the Supplier in writing of the claims asserted by the third party, does not acknowledge a violation and leaves all defensive measures and settlement negotiations to the discretion of the Supplier. If the Purchaser ceases to use the Deliveries in order to minimize the damage or for other good reason, it shall be obligated to inform the third party that such cessation of use does not constitute an acknowledgement of a violation of the IPR.
2. Claims of the Purchaser are excluded if it is responsible for the violation of the IPR.
3. Claims of the Purchaser are also excluded if the violation of the IPR is caused by specifications made by the Purchaser, by an application not foreseeable by the Supplier or by the Deliveries being modified by the Purchaser or being used together with products not provided by the Supplier.
4. In the event of violation of the IPR, the claims of the Purchaser as regulated under No. 1a) shall otherwise be subject accordingly to the provisions of Art. VIII No. 4, 5, 8 and 9.
5. In the event of other defects in title, the provisions of Art. VIII shall apply accordingly.
6. Further claims or claims other than those regulated under Art. IX against the Supplier and its vicarious agents on account of a defect in title are excluded.

X. Reservation of performance

1. The fulfillment of the contract is subject to the proviso that there are no obstacles due to German, US or other applicable national, EU or international regulations of foreign trade law as well as no embargos or other sanctions.
2. The Purchaser is obligated to provide all information and documents required for export, movement and/or import.

of this contract. This shall not apply if adherence to the contract would represent an unreasonable hardship for one party.

XI. Impossibility; amendment of contract

1. If delivery is impossible, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. However, the Purchaser's claim for damages shall be limited to 10 % of the value of that part of the delivery which cannot be used as intended due to the impossibility. This limitation shall not apply in cases of liability based on intent, gross negligence or injury of life, limb or health; this does not constitute a change in the burden of proof to the disadvantage of the Purchaser. The right of the Purchaser to withdraw from the contract remains unaffected.
2. If events within the meaning of Art. IV No. 2 a) to c) substantially change the economic significance or the contents of the delivery or have a substantial effect on the Supplier's business, the contract shall be adapted appropriately in good faith. If this is not economically reasonable, the Supplier shall be entitled to withdraw from the contract. The same shall apply if the required export licenses are not granted or cannot be used. If the Supplier intends to assert this right of withdrawal, it shall notify the Purchaser thereof immediately after having realized the consequences of the event, even if an extension of the delivery period had been initially agreed upon with the Purchaser.

XII. Other claims for damages

1. Unless otherwise provided for in these General Terms and Conditions, claims for damages by the Purchaser are excluded, irrespective of the legal grounds, in particular for breach of obligations arising from the contractual relationship and from tort.
2. This does not apply if there is liability as follows:
 - a) Under the Produkthaftungsgesetz (*Product Liability Act*),
 - b) In case of intent,
 - c) In the event of gross negligence on the part of owners, legal representatives or executives,
 - d) In case of fraudulent intent,
 - e) In the event of non-compliance with an assumed guarantee,
 - f) Due to culpable injury to life, limb or health, or
 - g) Due to the culpable violation of essential contractual obligations.

The claim for damages for breach of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless another of the aforementioned cases applies.

3. The above provisions do not constitute a change in the burden of proof to the disadvantage of the Purchaser.

XIII. Jurisdiction and applicable law

1. If the Purchaser is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be at the Supplier's registered place of business. The Supplier shall also be entitled, however, to take legal action at the Purchaser's registered place of business.
2. This contract including its interpretation shall be subject to German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIV. Legal validity of contract

The validity of the remaining provisions of the contract shall in no way be affected by the legal invalidity of one or more provisions