



General Terms of Sale and Delivery

Made and entered into by:

GfA ELEKTROMATEN GmbH & Co. KG a corporation duly incorporated with limited liability, according to the laws of the Germany.

Edition: I/VL

- 1 Area of application**
- 1.1 The commercial relationship between our company and the customer is regulated exclusively by the following General Terms of Sale and Delivery, unless some other arrangement has been expressly confirmed by us in writing.
- 1.2 Any customer's terms of business that may deviate from the following are not part of our commercial contract, even if we do not explicitly state that these are not accepted in the individual case.
- 1.3 These Terms of Sale and Delivery will be considered to have been accepted by the customer at the latest when the goods are received.
- 1.4 If there is a regular business relationship between our company and the customer, these Terms of Sale and Delivery shall also apply for all orders that we receive from the customer in the future with no obligation on our part to expressly refer to them in each case.
- 2 Offers, technical data, documents**
- 2.1 Our offers are not binding unless otherwise expressly indicated.
- 2.2 Technical information in words, figures, drawings or photographs, e.g. regarding weight, dimensions and performance of our products shown brochures, publications and offers are, unless otherwise expressly indicated, only approximate estimates. We specifically reserve the right to make changes due to modifications in construction.
- 2.3 Cost estimates, drawings and other documents relating to the products we deliver remain our property. We also retain our copyright to these documents even after delivery to the customer. None of the aforementioned documents may be made available to a third party without our prior written permission. We reserve the right to demand return of these documents if we do not receive the order from the customer.
- 3 Validity of the agreement**
- 3.1 The agreement will only become valid when we have confirmed the order in writing and only with the contents specified therein. The scope of our delivery obligations will be determined exclusively by this confirmation of order. Any obvious typing, calculation or printing errors in the confirmation of order will not commit us to any obligations.
- 3.2 Auxiliary agreements, supplements or amendments to the contract will also be legally valid only if they have been confirmed in writing.
- 4 Prices, terms of payment**
- 4.1 Prices are quoted ex works or factory warehouse. They do not include the statutory rate of value added tax, costs of packing, freight, assembly and other costs, with the exception of costs of loading in our works or factory warehouse.
- 4.2 The invoice amount shall, unless the confirmation of order contains some other terms of payments binding for the customer, be payable within eight days with a 2 % discount or within thirty days net. No discount is granted if the customer is in default of payment due for earlier deliveries.
- 4.3 All payments must be effected so that they are credited to one of our accounts at the bank or postal savings bank on the day they become due in a way that allows us free disposal of the paid amount. Any amounts not paid by the customer by the time they become due will incur default interest at a rate corresponding to 3 % above the relevant basic interest rate of the European Central Bank in accordance with the discount rate transfer law or the official cardinal rate of interest replacing this rate, but at least at a rate of 5 % per annum. We reserve the right to assert further claims for damages due to default of payment.
- 4.4 All payments must be received by us free of charges. Sales representative are not entitled to collect bills unless they have been issued with a written authorisation in this regard. Bills of exchange and cheques are only acceptable as payment, and in the case of bills of exchange only if a prior agreement has been reached in writing. Costs of discount, expenses and all costs relating to the collection of the amounts covered by bills of exchange and cheques must be borne by the customer.
- 4.5 The customer is entitled to set off against our claims for payment only undisputed or legally established counterclaims. A right of lien against our claims can also only be asserted on the basis of such a counterclaim.
- 4.6 All claims for payment against the customer arising from our commercial transactions, including those for merchandise that was not delivered but is ready for dispatch, are immediately due for payment irrespective of any respite arrangements or agreed postponement of payment
- 4.7 if the customer is in default of payment of some claim for reasons for which the customer is responsible, especially when a cheque or bill of exchange issued by the customer or a direct debit charged to his bank account is not honoured:
- 4.8 if there is a significant deterioration of the customer's asset or financial situation after the confirmation of order has been sent, or if any facts or circumstances come to our attention that could put the customer's solvency or creditworthiness seriously in doubt and which would have prevented us from delivering on credit had we known about this situation beforehand. A significant deterioration of the customer's asset or financial situation will in particular obtain if the customer ceases payment, if application has been made for initiation of insolvency proceedings against his assets, or if an enforcement order against the customer by some creditor has been unsuccessful;
- 4.9 if the customer asserts that he is unwilling or unable to fulfil punctually his payment obligations from a contract concluded with us for some reasons for which he himself is responsible;
- 4.10 if the customer jeopardises the commercial safety of our claims for payment against him or their enforceability by grave infringements of contractual obligations, or if it emerges that the customer has deliber-

- ately made misleading statements during contract negotiations.
- In all of the above cases we shall be entitled to demand, according to our discretion, advance payment in cash or security for all subsequent deliveries. We are furthermore entitled in all of the above cases to cancel any rebates or discounts or any other benefits granted to the customer.
- 4.11 If the customer is in default of his payment obligations or if these become due on the basis of some reason stated under number 6, 7, 8, 9 and 10 above, we shall be entitled to, without prejudice to any other rights, demand return by the customer of merchandise not yet paid - which shall not constitute a withdrawal from the contract - and, following issue of a warning and unsuccessful expiry of a suitable prolongation period, to withdraw from all outstanding contracts with the customer and demand compensation for damages due to non-fulfilment. We shall also have the same rights after prior warning and specification of a respite period if the purchaser refuses acceptance of a delivery in part or in full or if the customer asserts that he is unwilling or unable to fulfil punctually his payment obligations from a contract concluded with us for some reasons for which he himself is responsible.
- 5 Term of delivery**
- 5.1 If a term of delivery has been agreed, it shall commence on the day our written confirmation of order is sent, but not before clarification of all details of order and not before all necessary documents, permits and releases have been submitted by the customer and the agreed down payment has been received.
- 5.2 The term of delivery will be considered fulfilled when the object has been dispatched by the due date or - if it has to be requested or collected by the customer - the customer has been advised of readiness for dispatch.
- 5.3 In the case of force majeure or any unforeseen circumstances outside our control, the term of delivery will be prolonged by a suitable period. If these circumstances render delivery impossible or impractical, we shall be entitled to withdraw from the contract to the extent that we have not yet fulfilled it. The customer shall not be entitled to raise claims for damage compensation due to this withdrawal from contract. The term unforeseen circumstances as used in this paragraph includes every event outside our control that could obstruct, handicap or delay production, delivery or transport of the merchandise permanently or in part, i.e. in addition to cases of force majeure, particularly war and similar situations, civil unrest, state intervention, changes to national trade or energy policy, operational disturbances outside our control, strikes and lockouts, shortages or abnormal increases in the price of raw materials, transport or labour, transport obstructions, export, import or transit prohibitions, shipwreck or other damage to the means of transport, irrespective of whether in the country of origin, transit or destination. In the case of import and export transactions, we shall be entitled to withdraw from the contract if the necessary permits have not been issued to us.
- 5.4 If we are delayed in delivery, the customer can, after expiry of a respite period of at least one month that he has set in writing, withdraw from the contract to the extent that it has not yet been fulfilled by us. Damage compensation due to non-fulfilment can only be claimed, and shall be limited only to the unfulfilled part of our delivery obligations, if we or our agents have caused the delay in delivery wilfully or by gross negligence.
- 5.5 Fulfilment of the term of delivery will in all cases be dependent on the customer fulfilling his contract obligations in advance.
- 6 Dispatch and transfer of risk**
- 6.1 Delivery will be made, unless otherwise agreed in advance, ex works or factory warehouse. If cost clauses are employed, the terms and definitions of INCOTERMS 1990 will apply unless otherwise regulated under these General Terms of Sale and Delivery. We reserve the right to make partial deliveries.
- 6.2 With the handover of the merchandise to the transport company, freight contractor or any other person or institution commissioned to carry out the dispatch, but at the latest when the merchandise leaves our works or factory warehouse, the risk - also in the case of FOB and CIF deliveries - will be transferred to the customer. Dispatch, selection and mode and route of transport, as well as the suitable packing for the merchandise will be decided by us with all due care but - except in cases of wilful or gross neglect - without acceptance of any liability. If, however, in some exceptional case, claims for transport damage or losses are raised against us, the customer will only be entitled to assert these claims if he has, before payment of the freight costs, ensured that indication of damage and/or loss is entered correctly and in time in the freight documents and freight invoices and ensured that the record sheets are correctly filled, and if he has notified us or the transport companies of this damage or loss within the period of one week after receipt of the merchandise at the destination, or, if the goods are not received, after delivery of the advice of readiness for dispatch, and has retained the merchandise with the packing for our examination.
- 6.3 We are only obliged to provide transport insurance after a written agreement has been made with the customer. Costs of this insurance will be borne by the customer.
- 6.4 If dispatch or collection of the merchandise is delayed due to reasons for which the customer is responsible, we shall be entitled to store the merchandise at the customer's cost and risk according to our best judgement. After expiry of a suitable respite period set by us we shall be entitled to withdraw from the contract and sell the undelivered or uncollected quantities to some other customer. In this case, the customer shall be liable to pay the difference between the agreed purchase price and proceeds from this sale.
- 7 Retention of title**
- 7.1 The delivered merchandise shall remain our property until complete fulfilment of all current and future claims against the customer, irrespective of the legal grounds on which these may be based.
- 7.2 The customer must guarantee safe and correct storage of the objects remaining in our property and protect them at his own cost against theft, fire and other material damage. Claims against the insurance company due to damage to the merchandise are hereby assigned to us by mutual agreement to the value of the retained property.
- 7.3 The customer may sell the objects remaining in our property only within the framework of his regular business dealings, and may not pledge them or transfer them to secure a debt or in any other way allow rights of disposal to any third party.
- 7.4 The customer hereby transfers all claims and receivables against third parties resulting from

- agreements, disposals (especially from further sale), confiscation or other legal acts relating to objects belonging to us. If the customer's claims in this regard also relate to other objects or services, only the part of the claim amount corresponding to the value of the objects belonging to us at the time of the legal act will be transferred to us. The customer is entitled to collect cash claims within the framework of his regular business. He must, however, allow us the right to collect these amounts if he has failed to fulfil his obligations towards us or if he has become insolvent. The customer must support us to the best of his ability in collecting these amounts and to advise the third party in writing of this assignment when we make this request. We shall be entitled to demand at any time all information and documents necessary to assert our claims.
- 7.5 We are entitled to demand return of the objects remaining in our property at any time if the customer is in default of payment or infringes against any important obligations on his part. The customer shall not be entitled to claim a right of retention against this demand for return of the merchandise. The customer must tolerate this removal and allow us access to his premises for this purpose. The assertion of this demand for return and the removal of the relevant merchandise shall not constitute a withdrawal from contract. If, however, we have set a period with threat of rejection, have withdrawn from the contract and subsequently sold the goods, the customer shall then be liable for the difference between the agreed purchase price and the proceeds from the sale. The customer shall moreover also bear costs of removing the merchandise. We shall also be entitled to cancel under the same conditions the customer's authorisation to sell the delivered objects and to collect all cash claims assigned to us. In this case, we shall be entitled to assert the assigned claims and receivables directly.
- 7.6 The customer must inform us in writing immediately of any claims or seizure by a third party of the goods in our property or the claims and receivables assigned to us - in particular any execution proceedings or other seizures - as well as of all damage to these objects.
- 7.7 The customer is obliged to pay compensation for all damage and costs - including court and legal costs - that we incur due to failure to fulfil his or his customer's obligations or in the course of measures of intervention against seizure of the property by a third party.
- 7.8 If the value of the securities provided to us exceed our claim against the customer in the particular case by more than 20 %, we shall when requested return a corresponding portion of the securities of our own choice.
- 8 Warranty**
- 8.1 We guarantee that our products are state-of-the-art and free of production and material faults and that they contain all promised features and characteristics. The warranty period is 6 months, commencing with the date of delivery. The customer can claim guarantee only if he has correctly examined the products on receipt in accordance with paragraph 2 and has notified us of any defects.
- 8.2 The customer must examine the delivered merchandise immediately on receipt and inform us in writing of any defects or shortages at the latest within one week. We must receive written notification of any defects or shortages that are not noticed during this acceptance examination as soon as they are discovered. The merchandise will otherwise be considered to have been accepted (§§ 377, 378 of the German Civil Code - HGB).
- 8.3 A guarantee of product characteristics will only be on the basis of a relevant explicit written declaration by us that goes beyond a mere description of merchandise characteristics.
- 8.4 In the case of any defects in the merchandise we deliver, we shall only be liable with exclusion of any further or consequential claims as follows:
- a) We shall be entitled to improve or replace, according to our choice, all parts that within six months of the date of delivery unusable or severely restricted in use due to some situation or condition that is proven to have been before transfer of risk - especially due to incorrect design, poor materials or faulty construction. Replaced parts are our property. We shall also be entitled at our own discretion to deliver an entirely new and faultless object. Only after our improvements or our replacement delivery have failed, or if these are also found to be faulty, can the customer demand reduction of payment or cancellation of the contract according to his choice.
- b) The customer's right to claim against us due to faults will in each case be limited to the period of six months from the date of delivery that we have granted to the customer for delivery of the object in which fault was found.
- c) We accept no guarantee for damage incurred for the following reasons:
 Unsuitable or unprofessional use, faulty assembly or installation by the customer for a third party, natural wear, incorrect or negligent treatment, especially irregular strain or use, use of unsuitable tools or materials or substitute materials, faulty building construction, chemical influences, unauthorised repair of the object by the customer or by a third party.
- d) The customer shall give us the necessary time and opportunity to carry out any improvements or replacement deliveries that we deem necessary. Otherwise we shall be released from all liability for defects or shortages. This release shall also apply if the customer or a third party has carried out repairs or any modifications to the delivered object without our prior written permission.
- e) We can refuse to remedy defaults or shortages as long as the customer fails to fulfil his obligations towards us.
- 8.5 The customer shall have no further or consequent claims towards us, in particular claim for compensation for damages not incurred directly by the delivered merchandise itself, irrespective of the contractual or liability circumstances from which such a claim can be derived, unless these claims are based on the absence of promised characteristics or if we or our agents caused a situation or circumstances leading to a claim for damage compensation either wilfully or by gross negligence. If we or our agents are only guilty of gross negligence, the damage compensation amount may in no case exceed the amount of damage or loss of earnings incurred by the purchaser which we would have concretely foreseen at the time the contract was concluded as a possible consequence of breach of contract or some other act causing an obligation to provide compensation taking account of all information known to us then.
- The above limitations of liability shall also apply for any claims that could be made against us resulting from some inadequate advice about characteristics and use of the delivered merchandise - unless these characteristics were expressly guaranteed. The customer shall have no other claim for compensation for any expenses incurred in the course

of or as a result of establishing and removing defects or shortages in the objects delivered by us.

9 Applicable law, invalidity of individual provisions

- 9.1 All agreements and legal acts relating to the delivered merchandise shall be regulated exclusively by the law of the Federal Republic of Germany.
- 9.2 If any individual provisions of this contract are or become void or ineffective in law, the remaining provisions shall be valid notwithstanding.

10 Place of performance and legal venue

- 10.1 Place of performance for our deliveries and for all payments is Düsseldorf, Germany.
- 10.2 The exclusive legal venue for all litigation, including procedures relating to bills of exchange and cheques, is Düsseldorf, provided an agreement on legal venue is legally admissible. We shall in any case be entitled to take legal action against the customer at his general legal venue.