

General Terms and Conditions of Business

Electric Machine and Fabrication, LLC

§ 1 Validity of the terms and conditions

1. Goods and, services provided and offers submitted by the Seller shall be based solely on these terms and conditions of business. This means that these terms and conditions shall also apply for all future business relationships, even if they have not been expressly agreed again. These terms and conditions shall be regarded as having been accepted by the receipt of the goods or performance at the latest. Counter confirmations of the Buyer referring to his terms and conditions of business or purchase are hereby rejected.
2. Individual agreements are not binding, even if the Seller does not expressly contradict them.

§ 2 Offers and concluding contracts

1. The Seller's offers are subject to change without notice and are nonbinding.
2. The Buyer shall accept liability that third party rights are not violated by using the drawings, samples and similar aids and has to exempt the Seller from any disadvantages he may suffer as a result either from legal action or in terms of damages.
3. The sales staff of the Seller are not authorized to make verbal side agreements or verbal assurances exceeding the content of the written contract.

§ 3 Prices

1. Prices shall be regarded as being subject to change without notice.
2. Additional goods and services shall be invoiced separately.

§ 4 Passing of risk, Damage in transit

1. Risk shall pass over to the Buyer as soon as the product has been handed over to the person transporting the goods or when the product has left the Seller's stores for the purposes of being delivered. If delivery is impossible without it being the fault of the Seller, risk shall pass over to the Buyer when the Buyer is notified that the product is ready for delivery. This shall also apply if the product is to be delivered freight-free and irrespective of the method of delivery.
2. Insurance cover shall only be taken out for damage in transit at the request and expense of the Buyer.

§ 5 Delivery

1. Delivery dates or delivery periods which can be agreed as being either binding or non-binding, must be made in writing.
2. Delivery periods shall begin on the date of our order confirmation.
3. The Seller shall not be to blame for delays in the supply of goods and services, even if he has agreed delivery periods and dates on a binding basis, if these are as a result of force majeure and as a result of events which make it significantly more difficult or impossible for the Seller to render performance and for which he is not to blame. These include in particular strike, lock-out, official instructions etc, even if they occur at the Seller's supplier or sub-supplier and consequently prevent the Seller from delivering on time himself. They shall entitle the Seller to postpone the delivery of the goods or rendering of the services by the period of time in which he is prevented from doing so plus an appropriate start-up time or to withdraw either completely or – in so far as this is reasonable – partially from the part of the contract not yet fulfilled.
4. If the Seller is prevented from fulfilling his contractual performance for more than three months, the Buyer shall, having set an appropriate subsequent period for the Seller to do so, be entitled to withdraw from the part of the contract not yet fulfilled. If the delivery period is extended or if the Seller is exempted from his obligation, the Buyer will not be able to derive any claims for damages in compensation as a result. The Seller can only rely on the named circumstances if he has informed the Buyer straight away.
5. The Seller shall be entitled to make partial deliveries and render part performances at any time to a reasonable extent.
6. If the delivery date is exceeded by more than 6 weeks, the Buyer shall consequently be entitled to set the Seller a reasonable subsequent period to deliver the goods. If the goods have still not been delivered when the subsequent period lapses, the Buyer shall be entitled to withdraw from the contract.

§ 6 Warranty

1. The point in time at which risk passes over shall be instrumental for determining the condition in accordance with the contract.
2. If the Seller's operating or maintenance instructions are not followed, or if modifications are carried out to the products, or if parts are replaced or expendable materials used which are not in compliance with the original specifications, any warranty shall consequently lapse, if the Buyer cannot refute the substantiated assertion to the effect that one of these circumstances, and nothing else has caused the fault.
3. The Buyer shall have to inspect the delivered object straight away after it has been delivered; the faults identified in doing so are to be notified to the Seller in writing within an exclusive period of 48 hours, otherwise the goods shall be regarded as having been approved.
4. If the Buyer does not allow the Seller the time and opportunity straight away to convince himself that the faults do exist and to fulfil his warranty obligations, and if the Buyer does not make the goods about which he has made a complaint available straight away, all warranty claims shall lapse.
5. Material and manufacturing defects which appear within the period stipulated within the contract or by West Virginia law, shall be rectified by the Seller either by repair or replacement as the Seller sees fit. The Buyer shall only be entitled to cancel the contract or reduce the purchase price if the Seller decides that a repair or replacement cannot be made or if the repair or replacement selected by the Seller has failed.
6. In the event of concealed defects which cannot be identified even if the goods are carefully inspected immediately upon receipt, the notification period shall be extended up to the expiry of the statutory warranty period at the latest. These faults are to be notified straight away within an exclusion period of two weeks, otherwise they too shall be regarded as having been approved.
7. The above sections include a final warranty for the products alone. They exclude other warranty claims of all types. This warranty shall not cover compensation claims for damages based on quality warranties which the Buyer should insure against the risk of consequential harm caused by a defect.

§ 7 Retention of title

1. The Seller shall be granted the following securities until all claims have been fulfilled (including all demands for balances of account under open accounts) to which the Seller is entitled against the Buyer and the companies within his group for any legal reason both now and in the future. At the request of the Buyer, the following securities shall be released by the Seller at the Seller's choice, provided that their value exceeds the claim on a permanent basis by more than 20%.
2. The goods shall remain the property of the Seller. If the goods are processed, combined, mixed and / or transformed, such actions shall always be for the Seller as manufacturer, but without any obligation for the Seller however. If the Seller's (co-) ownership expires as a result of the goods being processed, combined, mixed and / or transformed, it shall consequently be agreed here and now that the Buyer's proportion of the (co-) ownership to the thing as a whole (invoice value) shall

pass over to the Seller. The Buyer shall keep the Seller's (co-) ownership in safekeeping free of charge. Goods to which the Seller is entitled to (co-) ownership shall be designated in the following as goods subject to reservation of title.

3. The Buyer shall be entitled to process and to sell the goods subject to reservation of title in proper commercial transactions, as long as he is not in arrears. Pledges and other transfers or ownership by way of security are not allowed. The accounts (including all balances of account from open accounts) created from the resale or by another legal reason (insurance, illegal act) with regard to the goods subject to the reservation of title shall be assigned here and now by the Buyer by way of precaution to the Seller up to the amount of the claim for the purchase price owed to the Seller. The Seller authorizes the Buyer irrevocably to collect the accounts assigned to the Seller for the account of the Seller but in the name of the Buyer. This collection authorization can only be revoked if the Buyer fails to fulfil his payment obligations properly.
4. In the event of third party seizures on the goods subject to the reservation of title, the Buyer shall point out that the goods are owned by the Seller and notify the Seller without delay. At the request of the Seller, the Buyer shall be obliged to furnish the Seller with all information about the whereabouts of the goods and to provide the Seller with the necessary documents.
5. In the event of conduct by the Buyer which is in breach of the contract – in particular default in payment – or if the Seller becomes aware of circumstances which question the creditworthiness of the Buyer (Cf. § 8 (6)), the Seller shall be entitled to take back the goods subject to reservation of title or if necessary to demand the assignment of the Buyer's rights to the surrender of the goods against third parties. If the Seller takes back or pledges the goods subject to the retention of title, this shall not constitute a withdrawal from the contract.

§ 8 Payment

1. Provided that nothing has been agreed to the contrary, the Seller's invoices are payable 30 days from date of invoice.
2. Payment instructions, bank transfers, checks and drafts shall only be accepted by separate agreement and only for the sake of fulfilment after all collection and discount fees have been calculated.
3. The Seller shall be entitled, in spite of the Buyer's terms and conditions to the contrary, to offset payments first of all against older debts and the Seller shall notify the Buyer of how the calculation has been made. If costs and interest have already been incurred, the Seller shall be entitled to count the payment first of all against the costs, then against the interest and finally against the main performance.
4. If the agreed period for payment is not complied with, the Seller can demand default interest amounting to 18% annually and assert a claim for damages over and above this if he can provide evidence of such damages. The Seller can also make the Buyer responsible for any default damages.
5. The Buyer shall only be entitled to offset, exercise a retention or reduce the contract price, even if he can assert notification of defects or counter claims if the counter claims have been declared final and absolute in a court of law or if they are undisputed.
6. Filing for bankruptcy or composition proceedings, an application by a creditor for the submission of a declaration in lieu of an oath, the dishonoring of a check, the fact that a draft from the Buyer or from the owner of the company has been protested or if the Seller becomes aware of other circumstances which give rise to doubts as to the creditworthiness of the Buyer, shall release the Seller from further obligations to supply the Buyer and shall entitle the Seller to make the entire balance owing to him payable, even if the Seller has accepted checks. In this case the Seller shall, in addition to this, be entitled to demand payment in advance or securities as well as to revoke terms of payment already granted.
7. Buyer shall be liable to the seller for all costs and expenses of Seller, including attorney's fees incurred in the collection of any indebtedness of Buyer or in the enforcement of any rights hereunder, including repossession of any goods. Furthermore, Seller shall not be liable to Buyer for any damages or losses sustained by Buyer as a result of the enforcement by Seller of any of its rights or remedies hereunder, and Buyer hereby waives all defenses to Seller's enforcement of its rights hereunder. No failure or delay on the part of the seller in exercising any right, power or remedy will operate as a waiver thereof.

§ 9 Design modifications

The Seller shall reserve the right to carry out modifications to the design at any time; however he shall not be obliged to carry out such modifications to products already delivered.

§ 10 Maintenance of secrecy / Inventions

1. The buyer shall deal in a confidential manner with all written documents or documents handed over to him in the course of technical discussions and / or information, knowledge and experience of which he becomes aware, in so far as they are not prior art. They must not be handed on to third parties or made accessible to the public by other means without the express consent of the Seller and they may only be used for the purposes of instruction. Third parties shall also include the Buyer's employees not connected with handling the order.
2. Should the Buyer be handed over information and / or documents which include patentable inventions, the Seller shall consequently reserve all rights, in particular the right to file applications for patents and / or utility patents regarding such inventions. Notification to the Buyer shall not substantiate any right whatsoever by the Buyer to prior use and / or if necessary the Buyer's right to assert an infringement of novelty with regard to such patent applications.

§ 11 Limitation of liability

1. Claims for damages as compensation based on default, impossibility, breach of contract, indebtedness when the contract is concluded and illegal acts shall be ruled out not only against the Seller but also against his senior employees and assistants or vicarious agents, provided that no instances of intent or gross negligence are extant.
2. This shall also apply for claims for damages for compensation on account of non-fulfilment, only however, in so far as the reimbursement of indirect or consequential damages is demanded unless liability is based on a warranty which is designed to protect the Buyer from such damage.
3. All liability shall be limited to damage which could have been foreseen when the contract was concluded.
4. All claims against the Seller, regardless of the legal reason on which they are based, shall become time-barred no later than 6 months after risk passes over to the Buyer unless the statutory period of limitation is shorter.

§ 12 Place of fulfilment, Place of jurisdiction, Applicable law, Partial invalidity

1. The place of fulfilment and the place of jurisdiction for all disputes arising between the parties based on the contractual relationship shall be West Virginia.
2. These terms and conditions of business and the entire legal relationships between Seller and Buyer shall be governed solely by the law of the state of West Virginia.
3. Should a provision of these terms and conditions of business or a provision forming part of other agreements be or become invalid, the validity of all the remaining provisions or agreements shall not be affected.