

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

of

Hitachi Kokusai Electric Europe GmbH

### 1. Scope of Application

Sales and deliveries by Hitachi Kokusai Electric Europe GmbH ("HKEU") shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery ("Terms of Delivery"), which shall be accepted by Customer by the placing of an order or the receipt of delivery. They shall also apply to all future transactions with Customer. The application of Customer's conflicting or supplementary terms and conditions shall be excluded, even if HKEU does not expressly object to such terms and conditions.

### 2. Conclusion of Contract

- 2.1 Offers by HKEU shall be non-binding. A contract shall only become effective once it has been confirmed by HKEU in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Verbal agreements or promises shall only be valid if an authorized employee of HKEU has confirmed them in writing.
- 2.2 HKEU retains all rights in the sales documentation (in particular pictures, drawings, data on weight and size) and samples. These items must not be made available to third parties and must be returned to HKEU without undue delay on demand.
- 2.3 The field staff of HKEU is not authorized to represent HKEU. In particular, the field staff cannot conclude contracts and make binding promises concerning the goods to be delivered (*Liefergegenstand*) ("Goods") or other conditions.

### 3. Delivery Periods and Delivery Dates

- 3.1 Delivery dates and delivery periods are only binding if they have been agreed in the contract as binding and Customer has provided HKEU in a timely manner with all of the information or documentation required for the performance of such delivery and Customer has made any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of order. In the event of additional or supplementary contracts entered into at a later date, the delivery periods and delivery dates shall be extended or rescheduled accordingly, as applicable.
- 3.2 Events that are unforeseeable, unavoidable and outside the control and sphere of influence of HKEU and for which HKEU does not bear responsibility, such as acts of God, war, natural disasters or labor disputes, shall release HKEU for the duration of such event from its obligation to make timely delivery or to perform timely. Delivery and performance periods and dates, as the case may be, shall be extended or rescheduled, as applicable, by the length of such disturbance, and Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.
- 3.3 With regard to Goods that HKEU does not produce itself, the obligation to deliver shall be subject to HKEU's correct and timely receipt of such Goods from its suppliers.
- 3.4 If deliveries by HKEU are delayed, Customer shall only be entitled to rescind the contract if (i) HKEU is responsible for the delay and (ii) a reasonable grace period set by Customer has expired.
- 3.5 Should Customer be in default of the acceptance of delivery or should he be in breach of any other obligations to cooperate with HKEU, HKEU shall be entitled, without prejudice to its other rights, (i) to

reasonably store the Goods at Customer's risk and expense or (ii) to rescind the contract in accordance with the statutory provisions.

3.6 HKEU may make partial deliveries for good reason if and to the extent this is reasonable for Customer.

#### **4. Shipment, Passage of Risk, Transport Insurance**

4.1 In the absence of any other instruction by Customer, shipment shall be made using a reasonable method of shipment in the usual manner of packaging.

4.2 The risk shall pass to Customer (i) upon delivery of the Goods to the carrier commissioned by HKEU in case of a contract of sale involving the shipment of goods, (ii) upon handover to Customer if Customer collects the Goods himself, or (iii) upon handover to a third party if a third party authorized by Customer collects the Goods. Should Customer be in default of acceptance, risk shall pass to Customer upon default. If, in case the Goods shall be collected by Customer or a third party authorized by Customer, and delivery is delayed on grounds for which Customer is responsible, risk shall pass to Customer on the date Customer is notified of the readiness of the Goods for shipment.

4.3 A transport insurance shall be taken out only upon request and at the expense of Customer.

#### **5. Prices, Terms of Payment**

5.1 Unless the parties have agreed upon a certain price, the price shall be determined by the price list of HKEU as applicable at the date of the conclusion of the contract.

5.2 If the agreed delivery date is more than four months later than the conclusion of the contract and if, after conclusion of the contract, HKEU has incurred unforeseeable cost increases with regard to the Goods for which it does not bear responsibility, HKEU shall be entitled, at its reasonable discretion, to pass on such higher costs by increasing the agreed price on a pro rata basis.

5.3 All prices of HKEU are ex works exclusive of statutory VAT in the respective applicable amount and do not include any shipment and packaging costs, which will be charged separately. Customer shall bear any public charges such as possible customs duties that may arise in connection with the import of the Goods.

5.4 HKEU is entitled to issue partial invoices for partial deliveries as defined in section 3.6 hereof.

5.5 Each invoice of HKEU shall be due for payment without any deductions within 30 days from the date of invoice; if this period for payment lapses unsuccessfully, Customer shall be in default. Payments by Customer shall not be deemed to have been made until HKEU has received such payment.

5.6 In the event that Customer is in default, HKEU shall be entitled to demand default interest in the applicable statutory amount. Any claims for further damages due to the default shall remain unaffected.

5.7 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for HKEU.

5.8 Customer is only entitled to a set-off if his counterclaim is uncontested, ready for decision or has been finally adjudicated.

5.9 Customer is only entitled to assert a right of retention to the extent that his counterclaim is based on the same contract and is uncontested, ready for decision or has been finally adjudicated.

5.10 If HKEU becomes aware of the risk of Customer's impossibility to perform (*mangelnde Leistungsfähigkeit*) after conclusion of the contract, HKEU shall be entitled to make outstanding deliveries only against prepayment or the provision of security. If such prepayments or security have

not been rendered even after the expiry of a reasonable grace period, HKEU may partially or totally rescind individual or all of the affected contracts. HKEU shall remain entitled to assert further rights.

## **6. Retention of Title**

- 6.1 The Goods shall remain the property of HKEU until any and all claims of HKEU arising from its business relationship with Customer have been paid in full.
- 6.2 In the case of current accounts, this retention of title shall serve as security for the claim for the balance to which HKEU is entitled.
- 6.3 Customer shall only be allowed to sell the Goods subject to retention of title ("Products subject to Retention of Title") within normal and proper business transactions. Customer is not entitled to pledge the Products subject to Retention of Title, grant chattel mortgages on them or make other dispositions endangering HKEU's title to such products. Customer hereby assigns its receivables arising from the resale of the products to HKEU, and HKEU hereby accepts such assignment. Should Customer sell the Products subject to Retention of Title after processing or transformation or joining or mixing of such products with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between HKEU and Customer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to HKEU in his own name. HKEU may revoke such authorization and the right to resell the products if Customer is in default of the performance of material obligations such as making payment to HKEU.
- 6.4 Any processing or transformation of the Products subject to Retention of Title by Customer shall always be performed for HKEU. If Products subject to Retention of Title are processed with other goods, HKEU shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other processed goods at the time of processing. The new goods created by way of processing shall be subject to the same provisions as applicable to the Products subject to Retention of Title.
- 6.5 Should the Products subject to Retention of Title be joined o with other goods, HKEU shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other goods at the date of joining. Should the joining of the goods occur in such manner that Customer's goods are to be viewed as the main goods, it shall be deemed to be agreed that Customer assigns proportionate joint ownership to HKEU. Customer shall hold the joint ownership created in such manner in custody for HKEU.
- 6.6 Customer shall provide HKEU at all times with all desired information concerning the Products subject to Retention of Title or receivables assigned to HKEU under this contract. Customer shall immediately notify HKEU of any attachments of or claims to the Products subject to Retention of Title by third parties and shall provide the necessary documents in this regard. Customer shall at the same time advise the third party of HKEU's retention of title. The costs of a defense against attachments and claims shall be borne by Customer.
- 6.7 Customer is obliged to treat the Products subject to Retention of Title with care for the duration of the retention of title.
- 6.8 Should the realizable value of the securities exceed all of HKEU's claims that are to be secured by more than 10 %, Customer shall be entitled to demand a release to such extent.
- 6.9 Should Customer be in default of material obligations such as payment to HKEU, and should HKEU rescind the contract, HKEU may, notwithstanding any other rights, request surrender of the Products subject to Retention of Title and may make use of them otherwise for the purpose of satisfying its

matured claims against Customer. In such case, Customer shall grant HKEU or HKEU's agents immediate access to the Products subject to Retention of Title and surrender the same.

- 6.10 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same effect as in Germany; Customer shall do everything to create equivalent security rights for HKEU without undue delay. Customer shall cooperate in all measures such as registration, publication, etc. that are necessary and beneficial to the validity and enforceability of such security rights.
- 6.11 On HKEU's demand, Customer is obliged to appropriately insure the Products subject to Retention of Title, provide HKEU with the respective proof of such insurance and assign the claims arising under such insurance to HKEU.

## **7. Intellectual Property Rights and Advertising**

- 7.1 Customer shall not perform and may not authorize a third party to perform any act that may endanger the trademarks or other intellectual property rights used by HKEU in relation to the Goods. In particular, Customer may not obscure, alter or remove in any manner the trademarks and/or other distinctive features, whether imprinted or attached, that are part of HKEU's Goods and may not include or attach any other features.
- 7.2 Customer may only advertise the Goods and use the Advertising Material and the trademarks of Hitachi Kokusai Electric Europe GmbH for this purpose if HKEU has granted its prior express consent in writing. HKEU may withdraw its consent at any time. Irrespective of HKEU's consent, Customer shall in any event remain responsible for ensuring that all advertising measures or advertisements fulfill the statutory requirements, if any, and do not breach any industrial property rights of third parties.

## **8. Quality, Customer's Rights in case of Defects, Duty to Inspect the Goods**

- 8.1 Upon passing of the risk the Goods shall be of the agreed quality; the quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the Goods.
- 8.2 Information provided in sales catalogues, price lists and any other informative literature provided by HKEU or any other descriptions of the Goods shall under no circumstances constitute a guarantee for any specific quality of the Goods; such specific quality or durability guarantees must expressly be made in writing.
- 8.3 HKEU reserves the right to change the Goods slightly with regard to their construction, material and/or finish to the extent their agreed characteristics are not changed hereby. This shall not apply to cases in which HKEU manufactures or develops the Goods according to the Customer's specifications or participates in this development.
- 8.4 Irrespective of any possible rights due to defects of the Goods according to the provisions set forth below, Customer shall be obliged to also accept Goods having immaterial defects.
- 8.5 Customer's rights in case of defects of the Goods shall require that he inspects the Goods upon delivery without undue delay and notifies HKEU of any defects in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to HKEU in writing without undue delay upon their discovery.
- 8.6 In the event of a notification of a defect, HKEU shall have the right to inspect and test the Goods to which objection was made. Customer will grant HKEU the required period of time and opportunity to exercise such right. HKEU may also demand from Customer that he returns to HKEU at its expense the Goods to which objection was made. Should Customer's notification of the defect prove to be unjustified and provided Customer has realized this prior to the notification of the defect or has not

realized it in a negligent manner, Customer shall be obliged to reimburse HKEU for all costs incurred in this respect, e.g. travel expenses or shipping costs.

- 8.7 HKEU shall be entitled to remove the defect at its option by remedying the defect or, alternatively, by delivering a replacement, both free of charge to Customer (together "Subsequent Performance").
- 8.8 Customer shall give HKEU the necessary reasonable time and opportunity for the Subsequent Performance.
- 8.9 Goods that have been replaced by HKEU shall, upon its demand, be returned to HKEU.
- 8.10 Customer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the Goods due to reasons for which Customer bears responsibility, such as inappropriate or improper use, the non-observance of the operational instructions, incorrect start-up of operation or faulty treatment (e.g. excessive wear), (iii) incorrect assembly and/or installation by Customer or a third party commissioned by Customer, and (iv) the use of unsuitable accessories or unsuitable spare parts or the performance of inappropriate repair works by Customer or a third party commissioned by Customer.
- 8.11 HKEU shall bear the costs for shipment, travel, labor and material that accrue for the purpose of a Subsequent Performance. Subsequent Performance does not encompass the installation and removal of the defective Goods; Customer shall bear the installation and removal costs.
- 8.12 Should the Subsequent Performance fail, should such remedy be unreasonable for Customer or has HKEU refused such remedy pursuant to Section 439 (4) German Civil Code (*Bürgerliches Gesetzbuch*; "**BGB**"), Customer may, at its option, rescind the contract in accordance with the statutory provisions or reduce the purchase price and/or claim either damages pursuant to section 9 or the reimbursement of its [futile] expenses.
- 8.13 The limitation period for Customer's claims for defects shall be twelve months beginning with the handover of the Goods to Customer. The provisions on the statute of limitations of Section 445b BGB shall remain unaffected. The statutory limitation period shall apply:
  - (a) to Customer's rights with respect to defects concealed in bad faith or caused intentionally;
  - (b) if and to the extent HKEU has assumed a guarantee;
  - (c) to Customer's damage claims due to culpably caused personal injuries;
  - (d) to Customer's damage claims for damages caused by HKEU intentionally or by gross negligence;
  - (e) to Customer's damage claims due to other reasons than defects of the Goods; as well as
  - (f) to claims under the German Product Liability Act or any other mandatory statutory liability.

## **9. Limitation of Liability and Damage Compensation**

- 9.1 HKEU's obligation to pay damages shall be limited as follows:
  - (a) For damages caused by a breach of a material contractual obligation, HKEU shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract; HKEU shall not be liable for damages caused by a breach of a non-material contractual obligation.

- (b) The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent HKEU has assumed a guaranty.

9.2 Customer shall take all reasonable measures necessary to avert and reduce damages.

9.3 HKEU shall not be liable for the infringement of third-party industrial property rights in the case of Goods manufactured in accordance with the Customer's specifications; this shall also apply if HKEU participated in the development or developed Goods in accordance with the Customer's specifications.

## **10. Product Liability**

If Customer sells the Goods, whether unchanged or changed, whether after processing, transformation, joining, blending or mixing with other goods, Customer shall indemnify HKEU in their internal relationship against any product liability claims of third parties if and to the extent Customer was liable for the defect leading to the liability towards third parties.

## **11. Compliance**

11.1 Customer shall comply with existing export laws and regulations and may not arrange for any re-export of the delivery items without the corresponding approval of the respective governments.

11.2 Customer shall comply and be responsible for its employees' compliance with existing laws, including but not limited to anti-corruption laws.

11.3 The Goods may not be used as weapons and / or for the purpose of disrupting international peace / security.

11.4 The Goods may not be sold, lent or rented to businesses that are involved in the activities mentioned under point 11.3. This also applies to design, development and production, regardless of compliance with the export laws in force in the respective countries.

11.5 Some of the Goods contain US American components which are subject to the American Export Administration Regulation (EAR). Customer is strictly prohibited from selling or reselling the Goods to Iran or any other country subject to export restrictions.

## **12. General Provisions**

12.1 Customer may assign the rights arising from the parties' contractual relationship to third parties only with HKEU's written consent. Section 354a German Commercial Code (*Handelsgesetzbuch*; "HGB") shall remain unaffected hereby.

12.2 Information on the processing of personal data by HKEU is available here: [https://hitachi-keu.com/content/datenschutz\\_e.htm/](https://hitachi-keu.com/content/datenschutz_e.htm/)

12.3 Amendments and supplements to the contract and/or these Terms of Delivery and any side agreements must be made in writing. The same shall apply to the amendment of this written form requirement.

12.4 If a provision of the contract and/or these Terms of Delivery is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected hereby.

12.5 Exclusive venue for any and all disputes arising from or in connection with the parties' contractual relationship shall be Frankfurt am Main. HKEU is entitled, however, to sue Customer at any other court having statutory jurisdiction.

12.6 The laws of the Federal Republic of Germany shall apply to these Terms of Delivery and the parties' contractual relationship to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).