Standard Terms and Conditions (Terms of Sale and Delivery) of ESJOT-Antriebstechnik GmbH

Orders placed by companies, legal entities under public law or of public special assets (hereinafter called »principal«) are handled by us (hereinafter called »agent«) exclusively on the basis of the following terms which shall also apply to all future transactions without again having to make special reference to them. Counter-confirmations by the principal referring to his conditions are herewith objected to. At the latest when the principal takes receipt of our delivery these terms are deemed to be accepted even if the principal previously made reference to his conditions.

Business terms of the principal require our express written agreement to become effective. The effectiveness of terms worded to the contrary cannot be derived from the performance of an order placed. The legal provisions shall exclusively apply to the legal relationship with the principal unless the following provisions show any deviations.

In the event that our extended reservation of ownership in accordance with Figure VII. – due to a protective clause of the principal - has not become element of the contract, the transfer of goods shall in any case occur under the suspensive condition of complete payment of the price agreed upon.

I. Conclusion of Contract

1. Offers of the agent are subject to change without notice. Orders placed by the principal shall become binding only upon our written confirmation of order.
2. Changes or supplements of these business terms and of any agreements made shall only become effective if confirmed in writing by the agent. This shall also apply to a change of this written form clause.
3. The data, drawings and performance descriptions contained in our prospectuses, catalogues, pricelists or in the papers belonging to the offer are customary approximated values, unless expressly stated as binding in the order confirmation.
4. The Incoterms 2000 shall be valid for the interpretation of commercial terms.

II. Pricing

1. Prices are understood in EURO, ex works, plus legal VAT, packing and insurance.
2. If wage, material and/or manufacturing costs to be paid by us change through no fault of our own during the time after receipt of order until manufacture of goods ordered or until performance of any services promised by us so that the manufacturing costs to be

substantiated and established by us according to commercial principles for the purpose of § 255 HGB (German Commercial Code) for the individual product ordered rise by more than 25% in contrast to the time when the order was placed, we shall be entitled to re-establish the price agreed upon for the product ordered at equitable discretion (§ 315 BGB/German Civil Code).

3. Packing materials shall be billed at prime cost and will not be taken back.

III. Terms of Payment

1. The time for payment of our claims is subject to legal provisions.
2. Our invoices shall be settled immediately after receipt without any deduction. Payment by bills of exchange requires a corresponding agreement. If cheques or bills of exchange are accepted by us, this is only done as conditional payment. Discount charges shall be billed from the date of maturity of the invoice amount. A warranty for proper presentation of the bill of exchange and for noting of bills shall be excluded. Acceptance of bills of exchange is made subject to the proviso of their being discountable.
3. If – deviating from Figure III. Nr. 1 - a term of payment was agreed upon that can be calculated according to calendar, there will be no need for a reminder upon default. The expiration of the term of payment takes the place of the reminder. For the rest, the commencement of default depends upon the legal provisions.
4. If after conclusion of contract a considerable risk of claim upon the consideration due to us becomes perceivable, we may refuse performance and establish an adequate deadline to the principal during which he has to pay step by step against delivery or offer security. If the principal refuses to pay or render a security, or after fruitless expiration of the deadline we shall be entitled to withdraw from the contract and to demand damages. Upon delivery of goods and in the event of a considerable risk of claim relating to the consideration due to us we shall be entitled – upon previous notice – to take the goods back and for this purpose possibly to enter the works of the principal and to take hold of the goods. Taking the goods back is no cancellation of contract. The principal may avoid the obligation to surrender by providing a security amounting to our claim for payment.
5. Upon default of payment by the principal we may – after notice to the principal – stop performance of further commitments, even those resulting from other orders, until receipt of payment.
6. The principal can only offset claims of the agent by such claims that by reason and amount are undisputed or legalized. A lien by the principal does only exist if based upon a claim that by reason and amount is undisputed and legally valid.

IV. Passing of Shipment and Risk

1. Shipment is effected ex works and − if no fixed agreement was made − without our guarantee for selection of the lowest-priced type of shipment.
2. Risk shall − even if shipment free of charge is specifically agreed upon − pass upon the principal when the goods are turned over to the shipping agent entrusted to carry out transport. This shall also apply if shipment is effected by our own people.
3. If shipment or collection of the goods ordered is delayed for reasons that we are not responsible for, risk shall pass upon the principal once he receives the notice saying that goods are ready to be shipped or collected.

V. Delivery

1. The delivery dates quoted by us are no firm dates unless expressly stated to the contrary in writing. Except for effectively agreed upon fixed dates, the delivery periods agreed upon are subject to the proviso of timely self-supply by our suppliers.
2. The date of dispatch shall be decisive for the observation of delivery periods. If goods cannot be dispatched in time and if we are not to blame for this, delivery periods shall be deemed observed once the notice of goods being ready for dispatch has been sent.
3. Events of force majeure obstructing the fulfilment of our obligations shall entitle us to postpone delivery by the period of obstruction and by an adequate (lasting max. 14 workdays) start-up period or to cancel the contract with reference to the part not yet fulfilled. The principal may request us − after fixing an adequate time limit − to state whether we want to cancel the contract or supply within an adequate period. The principal may cancel the contract if we do not declare our intention within the period fixed by the principal. If a fixed-date transaction was agreed upon, the legal rights of cancellation of the principal shall remain unaffected by the above arrangements.
4. If we are in default of delivery and if the principal wants to withdraw from the contract, he shall have to give us an adequate period for fulfilment of at least 2 weeks, unless according to law the fixing of a time limit is unnecessary.
5. If the agent owes divisible output, partial performances shall be permissible within reasonable scale and can be separately billed by the agent. A lien based upon a part of order not yet supplied cannot be asserted against the claim for payment of a partial performance reasonable to the principal.

VI. Obligation to take Delivery, Increased- or Short Delivery

An order or call requires the purchaser to take delivery of the full quantity

of goods. This commitment shall particularly apply to such cases in which the goods to be supplied either wholly or in part require special manufacture. We reserve the right of an increased or short delivery of up to 10 % of the order or call quantity. Corresponding to volume, the overall price will change by increased or short delivery.

VII. Reservation of Ownership

1. We reserve the right of ownership to the goods supplied by us until all our claims from the business connection with the principal, including claims arising in future, have been fully settled. The goods may only be sold in proper course of business. Entitlement to sell shall expire upon suspension of payment by the principal. The principal shall not be entitled to pawn or pledge reserved goods as a security. He shall be bound to safeguard our rights during credited onward sale of reserved goods. The principal already now assigns all claims accruing to him from the onward sale against his clients. He shall, however, until further notice be entitled to collect his claims at his own expense. We herewith accept the assignment. Upon request, the principal shall submit to us the list of debtors of claims assigned, plus the nature and amount of claims and all papers necessary to enforce claims concerned. After a corresponding advance notification to the principal we shall be entitled to disclose the assignment of claim towards the third-party debtor.
2. If the subject of delivery is resold together with another commodity that doesn't belong to us, the claim of the principal against his clients amounting to the price agreed between us and the principal shall be deemed as assigned.
3. We undertake to release the securities we are entitled to to such an extent as their value exceeds the claims to be secured, as far as these are not yet settled, by more than 20 %.
4. The principal shall be bound to insure the goods reserved for the time after transfer of risk against the risk of destruction, loss or damage by fire, water and theft. He shall be further obliged to insure the risk of destruction, loss and damage of goods reserved during the way of transport. In the event of loss, destruction or damage of goods reserved the principal shall immediately inform us and upon request provide all papers relating to the damage of the goods reserved, in particular the survey report, and inform us on insurances available and − upon his option − either submit the insurance certificate or a trust letter issued by the insurer for our goods reserved.
5. Pledging or transfer of goods reserved as guarantee shall be unlawful. In the event of pledging, seizure or other measures by third parties we shall be informed immediately.
6. Conversion or reshaping of goods reserved is always done by the principal on behalf of us. Thus, we are deemed to be the manufacturer in accordance with § 950 BGB/German Civil Code. In

case of conversion, connection or mixing with other third-party goods by the principal we shall be entitled to joint ownership to the new commodity at the ratio of the invoice value of the processed goods reserved versus the invoice value of the other processed commodity. For the rest, the provisions for goods reserved in accordance with Figure VII N°. 1-5 shall apply analogously to goods resulting from conversion, connection, mixing with to which we acquire full or part-ownership.

VIII. Complaints

1. a) If the provisions of § 377 HGB/German Commercial Code or of §§ 381, 377 HGB are applicable to the contract, the following shall be agreed upon with reference to the periods relating to defects there determined: Perceivable faults shall be reported to us by the principal in written form and without delay, at the latest 4 workdays after delivery. Hidden faults shall be reported to us in writing and without delay after discovery, at the latest 4 workdays after discovery. For the rest conditions and consequences of a late complaint are subject to the legal provisions of (§ 377 HGB/German Commercial Code or §§ 377, 381 HGB).
   b) The above provision in Fig. VIII. Nr. 1 lit. a is not applicable, if we − with reference to the defect to be notified − have given a contractual guarantee for being free from defects or if a claim for damages based upon injury to life, body, health or freedom of an individual is asserted against us. In these cases conditions and consequences of a late complaint are exclusively subject to the legal provisions (§ 377 HGB or §§ 377, 381 HGB).
2. If the principal − within the scope of a mutual business transaction - fails to timely report a complaint according to the provisions of §§ 377 or 377, 381 HGB, this will also lead to the exclusion of the tortuous claims of the principal resulting from the defect. This shall not apply if the claims are based on an at least grossly careless conduct of the agent or of his vicarious agents. Further, the exclusion shall not apply to claims based upon the Product Liability Act, or on injury to life, body, health or freedom of an individual.

IX. Warranty, Liability and Limitation of Liability in Time

1. Our warranty for faults − subject to legal provisions − is restricted to subsequent fulfilment (subsequent delivery or remedying the defect), withdrawal or reduction (reduction of price). Compensatory damages for damage resulting from defects of quality that we are responsible for shall be rendered by us within the scope of contractual liability under legal conditions in the following cases only:
   a) The claim for damages asserted against us is based upon a defect of quality the subject of which is the reimbursement of a material

damage occurred on a legal asset different from the object of sale. On an equal footing with a material damage is any property damage which is a material damage caused by a defect of quality affecting legal assets other than the object of sale (property consequential damage of a material damage). The amount of our liability is limited subject to the provisions in Fig. IX Nr. 4.
b) The defect of quality is to be answered by us in consequence of intent, malice or gross carelessness.
c) With reference to goods being free from defect of quality causing damage we granted a particular contractual undertaking or guarantee going beyond a quality agreement.
d) The claim for damages directed against us is based upon injury to life, body, health or freedom of an individual.
e) For the damage we take liability under the aspect of default. Our extra-contractual liability, in particular according to the provisions of tort and the Product Liability Act shall not be restricted by the above provisions.

2. a) The period of limitation for the claims quoted in § 437 BGB/ German Civil Code based upon defects of quality, subject to the following provisions, amounts to one year. If the matter delivered or manufactured by us is used for a building in accordance with its customary mode of usage, and if it is through this matter that its defectiveness was caused, the period of limitation for this warranty claim shall be 5 years. To the extent that warranty claims asserted against us demanding damages because of injury to life, health, body, or freedom of man, the legal periods of limitation shall continue to apply. The legal periods of limitation shall further continue to apply if we have concealed the defect maliciously or if we are responsible for the defect due to intent or gross carelessness. The legal periods of limitation shall also apply if we with reference to the concrete defect have taken over a contractual guarantee for goods being free from defects.
b) The period of limitation for claims quoted in § 437 BGB/ German Civil Code, based upon legal infirmities, amounts to one year unless the defect exists in a material right of a third party, based upon which the surrender of the object of sale can be demanded, or in any other right registered in the land register. The legal periods of limitation shall continue to apply (§ 438 BGB/German Civil Code) if we maliciously concealed the defect or if we are responsible for the defect due to intent or gross carelessness. Legal periods of limitation shall further apply if we − with reference to the concrete defect − accepted a contractual guarantee for goods being free from defects.
c) The regular period of limitation because of other claims asserted against us which are not based upon liability for legal infirmities or defects of quality amounts to 24 months. This shall not apply if claims asserted against us are based upon injury to life, health, body or freedom of man, if our liability is based upon an intentional or gross careless neglect of duty that we are responsible for, or if

claims resulting from the Product Liability Act are asserted against us. In these cases the legal periods of limitation shall continue to apply. Further, §§ 196 and 197 BGB/German Civil Code shall remain unaffected.

3. If goods supplied by us are replaced or reworked by us within the scope of warranty, the period of limitation for warranty claims, also for those goods replaced or reworked, shall not be extended by this. The legal provisions for suspension and for new start of limitation period remain unaffected by this.
4. For consequential loss of a defect of quality our liability − no matter for which legal basis − is as to amount limited to each neglect of duty to an amount of 2,000,000.00 e, if we basically prove a liability insurance liable to support in a case of damage with an insurance amount of at least 2,000,000.00 e available for a case of damage. The same shall apply for our liability for damage due to a culpable accessory neglect of duty. If several cases of damage turn up within the scope of a sales contract or of any other transaction which are based upon the same cause e.g. supply of several items with the same defect within a contract of sale, this shall be deemed as one uniform offence. Upon written request of the principal a higher insurance amount may be concluded at his expense. In this case the liability ceiling will increase accordingly. This limitation of liability shall not apply if our liability is based upon intent or malice or gross carelessness. Further, it shall not apply to claims from the Product Liability Act, to contractual claims because of such defects, for the absence of which we contractually took over a guarantee or to claims for damages asserted against us based upon injury to life, body, health or freedom of an individual. Insofar we shall be liable, subject to legal provisions, to an unlimited amount.
5. Our warranty and liability − no matter for which legal reason − shall be excluded for defects based upon deficiencies contained in plannings, drawings, materials or products delivered by the principal, unless the defectiveness of plans, drawings, materials, or products supplied by the principal was not recognized by us on account of gross carelessness. If a first-sample checking was performed by the principal and if he did not notify us immediately of any defects, our liability shall − no matter for which legal reason − be excluded for such defects which on the basis of a careful first-sample checking could have been established. This limitation of liability shall not apply if our liability is based upon intent or malice or gross carelessness. Further, it shall not apply to claims resulting from the Product Liability Act, to contractual claims for such defects for the absence of which we have granted a contractual guarantee or for claims of damages asserted against us based upon injury to life, body, health or freedom. To such an extent the legal provisions shall continue to apply.
6. The above rulings in Fig. IX Nr. 1 to 5 shall not apply to the recourse of the principal against the agent according to §§ 478, 479

BGB/German Civil Code or according to §§ 651, 478, 479 BGB (recourse because of a defect of goods occurred at a consumer's). Insofar, the legal provisions continue to apply.

X. Goods sent in for Processing or Repair

1. The following provisions shall apply to contracts the subject of which is processing, reworking or repair of goods surrendered to us. Unless otherwise provided for, the other provisions of these business terms shall apply to those contracts.
2. Delivery of goods sent to us for processing shall be made free works of the agent, in good packing, with an attached delivery note with our order data.
3. The material of parts surrendered shall be communicated to us at the latest with delivery. It must guarantee best-possible processing. If these conditions are not complied with, the agent may bill costs for extra work thus resulting plus costs resulting for thus prematurely worn or damaged tools or cancel the contract in which case the principal shall pay the contract price less expenditure saved, plus extra costs mentioned above.
4. Our warranty for defects of quality shall − subject to legal provisions − be limited to subsequent fulfilment (subsequent delivery or reworking), withdrawal or reduction (reduction of price). Damages for damage caused by defects of quality that we are responsible for shall be rendered by us within the scope of contractual liability under legal provisions in the following cases only:
   a) The claim for damages asserted against us is based upon a defect of quality and has the replacement of a material damage or any property damage caused by the defect of quality as subject which is the consequence of a material damage caused by a defect of quality. The amount of our liability shall − subject to the provisions in Fig. IX Nr. 4 − be limited.
   b) We are responsible for the defect of quality due to intent, malice or gross carelessness.
   c) We granted a particular contractual promise or guarantee going beyond an agreement of quality stating that the works is free from a defect of quality causing damage.
   d) The claim for damages asserted against us is based upon an injury to life, body, health or freedom of an individual.
   e) We shall be liable for the damage under the aspect of default. Our extra-contractual liability, in particular in accordance with the provisions of unlawful act and the Product Liability Act shall not be affected by the above provisions.
5. If − in accordance with legal provisions − we assume liability for damage to or loss of goods sent to us, this liability for each violation of duty that we are responsible for shall − as to the amount − be limited to a sum of 2.000.000,00 EUR if we in case of damage prove the existence of an insurance liable to perform with an insurance

amount of 2.000.000,00 EUR available for the case of damage. If several cases of damage turn up within the scope of one contract which are based upon the same cause e.g. the same faulty processing of several pieces sent in, this shall be handled as one uniform offence. Upon written request of the principal a higher insurance sum can be concluded at his expense. In this case the maximum liability limit will increase accordingly. This limitation of liability shall not apply if we are to blame for intent or gross carelessness or if we − with reference to a defect causing damage − assumed a guarantee for goods being free from defects. Further, this limitation of liability shall not apply if a claim is asserted against us because of a damage based upon injury to life, body, health or freedom of an individual.

6. The period of limitation for the warranty claims quoted in § 634 BGB/German Civil Code for defects of quality and legal infirmities is − subject to the following provisions − one year if the work owed by us consists in the manufacture, maintenance or modification of a matter, which is no building or in the issue of planning or supervisory services which do not relate to a building. If warranty claims asserted against us are based upon damages due to injury to life, health, body, or freedom of an individual, the legal periods of limitation shall continue to exist. Legal periods of limitation shall further prevail if we have maliciously concealed the defect or if we are responsible for the defect due to intent or gross carelessness. The legal periods of limitation shall also apply if we − with reference to the concrete defect − have assumed a contractual guarantee for freedom of defects.
7. If plant services are subsequently improved by us, the period of limitation for warranty claims, including that for parts improved, shall not extend by this. The legal provisions for suspension and fresh start of the period of limitation remain unaffected by this.
8. If our service − according to legal provisions − or on account of a contractual agreement expressly to be made requires an acceptance test, the following shall be agreed upon for this purpose: Our service is deemed accepted at the latest if the matter processed by us is sold or surrendered for use by the principal to a third party; if the matter processed by us with approval of the principal is processed or mixed or connected with other matters; or if the matter processed by us is − beyond a trial − either used by the principal or by a third party with the approval of the principal.
9. Based upon his claim resulting from the order the agent shall be entitled to a contractual lien relating to the goods which due to the order came into his possession. The contractual lien may also be asserted because of claims resulting from work and other services performed at an earlier date to the extent that they related to the subject of order. For other claims resulting from the business relationship the contractual lien shall only apply to the extent that they are undisputed or if a valid title is available and if the subject of

order belongs to the principal.

XI. Place of Performance, Legal Venue and Applicable Law

1. Our business seat (Ense-Höingen) shall be place of performance for the contractual obligations of both contracting parties.
2. Our business seat (Ense-Höingen) shall be exclusive legal venue for all claims in connection with the performance of this contractual relationship. This shall also apply to claims resulting from cheques, bills of exchange and direct debiting. We may also take legal action at the seat of the principal.
3. German Law shall apply to all claims in connection with the performance of this contractual relationship subject to the proviso that the provisions of the Vienna-UN-Agreement dated 11.04.1980 covering contracts of International Purchase of Goods shall not apply.

XII. Salvatorian Clause

Should one of the provisions of these terms of delivery and payment be or become invalid, the legal validity of the remaining provisions shall not be affected thereby. In this case a valid provision that comes closest to the economic purpose pursued by the parties shall be deemed to be agreed.