

**Sales and Delivery Conditions for Export  
of Maico Elektroapparate-Fabrik GmbH, D-78056 Villingen-Schwenningen**

**I. General, Scope**

- (1) All current and future quotations, deliveries and other services provided by Maico Elektroapparate-Fabrik GmbH to purchasers named in paragraph 2 are subject exclusively to these "Sales and Delivery Conditions for Export". General terms and conditions of the purchaser which are inconsistent therewith shall be without effect in respect of the supplier. Deviating or other general terms and conditions of the purchaser may only then become part of the contract if they have been expressly accepted by us in writing.
- (2) Our "Sales and Delivery Conditions for Export" apply exclusively to purchasers outside the Federal Republic of Germany who are trading in their normal professional or business capacity when they sign the contract. Our domestic purchasers are subject to the "Sales and Delivery Conditions for Domestic Business" (*Verkaufs- und Lieferbedingungen für Inlandsgeschäfte*).

**II. Contract Content, Contract Conclusion**

- (1) Particulars and information contained in product catalogues and price lists only become a binding part of the contract provided that they are expressly referred to therein.
- (2) The content of purchase orders with contract conditions and delivery and service provisions are definitive and shall become binding only once confirmed by us in writing. Subsidiary agreements, verbal statements by employees or representatives and changes to confirmed orders (including changes to delivery items) must be made in writing by us to be applicable.

**III. Subject of Contract, Deviations Provision**

- (1) The subject of the contract shall be exclusively determined by the product description contained in the quotation or in our purchase order confirmation.
- (2) We reserve the right to make changes to the construction or in the materials used which deviate from the product description agreed to in the contract insofar as the normal usage of the goods or that presupposed in the contract is not essentially or negatively influenced and provided that the changes are not unreasonable for the purchaser.

**IV. Prices**

- (1) Except if otherwise agreed or if other provisions are stated below, prices shall be understood to be ex-works (EXW) Villingen-Schwenningen, Germany.

The cost of appropriate packaging is included in the quoted prices; however, the cost of suitable packaging for transportation by sea will be charged for at the price we have to pay.

Except if otherwise agreed, the costs of erection / installation are not included in the prices quoted.

The prices do not include taxes and other charges associated with the delivery.

- (2) Payments must be made in the currency stated in our quotation or order confirmation.

**V. Payment**

- (1) The agreed upon terms of payment apply. Payments must be made to the account stated in our invoice free of charges and without any discount. Independently of the means of payment, the payment shall only then be accepted as having been made when the full amount on the invoice has been credited irrevocably to our account so that we have access to it (receipt of payment). The purchaser shall bear all additional costs that arise from his choice of means of payment.
- (2) Should the purchaser fail to make payment within good time, we can demand interest of 8 % p. a. over the main refinancing operations rate of the European Central Bank without prejudice to

any other remedies. We are also at liberty to prove actual greater damages.

- (3) An offset or netting off of counter claims or the right to withhold payment is only permitted if the purchaser has obtained a final judgment on legal claims or if these legal claims are recognised, uncontested and accepted by us.

**VI. Delivery, Credit Worthiness, Acceptance**

- (1) If a delivery period is agreed to then it begins from the date at which the order is confirmed by us, however, not before the purchaser has supplied all the required documentation and answers to all the technical questions asked of him and the specification of the individual details of the desired model have been completely cleared up.
- (2) The delivery date specified has been met if prior to its expiry the conditions for the transfer of risk in accordance with section VII, paragraph 2 have been fulfilled.
- (3) The delivery date specified shall be extended accordingly if we are unable to meet our delivery obligations at all or in time for reasons that lie beyond our control and which could not be reasonably foreseen by us at the time the contract was concluded. Amongst the obstacles that lie beyond our control is in particular the untimely and improper delivery of material from our suppliers. The start and end of the obstacle will be communicated as soon as possible to the purchaser. If the delay is in excess of three months or if it appears likely that it will be more than three months, then the purchaser or we can declare the contract as avoided.
- (4) If after the conclusion of the contract we become aware of circumstances that lead us to have well-founded doubts about the credit worthiness or ability to pay of the purchaser and there is a consequent danger that payments due to us under the contract will not be made, then we have the right to deny our services so long until the payment is made in accordance with the contract or security is provided for the payment and the purchaser has discharged any other claims that arose from the business relationship and which are economically associated with the contract in question.
- (5) Unless otherwise agreed, the purchaser is obliged to take over the goods within 10 days after being notified of their being at his disposal at our place of business in Villingen-Schwenningen, Germany. Exceeding such period by more than 3 days constitutes a fundamental breach of contract and entitles us, without prejudice to other remedies, to arrange for the carriage of the goods to the purchaser and to charge him for it and for the associated formalities. Not taking over the goods does not release the purchaser from his obligation to pay the purchase price.

**VII. Delivery, Dispatch and Risk Transfer**

- (1) The place of delivery is determined in accordance with the delivery clauses, drawn up under the Incoterms 2000 and agreed between us and the purchaser. Unless another special delivery clause has been agreed, delivery shall be made ex-works (EXW) at our place of business in Villingen-Schwenningen, Germany.
- (2) Unless otherwise agreed, risk shall pass to the purchaser at the time that the goods are made available to him. If the goods are transported to the purchaser the risk shall pass to the purchaser at the latest at the time when the goods are handed over to the first carrier for transmission to the purchaser. If the carriage of the goods should be delayed as a result of circumstances beyond our control, then risk shall pass to the purchaser at the time when our readiness for dispatch is communicated to him.
- (3) At the request of the purchaser all goods may be insured at his expense from the point in time of risk transfer. In case of a claim we shall immediately transfer the purchaser's rights under the terms of the insurance to perform those services expected by the purchaser (including refunding the insurance premium) to the purchaser.

### **VIII. Lack of Conformity of Goods or Documents, Notice of Defects, Warranty**

- (1) The purchaser must give us notice in writing of a lack of conformity of the goods or documents which could be discovered when taking them over within as short a period as is practicable in the circumstances, but no later than one week, after he has taken over them, specifying in detail the nature of the lack of conformity. Further, the purchaser has a duty to examine the goods or documents promptly but no later than one week of taking them over. The purchaser loses the right to rely on a lack of conformity of the goods if he does not give notice to us specifying the nature of the lack of conformity within one week after he has discovered it or ought to have discovered it, notwithstanding the reasons the purchaser may have for not adhering to these requirements. Written notice of defects discovered must be dispatched to us by the purchaser no later than one week of taking over the goods or of the discovery of a lack of conformity. Additionally, the notice of defects, promptly dispatched by the purchaser, must actually reach our hands.
- (2) In case of a lack of conformity of goods or documents we are entitled to remedy it by repair or replacement even after the agreed date of delivery. Unless otherwise agreed to in the contract or as a result of circumstances relating to the conclusion of the contract, in particular the negotiations that took place, a lack of conformity does not exist if the goods do not correspond to the valid technical and other standards in the country of destination (location of the purchaser) or if the goods are not fit for the purposes for which goods of the same description would ordinarily be used.
- (3) Insofar as the lack of conformity of goods or documents is not remedied by repair or replacement within a reasonable time, the purchaser is entitled to request a reduction in the purchase price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time.
- (4) In case of a lack of conformity of goods or documents the purchaser is not entitled to demand a cancellation of the contract instead of a reduction of purchase price except unless the lack of conformity amounts to a fundamental breach of contract. No fundamental breach of contract shall exist if we remedy the lack of conformity within a reasonable period of not less than six weeks to be fixed by the purchaser.
- (5) The purchaser's rights to warranty claims expire within six months after dispatching a proper notice of defects, in any event at the latest twenty-four months after the goods are handed over to the first carrier for transmission to the purchaser.

### **IX. Liability, Compensation**

- (1) Our liability for compensation, in particular consequential loss due to late delivery or a lack of conformity of the goods or documents, is specifically excluded except if it results from intention or gross negligence.
- (2) Our liability in accordance with applicable and contractually unchangeable legal product liability regulations remains unaffected.

### **X. Reservation of Title**

- (1) Title to the delivered goods is retained by us until the purchase price of the goods has been paid in full in accordance with section V, paragraph 1, provided such a reservation of title is legal under the applicable laws.
- (2) The purchaser must take all measures that are necessary to secure this right to property title or to procure equivalent security rights in the country of his place of business. Non-compliance by the purchaser of this duty constitutes a fundamental breach of contract.
- (3) The arrangements for the reservation of title do not affect the conditions for the transfer of risk stated in section VII, paragraph 2.

### **XI. Place of Jurisdiction, Applicable Law**

- (1) Any legal disputes arising from this contract shall be governed exclusively by the courts in our place of business in D-78056 Villingen-Schwenningen, Germany. Notwithstanding sentence 1 we are also entitled to take the purchaser to court in his place of business.
- (2) The contract shall be governed by the laws of the United Nations Convention on the International Sale of Goods (CISG) dated April 11 1980. Legal questions concerning matters which are not governed by this Convention or which cannot be settled in conformity with the general principles on which it is based, shall be subject to the provisions of Swiss law.

### **XII. Final Provisions**

- (1) In the event that any individual term or provision of the present sales and delivery contract or any agreement made based thereon should for any reason be held to be invalid or legally unenforceable in any respect, such invalidity or unenforceability shall not affect any other term or provision of the contract. In case of such an invalid or legally unenforceable term or provision the parties shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid or legally unenforceable provision.
- (2) The parties are jointly obliged to undertake whatever measures are necessary to achieve the purpose of the contract and to refrain from any activities that could have an adverse effect.