

Terms and Conditions of Sale and Delivery Issued by SEW-EURODRIVE GmbH & Co KG (SEW)

§ 1 General

- (1) Deliveries and services shall exclusively be handled on the basis of the applicable order confirmation, any special agreements made in writing, and in accordance with the following conditions. Any other terms and conditions, particularly purchase terms and conditions, do not apply unless SEW has approved of their validity expressly in writing.
- (2) Offers from SEW are subject to change. An Agreement comes into effect with the order confirmation from SEW in text form.
- (3) These terms and conditions of sale and delivery apply only to companies in the sense of § 310 (1) German Civil Code [Bürgerliches Gesetzbuch – “BGB”].
- (4) The Customer is obligated to provide correct specified data in full and check the order confirmation for the correctness of the data provided.
- (5) Project planning support from SEW occurs only within the scope of the entire system specified by the Customer. SEW does not accept any liability for such systems, even if SEW offers and delivers goods that have integrated, functional safety.
- (6) SEW reserves the right to make any changes to technical data and designs in the interest of technical progress and development.
- (7) SEW reserves the right of ownership and copyrights for all patterns, illustrations, drawings, calculations, and similar information of corporeal and incorporeal nature, including those in electronic form. The same applies for documents and information designated as “confidential.” Prior written permission from SEW is required to disclose this information to third parties.
- (8) These Terms and Conditions also apply to all future deliveries and services until new terms and conditions of sale and delivery from SEW come into effect.

§ 2 Prices and Terms of Payment

- (1) Prices set by us are quoted ex works or delivery storage sites provided that no other written agreements have been made. Prices do not include packaging, shipping, postage, insurance or the legally applicable sales tax.
- (2) Unless otherwise agreed in writing, payments shall be due within 30 days after the invoice date in cash without any deductions at a free SEW payment office. Provided that there are no invoices outstanding, we grant a 2% discount for payments that we receive within 14 days after the invoice date; exceptions thereto include repair and spare parts shipments, which are due in net cash immediately.
- (3) Checks and bills of exchange shall be valid as a payment only upon encashment, whereby we reserve the right to accept bills.
- (4) If we, after sending our order confirmation, are made aware of any significant deterioration of the Customer’s financial circumstances, our demands for payment shall be due immediately. In addition, we are entitled to carry out outstanding deliveries and services, also in deviation to the order confirmation, only upon advance payment, and to withdraw from the Agreement after a reasonable period of grace unless the Customer provides security. The same applies for failure to comply with the Terms of Payment, even if failure to do so concerns other orders from the mutual business relationship.
- (5) The Customer shall only be entitled to off-set claims if the Customer’s counterclaims are undisputed or declared legally binding by SEW. The Customer may exercise the right of retention insofar as the Customer’s counterclaim is based on the same contractual relationship.

§ 3 Delivery Time

- (1) Delivery and service shall be provided within the calendar week confirmed in text form, albeit not prior to clarifying all implementation details. The Customer must fulfill all obligations incumbent upon the Customer, such as the provision of a down payment, in due time. If this is not the case, the delivery time

shall be extended accordingly. This does not apply insofar as SEW is responsible for the delay.

- (2) The delivery time shall be extended further as appropriate in the event of unforeseeable conditions, which are beyond SEW’s control, regardless of whether such events arose at SEW or its suppliers, for example, cases of force majeure, industrial actions, and other delays beyond a party’s control, in the completion of delivery parts, malfunctions, or defective goods, delays in the delivery of essential parts and raw materials, insofar as those conditions have a significant influence on the completion or sending of the goods ordered. These types of conditions shall also be deemed beyond SEW’s control if they occur during a delay that is already effective. SEW shall immediately notify the Customer of the beginning and end of such conditions.
- (3) The Customer may only withdraw from the Agreement due to delivery delays within the framework of the legal provisions only insofar as SEW is responsible for the delays.
- (4) If SEW causes a delay and the Customer accrues losses due to the delay, the Customer shall be entitled to claim a flat-rate compensation. Such compensation amounts to 0.5% for each complete week of delay, amounting to a total of no more than 5% of the price for the part of delivery and service that, due to the delay, could not be put into appropriate operation. Any additional claims due to delay of delivery are exclusively subject to § 7 of these conditions.
- (5) If the Customer causes a delay in accepting the delivery or culpably infringes another obligation to co-operate, SEW shall be entitled to demand compensation for any damages incurred, including any additional expenditures. Any further claims are reserved.

§ 4 Passing of Risk, Acceptance

- (1) Risk is passed to the Customer upon transfer of the delivery to the shipping company or carrier, albeit no later than when the delivery leaves the factory or warehouse. This also applies if a carriage-paid delivery, ex works delivery, or similar arrangements have been agreed upon. Insofar as the acceptance of delivery is to be made, acceptance is authoritative for the passing of risk. Acceptance is due immediately by the acceptance date, alternatively after SEW reports consent to accept. The Customer may not refuse to accept delivery on account of a nonessential defect.
- (2) If shipping or acceptance is delayed or not undertaken as a result of conditions that are beyond SEW’s control, risk is passed to the Customer from the day of the delivery or consent to accept.

§ 5 Reservation of Title

- (1) SEW reserves the right of title to delivered goods up to receipt of all payments due to SEW arising from the business relationship with the Customer.
- (2) If the Customer defaults on a payment due date, SEW shall be entitled to re-enter the goods in its inventory after issuing a dunning notice. SEW may also repossess the goods without prior withdrawal from the Agreement. The Customer herewith agrees to allow SEW to enter its premises without delay during normal business hours and repossess such goods. The same applies upon the Customer’s submission of the statutory oath of disclosure for filing an arrest order to submit a statutory oath of disclosure by the Customer, or for a Customer’s request to open insolvency process for the Customer’s assets.
- (3) SEW shall be entitled to withdraw from the Agreement if the Customer acts contrary to the Agreement, in particular by defaulting payment. For returning goods as a result of cancellation or withdrawal, SEW shall only be obligated to issue credit in the amount of the invoice value with a deduction of decreased value determined by equitable discretion as well as the return and disassembly costs, however at least over 30%

of the invoice value. SEW ensures higher credit if the Customer proves a higher recoverability of the value of the repossessed goods.

- (4) The Customer is obligated to take care of the goods; in particular the Customer is obligated to insure up to the replacement value for fire, water, and theft damage at the Customer's own expense.
- (5) The Customer is to inform SEW immediately in case of seizure, confiscation or other act of disposal or encroachment by third parties.
- (6) The Customer shall be entitled to resell the delivered goods in accordance with proper, business practices. Seizure, charging as security or other acts of disposal is prohibited. If the Customer resells goods delivered by SEW, regardless of the condition of such goods, the Customer shall cede to SEW all receivables originating from mutual business relationships arising from the sale up to the value of the goods against its Purchasers with all ancillary rights to SEW. The Customer shall be entitled to collect such receivables.
- (7) Entitlement to resale and collection of receivables can be revoked, if the Customer enters into default of payment or if the Customer financial circumstances or credit worthiness significantly deteriorates. Upon request, the Customer shall be obligated to disclose the withdrawal to its recipients unless SEW does not inform the recipients of the Customer itself, and give SEW the necessary information for the assertion of its rights against the Customer's recipients and surrender documents.
- (8) The Customer agrees to always carry out any processing or modification of delivered goods for SEW. If the goods are used with objects not belonging to SEW pursuant to § 950 BGB, SEW acquires joint ownership of the new object in the proportion of the value of the goods to the other processed objects at the time of processing. For objects resulting from processing, the same applies as for goods delivered with due reserve.
- (9) Upon request of the Customer, SEW agrees to release the securities to which SEW is entitled, if potential value thereof exceeds the claims to be secured by more than 10%. The choice of securities to be released is the responsibility of SEW.

§ 6 Warranty Claims

- (1) In the event of defects, the Customer shall be entitled to claim performance of contract, in which case SEW shall be entitled to select whether to eliminate the defect or to supply a non-defective good or service. The Customer shall grant SEW the time and opportunity to undertake performance of contract and shall not charge for doing so. Customers have the right to remedy the defect themselves or order a third party to perform any necessary repairs in urgent cases only. Defects have to represent a threat to operational safety or cause unreasonably excessive damages. Customers are obligated to inform SEW immediately. Any expenses associated with such repairs can be submitted to SEW for reimbursement. Goods which the Customer claims to be defective shall only be returned to SEW upon the request of SEW and, where applicable, properly packaged with a packing slip indicating the order number.
- (2) In the event that defects are to be resolved, SEW agrees to bear all expenses incurred by the resolution of the defect, particularly transportation, freight, labor and material costs, as long as such costs are not increased by the fact that the goods had been brought to another location other than the place of performance, unless the transport complies with designated use.
- (3) In the event that supplementary performance is not met (§ 440 BGB), the Customer shall be entitled to reduce the purchase price or withdraw from the Agreement.
- (4) Any damages caused by any of the reasons listed below and for which we are not held responsible as a breach of duty do not constitute a right to claim under warranty:
Inappropriate or improper use after passing of risk, particularly excessive use, incorrect assembly or startup by the Customer or third party despite the provision of appropriate assembly instructions, natural wear and tear, incorrect or negligent handling, unsuitable operating material, replacement materials,

inadequate construction work, inobservance of operating instructions, unsuitable operating conditions, particularly unsuitable chemical, physical, electromagnetic, electrochemical or electrical influences, climatic or environmental influences as well as excessively high or low ambient temperatures.

- (5) The period of limitation for warranty claims is two (2) years as of the beginning of legal period of limitation.
- (6) Any additional claims are exclusively subject to § 7 of these Conditions.

§ 7 Liability for Compensation of Damages and Expenses

- (1) SEW shall be liable without limitation for any damages resulting from deliberate or grossly negligent breach of duty as well as culpable injury to life, body or health unless governed otherwise by applicable laws.
- (2) In the case of gross negligence on the part of non-managerial employees, SEW's liability is limited to property damage deemed typical within the scope of this Agreement and which can be reasonably foreseen.
- (3) In case of minor negligence, SEW shall only be liable for property damage only in the event of violation of significant contractual obligations. In this regard too, the liability of SEW shall be limited to property damage deemed typical and foreseeable within the scope of this Agreement.
- (4) Any other liability for damages other than those stated above is void, without taking the legal nature of the submitted claim into consideration. This applies in particular to unauthorized acts pursuant to §§ 823, 831 BGB, unlimited liability pursuant to the German Product Liability Act remains unaffected.
- (5) A preclusive time limit of 18 months applies to the limitation of all claims that are not subject to the statutory limitation due to a fault in the goods. The time limit starts from the point of recognition of the damage and the individual causing such damage.

§ 8 Right of Withdrawal

SEW can withdraw from the Agreement either in part or in full by written declaration, in the event of the Customer's inability to pay, over-indebtedness of the Client, discontinuation of payment by the Client or if the Customer has filed for insolvency. SEW shall be entitled to exercise its right to withdraw from the Agreement until the opening of insolvency procedures for the Client's assets. The Customer herewith agrees to provide SEW access to its place of business during normal business hours and repossess the goods.

§ 9 Place of Performance, Place of Jurisdiction and Applicable Law

- (1) Unless otherwise stated in the order confirmation, SEW headquarters in Bruchsal is the place of performance.
- (2) The place of jurisdiction for any direct or indirect legal actions resulting from the Agreement is Bruchsal if the contractual partner is a business entity.
- (3) The provisions of this agreement, even if goods and services are sent to other countries, are subject to German law. The United Nations law governing the international sale of goods (CISG) is not part of this Agreement.

Bruchsal, January 2006

SEW
EURODRIVE
GmbH & Co KG