

1. Application

All offers, transactions, supplies and services of Sprecher Automation GmbH (Sprecher) shall exclusively be governed by the

- **General Terms of Delivery** issued by the Austrian Electrical and Electronics Industry Association (FEEL) – edition September 2011
- **Installation conditions** of the Austrian high voltage and low voltage industry – edition May 2000
- **downloadable** under www.sprecher-automation.at
- under prior **inclusion** of the following **deviating** and/or **supplementary conditions** referred to the **clauses 2. (2.1. to 2.9.) and 3. (3.1. to 3.3.)**

Software shall exclusively be governed by the

- **General Terms for the License Agreement for Sprecher Software** issued by Sprecher Automation GmbH
- **downloadable** under www.sprecher-automation.at
- and/or **software conditions of third parties**
- which shall be **agreed separately**

In case of contradictions in the contract documents following order of precedence shall apply: (a) special agreements, if confirmed by Sprecher in writing; (b) this General Terms and Conditions of Delivery; (c) non-mandatory provisions of the commercial law and civil law.

2. Modifications and Amendments to the General Terms of Delivery issued by the Austrian Electrical and Electronics Industry Association (September 2011):

2.1. regarding Clause „3. Conclusion of contract“

In addition the following shall be applicable:

3.4. Technical data contained in our documentation shall be understood only as approximate values unless they are expressly assured to be binding. Changes and deviations due to design and/or production shall be reserved in any case. Mere typing- and calculation errors in our offers, confirmations or invoices may be corrected by us at any time.

3.5. All documents made available to the Customer, in particular cost estimates, drafts, models, technical calculations and the like shall remain our property. The Customer shall not be entitled to disclose such documents to third parties. If no order is placed by the Customer, such documents shall be returned immediately upon request

2.2. regarding Clause „4. Prices“:

In addition the following shall be applicable:

4.6. All prices are calculated in Euro, unless otherwise expressly recorded. Unless otherwise agreed in writing, no warranty for correctness of cost estimations shall be assumed.

4.7. The prices are effective only with an order covering the whole scope of supply as offered. It is assumed that delivery respectively installation can be carried out in one working process. Additional costs incurred due to unforeseeable interruptions during installation that become necessary in connection with supervision of the works shall be invoiced separately.

4.8. Work ordered, but not included in our offer, shall be carried out subject to our conditions and cost rates.

2.3. regarding Clause „5. Delivery“:

In addition the following shall be applicable:

5.6. In case of a delay in the agreed payments the delivery period shall be extended accordingly. The delivery period shall be deemed observed if the delivery item leaves our warehouse prior to expiration of the delivery period or if by then we have notified the Customer of our readiness to deliver or, in case installation was agreed, if the system is ready for operation upon expiration of the

delivery period. The system shall be considered ready for operation if it can be used according to its permitted use and no material defects impede use of the system. This shall also apply if parts which are not material (as, e.g., painting) are completed at a later point in time or if materials and services to be provided by third parties who are commissioned with production of the system or which are to be provided by the Customer and may be necessary have not been provided, and do not allow trial operation or if the system has not been accepted despite a deadline. If trial operation is not possible immediately upon completion of the system for reasons for which we are not responsible, the additional costs incurred as a result thereof shall be invoiced separately.

5.7. We use our best effort to adhere to the agreed delivery dates. Delay in delivery shall not entitle our customer to rescind the contract or to assert claims under warranty, avoidance of the contract on account of mistake or claims for damages. We shall be entitled to carry out and invoice partial and advance deliveries.

5.8. Excluding any liability on our part we reserve the right to choose the type of shipping and the route. We shall, in particular, not be obliged to choose the cheapest mode of transportation.

5.9. Packaging, including packaging of partial and/or advance deliveries, shall be according to commercial standards. Any additional packaging shall be at the expense of the Customer.

5.10. Surcharges for express deliveries and air cargo shall be invoiced separately. Transport insurances shall only be concluded upon the order and on the account of the Customer.

5.11. The delivery period shall be extended reasonably, if changes in the execution of the work, which require additional deliveries and/or services, are necessary due to construction reasons, requirements by public authorities or Customer requests or if - for reasons for which we are not responsible - a trial operation is not possible or only possible at a later point in time. Additional costs incurred as a result thereof shall be borne by the Customer.

2.4. regarding Clause „6. Passage of risk and place of performance“:

Clause 6.1. shall be changed and amended as follows:

6.1. Usage and risk shall pass to the customer FCA place of Sprecher head office in Linz/Austria, INCOTERMS® 2010.

If goods which are ready for shipment cannot be dispatched or an agreed installation cannot be effected due to reasons for which we are not responsible, we shall be entitled to store the goods at our discretion at the Customer's risk and expense, and delivery shall be considered effected thereby. In this respect we shall be entitled, in particular, to store the goods ourselves at market prices or to store the goods that are ready for shipment in the name and on the account of the Customer with third parties.

Clause 6.2. shall be changed as follows:

6.2. The place of performance for any and all contractual obligations of the parties to the contract shall be the place of our head office in Linz/Austria, irrespective of any agreement on the place of delivery and payment of cost of transportation or the place of payment.

2.5. regarding Clause „7. Payment“:

In addition the following shall be applicable:

7.9. In case of interruptions of the installation not provided for in the contract and for which we are not responsible we shall be entitled to submit progress payment invoices.

2.6. regarding Clause „8. Warranty and acceptance of obligation to repair defects“:

Clause 8.5. shall be amended as follows:

Alternatively we shall be entitled to demand cancellation of the contract.

Clause 8.10. shall be amended as follows:

Assignment of warranty claims and claims for damages or the like shall be inadmissible.

In addition the following shall be applicable:

8.12. Differences between the goods ordered and goods delivered, as, e.g., wrong dimensions or wrong goods (delivery of goods other than those ordered) shall be claimed within 8 days of delivery and prior to treatment or processing, even if the goods are not delivered directly to the Customer; otherwise the goods shall be considered accepted and cannot be taken back or exchanged by us.

8.13. Advice given by us orally or in writing shall be without engagement and shall not release our customers from their own inspection of our products as to suitability for the intended purpose. We shall not warrant that goods delivered subsequently are identical with initially delivered goods.

8.14. Deliveries shall be based upon the drawings and descriptions as well as recognized technical standards and norms (IEC, VDE- ÖVE, DIN) of the respective manufacturer valid at time point of manufacturing respectively contract confirmation.

8.15. The Customer shall always prove the existence of defects of the delivered goods at the time of delivery. In case of a complaint the Customer shall at first be obliged to accept, properly unload and properly store the goods, taking into particular account the product specifications enclosed with the goods or to be requested from us.

8.16. With respect to those goods which we have purchased from suppliers, we shall only assume warranty to the extent of the warranty claims to which we are entitled vis-à-vis the supplier. With respect to goods delivered by us we shall only warrant the qualities which are usually presupposed in commerce.

2.7. regarding Clause „11. Seller's liability“:

In addition the following shall be applicable:

11.6. Instructions given in brochures, instructions for use or other types of product information shall be strictly observed by the Customer to avoid possible damage. It is hereby expressly warned to use the products beyond the defined areas of application. With respect to materials and data provided by the Customer we shall not be subject to a duty to check the same nor to a duty to warn. In particular, we will not verify accuracy of data contained in data carriers which are provided to us. We shall not assume liability of any kind for direct or indirect damage caused by errors of such data and materials.

11.7. In case the Customer himself should be held liable on the basis of the Austrian Product Liability Act or foreign similar provisions, he shall expressly waive any right of recourse vis-à-vis us, in particular the right as defined in Section 12 of the Austrian Product Liability Act or in foreign similar provisions.

11.8. If the Customer puts the goods delivered by us into the stream of commerce outside the European Economic Area, he undertakes to exclude the obligation to pay damages pursuant to the Product Liability Act vis-à-vis his customer provided that such exclusion is permitted according to the law agreed or to be applied between him and his customer. In such a case or in case the Customer fails to exclude such liability vis-à-vis his customer he shall be obliged to indemnify and hold us harmless from third-party claims under product liability.

2.8. regarding Clause „14. General“:

In Clause 14. the first paragraph shall be characterized as Clause 14.1., in addition the following shall be applicable:

14.2. The Customer agrees that the personal data contained in the contract may - in performance of the contract - also be stored and processed by us electronically.

14.3. The Customer shall be obliged to inform us immediately and without request about changes of his home and/or business address and to provide evidence thereof as long as the present transaction has not been fully performed by both parties. In case of a failure to make such notification, declarations made to the Customer shall be deemed received by him also if they were sent to the address most recently notified. The Customer shall be obliged to prove the fact that a notice on changes was received on a case-by-case basis.

14.4. The headings of the provisions contained in the Terms and Conditions of Sale shall be for convenience only and shall not be used for interpretation of the same.

14.5. No development of business transactions between the contracting party and us and no delay or omission concerning exercise of any right, legal remedy or right of appeal granted to us on the basis of the General Terms and Conditions of Sale shall be deemed a waiver of such rights. Each and every right, legal remedy or right of appeal granted to us in this document shall be accumulative and shall have the same priority as other statutory rights, legal remedies and rights of appeal and shall exist in addition to the same.

14.6. If and insofar written form is provided for in these Terms and Conditions of Sale, such written form cannot be replaced by the electronic form as defined in the Digital Signature Act [Signaturgesetz] (Federal Law Gazette (BGBl I 1999/190 as amended).

2.9. following Clause 17. shall be added:

17. Material and Data provided:

17.1. Materials, such as, e.g., hardware, switchboards, electronic devices, data and data carriers of all kinds which are provided by the Customer shall be delivered to our plant free of any charges. Receipt thereof shall be acknowledged without warranty of correctness of the quantity stated in the delivery documents. We will only be able to carry out a proper acceptance and inspection during the production process and shall be liable only for damage caused by our own gross negligence. We shall be entitled to invoice all costs incurred in connection with inspection and storage of the materials provided. Packaging material as well as waste resulting from trimming, punching out, making ready for printing and offprint shall automatically become our property upon processing.

17.2. The Customer shall collect his manuscripts, drafts and other documents at our premises within four weeks of completion of the order. After expiration of such period we shall not assume any liability for documents which have not been collected and we shall be entitled to dispose of such materials at the Customer's expense and without any claim of the Customer for compensation, or to store the goods in the name and on the account of the Customer at market terms ourselves or with third parties. In no case shall we be obliged to continue to keep the documents or the objects serving re-use of the same after expiration of the date stated.

17.3. With respect to materials and data provided by the Customer we shall have no duty to inspect or warn. In particular, we will not verify correctness of data contained on data carriers which are provided to us. We shall not assume liability of any kind for direct or indirect damage caused by errors of such data and materials.

3. Modifications and Amendments to the Installation conditions of the Austrian high voltage and low voltage industry (Mai 2000):

3.1. regarding Clause „1. Starting installation“:

Clause 1. shall be amended as follows:

The preparatory work for installation shall be carried out by the Customer so timely that installation can be started immediately after arrival of the installation staff and can be carried out without delay until acceptance by the Customer; otherwise we shall be entitled to change the date of commencement of installation without consequences of delay and the costs incurred by then shall be invoiced to the Customer. The Customer shall ensure that the delivered parts, scaffolds and systems are protected against becoming wet and against dust, dirt or other adverse impacts and are stored carefully according to the product specifications, which are enclosed with the goods or can be obtained from us. We shall not assume liability for damage caused to the system and/or the delivered material on the construction site, e.g., by fire, explosion, lightning, water, chemical impacts and/or damage to property caused by the Customer or third parties.

3.2. regarding Clause „16. Liability“:

Clause 16. shall be replaced by Clause 11.1 to 11.5 of the General Terms of Delivery issued by the Austrian Electrical and Electronics Industry Association (September 2011).

3.3. following Clause 18. shall be added:

18. Miscellaneous:

18.1. In case goods are manufactured on the basis of documents provided by the Customer (construction data, drawings, models, etc.) we shall not be liable for correctness of the construction but shall only ensure that the execution will be carried out according to the data provided by the Customer. A duty to warn on our part shall be expressly excluded. We shall not be obliged to check whether the documents we are given infringe proprietary rights of third parties or not. In case of an infringement of such rights of third parties, if any, the Customer shall indemnify and hold us harmless in any way.

18.2. All documents (construction data, drawings, models, etc.) which we draw up for the Customer shall be our intellectual property and shall not be used or passed on without our written consent. The Customer shall not acquire any rights of whatsoever kind in such documents.

18.3. The Customer agrees that we depict the products we have manufactured for him or the systems or parts of systems delivered by us for advertising purposes together with the entire system of the Customer and otherwise present them, e.g., as samples. We may choose the design of the presentation as well as the selection of the presentation medium at our sole discretion.

18.4. Upon delivery and/or installation - even if it is only a partial installation or partial delivery - the Customer shall be obliged to accept the system immediately upon notification of readiness for acceptance and to sign the acceptance record stating in detail his objections, if any; otherwise the delivered (partial) system shall be deemed accepted as free from defects.

4. Secrecy

4.1. The customer undertakes to use all data, drawings, technical specifications, materials provided and documentations of any kind, which he receives in connection with the contract with Sprecher or which he receives or become aware in the course of the contractual co-operation, confidential, not to copy them and not to disclose the same to third parties or make them available elsewhere, unless they are generally known or otherwise lawfully known. The customer shall impose the above obligation on their staff and auxiliary persons

accordingly. The secrecy obligation shall continue after termination of the contract.

4.2. The Customer is permitted to refer to the contractual co-operation in marketing material and publication, irrespectively of the kind, only after he has got the expressly written confirmation from Sprecher.

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