

INDU-ELECTRIC Gerber GmbH

GENERAL TERMS OF DELIVERY

1. Applicability of the conditions

Deliveries, services and offers are made exclusively on the basis of these Terms of Delivery. These Terms and Conditions of Sale apply exclusively to contractors, legal entities under public law or special funds under public law within the meaning of Para. 31(1) of the German Civil Code (BGB). These Terms and Conditions of Sale shall also apply to all future transactions with the Purchaser, insofar as legal transactions of a related nature are concerned. Individual agreements made with the purchaser in individual cases, including ancillary agreements, supplements and amendments, shall in all cases take precedence over these Terms and Conditions of Sale. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements. General terms and conditions of the purchaser shall only apply insofar as we have expressly agreed to them in writing.

2. Offer and conclusion of contract

Offers are subject to change without notice. The purchase contract is concluded only through our order confirmation or through delivery of the order. Supplements, amendments or subsidiary agreements require our written confirmation.

3. Drawings, illustrations, dimensions, weights, rights of third parties thereto
Drawings, illustrations, dimensions, weights or other performance data are binding only if this is expressly agreed in writing. Offers, drawings and all other documents remain the property of and are copyrighted by us without limitation. The documents must be made accessible to third parties only with our prior consent and must be returned to us upon request if the order is not placed with us. The same applies to documents of the purchaser. However, we are entitled to make these accessible to third parties to whom we have permissibly assigned deliveries.

The purchaser shall indemnify us against claims of third parties arising from the infringement of industrial property rights for the delivery of parts according to drawings or samples. If we are prohibited from manufacturing or delivery by a third party with reference to a property right belonging to him, we shall be entitled, without examining the legal situation, to cease work and demand reimbursement of the costs incurred.

4. Prices, price changes

The prices are in Euro. They do not include VAT. Value added tax (VAT) will be invoiced additionally at the statutory rate applicable on the date of performance. The prices stated in price lists and brochures for resellers are recommended retail prices excluding VAT. We reserve the right to charge the prices valid on the day of delivery. We are not bound to the observance of previous prices for follow-up orders.

5. Pricing

The prices are ex works or ex warehouse excluding packaging. Packaging is charged at cost price. Returnable packaging is charged at rental rates on the basis of the cost price. The return of the reusable packaging, which remains our property, shall be effected immediately, carriage paid.

6. Terms of payment, prohibition of offsetting

Our invoices are payable within 30 days net from the date of invoice without deduction, at the latest 30 days after the due date and receipt of the consideration, unless otherwise agreed. Payments must be made in cash and free to Neuss. Cheques shall be accepted only subject to the usual reservation, bills of exchange only by special agreement and provided they comply with the purchase conditions of the Deutsche Bundesbank.

In the case of payments of any kind, the day on which we can dispose of the amount shall be deemed the day of performance. If the agreed payment terms are exceeded, the consequences of default shall occur without a special reminder being required. Subject to the assertion of other rights, interest on arrears shall be charged annually at a rate of 8% above the base interest rate applicable at the time pursuant to Para. 247 BGB (German Civil Code). We reserve the right to further damages.

If the purchaser defaults on payment of the price, we shall be entitled to withdraw from the contract after setting a deadline without success and to demand the return of the goods and damages for delayed performance. The purchaser may only offset our claims against undisputed or legally established claims, unless the counterclaim originates from the same contractual relationship as the claim against which the offset is to be made.

7. Subsequent security and right to refuse performance

A prerequisite for the obligation to deliver is the creditworthiness of the purchaser. If, after conclusion of the contract, we receive information or if facts arise which cast doubt on the solvency of the purchaser in the amount resulting from the order, in particular in respect of a considerable deterioration of the financial situation/application for the opening of insolvency proceedings and foreclosure, cessation of payments, repeated default of payment, dissolution of business, transfer of business, pledging or subsequent transfer by way of security of goods, stocks or receivables etc., we shall be entitled to refuse performance until the consideration owed by the purchaser has been effected or security has been provided for this. We shall also be entitled to set a reasonable deadline for the purchaser to effect the consideration owed and to withdraw from the contract and claim damages after the deadline has expired.

8. Delivery period, impossibility

Compliance with the deadlines for deliveries requires the timely receipt of all documents and releases to be supplied by the purchaser as well as compliance with the agreed terms of payment and other obligations by the purchaser. If these conditions are not fulfilled in time, the deadlines shall be extended accordingly. This does not apply if the purchaser is not responsible for the delay. We shall not be responsible for delivery and performance delays due to force majeure and due to events that make delivery significantly more difficult or impossible for us (strike, lockout, official orders, etc., even if they occur at our suppliers or their subcontractors), even in the case of bindingly agreed deadlines and dates. They entitle us to extend the delivery periods by the duration of the hindrance plus a reasonable start-up period or, because of the part of the contract not yet fulfilled, to withdraw from the contract in whole or in part.

If dispatch or delivery is delayed by more than one month after notification of readiness for dispatch at the request of the purchaser, the purchaser may be charged storage charges of 0.5 % of the price of the equivalent of the deliveries for each month commenced, but no more than a total of 5%. The parties are at liberty to prove higher or lower storage costs.

9. Withdrawal of the purchaser, limitation of liability

In the event of a delay in delivery not caused by us intentionally or through gross negligence, we shall be liable for each completed week of delay within the framework of a lump-sum compensation for delay amounting to 0.5% of the value of the delivery, but not more than 5% of the invoice value of the delivery affected by the delay.

This provision shall apply only to that part of the delivery that could not be put to the intended use due to the delay. Claims for damages on the part of the purchaser due to delayed delivery as well as claims for damages in lieu of performance that exceed the aforementioned limits shall be excluded in all cases of delayed delivery, even after expiry of any, for example statutory, period for delivery that may have expired for us.

This shall not apply if liability is mandatory in cases of intent, gross negligence or injury to life, limb or health. This is not associated with a change in the burden of proof to the detriment of the purchaser. The purchaser is entitled to withdraw from the contract within the framework of the statutory provisions only if we are responsible for the delay in delivery.

At our request, the purchaser shall declare within a reasonable period of time whether he will withdraw from the contract due to the delay in delivery and/or demand damages instead of performance or insist on delivery.

10. Transfer of shipping risk

The risk passes to the purchaser when the goods have been dispatched or

collected. Parcels are always sent free of charge and the package fees plus VAT are calculated. If dispatch or acceptance is delayed or impossible at the request of the purchaser or through no fault of our own, the purchase price shall nevertheless become due and the risk shall pass to the purchaser on the day on which the goods are ready for dispatch. If the goods are taken back for reasons for which we are not responsible, the purchaser shall bear all risk until we have received the goods.

11. Non-acceptance

The purchaser may not refuse acceptance of deliveries due to insignificant defects.

12. Material defects

We shall be liable for material defects as follows:
All those parts or services which show a material defect within the limitation period irrespective of the period of operation shall, at our discretion, be repaired, replaced or provided again free of charge, provided that the cause of the defect already existed at the time of transfer of risk. Claims for material defects are subject to a limitation period of 12 months. This shall not apply in the case of claims for damages arising from injury to life, body or health or from intentional or grossly negligent conduct, or if the law pursuant to Para. 438(1)(2) (buildings and objects for buildings), Para. 479(1) (right of recourse) and Para. 634a(1)(2) (construction defects) BGB prescribes longer periods. The purchaser must notify us immediately in writing of any material defects. In the event of notices of defects, payments by the purchaser may be withheld to an extent that is in reasonable proportion to the material defects that have occurred. The purchaser is entitled to withhold payments only if a notice of defect is asserted, the justification of which is beyond doubt. If the notice of defect is unjustified, we shall be entitled to demand reimbursement of the expenses incurred by us from the purchaser. Initially, we must always be given the opportunity of remedying the defect within a reasonable period of time. If the remedy fails even after a second attempt, the purchaser is entitled to withdraw from the contract or reduce the remuneration without prejudice to any claims for damages. The following liability limitation regulations shall apply to claims for damages. Claims for defects shall not exist in the event of insignificant deviations from the agreed quality, in the event of only insignificant impairment of usability, in the event of natural wear and tear or damage arising after the transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable foundation soil or as a result of particular external influences not assumed under the contract, as well as in the event of non-reproducible software errors. If improper modifications or repair work are carried out by the purchaser or by third parties, there shall also be no claims for defects and any consequences resulting from these. Claims of the purchaser for expenses incurred for the purpose of subsequent performance, in particular transport routes, labour and material costs, are excluded insofar as the expenses are increased because the object of the delivery has subsequently been moved to a location other than the branch office of the purchaser, unless the transfer corresponds to its intended use. The purchaser's statutory rights of recourse against us shall not exist to the extent that the purchaser has not entered into any agreements with its customer that go beyond the statutory claims based on defects. Furthermore, the last paragraph shall apply mutatis mutandis to the scope of the purchaser's right of recourse against us. Otherwise, Sect. 17 (Other claims for damages) shall apply to claims for damages. Further or other claims of the purchaser against us and our vicarious agents due to a material defect than those regulated in Sect. 12 are excluded unless we or our vicarious agents are guilty of gross negligence or intent. In this case, too, any claims shall be limited to compensation for the damage foreseeable at the time of conclusion of the contract. This shall not apply in the event of fraudulent intent or if we have assumed a guarantee for the quality of the thing.

13. Defects of title

Unless otherwise agreed, we undertake to deliver the goods free of industrial property rights and copyrights of third parties only in the country of the place of delivery. If a third party asserts justified claims against the purchaser due to infringement of these rights by deliveries made by us and used in accordance with the contract, we shall be liable to the purchaser within the period specified in Sect. 12 Para. 2 as follows:

a) If we shall, our obligation and at our expense, either obtain a right of use for the delivery concerned or replace them. If this is not possible for us under reasonable conditions, the purchaser shall be entitled to the statutory rights of withdrawal or reduction. Our obligation to pay damages is governed by Sections 12 and 15.
The aforementioned obligations shall only apply to us if the purchaser immediately notifies us in writing of the claims asserted by the third party, does not acknowledge an infringement and leaves all defensive measures and settlement negotiations to our discretion. If the purchaser ceases to use the delivery for the purpose of reducing damage or for other important reasons, he shall be obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of property rights. Claims of the purchaser are excluded if he is responsible for the infringement of property rights.

Claims of the purchaser are also excluded if the infringement of property rights is caused by special specifications of the purchaser, by an application not foreseeable by us or by the delivery being modified by the purchaser or being used together with products not supplied by us. In the event of infringements of industrial property rights, the provisions of Sect. 12(4), 5 and 9 shall apply mutatis mutandis to the purchaser's claims regulated in Sect. 12(2). In the event of other defects of title, the provisions of Section 12 shall apply mutatis mutandis. Further or other claims of the purchaser against us and our vicarious agents than those regulated in this section due to a defect in title are excluded.

14. Recourse of the contractor according to Para. 478 et seq. BGB

In cases of recourse of the contractor pursuant to Para. 478 BGB, we shall be entitled to grant the recourse creditor equivalent compensation instead of the statutory claims for defects. For the exclusion or limitation of the claim to damages, the provisions of Sections 12, 13 and 15 of these Terms and Conditions shall apply. Para. 377 HGB (German Commercial Code) remains unaffected in any case.

15. Impossibility

If the delivery is impossible, the purchaser is 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 that cannot be put to its intended use due to the impossibility. This limitation shall not apply if liability is mandatory in cases of intent, gross negligence or injury to life, limb or health. This is not associated with a change in the burden of proof to the detriment of the purchaser. The purchaser's right to withdraw from the contract remains unaffected.

16. Modifications to a contract

Insofar as unforeseeable events within the meaning of Sect. 8(2) substantially change the economic significance or the content of the delivery or have a considerable effect on the supplier's business and an adherence to the contract cannot be reasonably expected, each party to the contract shall be free to demand adjustment of the contract in good faith.

Insofar as this is not economically justifiable, the parties to the contract shall be free to withdraw from the contract or to terminate it in the case of continuing obligations. If the right of withdrawal or termination is to be exercised, each contracting party must notify the other contracting party of this immediately after the conditions for withdrawal or termination have been met. This shall also apply if an extension of the delivery period was agreed between the contracting parties.

17. Other claims for damages

Claims for damages and reimbursement of expenses by the purchaser (hereinafter referred to as "claims for damages"), regardless of the legal basis, in particular due to breach of duties arising from the contractual obligation and from unlawful acts, are excluded.

This shall not apply in cases of mandatory liability, e.g. under the German Product Liability Act, in cases of intent, gross negligence, injury to life, limb or health, or breach of fundamental contractual obligations. The claim for damages for the breach of fundamental contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless intent or gross negligence exists or liability is assumed for injury to life, limb or health.

The above provisions are not associated with a change in the burden of proof to the detriment of the purchaser. Insofar as the purchaser is entitled to claims for damages under this section, these shall lapse upon expiry of the limitation period applicable to claims for material defects in accordance with section 12.

18. Retention of title

The goods shall remain our property until full payment of all claims, including ancillary claims, claims for damages, future claims and payment of cheques and bills of exchange has been made. The purchaser is entitled to process and sell the goods under consideration of the following provisions:

a) The purchaser's entitlements to process reserved goods in the ordinary course of business shall end, notwithstanding our revocation, which is permissible at any time, upon the purchaser's cessation of payments or if insolvency proceedings are instituted against his assets. The purchaser is obliged to resell the reserved goods only subject to reservation of title and to ensure that the claims from the resale or processing of the reserved goods are transferred to us in accordance with b) and c).

b) The use of the reserved goods for the fulfillment of contracts for work and labour and contracts for labour and materials shall also be deemed a resale. The conditional purchaser is not entitled to dispose of the reserved goods in any other way, in particular to pledge them or assign them by way of security. We shall be informed immediately of seizures by third parties, stating the creditor of the seizure. An assignment of the claims from the passing on of our reserved goods is not permitted unless it is an assignment by way of genuine factoring which is notified to us and in which the factoring proceeds exceed the value of our secured claims. With the crediting of the factoring proceeds, our claim becomes due immediately.

c) By processing the reserved goods, the purchaser who processes the goods for us does not acquire ownership of the new thing in accordance with Para. 950 BGB. If the reserved goods are processed, mixed or blended with other objects, we shall acquire co-ownership of the new thing in the ratio of the value of our reserved goods to the total value of the goods.

d) The purchaser hereby assigns to us the claim, including all ancillary rights from the resale of the reserved goods, also pro rata insofar as the goods have been processed, mixed or blended and we have acquired co-ownership thereof in the amount of the invoice value. In this assignment, we shall be entitled to a fraction of the respective purchase price claim corresponding to the ratio of the invoice value of our reserved goods to the invoice value of the object. If the purchaser has sold this claim within the framework of genuine factoring, he shall assign to us the claim against the factor taking its place.

e) We will not collect the assigned claims as long as the purchaser meets their payment obligations. However, the purchaser shall be obliged to provide us upon request with a precise list of the claims received by us, including the names and addresses of the customers, the amount of the individual claims, the invoice date, etc., to notify his customers of the assignment and to provide us with all information necessary for the assertion of the assigned claims. He is entitled to collect the claims himself as long as we do not give him any other instructions. The purchaser authorises us to inform the customer of this assignment and to collect the claim himself as soon as the purchaser defaults on a payment or his asset situation deteriorates significantly. In this case, we are free to demand that he permits us to have the stock of the assigned claims inspected by a representative on the basis of the purchaser's accounts. Amounts received from assigned claims shall be kept separately for transfer.

f) The retention of title shall also remain in effect if individual claims are included by us in a current account and the balance is struck and acknowledged. We shall be entitled to retention of title not only for the recognised abstract final balance, but also for the causal balance.

g) We already release fully paid deliveries if the security existing through the retention of title exceeds the claim to be secured by more than 20%.

h) As soon as he has stopped payments, and immediately after notification of the stoppage of payments, the purchaser shall provide us with a list of the remaining reserved goods, even if they have been processed, and a list of the claims to the third-party debtors together with copies of the invoice.

i) The purchaser shall keep the reserved goods in safe custody for us. He shall insure them against fire, theft and water damage. The purchaser hereby assigns to us his claims for compensation to which he is entitled against insurance companies or other obligated parties for damages of the kind mentioned in sentence 2 to the amount of our claims.

j) We are entitled to demand the return of the reserved goods if we have withdrawn from the contract.

k) Rights arising from the retention of title and all special forms thereof specified in these terms and conditions shall be regarded as contingent liabilities that we have entered into in the interest of the purchaser until we have been fully indemnified.

1) Validity of the Terms of Delivery, binding nature of the contract

The invalidity of individual provisions of these Terms of Delivery or individual agreements in the delivery contract shall not affect the validity of the remaining provisions. To the extent permitted by law, a provision that comes as close as possible to the invalid provision in economic terms shall then be deemed to have been agreed. For business transactions with customers who are neither merchants within the meaning of the German Commercial Code (HGB) nor legal entities under public law, nor special funds under public law, only the provisions of Sect. 18 Retention of title shall apply.

19. Place of performance, place of jurisdiction, application of law

Place of performance for delivery and payment is Neuss, Germany. The exclusive place of jurisdiction for both parties to the contract for all disputes arising directly from the contractual relationship is its court responsible for Neuss.

The relations between us and the purchaser are subject exclusively to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods does not apply.

20. Data storage

We are entitled to process the data about the purchaser received for or in connection with our business relationship with the purchaser, regardless of who it originates from, in accordance with the German Federal Data Protection Act. Further information and our privacy policy can be found at www.indu-electric.de.