

General Terms and Conditions of Sale and Delivery

I. General

II. Conclusion of the contract

1. Our offers are non-binding unless they are expressly designated as binding in the offer text. The order by the customer is considered a binding contract offer, which we can accept within 14 days of receipt (order confirmation). Delivery contracts and all other agreements (including ancillary agreements) only come into effect through our written or textual confirmation or through delivery.
2. EBRO is entitled to also send order confirmations electronically to the customer.
3. We reserve our property rights and copyrights to the cost estimates, drawings and drafts prepared by us, as well as their arithmetic basis. These documents may not be reproduced or made accessible to third parties without our written consent. They are to be returned to us immediately if the order is not placed. Transfer of rights or obligations of the customer from the contract require our written consent.

III. Scope and delivery

1. The order in connection with our specific order confirmation is decisive for the scope of the deliveries and services. Subsidiary agreements and changes to the contract require written confirmation.
2. Partial deliveries are permissible if this is reasonable for the customer and the customer does not inform us immediately after the partial delivery that this is not of interest to him.

IV. Prices and Payments

1. Unless expressly agreed otherwise, our prices apply ex works including loading at the works (FCA, Incoterms 2010), excluding packaging, and plus sales tax at the respective statutory rate for the services listed in the order and order confirmation. Additional or special services such as packaging, freight or assembly will be charged separately.
2. Public charges (taxes, fees, customs duties, etc.) arising from or in connection with the conclusion or processing of the order outside of Austria are borne by the customer.
3. EBRO is entitled to send invoices to the customer electronically.

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4. Unless expressly agreed otherwise, payment must be made by bank transfer within 30 days of receipt of the invoice without any deductions or discounts.
5. All payments are always set off against interest and costs first and then against our oldest claims, regardless of other dispositions of the customer.
6. If payment is exceeded, default interest will be charged at the statutory rate. The assertion of further damage is not excluded. In relation to entrepreneurs, our entitlement to the entrepreneurial interest according to § 456 UGB remains unaffected.
7. The customer can only offset claims that are undisputed or have been legally established. The customer is only entitled to assert rights of retention based on counterclaims from the same contractual relationship.
8. If the terms of payment are not adhered to, or circumstances become known which are suitable to reduce the creditworthiness of the customer, we will immediately make all our claims due, even in the case of a possible deferral. In such cases, we are entitled to perform outstanding services and deliveries only against advance payment or the provision of appropriate security. If the customer does not comply with our request for advance payment or the provision of security within a reasonable period of time, we are entitled to withdraw from the contract and to invoice the customer for the costs incurred up to that point.
9. Furthermore, in the event of non-compliance with the terms of payment, we can prohibit the resale and processing of the delivered goods and demand their return or the transfer of indirect ownership of the delivered goods at the expense of the customer and the authorization to collect in accordance with Section VIII., 7 withdraw. The purchaser hereby authorizes us to enter his company in the named cases and to pick up the delivered goods. Taking back the goods constitutes a withdrawal from the contract only if we expressly declare this.

V. Delivery Time

1. The delivery period begins with the dispatch of the order confirmation, but not before the documents, permits and releases to be handed over by the customer have been provided and not before an agreed down payment has been received.
2. The delivery period is met if the delivery item has left the factory by the time it expires or readiness for dispatch has been notified.
3. The delivery period is extended appropriately in cases of force majeure, industrial disputes, in particular strikes and lockouts, delays on the part of the supplier and the occurrence of other events for which we are not responsible. We will notify the customer of the occurrence and probable duration of such events. This also applies if the circumstances arise in the event of underdelivery.
4. If the shipment is delayed on request or for other reasons affecting the customer, he will be charged the costs incurred by storage starting one month after notification of readiness for dispatch, but at least 0.5% of the costs for storage in our works. Invoiced amounts are calculated for each commenced month. However, after setting and unsuccessful expiry of a reasonable deadline, we are entitled to withdraw from the contract and otherwise dispose of the delivery item and / or to supply the customer with an appropriately extended deadline.
5. Adherence to the delivery deadline presupposes the timely fulfillment of the contractual obligations of the customer. The exception of the unfulfilled contract remains reserved.

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VI. Transfer of risk and receipt

1. Delivery takes place ex works, which is also the place of performance for delivery and any subsequent delivery.
2. The risk of accidental loss and accidental deterioration is transferred to the customer at the latest when the delivery parts are handed over, even if partial deliveries are made or we have taken on other services, e.g. shipping costs or delivery and installation. In the case of a sale by mail order, the risk of accidental loss and accidental deterioration, as well as the risk of delay, are transferred to the forwarding agent, carrier or other third party designated for shipping upon delivery.
3. If dispatch is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer on the day of notification of readiness for dispatch.
4. At the request of the customer, the shipment will be insured against theft, breakage, transport, fire and water damage at the customer's expense.

VII. Withdrawal and right of termination of the customer

1. The customer can only withdraw or terminate the contract due to a breach of duty that does not consist of a defect if EBRO is responsible for the breach of duty. A free right of termination of the customer is excluded.
2. If the customer withdraws from the order or from the contract without good cause, EBRO is entitled to demand all costs incurred by EBRO up to the time of the withdrawal from the customer. These costs include in particular the costs of order processing, production costs and material costs.
3. Changes to an order confirmed by EBRO are only possible with the prior written consent of EBRO. Any additional costs arising from this must be borne by the customer. With the confirmation of the order change, EBRO will designate a new delivery date, any penalty obligations and the consequences of default by EBRO are no longer applicable.
4. Unauthorized return of goods by the customer does not affect EBRO's claim to payment of the agreed remuneration.
5. Returns will only be accepted if the "Return of goods" form has been completed in full, signed and enclosed with the return. Otherwise, returns will be refused. The form and further information can be found at www.ebro-armaturen.com/downloads/warenruecksendung.html. The acceptance of a return does not constitute a legal declaration by EBRO, regardless of its content, in particular it does not contain any consent to a withdrawal from the contract or a cancellation of the contract by the customer.
6. The contestation of the contract due to shortening by half (§ 934 ABGB) is excluded.

VIII. Retention of title

1. All delivered goods remain our property (reserved goods) until all claims have been met, in particular the respective balance claims, including interest and costs, to which we are entitled, regardless of the legal reason. This also applies if payments are made on specifically designated claims.
2. The customer must treat the reserved goods with care, insure them appropriately and, if necessary, maintain them. The customer bears the risk of destruction, loss or deterioration of the reserved goods.
3. The reserved goods may not be pledged to third parties or assigned as security before the secured claims have been paid in full. The customer must inform us immediately if an application has been made to open insolvency proceedings or if third parties have accessed the goods belonging to us (e.g. seizures).

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4. The purchaser may only sell or use the goods subject to retention of title in the normal course of business, provided that the remuneration claims of the purchaser from the resale or further use are transferred to us in accordance with paragraphs 5 and 6 below.
5. Any treatment and processing of the goods subject to retention of title takes place at the purchaser's own risk. Even if the reserved goods are installed, ownership of the reserved goods continues to exist if our reserved goods can be separated again without changing them. If the goods cannot be returned, co-ownership arises in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used.
6. The purchaser's claims from the resale of the goods subject to retention of title, regardless of whether before or after installation, shall be up to the amount of our claim from the delivery of our goods to the customer. The customer must inform his contractual partner of the assignment or enter the assignment in the business books, in particular in the open item list. At our request, the customer must name his contractual partner and provide us with the information and documents required to collect the assigned claim.
7. The same applies to compensation from insurance payments that are made due to damage to or destruction of the goods subject to retention of title.
8. The customer is entitled to collect claims from the sales in accordance with paragraphs 4 and 5 until our revocation, which is permissible at any time.

IX. Guarantee

1. We guarantee the flawless manufacture of the parts supplied by us in accordance with the agreed technical delivery regulations. The point in time of the transfer of risk is decisive for the contractual condition of the goods.
2. The customer must check the goods immediately upon receipt and report defects in the goods at the destination, and hidden defects in writing immediately after discovery of the defect. In any case, obvious defects must be reported in writing within five working days from delivery and defects not recognizable during the inspection within the same period from discovery. If the customer fails to properly examine and / or report defects, our liability for defects that are not reported, not reported on time or not properly reported, is excluded in accordance with the statutory provisions.
3. The obligation to give notice of defects in number 2 also applies to obvious deviations within the meaning of Section 378 of the Austrian Commercial Code (UGB).
4. We are to be given the time and opportunity to determine the defect complained of. Goods complained about must be returned to us immediately upon request. Item VII.6 applies accordingly to returns due to a complaint or a repair order. If the customer does not meet these obligations or makes changes to the goods complained about without our consent, he loses any warranty claims. Only in urgent cases that endanger operational safety and to prevent disproportionately large damage, in which case we must be informed immediately, does the customer - insofar as we give our consent - have the right to have the defect remedied himself or by a third party and we will replace the to demand necessary costs.
5. In the event of a justified notification of defects in due time, we will either rectify the defective goods or deliver flawless replacements at our option. Our right to refuse supplementary performance under the legal requirements remains unaffected.
6. The supplementary performance includes neither the removal of the defective item nor the re-installation if we were not originally obliged to install it.
7. EBRO bears the expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labor and material costs, if and to the extent that there is actually a defect. Otherwise, EBRO can demand that the purchaser reimburse the costs arising from the unjustified request for the removal of defects (in particular testing and transport costs).
8. If we fail to meet our warranty obligations or not in accordance with the contract, the purchaser is

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entitled to withdraw from the delivery item or to reduce the price with regard to the defective delivery item after a reasonable grace period has expired, unless such a grace period was already dispensable according to the statutory provisions. In the event of a minor defect, the purchaser cannot withdraw from the contract.

9. Further claims by the purchaser, in particular for compensation for damage, exist only in the case of defects in accordance with Section X and are otherwise excluded.
10. We assume no liability for damage caused by natural wear and tear, incorrect installation or removal (assembly) or commissioning by the customer or third parties, unsuitable or improper use, use of unsuitable materials or improper handling, errors in construction which can be traced back to specifications of the customer or other causes which are the responsibility of the customer.
11. Notwithstanding the above regulations, if third-party drives or third-party components are used by the customer or third parties, in particular in the case of end position feedback (electrical or pneumatic), directly attached solenoid valves, positioners, manual operations (third-party designs) and other components not included in our scope of delivery, or installation the same in the delivery item exclusively guarantee for our own scope of delivery, if and to the extent that the assembly and functional test is carried out by our specialist staff. Liability for third-party drives or third-party components and damage resulting from their deficiency is excluded.
12. Warranty claims expire within 12 months after the transfer of risk. The reversal of the burden of proof of § 924 second sentence ABGB remains unaffected / The customer has to prove that the defect already existed at the time of delivery.

X. General Limitation of Liability

1. In the case of the mere delivery of goods (purchase contract) we are only liable for warranty. If we should make a mistake in a commissioned installation (work delivery contract), which is based on intent or gross negligence on our part or on the part of our representatives or vicarious agents during the installation, we are liable according to the statutory rules; In the case of slight negligence, we are only liable for damage resulting from the breach of a contractual main obligation. In this case, however, our liability is limited to the replacement of the foreseeable, typically occurring damage.
2. The customer has to prove the existence of slight and gross negligence.
3. Recourse claims in accordance with § 12 of the Product Liability Act and claims for damages that have been transferred to the customer in accordance with §§ 1358, 1422 f ABGB are also excluded in the event of slightly negligent causation.
4. Unless otherwise expressly regulated above, our liability for consequential damage is excluded.

XI. General provisions

1. Should any provision of these conditions of sale be or become ineffective or unenforceable in whole or in part, this shall not affect the validity of the remaining provision or parts thereof. The contracting parties are obliged to replace the ineffective provision or its part with an effective provision that comes as close as possible to its economic success. The same applies in the event of a contractual loophole.
2. Austrian law applies exclusively to the contractual relationships, excluding their conflict of laws and excluding the United Nations Convention on the International Sale of Goods (UN Sales Convention).
3. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Vienna if the customer is an entrepreneur, a legal entity under public law or a special fund under public law. We are also entitled to sue at the customer's headquarters. Mandatory legal provisions, in particular to exclusive responsibilities remain unaffected.

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XII. Privacy

We are expressly entitled to store and process the data of your company required for the fulfillment of the order (GDPR). This also applies to our vicarious agents.