

General Terms and Conditions of Sale & Delivery of e+a Elektromaschinen und Antriebe AG

§ 1 General

- 1.1** These General Terms and Conditions of Sale and Delivery (these “Terms”) are applicable to all US customers (the “Customers” and each, individually, a “Customer”) of e+a Elektromaschinen und Antriebe AG (“e+a”) and to all related transactions between e+a and Customer.
- 1.2** e+a shall sell and deliver to Customer and Customer shall purchase and accept from e+a the products (herein, the “Products”) described on or in any confirmed order, agreement or quotation or any combination thereof (the “Order”), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire agreement between e+a and Customer regarding the Products.
- 1.3** No other terms or conditions shall be of any effect unless otherwise specifically agreed upon by e+a and Customer in a separate written agreement duly signed by Customer and an officer of e+a. Customer will be deemed to have assented to all Terms if any part of the Products is accepted by Customer. If Customer finds any Term not acceptable, Customer must so notify e+a at once and must reject the Products delivered under these Terms. Any additional or different terms or conditions contained in Customer's order or response hereto shall be deemed objected to by e+a and shall be of no effect. No general terms and conditions of a Customer shall at any time form a part of the content of any contract or agreement between the Customer and e+a, even if they are not further expressly rejected by e+a.
- 1.4** No Order is binding upon e+a until acceptance of the Order in writing by e+a (including by fax transmission or email). Notwithstanding any prior acceptance of an Order by e+a, e+a shall have no obligation to deliver Products if the Customer is in breach of any of its obligations hereunder, or any other agreement between the Customer and e+a, at the time e+a's performance was due.

§ 2 Prices

Unless otherwise agreed by e+a in writing, all prices for the Products are subject to change without prior notice. Prices in catalogs or brochures are not binding until confirmed in writing by e+a. Unless otherwise agreed in writing between the parties, all



prices are net, Ex Works (per Incoterms 2000) and exclusive of packaging, transport, delivery, assembly, installation, initial commissioning and acceptance costs.

§ 3 Delivery

- 3.1** All shipping and delivery dates are tentative. Except as otherwise specified in these Terms, the Products shall be sold and delivered EX WORKS (per Incoterms 2000) e+a's facility in Möhlin, Switzerland. Title to and risk of loss for the Products shall pass to Customer upon delivery thereof to any common carrier at such facility.
- 3.2** In no event shall any loss, damage, injury or destruction operate in any manner to release Customer from the obligation to make payments required herein. e+a shall not be liable for any delay or failure to perform in whole or in part, caused by any force majeure, including without limitation governmental prohibition, restriction or other action or by reason of fire, floods, strikes, work stoppages, accidents, casualties, inability to procure supplies and raw materials, delays in transportation, civil unrest, hostilities or war or other causes beyond e+a's control whether or not similar to those mentioned.
- 3.3** If Customer fails to accept delivery due to reasons beyond e+a's control, Customer shall nonetheless make payment to e+a. Where Customer wrongfully rejects or revokes acceptance of the Products or fails to make payment due on or before delivery, or repudiates with respect to all or part of the contract for the Products shipped, e+a may withhold delivery, or stop delivery of the Products or cancel the contract and/or sue for damages at e+a's exclusive option. If Customer causes a delay in the delivery of the Products or any part thereof, e+a, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes e+a substantial inconvenience, e+a has the right to cancel with respect to the Products whose delivery is delayed. e+a reserves the right to retrieve any expenses or damages resulting from such delays. Unless otherwise agreed in writing, e+a reserves the right to make partial shipments and to submit invoices for partial shipments.
- 3.4** e+a shall have the right to make partial deliveries as necessary. e+a reserves the right to make changes and modifications to the Products at any time. Delivery of such changed or modified Products shall be permitted to the extent that the changes and modifications have no material impact on the nature and use of the Products.



§ 4 Transportation

Transportation shall be at Customer's expense. e+a shall not be liable for any costs of transportation including without limitation, charges incurred at the point of destination such as spotting, storage, switching, drayage, demurrage, pier loading charges, etc. Insurance for the Products during transport shall be the sole responsibility of the Customer.

§ 5 Taxes

The amount of any sales, use or other tax or duty, however designated, levied or based on the price of the Products and payable or required to be collected by e+a shall be added to the price quoted and billed to and paid by Customer as if originally included herein. Irrespective of whether such tax or duty has been added to the Price Customer shall reimburse e+a therefor. If Customer claims an exemption from such tax or duty Customer shall provide e+a with appropriate exemption certificates or other documents acceptable to e+a in its sole discretion.

§ 6 Terms of Payment

Payment is due within thirty (30) days from date of invoice. Payment must be made by Customer when due without offset, deduction or counterclaim regardless of any claim by Customer. Past due amounts are subject to a monthly service charge at a rate equal to the lesser of four percent (4%) above the Swiss National Bank rate per month or the maximum rate permitted by applicable law.

§ 7 Credit

Each delivery to be made to Customer shall be subject to receipt of cash or availability of credit arrangements made by Customer with e+a. If payment is not made in accordance with these Terms, or if at any time in e+a's sole and absolute judgment Customer's credit standing has been impaired, e+a may withhold or defer delivery of any Products to be sold hereunder until satisfactory cash or credit arrangements have been made. If Customer fails, neglects or refuses to pay or provide e+a with credit arrangements satisfactory to e+a in its sole and absolute discretion, or to comply with these Terms or the terms of any credit arrangement, then e+a may, without waiving any other remedies it may have against Customer, terminate any agreement then in place without further liability on e+a's part.



§ 8 Security Interest

- 8.1** As security for the timely payment and performance of all Customer's indebtedness to e+a, Customer hereby grants to e+a a first priority security interest (the "Security Interest") in the Products following delivery thereof to Customer ("Collateral"). The Security Interest shall remain in force until payment in full of the entire purchase price for the Products and any other amounts due to e+a by Customer.
- 8.2** If so requested by e+a, the Customer shall deliver to e+a, in form and substance satisfactory to e+a, and duly executed as required by e+a, financing statements and other security interest perfection documentation in form and substance satisfactory to e+a, duly filed under the UCC in all jurisdictions as may be necessary, or in e+a's opinion, desirable, to perfect e+a's security interest and lien in the Collateral, in order to establish, perfect, preserve and protect e+a's security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of e+a's security interest.

§ 9 Inspection and Testing

Customer shall inspect the Products within five (5) days of delivery to verify compliance with the specifications as set forth in Customer's purchase orders and accepted by e+a. In the event of any non-conformity or defect, Customer shall notify e+a within ten (10) days of such inspection. Prior to any application of any Product, Customer shall test the suitability of such Product for the application.

§ 10 Product Warranty

- 10.1** For a period of 12 months from the date of shipment to the Customer, e+a warrants that all Products and spare parts are: (a) manufactured by e+a; (b) as described in e+a's published specifications (if any) and (c) substantially free from defects in materials or workmanship.
- 10.2** The foregoing warranty is subject to the proper storage, transportation, installation, use, and absence of any modification, or alteration of the Products. All warranty claims must be made by Customer to e+a in writing within 7 days of the manifestation of a problem and prior to the end of the Warranty Period.
- 10.3** Unless expressly warranted in e+a's order confirmation, e+a makes no warranty that the Products comply with applicable law, regulations or specifications in any jurisdiction in which the Products may be sold or marketed in any jurisdiction. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the Products shall be the sole responsibility of the Customer.





10.4 EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

§ 11 Indemnification

11.1 Customer agrees to diligently defend, and to hold harmless and indemnify, e+a and its directors, officers, employees, shareholders, affiliates, agents and representatives (the “e+a Indemnitees”) from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney’s fees and costs, expert’s fees and costs, and court costs, and in each case as such costs are incurred (the “Losses”) arising directly or indirectly out of (i) any use of the Products, whether authorized or unauthorized, and irrespective of whether such claim alleges personal injury, product liability, strict or absolute liability, breach of contract or implied contract or warranty, or any other claim of any nature on any theory of recovery, except to the extent such Losses have been incurred as a direct result of a breach of e+a’s warranty or e+a’s gross negligence or willful misconduct, or (ii) arising out of any breach or misrepresentation of any of Customer’s representations or covenants or other terms contained in these Terms or any agreement in which these Terms are incorporated, or (iii) arising out of the improper use, storage, handling, transportation, modification or alteration of the Products by the Customer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of the Customer; provided that Customer shall not be required to indemnify any e+a Indemnitee to the extent e+a shall be required to indemnify any Customer Indemnitee pursuant to Section 11.2.

11.2 e+a agrees to diligently defend, and to hold harmless and indemnify, Customer and its directors, officers, employees, shareholders, affiliates, agents and representatives (the “Customer Indemnitees” and together with the “e+a Indemnitees,” each an “Indemnitee” and, collectively, the “Indemnitees”) from and against any and all Losses arising directly or indirectly out of (i) e+a’s strict liability, negligence or willful misconduct with respect to any product liability claims, or (ii) any breach or misrepresentation of any of e+a’s representations or covenants or other terms contained in these Terms or any agreement in which these Terms are incorporated; provided that e+a shall not be required to indemnify any Customer Indemnitee to the extent Customer shall be required to indemnify any e+a Indemnitee pursuant to Section 11.1; and provided further that e+a’s obligations pursuant to this Section 11.2 shall be subject to the limitations set forth in these Terms.

11.3 Each Indemnitee shall promptly notify a party that may have indemnification obligations under this Section (the “Indemnitor”) of any claim, suit or proceeding; provided, however, that any failure by such Indemnitee to provide prompt written notice hereunder shall excuse the Indemnitor only to the extent that the Indemnitor is prejudiced by such failure to give notice. The Indemnitee shall cooperate with the Indemnitor with regard to the defense of any suit or threatened suit. The Indemnitor



may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the Indemnitor shall obtain the Indemnitee's prior written consent to any settlement unless the settlement involves solely the payment of money and all of such payment is payable by the Indemnitor, its insurers, and parties other than any Indemnitees.

- 11.4** The Indemnitor shall notify an Indemnitee in writing within 10 days of the Indemnitor's receipt of knowledge of any accident or safety incident involving the Products which results in personal injury or damage to property, or any government or similar investigation, claim or inquiry involving the Products. The Indemnitor shall fully cooperate with each Indemnitee in the investigation and determination of the cause of any such accident or incident, and shall make available to each Indemnitee all statements, reports and tests made by the Indemnitor or made available to the Indemnitor by others. The furnishing of such information to an Indemnitee and any investigation by an Indemnitee of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by an Indemnitee, nor shall it affect the indemnification obligations above.
- 11.5** Customer represents and warrants that it has in place customary insurance and liability waivers to cover the use and operation of the Products by Customer's personnel, customers, and third-party users, and e+a represents and warrants that it has in place the necessary insurance to cover product liability. In addition, each of e+a and Customer represents and warrants to the other that it maintains customary insurance to support the indemnification obligations assumed by it in these Terms.

§ 12 Limitation of Liability

- 12.1** Customer's exclusive remedy for defective or non-conforming Products or any other cause whatsoever hereunder shall be, at e+a's option, the repair or replacement of Products.
- 12.2** To obtain repairs under warranty, Products or components must be shipped, freight paid, to e+a Kaufmann AG Elektromotorenbau, Äussere Kanalstrasse 31, 5013 Niedergösgen, Switzerland. Upon repair or replacement of the defective or non-conforming Products, e+a shall have no further obligation to Customer with respect to such defect or non-conformity. Transportation charges for the return of Products shall not be paid unless authorized in advance by e+a.
- 12.3** e+a shall not be liable for, and Customer assumes responsibility and holds e+a harmless for, all personal injury and property damage resulting from the handling, possession, use or resale of the Products, whether the Products are used alone or in combination with other products or equipment.
- 12.4** e+a's liability for damages arising out of or in connection with the Products shall in no



event exceed the purchase price of the Products. It is agreed and acknowledged that the provisions of these Terms allocate the risks between e+a and the Customer in a fair and equitable manner, e+a's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, e+a would not have entered into these Terms.

- 12.5** In no event shall e+a be liable to any person for indirect, incidental, consequential, punitive or other non-compensatory damages (including but not limited to loss of profits or goodwill, or additional expenses incurred), whether pursuant to a claim in contract, tort or otherwise and whether in an action for breach of warranty or otherwise.
- 12.6** In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.
- 12.7** With respect to any costs, damages, interest or claims adjudicated by a court or arbitration tribunal located in the United States of America and its possessions (the "US") or applying the laws of the US or any of its states or territories for which e+a is liable, e+a shall in any case only be liable to the extent it would have been liable pursuant to the internal laws of Switzerland, and, as between Customer and e+a, any liability in excess of any liability so adjudicated to e+a shall be borne by Customer.

§ 13 Proprietary Information

All layouts, models, designs, sketches drawing blueprints and patterns incorporated in the Products or otherwise provided to Customer are the proprietary information of e+a. Customer agrees not to disclose or utilize any such information nor to manufacture or have manufactured any products which are the same as or similar to any Products.

§ 14 Miscellaneous

- 14.1** These Terms and all claims arising out of or related to these Terms, including tort claims, shall be governed by and construed in accordance with the laws of Switzerland without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Switzerland. All disputes and/or legal proceedings related to these Terms shall be maintained in the courts located in Möhlin, Switzerland. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees, expert witness fees, and any other costs incurred to bring or defend such action. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS.



- 14.2** If any provision contained in these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.
- 14.3** In the event of a violation or threatened violation of e+a's proprietary rights, e+a shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that e+a would suffer irreparable harm.
- 14.4** Customer may not assign its order or any right or interest therein or any other obligation arising hereunder without the prior written consent of e+a.
- 14.5** The waiver by e+a of any breach or violation of these Terms by Customer shall not be construed as a waiver of any other existing or future breach or breaches by Customer.
- 14.6** The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.
- 14.7** These Terms shall apply to all sales of Products to Customer and shall survive the termination or cancellation of any other agreements, including but not limited to development or supply agreements, between e+a and Customer.

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