



Enercon Technologies Europe AG

1. APPLICABILITY

The General Terms and Conditions ("Conditions") set forth herein shall apply exclusively to all sales and deliveries of products ("Product") from Enercon Technologies Europe AG and any of its subsidiaries ("Supplier") to its customers ("Purchaser").

Terms and conditions provided by the Purchaser that is in conflict with these Conditions, or amendments to these Conditions, shall not apply unless the Supplier, in each individual case, has provided its prior written approval thereto. For the avoidance of doubt, these Conditions shall apply exclusively even if the Supplier performs delivery to the Purchaser without reservations, notwithstanding the Supplier's knowledge of conflicting terms and conditions of the Purchaser.

In case of an ongoing business relationship, the current version of the Conditions forms part of the agreement with the Purchaser regardless of the lack of a specific reference to the Conditions.

Unless expressly agreed in writing by the supplier, no terms and conditions submitted or referred to by the purchaser when negotiating or confirming the contract shall become part of the contractual relationship between the Purchaser and the Supplier.

In case of inconsistency between the terms of the individual contract (and the documents referred to therein) and these Terms and Conditions, the former shall prevail.

2. ORDERS AND ORDER CONFIRMATIONS

The Purchaser's order for the Products must be in writing. The contract with the Purchaser does not come into existence until the written purchase order confirmation from the Supplier has been received. The Supplier shall without undue delay confirm the order by a written order confirmation for products that are part of the Suppliers list of current products. Orders for products that will require modifications or any other changes to its current specifications will be confirmed according to the estimated time required to fulfil the Purchaser's request.

Should the order confirmation not be in compliance with the Purchaser's order, the Purchaser must notify the Supplier in writing within 14 days of receipt of the order confirmation. If the Purchaser fails to provide such notification of non-compliance, the Supplier shall not be liable for any incorrectness or delays in the delivery of the Products caused by the Purchaser's delayed or lacking notification to the Supplier.

In the event the Purchaser notifies the Supplier of such non-compliance, the Supplier shall, without undue delay send the Purchaser a new and correct order confirmation.

3. DELIVERY

Supplier shall deliver the Products at the agreed delivery date to the Purchaser. The Supplier's compliance with the delivery date is conditional upon the Purchaser's fulfillment of his own contractual obligations, including but not limited to the Supplier's punctual receipt from the Purchaser of specifications, documentation, permissions and advance payments (if applicable). If the Purchaser fails such fulfillment then the delivery date shall be extended accordingly.

All deliveries by the Supplier to the Purchaser shall be EX WORKS (EXW Incoterms 2010) at the Supplier's warehouse whereby delivery shall be deemed made at the date when the Supplier has notified the Purchaser that the Products are ready for delivery and have been placed at the disposal of the Purchaser.

The risk for the Products shall pass to the Purchaser at the time of delivery, even if the Supplier agrees to perform additional services, such as arranging of transportation of the Products.

If the parties have agreed that the Supplier shall ship the Products, then the Supplier will utilise his own transportation providers including insurance of the Products unless notified otherwise.

In the event that the Purchaser does not collect the Products at the agreed date of delivery, the Supplier shall arrange for storage of the Products at the risk and expense of the Purchaser.

Should the Supplier be in a situation where he is not able to fulfil delivery of all Products in an order, the Supplier shall be entitled to perform partial delivery of the order, provided that the Purchaser is notified in advance of the partial delivery.

4. DELAY

Should the Supplier become aware that he will not be able to deliver the Products at the agreed date of delivery, he shall forthwith notify the Purchaser thereof in writing and make all efforts to ensure a new delivery date that is acceptable for the Purchaser.

If a delivery is delayed due to circumstances for which the Supplier is liable and the new delivery date becomes unacceptable for the Purchaser, the Purchaser may claim default in the delivery provided a written delivery claim is submitted to the Supplier. Default deliveries as caused by delays from the Supplier shall be regulated according to clause 7.

If delivery is delayed due to circumstances for which the Purchaser is liable or which is due to Force Majeure (according to clause 8) a new delivery date may be agreed to conditional on the Supplier's acceptance.

If the Purchaser anticipates that he will be unable to accept delivery of the Products at the agreed date of delivery, he shall forthwith notify the Supplier in writing thereof, stating the reasons and, if possible, the time when he will be able to take delivery. If the Purchaser fails to take delivery, he shall nevertheless pay any part of the purchase price, which becomes due on delivery, as if delivery had taken place.

The Supplier shall be entitled to resell the Products ordered by the Purchaser in the event that the Purchaser does not take delivery. The Supplier shall, however, provide the Purchaser with 14 days advance notification of its decision to resell the Products.

5. PRICE AND PAYMENT

All prices quoted by Supplier are NET EX WORKS (EXW Incoterms 2010) unless otherwise agreed in writing in advance. Additional costs such as shipment, insurance, customs duties will be charged separately and specified in the Supplier's invoice.

The Supplier reserves the right to adjust the prices for orders when significant events occur that will lead to abrupt increases of materials and components or unfavourably developments in the currency situation. Such price adjustments will be made in writing to the Purchaser stating the cause of the adjustment. If the price adjustment passed on from the Supplier leads to a price increase of more than 10% of the ordered goods, the Purchaser shall have the right to cancel the relevant order.

The Purchaser shall pay the Supplier's invoice according to the terms of payment stated in the Suppliers sales invoice, order confirmation at 30days after date of invoice or as otherwise agreed. The Purchaser has no right to make deductions in the invoice or to exercise any right of retention, counterclaims or set offs against the invoice.

In case of agreed instalment payments, any default from the Purchaser in fulfilling the payment terms shall cause the total outstanding amount to become due immediately without requiring any further notification. All debt collection charges including legal fees shall be at the expense of the Purchaser.

The Supplier may hold back a delivery or parts thereof if the Supplier in its sole opinion, suspects that the Purchaser may not be able to fulfil his payment obligations or other obligations. The Purchaser shall without delay notify the Purchaser of such suspension of delivery and the reason therefore. The Supplier shall resume delivery if the Purchaser provides adequate security for the Purchaser's performance of his obligations.

6. CANCELLATION BY PURCHASER

Orders are NCNR (Non-cancellable Non-returnable). If cancellation of the order is pursued, Supplier will invoice Purchaser 60% after 3 weeks or the costs incurred or ship units if manufactured.

7. WARRANTY - DEFECTS IN THE PRODUCTS

The Supplier shall in a period of 1 year following the date on which the risk in the Products passed to the Purchaser, be liable for manufacturing and material defects in the delivered Products. The Supplier's liability for defects is limited to defects that the Purchaser can prove existed at the date the risk in the Products passed to the Purchaser.

The Purchaser shall notify the Supplier in writing of any defects in the Products that has been detected upon arrival inspections, installation or use of the Products, immediately. Should the Purchaser fail to provide the Supplier with such notification, the Supplier shall be discharged of any liability for defects in the Products that reasonably could have been detected by such inspections.

Upon receipt of a product defective notice, the Supplier shall, at its own choice, either repair or replace the defective Products. The Supplier shall be given reasonable time and opportunity for such repair or replacement and any denial of the same by the Purchaser shall discharge the Supplier from his liability.

The precondition for repair or replacement of the defective products related to manufacturing or material defects under the warranty period shall be that the products have been used and or installed;

- Purely in accordance with their intended purpose and application specifications,
- Within the specified operational envelope, e.g. environment boundaries,
- With power within the specified range, i.e. voltage, current and frequency boundaries,
- In a professional and legal manner and in accordance with product data sheet and installation instructions provided.

The warranty does not cover;

- Product defects due to general incorrect or negligent storing or use of the products,
- Product defects due to exposure to extreme conditions, e.g. thunder, lightning, water ingress, fire, bad ventilation or other conditions beyond the control of the Supplier,
- Failures due to compatibility issues between the products and the installation environment
- Products that have been modified or repaired without the prior written approval of the Supplier
- Normal maintenance and repair work of the installed products.

In so far as the Purchaser's notification of defects proves justified the Supplier will cover necessary costs related to the repair work or replacement of the products leading to a full restoration of the defective Products.

The Purchaser shall not be entitled to return the Products to the Supplier unless the Supplier has provided his prior written approval thereto.

If the return is approved by the Supplier, the Purchaser will receive an RMA number (Return Material Authorisation) and shipping instructions. The goods are then well packed by the Purchaser and clearly marked with address and RMA number, returned.

If the repair or replacement of defective Products is unsuccessful or cannot be effected within agreed deadlines, the Purchaser shall be entitled to cancel the contract whereby the Supplier shall credit the Purchaser for the payments that have already been made for the Products (if any).

For non-warranty product, the Supplier will support repair, maintenance and re-calibration based on quotation provided upon request for up to 15 years.

8. LIMITATION OF LIABILITY

Except as stated in clause 6 above, the Suppliers liability is limited to claims for damages caused by the Supplier's gross negligence or willful misconduct.

The Supplier's liability is under any circumstance, limited to direct losses, whereby the Supplier shall not be liable for indirect or consequential losses such as, but not limited to, stop in Purchaser's production or sale, deprivation, loss of profit due to the Purchaser not being able to fulfil contracts with its customers or others and damage caused by the Products to other products.

The Supplier shall, to the extent permitted by applicable law, have no liability for personal injuries or property damage caused by the Products.

In the event the Purchaser or any representative of the Purchaser shall alter or modify the Goods without the Supplier's prior written consent and any claims are asserted against the Supplier by reason of such alteration or modification the Purchaser shall defend, indemnify and hold the Seller harmless against any and all damages, liabilities, expenses and costs in connection therewith or resulting therefrom.

The Supplier's entire liability and the Purchaser's exclusive remedy for any cause of action arising out of this Contract is expressly limited to replacement by the Supplier of non-conforming Goods and delivery to the Purchaser's plant, or at the Supplier's option, payment not to exceed the purchase price of the Goods giving rise to the cause of action.

9. FORCE MAJEURE

The obligations of either party in relation to a sale by the Supplier shall be suspended to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: Industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to above whether occurring prior to or after the formation of the contract.

The right of suspensions shall only apply if the effect of the circumstance on the performance of the contract could not be foreseen at the time of the formation of the contract.

The party that claims being in a Force Majeure situation shall notify the other party in writing without delay when the circumstance starts and when it ends. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Products.

Regardless of what might otherwise follow from these Conditions either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended due to Force Majeure for more than three months.

10. INTELLECTUAL PROPERTY RIGHTS

The Supplier shall have unrestricted title to intellectual property rights and know-how related to the Products and any documentation or drawings provided to the Purchaser in conjunction with an offer or delivery of any Products.

Any documentation or drawings provided by the Supplier to the Purchaser shall not be used for any other purpose than that for which they were provided and may not without the prior written consent of the Supplier otherwise be used or copied, reproduced, transmitted or communicated to third parties.

Any documentation, illustrations, drawings, specifications, measurements or similar data provided by the Supplier according to an offer or a contract shall constitute mere normal guidelines except where otherwise specifically stated by the Supplier.

11. RETENTION OF TITLE

Ownership to and right of disposal of the Products (hereunder the right of pledging or reselling the Products) does not pass to the Purchaser until the Purchaser has fulfilled all his contractual obligations towards the Supplier, hereunder payment of the entire purchase price for the Products. The Purchaser shall at the Supplier's request assist him in taking any measures necessary to protect the Supplier's title to the Products in the country concerned.

The retention of title in this clause 10 shall not affect the passing of risk according to clause 3.

12. LIMITATION ON USE OF THE PRODUCTS

The Purchaser shall not be entitled to use or resell the Products for any other purposes than what it is intended for.

13. PLACE OF PERFORMANCE AND APPLICABLE LAW

Place of performance in respect of delivery of the Products and the Purchaser's payment of the Supplier's invoice shall be the registered office of the Supplier as stated in the order confirmation.

Any disputes arising from the contractual relationships between the parties shall be governed by Swiss Law with the exclusion of the Vienna Convention on the International Sale of Goods dated April 11, 1980. All disputes arising out of or in connection with the contract, including disputes on its conclusion, binding effect, amendments and termination, shall be exclusively resolved by the competent court of Zug, Switzerland.

The Supplier may, however, at its sole discretion institute legal proceedings against the Purchaser at any other applicable legal venue.

Additional agreements, provisions, amendments and supplements to these Conditions shall not be valid unless made in writing and signed by both parties.

By accepting the Purchase Order, Seller represents and warrants that the Products furnished may have been or will be manufactured and sold in compliance with all relevant Federal, State, and Local laws, ordinances and regulations. The Purchase Order and the performance of the parties hereunder shall be construed in accordance with and governed by the laws of Switzerland.

The ordinary courts are responsible at the registered office of the company, Cham ZG.