

# General Terms and Conditions of Sale and Delivery

## I. General

1. The legal relationship between the customer and EBRO ARMATUREN Gebr. Bröer GmbH, Hagen (hereinafter referred to as EBRO) shall be governed exclusively by these terms and conditions and if applicable any other agreements, unless expressly agreed otherwise. Amendments and supplements must be made in writing. General terms and conditions of the customer which contradict or deviate from our General Terms and Conditions of Sale and Delivery shall not apply even if they have not expressly been rejected in an individual case.
2. These General Terms and Conditions of Sale and Delivery shall also apply to all future transactions between the parties, even if they have not been expressly agreed again. Unless otherwise agreed, the General Terms and Conditions shall apply in the version valid at the time of the customers' respective order or in any case in the version last communicated to him in text form.
3. These General Terms and Conditions of Sale and Delivery shall only apply vis-à-vis entrepreneurs within the meaning of Section 310 German Civil Code (*Bürgerliches Gesetzbuch, BGB*).

## II. Conclusion of contract

1. Our offers are subject to alterations unless expressly designated as binding in the text of the offer. An order from the customer is considered a binding contract offer, which we can accept within 14 days after receipt. Delivery contracts and all other agreements (including ancillary agreements) shall only be concluded upon our confirmation in writing or in text form or delivery.
2. EBRO shall be entitled to transmit order confirmations to the customer electronically unless, the customer objects to such procedure immediately following receipt of the order confirmation.
3. We reserve our property rights and copyrights to the cost estimates, drawings and drafts prepared by us as well as their calculation basis. These documents may not be reproduced or made accessible to third parties without our written consent. They must be returned to us immediately if the order is not placed. Any transfer of the customer's rights or obligations arising from the contract requires our written consent.

## III. Scope and delivery

1. Our order confirmation shall be exclusively decisive for the scope of deliveries and services. An offer with time commitment and the timely acceptance thereof shall be decisive, in case an order confirmation is not available in time (Clause II.1). Ancillary agreements and amendments require written confirmation.
2. Partial deliveries are permissible, provided that this is reasonably acceptable to the customer and the customer does not inform us immediately after the partial delivery that it is not of interest to him.

## IV. Prices and payments

1. Unless expressly agreed otherwise, our prices shall apply ex works including loading at the plant (FCA, Incoterms 2010), excluding packaging, and plus value added tax at the applicable

# General Terms and Conditions of Sale and Delivery

statutory rate for the services listed in the order confirmation. Additional or special services such as packaging, freight or installation shall be invoiced separately.

2. Public charges (taxes, fees, customs duties, etc.) arising outside of Germany from or in connection with the conclusion or execution of the order shall be borne by the customer.
3. EBRO is entitled to transmit invoices to the customer electronically, unless the customer objects to such procedure immediately following his receipt of the invoice.
4. Unless expressly agreed otherwise, payment shall be made by bank transfer or cheque within 30 days of the invoice date without deductions or discounts.
5. Irrespective of any other dispositions of the customer, all payments shall always be credited against interest and costs first and subsequently against our oldest claims.
6. In the event of delay in payments, default interest shall be charged at the statutory rate. The assertion of further damages is not excluded. Our claim against merchants to commercial interest on maturity (Section 353 German Commercial Code (*Handelsgesetzbuch, HGB*)) remains unaffected.
7. The customer may only set off such claims which are undisputed or have been legally determined. The customer is only entitled to assert rights of retention on the basis of counterclaims from the same contractual relationship.
8. If the terms of payment are not met or circumstances become known which are suitable to reduce the creditworthiness of the customer, all our claims, even in the case of a possible deferment of payment, become due immediately. In such cases we shall be entitled to only perform outstanding services and deliveries against advance payment or appropriate security. If the customer does not comply with our request for advance payment or provision of security within a reasonable time period, we shall be entitled to withdraw from the contract and invoice the customer for all costs incurred up to then.
9. Furthermore, in the event of non-compliance with payment terms, we may prohibit resale and processing of the delivered goods and demand return or transfer of indirect possession of the delivered goods at the expense of the customer and revoke the direct debit authorization in accordance with Clause VIII. 7. The customer hereby authorizes us to enter his premises in the aforementioned cases and to collect the delivered goods. Taking back the goods shall only constitute withdrawal from the contract if expressly declared so by us.

## V. Delivery period

1. The delivery period begins with the dispatch of the order confirmation, however, in no event prior to the provision of documents, approvals and clearances to be procured by the customer as well as receipt of an agreed down payment.
2. The delivery period shall be deemed to have been abided by if by the end of the delivery period, the delivery item has left the plant or readiness for dispatch has been notified.
3. The delivery period shall be extended appropriately in cases of force majeure, industrial disputes, in particular strikes and lock-outs, delays on the part of suppliers and the occurrence of other events for which we are not responsible. We will inform the customer of the occurrence and anticipated duration of such events. The same applies in case of deliveries from a subcontractor.
4. If shipment is delayed at the customer's request, the customer shall be charged for costs incurred by storage starting one month after notification of the readiness for dispatch. If the goods are stored in our warehouse, at least 0.5% of the invoice amount will be charged for each month commenced. However, after setting and fruitless expiry of a reasonable deadline, we shall be entitled to otherwise dispose of the delivery item and/or to supply the customer within reasonably extended time. The customer may prove that we have not suffered any damage or that the damage was considerably less than the above lump sum.

# General Terms and Conditions of Sale and Delivery

5. Compliance with the delivery period necessitates the timely fulfilment of the customer's contractual obligations. The plea of non-performance of the contract remains reserved.

## VI Passing of risk and acceptance

1. The delivery shall be ex works, which shall also define the place of performance for delivery and for any subsequent delivery.
2. The risk of accidental loss and accidental deterioration shall pass to the customer at the latest when the delivery parts are handed over, even if partial deliveries are made or if we have also assumed other services, e.g. shipping costs or delivery and installation. In the event of a sale involving the carriage of goods, the risk of accidental loss and accidental deterioration as well as the risk of delay shall already pass upon delivery to the freight forwarder, carrier or other person designated for shipment.
3. If, due to circumstances for which the customer is responsible, dispatch is delayed, the risk shall pass to the customer on the day on which the goods were ready for dispatch.
4. At the customer's request and expense, we shall insure the shipment against theft, breakage, transport, fire and water damage as well as other insurable risks.

## VII. Rescission and customers' right to terminate

1. The customer may only withdraw or terminate due to a breach of duty, which is not a defect, if EBRO is responsible for such breach of duty. A free right of termination of the customer (in particular Sections 650, 648 German Civil Code is excluded. Apart from that, the statutory requirements and legal consequences shall apply.
2. If, with EBRO's consent, the customer terminates the order, EBRO shall be entitled to all costs already incurred by EBRO prior to the termination of the customer. These costs include, in particular, order processing costs, production costs and material costs.
3. A withdrawal from contract is only permitted under statutory requirements, in particular, the prior expiration of a reasonable time period. Para. 1 shall apply mutatis mutandis.
4. The modification of an order confirmed by EBRO is only possible subject to prior written consent of EBRO. Any additional costs arising therefrom shall be borne by the customer. EBRO shall specify a new delivery date with the order change confirmation.
5. Unauthorized returns of goods by the customer shall not affect EBRO's claim for payment of the agreed remuneration.
6. Returns will only be accepted if the "Goods Return Form" has been completely filled out, signed and if the "Goods Return Form" is enclosed with the return. Otherwise, returns will be rejected. The form as well as further information can be found under [www.ebro-armaturen.com/en/downloads/goods-return-form.html](http://www.ebro-armaturen.com/en/downloads/goods-return-form.html).

## VIII. Retention of title

1. All goods delivered shall remain our property (reserved goods) until all claims, in particular the respective outstanding balance, including interest and costs to which, regardless of the legal reason, we are entitled to have been satisfied. This shall also apply if payments are made for specially designated claims.
2. The customer shall treat the reserved goods with care, insure them appropriately and, if necessary, maintain them.

# General Terms and Conditions of Sale and Delivery

3. Prior to payment of the secured claims in full, the reserved goods may neither be pledged to third parties nor transferred by way of security. The customer must immediately inform us if an application for the opening of insolvency proceedings has been filed or if the goods belonging to us are accessed by third parties (e.g. seizures).
4. The customer may only sell or use the reserved goods in the ordinary course of business, provided that the claims from resale or use are transferred to us in accordance with the following paras. 5 and 6.
5. Processing and treatment of the reserved goods shall be carried out for us as manufacturer within the meaning of Section 950 German Civil Code without any obligations arising for us therefrom. The processed goods are deemed reserved goods within the meaning of para. 1. In case reserved goods are processed, mixed or combined with other goods, the customer shall assign to us co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used.
6. The customer's claims arising from the resale of the reserved goods, whether before or after processing, are hereby already assigned to us in full or in the amount of our possible co-ownership share pursuant to para. 5. They shall serve as security to the same extent as reserved goods. The same applies to compensation from insurance benefits and other claims.
7. The customer is entitled to collect claims from the sales according to paras. 4 and 5 until we revoke this right, which is permissible at any time. We shall only make use of the right of revocation if and to the extent that the customer no longer meets his payment obligations or if it becomes apparent that our claim to payment is at risk due to the customer's inability to pay, if the customer has filed an application for insolvency or similar proceedings or if payments have been suspended. In no case shall the customer be entitled to assign the claims. At our request, he shall be obliged to immediately inform his customers of the assignment to us and to provide us with the information and documents required for collection.
8. To the extent the value of existing security exceeds the secured claims by more than 10% in total, we shall at the request of the customer be obliged to release securities of our choice.

## IX. Warranty

1. We warrant that the parts supplied by us will be manufactured in good order and condition in accordance with the technical delivery specifications agreed upon. For the contractual condition of the goods, the time of transfer of risk shall be decisive.
2. The customer must notify in writing any defects immediately following receipt of the goods at the place of destination; hidden defects must be notified in writing immediately after the discovery of such defects. In any case, obvious defects must be reported in writing within five working days of delivery and defects not recognizable during inspection within the same period of time calculated from their discovery. If the customer fails to properly inspect the goods and/or give notice of defects, our liability for defects which had not or not on time or not properly been reported is excluded in accordance with statutory provisions.
3. In case acceptance has been agreed the claiming of defects which could have been ascertained in the course of the agreed type of acceptance is excluded.
4. We shall be given time and opportunity to ascertain the alleged defect. Rejected goods must be returned to us immediately upon request. With regard to returns due to a complaint or a repair order, Clause VII.6 shall apply mutatis mutandis. If the customer does not comply with these obligations or makes changes to the rejected goods without our consent, he loses any warranty claims. Only in urgent cases of danger to operational safety and to prevent disproportionately great harm, in which case we must be notified immediately, shall the customer have the right - insofar as we give our consent - to remedy the defect himself or have it remedied by third parties and request reimbursement of the necessary costs from us.

# General Terms and Conditions of Sale and Delivery

5. In case of justified, timely notification of defects, we shall, at our sole discretion, repair the rejected goods or supply a faultless replacement. Our right to refuse subsequent performance in accordance with statutory requirements shall remain unaffected.
6. The subsequent performance does not include the removal of the defective item nor the reinstallation, if we were not originally obliged to install.
7. EBRO shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if and to the extent that a defect actually exists. Otherwise EBRO may request reimbursement for costs incurred as a result of the customer's unjustified request to remedy the defect (in particular inspection and transport costs), unless the customer could not have identified the absence of defectiveness.
8. If we do not fulfil our warranty obligations or do not fulfil them in accordance with the contract, the customer shall after expiry of a reasonable grace period be entitled to withdraw from the contract or to reduce the purchase price with regard to the defective delivery item, provided that such grace period was not already dispensable in accordance with statutory provisions. In the event of an insignificant defect, the customer shall not be entitled to withdraw from the contract.
9. Further claims of the customer, in particular regarding compensation for damages, shall even in the case of defects only exist in accordance with Section X and shall otherwise be excluded.
10. We do not assume any warranty for damages caused by natural wear and tear, faulty installation or removal (assembly) or putting into operation by the customer or third parties, unsuitable or improper use, use of unsuitable materials or improper handling, construction faults attributable to the customer's specifications or other causes for which the customer is responsible.
11. Notwithstanding the above provisions, in the event of the use of external drives or external components by the customer or third parties, in particular end position feedback signals (electrical or pneumatic), directly mounted solenoid valves, positioners, manual overrides (external designs) and other components not included in our scope of delivery, or installation of the same in the delivery item, we only and exclusively warrant our own scope of delivery, if and to the extent assembly and functional testing was carried out by our specialist personnel. Any liability for external drives or external components and damages resulting from their defectiveness is excluded.
12. Warranty rights for defects shall become statute-barred within 12 months after transfer of risk, unless Section 438 para. 1 no. 2b) German Civil Code applies.
13. In the event of injury to life, body or health and in the event of an intentional or grossly negligent breach of duty by EBRO as well as in the event of fraudulent concealment of a defect or the assumption of a guarantee of quality, the statutory limitation periods shall apply.

## **X. General limitation of liability**

1. In the event of intent or gross negligence on our part or on the part of our representatives or vicarious agents, we shall be liable in accordance with the statutory provisions; the same applies in the event of a culpable breach of material contractual obligations. In the event of ordinary negligence, we shall, subject to a more lenient standard of liability available under statutory provisions, only be liable for damages which are not inconsiderable and which are arising from a breach of a material contractual obligation. However, our liability shall in such case be limited to foreseeable, typically occurring damages.
2. Liability for culpable injury to life, body or health as well as liability under the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
3. Unless expressly agreed otherwise above, our liability, including any possible liability for consequential damages, shall be excluded.

# General Terms and Conditions of Sale and Delivery

## **XI. Force Majeure**

EBRO shall not be liable for delays or non-performance of its contractual obligations due to war, terrorism, riots, civil commotion, strikes, lockouts or other labor disputes, epidemics, pandemics, accidents, fires, floods, storms, government restrictions and measures, embargoes, delays or non-delivery of materials, energy or other goods or services or other at the time of the conclusion of the agreement unforeseeable circumstances or events beyond EBRO's control ("Force Majeure").

EBRO shall immediately inform the Buyer of the event or circumstance of Force Majeure and shall use its best efforts to remedy the Force Majeure and limit its effects as far as possible.

Upon occurrence of Force Majeure, the Parties shall agree on the further course of action and determine whether the deliveries and services not provided during this Force Majeure period shall be made up for. Notwithstanding the foregoing, EBRO shall be entitled to withdraw from the orders affected by the Force Majeure event if the Force Majeure lasts for more than three weeks from the agreed delivery date.

## **XII. General provisions**

1. If any provision of these General Terms and Conditions of Sale and Delivery is or becomes invalid or unenforceable in whole or in part, the validity of the remaining provisions or parts thereof shall not be affected. The contracting parties are obliged to replace the ineffective provision or its part by an effective provision which comes as close as possible to the economic success of the ineffective provision. The same shall apply in the event of a contractual gap.
2. The contractual relations shall be governed exclusively by the law of the Federal Republic of Germany under the exclusion of its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Hagen, Germany, if the customer is a merchant, a legal entity under public law or a special public law fund. We shall also be entitled to file a suit at the headquarters of the customer. Mandatory statutory provisions, in particular regarding exclusive jurisdiction, remain unaffected.

## **XIII. Data protection**

We store and process data of your company as far as necessary for business purposes and as permitted by law.

Hagen, [●] 2020