

General Terms and Conditions of Business and Delivery

1. General Provisions / Scope of Application

The following Terms and Conditions of Business and Delivery (hereinafter referred to as the Terms) apply to all business relationships of EWAB Engineering GmbH with its registered address at Hann. Münden as well as of EWAB Engineering GmbH, Deggendorf with its registered address at Deggendorf and our customers who are entrepreneurs within the meaning of § 14 BGB, legal entities and separate estates under public law. Any deviating, opposing or complementing terms and/or other unilateral provisions of the customer, such as e.g. purchase terms, shall not become part of the agreement even if an order is accepted, unless we explicitly agree that such terms shall apply.

Our Terms are available to our customers on our home page www.ewab.com/agb-de for access and printout.

2. Offers / Contracting

Our offers, whether made in writing, in text form or orally, are invariably subject to confirmation and non-binding.

Any offer documents such as drawings, illustrations, particulars regarding mass, etc., are only approximately definitive, they only commit us to accepting an order if they are explicitly referred to as binding. In any other event, orders shall only be considered accepted if they have been confirmed by us **by order confirmation**.

3. Delivery Period / Delivery

- a. Unless agreed otherwise, we deliver "ex works". Any agreements deviating from this shall apply only upon our explicit approval. Any fixed date shall apply only if explicitly agreed upon. The relevant factor for compliance with the delivery date or delivery period is the notification by us of readiness for shipment or pick-up. However, prerequisite for the delivery date or commencement of the delivery period shall be that any and all technical and business-related details of the order have been settled (e.g. provision of detail drawings, sample parts, descriptions of operational sequences, specifications, etc.) and the customer has fulfilled all of his obligations (procurement of official permits, certificates, payment of a deposit, etc.).
- b. The delivery period shall be extended appropriately in case any unforeseen events occur, regardless of whether any such occurrence has taken place at our works or at a supplier or subcontractor. Such occurrences include in particular: business interruptions, strikes, lock-outs.
- c. The delivery period shall have been complied with by us if the article of delivery has left our works by the time of expiry of the delivery period or readiness for shipment has been declared. In so far as acceptance must be effected, the date of acceptance – except in the event of legitimate rejection - shall be relevant.
- d. In the event that shipment or acceptance are delayed for reasons the orderer is liable for, he shall be charged for the costs arising from any such delay.
- e. While the overall quantity remains unchanged, within the agreed delivery periods we shall be entitled to effect part deliveries and part performance to the extent that this is reasonable for the customer.
- f. Even if a fixed delivery period or a fixed delivery date has been agreed upon, we require an appropriate extension period in case of any delay occurring. Upon expiry of such an extension period without effect, the customer may withdraw from such performance or part performance which at the time of expiry of the extension period has not been declared ready for shipment.

4. Passing of Risk / Shipment

Any goods declared ready for shipment must be taken over by the partner without delay. Otherwise we shall be entitled to ship such goods at our discretion or store such goods at the customer's expense and risk. In the absence of any specific agreement the means and route of transport shall be selected by us.

Upon transfer to rail transport, to the hauler or the carrier, or respectively upon commencement of storage, though at the latest at the time the goods leave the works or storage facility, the risk shall pass to the customer, including in cases where we have assumed delivery.

In the event of any delay in shipment or assembly the customer is liable for or the customer is in default in acceptance for other reasons, the risk shall pass to the customer from the moment of occurrence of the delay.

5. Assembly

In case any assembly, start-up and instruction of operating personnel needs to be provided to the customer, we shall provide appropriate qualified fitters. To the extent that no separate consideration has been agreed upon for such services, these shall be provided contingent upon the effort required within the limits of what is to be considered usual as consideration. The customer shall provide appropriate lifting devices (e.g. forklifts, lifting trucks, etc.) including authorised personnel and with sufficient lifting power, as well as auxiliary materials (lifting means, chains, etc.) free of charge. The customer shall be charged for the assembly, start-up and instruction costs even if he refrains from subsequently ordering the goods required for his intended project.

6. Prices / Terms of Payment

- a. Unless agreed otherwise, our prices are always net prices to be understood ex works excluding packaging, shipment, postage and insurance as well as excluding statutory value-added tax.
- b. The terms of payment for our invoices are subject to the specific agreements. In case no terms of payment have been agreed upon, the following terms shall apply:
30% upon receipt of order and confirmation of order by EWAB
60% upon complete delivery or in case of default in acceptance on the customer's part 30 days upon declaration of readiness for delivery
10% upon handover in working order or start of production or respectively in case of default in acceptance at the latest 14 days upon declaration of readiness for handover in working order.
All payments due as net amounts within 14 days.
- c. In the event that we become aware of any facts placing the orderer's creditworthiness in doubt (e.g. due to non-payment of a cheque), or the orderer defaults on a payment by more than two weeks, our entire remaining claim shall be due for payment. In such an event, deliveries may be made contingent upon matching payment with delivery.
- d. In case the customer fails to pay as agreed, we shall, pursuant to § 353 HGB, be entitled to charge interest from the due date. Beyond this, in the event of default we shall be entitled to charge default interest to the amount of 9 percentage points above the respective base interest rate of the European Central Bank. In the event of default in payment, upon having notified the customer, we may additionally discontinue performance of our obligations until the consideration has been received.
- e. Further, in the event of default regarding a claim for consideration, the customer shall be liable to pay a lump-sum compensation to the amount of EUR 40.00. This shall also apply in the event that the customer is in default regarding any payment on account or any other part payment. The lump sum of EUR 40.00 is to be credited against any compensation due, to the extent that the damage is due to costs of legal prosecution.
- f. The agreed payment period begins from the date of issue of the invoice, though at the earliest from the date of delivery.
- g. Waiving §§ 366, 367 BGB, we shall determine which claims the customer is to satisfy by way of payment.

7. Defects

- a. The goods are to be examined for defects immediately. Any visible defects or non-conformance objections must be reported without delay, though at the latest within 7 days upon delivery, otherwise the goods shall be deemed accepted. Any notice of hidden defects shall be considered given in good time if such notice is received by us within 7 days upon their discovery.
The constitution of the goods is exclusively in accordance with the agreed technical delivery specifications. In case we are under contract to deliver according to our partner's drawings, specifications, patterns etc., that partner shall assume the risk of suitability for the intended purpose. The decisive factor for determination of conformity of the goods is the point in time the risk passes to the customer in accordance with Item 4 of these Terms.
- b. In the event of objections we shall be given the opportunity to jointly determine the defect. We shall not be liable for any defects caused by inappropriate or improper use or handling of the goods by the customer or any third parties. This shall apply accordingly to material defects occurring due to usual wear and tear, poor maintenance, non-compliance with operating instructions or use of inappropriate operating resources on the customer's part. Also excluded from liability for material defects are wearing parts such as greases, oils, tube packages/hose packages, exterior peripheral connections, cables subject to strain from torsion and bending and components designated as wearing parts.
- c. In the event of justified, timely objection we shall remedy the defect at our discretion either by subsequent improvement or replacement delivery.
- d. In the event that we default on subsequent improvement or replacement delivery, the buyer may withdraw from the contract upon expiry without effect of an appropriate additional respite period determined by the buyer.
- e. Any goods-related public statements or promotions on our part, in particular in advertising, brochures or prospecti, do not constitute a contractual statement regarding the constitution of the goods or articles.
- g. Any claims of the customer due to defects shall become void twelve months upon delivery of the article or respectively acceptance of the work. This does not apply to cases where longer periods are imperatively stipulated by law, i.e. in cases of damage to life, body or health, intentionally or grossly negligent breach of obligation, fraudulent concealment of a defect or in case of product liability pursuant to the product liability law.

8. Liability

- a. We assume unlimited liability for any damage to life, body and health arising from intentional or negligent breach of obligation on our part, on the part of our legal representatives or agents, as well as for any damage covered by liability pursuant to the product liability law, as well as for any damage based on intentional or grossly negligent breach of obligation, as well as on fraud or assumption of a warranty.
- b. In all other cases we also assume liability for any damage caused by ordinary negligence, to the extent that such negligence concerns the breach of contractual obligations whose fulfilment is of relevance to achieve the purpose of the contract and whose fulfilment the customer regularly relies upon or is entitled to rely upon (so-called cardinal duties, such as delivery of the article free from defects). However, we only assume liability to the extent that such damage is typically in connection with the contract and foreseeable and limited to an amount of EUR 1,000,000.00 per damage case or respectively a maximum of EUR 1,000,000.00 per year. In cases of ordinarily negligent breaches of non-essential secondary contractual obligations we shall not assume any liability.
- c. The liability limitations in the above sentences also apply to the extent that liability for our legal representatives, executive employees and other agents is concerned. Any more extensive liability is excluded regardless of the legal nature of the claim asserted. In any case where liability on our part is excluded or limited, this also applies to personal liability of its employees, staff members, collaborators, representatives and other agents.
- d. Any claims for damages shall become void after one calendar year upon delivery of the article or provision of the service regardless whether the customer has any knowledge of the cause and/or the causer of the damage. The short period of limitation does not apply in cases where longer periods are imperatively stipulated by law, i.e. in cases of damage to life, body or health, intentionally or grossly negligent breach of obligation, fraudulent concealment of a defect or in case of product liability pursuant to the product liability law.

9. Reservation of Proprietary Rights

- a. All goods delivered remain our property until any and all claims, including future claims, from the business relationship have been satisfied. This shall also apply if the individual claim has been included in current accounts and the balance has been recognised.
- b. The customer shall be under obligation to deposit the goods subject to retention of title carefully and insure them against loss and damage at his own expense. He hereby transfers his claims from any insurance contracts to us in advance. We accept this transfer. The customer shall be under obligation to separately store and mark the goods which are our property.
- c. Any processing or transformation of the goods subject to retention of title shall be effected by the orderer on our behalf without giving rise to any obligations on our part from this. If the customer combines, mixes, blends or processes the goods subject to retention of title with other goods or transforms them with other goods, we shall be entitled to co-ownership of the new goods resulting from this in proportion of the invoice value of the goods subject to retention of title to the values of the other goods. To this extent, the new goods shall be deemed goods subject to retention of title within the meaning of these Terms.
- d. Any alienation of the goods subject to retention of title shall only be permitted in regular business transactions. Any other forms of disposition, such as pledging and assignment by way of security, are not permitted. Any and all claims the customer is entitled to regarding the goods subject to retention of title from resale or for any other legal reasons the customer hereby transfers to us in advance, however only to the amount of 120 % of the unpaid share of our claim to the purchase price. Any transferred claims subject to this are released by us. In case of co-ownership the transfer only extends to the portion of the claim corresponding to our co-ownership. We hereby accept the transfer. Any resale is permitted only if this transfer has been secured.
- e. The customer shall be authorised until further notice to collect the transferred claims in regular business transactions. Upon our demand the customer shall notify his creditors of the transfer. We have the right to carry out such notification of the transfer at any time in the event that the customer defaults on his payment obligations.
- f. The customer's authorisation regarding disposition of the goods subject to retention of title and collection of transferred claims shall lapse in case of non-compliance with the payment terms, of unauthorised disposition, of bill and cheque protests as well as in cases where insolvency proceedings have been filed for or a material deterioration of the customer's financial situation becomes known to us. In such cases we shall have the right to immediately take possession of the goods subject to retention of title without withdrawing from the contract, for this purpose to enter the customer's premises, to demand relevant information regarding the goods subject to retention of title and any possible claims resulting from their resale as well as to inspect the customer's books to the extent that this serves the purpose of protecting our rights. Takeover of the goods subject to retention of title shall only constitute a withdrawal from the contract if we explicitly declare this to be the case.
- g. If the value of the securities provided to us exceeds our total claims by more than 10 %, the excess securities shall be released by us at our reasonable discretion and by our own choice.

10. Instruction / Product Liability

The customer shall be under obligation to carefully take note of any product information issued by us and to pass any such information on to his buyers. The customer shall have the obligation to also establish such an agreement with his buyer and to provide proof of this upon our request. In the event that the customer fails to meet this obligation and any product liability claims arise from this, the customer shall indemnify us in our internal relationship from any such claims upon first demand.

11. Data Protection

With regard to data protection law we are responsible for processing the customers' personal details for the purpose of performance of contract pursuant to Art. 6 Sect. 1 lit. B of the GDPR. The customers' personal details are processed exclusively for performance and handling of the contract. Without the customer's approval personal details shall not be disclosed to any third parties for any other purposes than for performance of contract. The data shall be deleted as soon as it is no longer required for the purpose of their processing, unless we are under obligation to store such data for a longer period pursuant to Art. 6 Sect. 1 lit. c of the GDPR due to retention and documentation obligations on the basis of tax and trade law or if the customer has agreed to continuing storage pursuant to Art. 6 Sect. 1 lit. A of the GDPR.

Applicable data protection law grants the customers in relation to us the following data subject rights regarding processing of their personal details:

Right to information pursuant to Art. 15 GDPR, right to correction pursuant to Art. 16 GDPR, right to deletion pursuant to Art. 17 GDPR, right of limitation of processing pursuant to Art. 18 GDPR, right to notification pursuant to Art. 19 GDPR, right to data transferrability pursuant to Art. 20 GDPR, right of revocation of approval pursuant to Art. 7 Sect. 3 GDPR as well as right of complaint to the supervisory authority pursuant to Art. 77 GDPR.

The customer can contact our data protection officer regarding matters of data protection under data.protection@ewab.com or under Datenschutzbeauftragter, EWAB Group Services GmbH, Zum Lichtblick 2, 34346 Hann. Münden.

12. Third-Party Rights / Intellectual Property Rights

If deliveries are made according to any plans, drawings, models, analytical specifications or other details provided by the customer and this results in a violation of any third-party rights, particularly protective rights, the customer shall be under obligation to indemnify us against these claims upon first demand regarding the law of obligations and shall have the obligation, if applicable, to provide us with a liquid security in the form of a directly enforceable bank guarantee without limit of time.

We reserve any and all property and intellectual property rights to samples and proposals, drawings or technical documents regarding the goods to be delivered or their manufacture. These items and/or this information may only be used in connection with the goods delivered by us and must not be made accessible to any third parties without our explicit approval.

13. Confidentiality

Each contracting party shall keep confidential from any third parties any and all documents (also including samples, models and data) and knowledge it receives from the business relationship, shall use such documents and knowledge only for the jointly pursued purposes and maintain such confidentiality with the same diligence as for its respective own documents and knowledge if the other contracting party designates such documents and knowledge as confidential or has an overt interest in keeping them confidential. This obligation shall begin from the first receipt of the documents or knowledge and shall end, unless agreed otherwise, 24 months upon termination of the business relationship.

The obligation does not apply to any documents and knowledge which are generally known or were already known at the time of receipt by the contracting party without its having been under obligation of confidentiality or which are subsequently passed on by a third party authorised for disclosure or which are developed by the receiving contracting party without utilisation of any documents or knowledge of the other contracting party which are to be kept confidential.

14. Force Majeure

Force majeure, labour disputes, unrest, measures by the authorities and other unforeseeable, unavoidable and serious events shall release the contracting parties from the obligation to perform for the duration of the interruption and to the extent of its effect. The contracting parties shall be under obligation to immediately provide the required information to a reasonable extent and to adapt their obligations to the changed circumstances in good faith.

15. Place of Performance / Court of Jurisdiction / Applicable Law / Final Provisions

The place of performance for all deliveries and services shall be Hann. Münden (to the extent that the business agreement [is established] between the customer and EWAB Engineering GmbH with its location in Hann. Münden) or respectively Deggendorf (to the extent that the business agreement [is established] between the customer and EWAB Engineering GmbH, Deggendorf with its location in Deggendorf). The court of jurisdiction for any and all legal disputes, also including cheque and bill proceedings, shall be the court in charge of our business location in Hann. Münden or Deggendorf. We shall also have the right to sue at the registered address of our contracting partner.

The law exclusively applicable to the contractual relationship shall be the respectively current law of the Federal Republic of Germany with the exception of the conflict of laws in international private law. Application of the United Nations Convention of 11 April 1980 on Contracts for the Purchase of Goods (CISG - "Vienna Purchase Rights") shall be excluded.

As of: 20/09/2018

AR BR CH CN DE ES FR IT MX SE UK US