



## GENERAL TERMS AND CONDITIONS

### 1. PREAMBLE

1.1. *These General Terms and Conditions shall apply insofar as different terms and conditions have not been expressly acknowledged in writing by the contracting parties.*

1.2. *The present General Terms and Conditions for the delivery of goods shall apply to services where appropriate.*

### 2. EXECUTION OF CONTRACT

2.1. *The contract shall be executed upon the seller sending a written acknowledgement of receipt of an order. The customer is required to inspect the acknowledgement of order immediately. If the acknowledgement of order differs from the order and the customer fails to notify the seller of this in writing within a period 5 days, the order shall be considered accepted by the customer.*

2.2. *Deviations from and additions to the contract require confirmation in writing by the seller in order to be valid. The customer's terms of purchase are only binding on the seller if the latter provides a separate acknowledgement in writing. Spoken assent by the seller is only binding if this is subsequently confirmed in writing.*

2.3. *The seller's offers (inclusive of goods ordered through the Web Shop) and terms of delivery shall be considered to be subject to confirmation and non-binding until receipt of the confirmation of order by the customer. The goods are subject to prior sale.*

2.4. *Should import and export licences, agreements about currencies and similar agreements be required in order to execute the contract the party who is responsible for the purchase must make every reasonable effort to obtain the required licences or permits in time.*

2.5. *The seller is entitled to withdraw from contracts that have already been concluded if the customer fails to meet their payment obligations (advance payments are to be effected within a term of 5 days from receipt of the confirmation of order) or if the payment should be refused by credit card, bank or other payment transferring institutions at the point of transaction for lack of funds. Similarly the seller is entitled to withdraw from contracts that have already been concluded if credit insurance cannot be obtained to cover the customer.*

2.6. *In the event of an unjustified withdrawal from the contract by the customer the seller is entitled to 10 % (ten percent) of the purchase price as a cancellation fee regardless of any claims for reparation in excess of that.*

### 3. DETAILS, PLANS AND DOCUMENTS

3.1. *Details about measurements, weight, power, capacity, delivery, prices, etc. in the catalogues, brochures, homepage, web-shop, newsletters, prospectuses, illustrations, price lists, etc. are only applicable when expressly specified in the confirmation of order. Particular details about performance are dependent on application and actual site conditions.*

3.2. *The outlines, plans and other technical documents, as well as catalogues, models, prospectuses, illustrations, displays, videos, fitting and installation instructions, operating instructions and images etc. constitute the property of the seller at all times, and also when*

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offered via internet media (i.e. Homepage). Their use, distribution, reproduction, publication and demonstration shall only be permitted after the property owner's explicit consent is obtained.

3.3. The seller reserves the right to change the construction and materials so long as this does not substantially affect or impair the customary usage of the delivered goods or the usage prescribed in the contract.

#### 4. PACKING

4.1. The period of passage of benefit and risk falls within the following cases: a) following the 'ex factory' sale of the goods the risk will pass from the seller to the customer, when the goods are made available to the customer. The seller must inform the customer of the time of delivery when the goods will be available to the customer. This communication must be effected promptly to allow the customer to take the usual necessary measures to secure this; b) for the purchase "truck, barge, goods wagon" (agreed place of departure), "frontier" or "place of delivery" or in the case of "free delivery until" the risk shall pass from the seller to the customer at the moment when the means of transport that is carrying the goods is taken over by the first haulage contractor; c) in the event of a "job" (free on board) or "cif" (costs, insurance, freight) or "c&f" (costs and freight) sale the risk shall pass from the seller to the customer when the goods are actually at the ship's rail in the agreed shipping port.

4.2. Insofar as a different agreement has not been made, the goods shall be sold ex-factory.

4.3. The seller is only required to provide insurance cover insofar as and when this has been agreed in writing.

4.4. Furthermore the latest INCOTERMS shall apply as specified on the day when the contract was agreed.

#### 5. DELIVERY PERIOD

5.1. Insofar as a different agreement has not been made the delivery period shall commence at the latest of the following times: a) date of the confirmation of the order; b) date of completion by the customer of all the technical, commercial and financial conditions; c) date when the seller has received an advance payment prior to delivery of the goods or a pre-payment and / or letter of credit.

5.2. The seller is entitled to effect partial or advance deliveries and to invoice them separately.

5.3. If the seller is to blame for a delay in delivery the customer can either insist on performance or, allowing a reasonable extension of time for delivery, announce his withdrawal from the contract. With regard to custom-made products, the extension of time is to take into account the fact that the seller is unable to sell elsewhere the parts that have already been made.

5.4. If the seller is unable to keep to the designated extension of time as per Art. 5.3. the customer is entitled following a written communication to cancel all the contracted goods that were not delivered and could not be used appropriately. In this event the seller is required to refund the payments that were made for the goods that were not delivered or could not be used and, insofar as the failure to deliver is due to gross negligence by the seller, to repay the necessary expenses that were incurred up to cancellation of the contract and its implementation. However, the seller is not liable for any losses of profits incurred by the customer. Goods that have already been delivered and are not usable shall be returned by the customer to the seller.

5.5. If the customer does not accept the goods that have been prepared in accordance with the contract at the contractually determined place of delivery or at the agreed time and this delay is not due to negligence or an action on the part of the seller, then the seller can either insist on performance or, allowing an extension of time for accepting the goods, announce their withdrawal from the contract. If the seller cancels the contract because the customer refuses to accept the goods, Point 2.6 shall be applied by analogy. When the goods have been segregated the seller can undertake to store the goods at the expense and risk of the customer. Furthermore, the seller is entitled to demand compensation for all the necessary expenses that were incurred in applying the contract and were not included in the received payments.

#### 6. PRICE

*Insofar as different prices have not been expressly acknowledged, the prices are ex-factory of the seller without packing or freight. If shipment with delivery is agreed the prices shall not include loading and handling. Unforeseen delivery costs that were not caused by the seller (i.e. temporary storage, multiple journeys) are to be paid by the customer.*

## 7. PAYMENT and TITLE OF OWNERSHIP

7.1. *Payments are to be effected in accordance with the agreed terms. The customer is not entitled to retain or offset payments in return for warranty claims or various counterclaims that are not recognised by the seller. If the customer has defaulted on an agreed payment or other service the seller can either a) insist on completion of the contract and put off his own obligations until the delayed payments or other services have been effected; b) call for immediate payment of the total outstanding purchase price; c) set an appropriate extension of the delivery period; d) cancel the contract after an extension of the delivery period. Insofar as the customer does not have grounds for support the seller is entitled in the event of a default to demand payment of a default interest rate of 6 % above the applicable 3 month EURIBOR. The right to demand a higher default interest rate for damages incurred is reserved. All the fruitless expenses incurred by the seller in completing the contract are to be repaid. The seller retains ownership of the purchased goods until the whole payment has been effected (inclusive of applicable interest payments and freight costs).*

7.2. *All credit card holders are subject to validation checks and authorization by the card issuer. We are allowed to exchange with third parties the personal information about the credit card holder that is required for these checks. If the card issuer refuses to approve the payment, we are only required to effect a delivery when the customer has paid by another means.*

7.3. *Payments for purchases made through the Web Shop are transmitted in an encrypted form using the latest technology. However the seller is not liable for the improper use by third parties of data relating to payments.*

## 8. PRIVACY

*In accordance with xelectrix Power GmbH Privacy Policy*

## 9. UTILITIES

*The customer shall provide free of charge all utilities necessary for the handing over, commissioning, or remedial work that may arise or be required.*

## 10. WARRANTY

*In accordance with xelectrix Power Warranty Policy document.*

## 11. LIABILITY

*The seller is liable for damage within the context of the law insofar as intent or gross negligence on the seller's part can be proved. Liability for slight negligence, and compensation for consequential damages and financial loss, not realized savings, loss of interest and damages arising directly or from third party claims are excluded. Furthermore, no liability shall be accepted for personal injury or damage to property that are not objects of the contract.*

## 12. TRADEMARKS, DOMAINS, PATENTS, IP

*Customer acknowledges that the trademarks, trade names, design marks ("Trademark"), Intellectual Property, Patents, designs, concepts, registrations, domains, websites, IP addresses used by the seller are the proprietary and sole property of the seller and requires express written consent from the seller before use. Furthermore, the customer will immediately cease use of the trademarks, trade names, design marks ("Trademark"), Intellectual Property, Patents, designs, concepts, registration, domains, websites, IP addresses upon request from seller. Customer is not allowed to set up domains and / or website for marketing or sales activities with specific reference to seller trade name, trademarks without express written permission from seller.*

## 13. PLACE OF JURISDICTION AND DISPUTE RESOLUTION

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*The parties consent to the application of the laws of Austria exclusively to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods, excluding its conflict of law rules, for the solving of any dispute relating to this Agreement. Any dispute, controversy or claim arising out of, or in connection with, this Agreement or the breach, termination or invalidity thereof, shall be finally settled in accordance with rules of the Arbitration Institute of the Austrian Chamber of Commerce.*

*Each party shall appoint one arbitrator who will jointly appoint the chairman. If they cannot agree on the chairman, then the chairman will be appointed by the said Arbitration Institute.*

*Arbitration will take place, in Austria. The language of the proceedings will be German.*

*These General Terms and Conditions are available in different languages; shall there arise any disputes regarding the interpretation of the English and German version, the German version shall prevail.*

*xelectrix Power GmbH*

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