

The English translation is for convenience only. In the event of any conflict or contradiction the German version shall be legally valid.

General Terms and Conditions of Business applicable from 12 March 2009, for:
Emerson Climate Technologies GmbH (Seller)
Emerson Electric GmbH & Co. OHG, Alco Controls (Seller)

1. General provisions

(1) The following Terms and Conditions of Business shall apply to all purchase contracts and works supply contracts between the seller and any entrepreneur (customer) within the meaning of §14 of the German Civil Code BGB. They shall likewise apply to all future business transactions with the customer.
(2) These Terms and Conditions apply to the sale of refrigeration compressors or components for use in the field of heating, refrigeration and air conditioning, together with accessories and spare parts therefor, referred to below as the "goods".
(3) These Terms and Conditions apply to the exclusion of all others. Different conditions drawn up by the customer or conditions which deviate from these Terms and Conditions of Business are not acknowledged by the seller, even if the contract is performed without reservation.

2. Conclusion of the contract

(1) Offers made by the seller are without obligation. Similarly, technical descriptions and other indications contained in offers, prospectuses and other information are not binding in the first instance. Indications in that sense and those given in public statements by the seller, by the manufacturer and his assistants/associates (§434 I 3 BGB) do not become a part of the specification unless specific reference is made to them in the contract.
(2) The seller does not enter into a contractual obligation until he sends the written order confirmation, which may also take the form of the invoice accompanying the goods. The written order confirmation is generally dispatched no later than two weeks after all the details have been clarified.
(3) The seller has not verified the data and criteria of the customer (on which his offer and order confirmation are based) for their accuracy unless he has given specific written confirmation of that fact in writing.
(4) Insofar as the customer does not call the express attention of the seller, when placing the order, to the fact that he wishes specifically to have a particular version of the ordered goods and that no departure whatsoever from his data and criteria is permitted, the seller is authorised to deliver a version which has undergone technical modification as part of the ongoing process of technical development insofar as this is reasonable for the customer to accept, having regard to the justified interests of both parties.
(5) The seller reserves the rights of ownership and copyright in illustrations, drawings, calculations and other documents. These may not be duplicated or made available to third parties without written consent.
(6) The customer is responsible for securing official authorisations. Protective devices are only delivered if this has been specifically agreed.

3. Prices and terms of payment

(1) Save where otherwise agreed, prices are quoted from the place of delivery (ex works) including standard packaging, but excluding insurance and other necessary and usual ancillary costs. Sales tax will be charged for domestic deliveries at the rate prescribed by law.
(2) Save where otherwise agreed, the invoiced sums fall due for payment upon receipt of the invoice, without any form of deduction.
(3) Payments are to be made in cash in the invoiced currency or by transfer, free of all charges, to the seller's paying agent. Cheques or bills are accepted solely for processing; the customer shall bear discounting costs and collection charges. If a cheque or bill is not honoured, the claims to which it refers fall due for immediate settlement.
(4) Insofar as no earlier timing is prescribed by law, the customer shall be deemed late in performance when the first warning has been issued. Subject to any greater prejudice, the customer shall pay a sum of €5.00 to the seller for each further warning. The customer is entitled to prove lower prejudice or the absence of any such prejudice.
(5) Offsetting or retention of payments is only permitted to the extent of counterclaims acknowledged by the seller and confirmed in writing, legally established claims or in the event of insolvency of Emerson Climate Technologies GmbH or of Emerson Electric GmbH & Co. OHG, Alco Controls.

4. Delivery Period – Transfer of risks - Performance

(1) The date stated on the order confirmation shall be the sole delivery date.
(2) Save where otherwise expressly agreed, the seller has done everything necessary on his part for performance of the contract if he has made the contractual goods available for timely despatch, or notified their readiness for collection if they are to be collected by the customer.
(3) In the absence of any special agreement, the risk of possible loss or damage shall pass to the customer at the time when he is informed that he may collect the goods from the seller. If it has been agreed that the goods are to be despatched to a place other than the place of performance, the risk shall be transferred at the time when the seller has delivered the goods to the person or establishment designated for performance of despatch. If despatch is delayed for reasons for which the customer is responsible, the risk shall be transferred to him when readiness for delivery is notified.
(4) If the seller himself does not receive deliveries despite having placed appropriate orders with reliable suppliers, he will be released from his obligation to perform and may withdraw from the contract.
(5) If, after signing of the contract, it emerges that the customer cannot provide an adequate guarantee of solvency and that the seller's entitlement to payment is at risk, in particular if the customer fails to satisfy claims of the seller which have fallen due, the seller is entitled to decline to effect delivery until the customer has made the outstanding payments or put up surety for them. If payment or provision of surety is not made within 12 working days of a request to do so, the seller is entitled to withdraw from the contract.

5. Late delivery

(1) In the case of late delivery for which the seller is responsible, a period of grace of three weeks (domestic) and six weeks (foreign) is regarded as appropriate. This period begins to commence when the seller has received the customer's prompt note letter. If the seller fails to effect delivery within the period of grace, the customer is entitled to seek compensation in lieu of performance or to withdraw from the agreement. However the seller's liability – save in the event of gross negligence or wilful misconduct on the part of senior personnel of the seller – is confined to predictable damage, typical of the contract, which may be suffered by the customer. In particular, the seller is not liable for contractual penalties payable by the customer to his own contracting partner or for the consequences of guarantee commitments made by the customer.
(2) If despatch or collection is delayed for reasons for which the customer is responsible the customer shall make a flat-rate contribution to the storage costs, without the need for effective costs to be proved, amounting to 1% of the invoiced sum per month or part thereof. The other statutory claims of the seller remain unaffected thereby.

6. Force majeure

(1) The delivery lead-time shall be extended by an appropriate period if industrial conflicts (more specifically strike and lockout) or other unpredictable circumstances beyond the control of the parties affect delivery of the goods. This concerns in particular acts of God, war, riot, fire, explosion, accident, flood, sabotage, compliance with requirements imposed by the State, laws, regulations, orders, measures or court injunctions. This shall likewise apply in cases where such circumstances occur with suppliers and sub-contractors of the seller. The seller is not liable for such circumstances, even if they occur at a time when he is already late in performance. In such cases performance of the contract will be postponed.
(2) If performance of the contract or part thereof is postponed on the basis of the provisions of Section 6 (1) for more than 180 successive calendar days, either party may withdraw from that part of the contract which has not yet been performed by giving written notice to the other party.

7. Retention of Title

(1) Ownership of the goods delivered by the seller is only transferred to the customer upon full payment by him (in the case of cheques and bills, after they have been honoured) of all claims, including ancillary claims, damages and future claims arising from the business relationship with the customer.
(2) The customer is required to call the attention of all third parties who make claims to the delivered goods to this reservation of ownership and to inform the seller accordingly. In the event of pledging, a copy of the pledge report must be forwarded. The customer shall not dispose of the goods covered by the retention of title and in particular shall not pledge or make them available as surety.
(3) In the event of late payment, deterioration of the asset situation and/or an application for insolvency proceedings to be opened against the customer, the seller is entitled to collect the goods covered by the reservation of ownership. At that time the authority of the customer to process and sell the goods shall end. In such a case, the customer thereby already grants the seller access to the goods covered by the retention of title.
(4) If the customer disposes of the goods covered by the reservation of ownership, he hereby assigns to the seller purchase price claims, payment claims for works performed or other claims in respect of the goods. This assignment must be disclosed on request. The seller hereby accepts the assignment.

(5) Enforcement of reservation of ownership is not considered as withdrawal from the contract.

(6) As long as the goods remain the property of the seller, processing or transformation shall always take place on behalf of the seller but without any obligation being imposed upon him. If the (co-)ownership of the seller lapses because of a binding obligation, it is hereby agreed that the (co-)ownership of the customer in the complete object shall pass to the seller on a pro rata value basis (invoiced value). The customer shall safeguard the (co-) ownership of the seller without remuneration.

(7) If the value of the existing sureties exceeds the secured claims by a total of more than 20% or by the percentage permitted under the relevant jurisdiction, the seller shall, at the request of the customer, release sureties at the seller's choice in respect of the excess value.

(8) If particular formalities must be fulfilled for the agreement of the retention of title under the laws of the customer's country, the customer must cooperate. If retention of title is not possible under the laws of the customer's country the security which approximates as closely as possible to the retention of title under German law shall be deemed to have been agreed.

8. Material defects

(1) The goods are brand new and may contain parts which are as good as new, together with brand new parts. The statutory time limits for complaint shall only be deemed to have been respected if the order number and the manufacturer's number are indicated in the report of defects.
(2) The seller is liable as follows for the delivered goods, to the exclusion of any further claims:
(a) In the case of material defects which do not, or do not significantly, impair the value and suitability of the goods for the use intended by the seller, the customer cannot derive any further rights.
(b) If, upon transfer of risks, the goods show a material defect the seller is entitled and obliged to effect subsequent performance. Subsequent performance shall be effected at the seller's choice by repair (including repeated repair) or replacement delivery. The seller is also entitled to effect replacement delivery instead of repairs which have already begun, at his own discretion. Replaced parts must be returned to the seller carriage paid. The costs of exchange work shall be charged to the customer.
(c) Insofar as subsequent performance fails definitively, is not effected within an appropriate period set by the customer or is declined, the customer is entitled, at his own choice, to withdraw from the contract, to reduce the purchase price (reduction) in an amount equivalent to the cost of the defect or – within the limits of the following paragraphs – to seek compensation instead of performance. The customer is not entitled to repair the defect himself and claim compensation for the cost incurred as a result.
(d) If a material defect causes damage, the seller is liable according to the statutory provisions in the case of personal injury, if the damage falls within the terms of the Product Liability Act or if it has been caused by wilful misconduct or gross negligence.
(e) In all other cases the seller shall be liable only insofar as the damage was caused by the negligent breach of a substantial contractual obligation or a "cardinal duty". Liability is confined to damage which is typical of the contract.
(f) Further contractual claims and claims in tort on the part of the customer are excluded. In particular, the seller is not liable for damage which has not occurred to the delivered object itself and for loss of profit or other damage to assets of the customer.
(g) In the case of third party products, liability is confined to assignment of the claims which accrue to the seller against the supplier of the third party products.

9. Other liability for compensation

(1) The provisions of No. 8 para. 2 letter d) - g) likewise apply to claims for compensation due to other breaches of obligations.
(2) In the event of any breach of a pre-contractual obligation or an impediment to performance which already existed when the contract was concluded (§§ 311 II, 311a BGB), the obligation of the seller to provide compensation shall be confined to the negative interest.
(3) The seller's liability in tort shall correspondingly be governed by the provisions of No. 8 para. 2 letter d) - g).
(4) In the event of wilful misconduct or gross negligence the seller shall not be liable for the absence of protected rights of third parties.

10. Time-barring

(1) Claims of the seller in respect of material defects shall be time-barred - save in the case of wilful misconduct or § 438 I 2 BGB – subject to § 479 BGB within 12 months of commissioning of the product, but no later than 18 months after the transfer of risks (No. 4, para. 3).
(2) Claims for compensation shall be time-barred within the statutory period in cases of personal injury or where the damage falls within the scope of the Product Liability Act or has been caused by wilful misconduct or gross negligence.
(3) All other claims against the seller are time-barred no later than six months after notification or after a claim could have been notified without gross negligence.

11. Other matters

(1) The fact that individual provisions may be invalid does not affect the validity of the remaining provisions of these General Terms and Conditions.
(2) Save where otherwise stipulated in these Terms and Conditions of Business, the concepts and definitions of the latest valid edition of INCOTERMS shall apply.
(3) Within the framework of exchange transactions, the return of defective goods will only be accepted up to three months after the date of the invoice for the goods delivered in exchange.
(4) The seller points out that all business data are stored within the framework of normal administrative procedures with the aid of an EDP system.
(5) Save where this is required by applicable law, the seller is not liable for the collection, treatment, recovery or disposal (i) of the goods or of any part of the goods if these are classified as "waste" by law or (ii) of any objects for which the goods or any part of the goods represent spare parts. If the seller is required under applicable law (including the law on disposal of electrical and electronic appliances, EU Directive 2002/96/EC (WEEE) and equivalent laws in the EU Member States) to dispose of goods or any parts of the goods as "waste", the purchaser – to the extent that he is not prevented from doing so by applicable law – shall, over and above the contract price, pay to the seller either (i) the regular seller's charge for disposal of these goods or (ii) if there is no such regular charge on the part of the seller, the seller's costs (including all processing transport and utilisation costs and an appropriate supplement for overheads) for the disposal of these goods.

12. Use for nuclear purposes

Should the products be used for nuclear applications (e.g. in a nuclear power plant) the customer must sign the Supplier's Nuclear Liability Indemnification Form. These additional conditions and such indemnification take priority over the present General Terms and Conditions. Copies may be requested from the seller if necessary.

13. Place of jurisdiction – Applicable law

(1) Berlin-Charlottenburg is the place of jurisdiction. This likewise applies to any proceedings relating to documents, bills and cheques. However, the seller is entitled to take proceedings against the customer in any other court which holds jurisdiction over the particular dispute under the law of the Federal Republic of Germany or of the home country of the Customer.
(2) Contractual relations between the seller and the customer shall be governed by German law to the exclusion of UN Convention on Contracts for the International Sales of Goods (CISG) and to the exclusion of all international contracts for the purchase of goods and international law.

14. These General Terms and Conditions replace all previous terms.

15. Compliance with Laws

Customer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Customer are established or from which items may be supplied, and the requirements of any licenses, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of hardware, software, services and technology. In no event shall Customer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licenses, authorisations or licence exceptions relating thereto. Customer agrees furthermore that it shall not engage in any activity that would expose the Seller or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Customer agrees to comply with all appropriate legal, ethical and compliance requirements.

16. Documentation and Software

Use of and ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Goods ("Software") and documentation supplied with the Goods ("Documentation") shall remain with the relevant

Seller Affiliate (or such other party as may have supplied the Software and/or Documentation to Seller) and is not transferred hereby to Customer.

Except as otherwise provided herein, Customer is hereby granted a non-exclusive, royalty-free licence to use the Software and Documentation in conjunction with the Goods, provided that and for so long as the Software and Documentation are not copied (unless expressly authorised by applicable law) and Customer holds the Software and Documentation in strict confidence and does not disclose them to others, or permit others to have access to them (other than Seller's standard operating and maintenance manuals), Customer may transfer the foregoing licence to another party which purchases, rents or leases the Goods, provided the other party accepts and agrees in writing to be bound by the conditions of this Clause.

Notwithstanding Sub-clause 2, Customer's use of certain Software, (as specified by Seller and including but not limited to control system and AMS Software) shall be governed exclusively by the applicable Seller Affiliate or third party licence agreement.

Seller and Seller Affiliates shall retain ownership of all inventions, designs and processes made or evolved by them and save as set out in this Clause no rights in intellectual property are hereby granted.