

General sales conditions (GSC) of E F D Induction Ges.m.b.H.



1. Scope of application

1.1. These business conditions apply between us and natural persons and legal entities (in the following: customer) to the subject legal transaction as well as to all future business, even if in the very case, mainly in future supplemental or consequential orders, they are not expressly referred to.

1.2. We exclusively conclude agreements on the basis of these business conditions.

1.3. Business conditions of customer or modifications or amendments of resp. to our general conditions require our express written consent in order to be applied.

1.4. Business conditions of customer are not accepted even if we do not expressly reject them after having been received by us.

2. Offers, conclusion of agreement

2.1. Our offers and cost estimates are not binding.

2.2. Representations, promises and guarantees on our behalf or agreements different from these general conditions in connection with the conclusion of the agreement will only be binding upon our written confirmation.

2.3. Informations about our products and services not to be allocated to us, in catalogues, price lists, folders, advertisements on fair booths, circular letters, advertising mailings and other media (information material) are to be notified to us by customer to the extent customer bases his decision to order on them. In such case we can comment on the correctness. In case customer does not meet this incumbency such information is not binding to the extent not having been expressly declared in writing to be part of the agreement.

2.4. Agreements concluded orally or over the telephone as well as written and oral agreements with agents of EFD Induction will only be binding on EFD Induction if EFD Induction has acknowledged them in writing.

2.5. Instructions provided by EFD Induction in brochures, instructions for use or other product information shall be strictly complied with in order to prevent damage. EFD Induction expressly warns the Customer against any use or treatment of the products beyond the defined areas of application. The Customer shall ensure that any further customer or user will be instructed sufficiently.

2.6. In case of withdrawal from the agreement/contract we may demand from customer liquidated damages in the amount of 30% the gross amount of the order without evidence of effective damages.

2.7. It is possible to claim higher damages.

3. Terms of delivery

3.1. Terms and dates for supply and performance are only binding for us if having been determined in writing. Waiving this stipulation of form also requires the written form.

3.2. In case the start of the performance of works or the implementation is delayed or interrupted by circumstances to be allocated to customer, the respective periods for

performance are extended and the completion dates correspondingly postponed.

3.3. The delivery time starts with the last of the following

- a) Date of written order
- b) Date of orderacknowledgement
- c) Date of presentation of all necessary documents to the supplier, including technical data-sheets and drawings, commercial papers.
- d) Date of receiving first down-payment, L/C or similar securities.

3.4. Deliveries will be made and invoiced at the prices and on the terms and conditions applicable on the date of delivery.

3.5. EFD Induction will deliver only on Incoterm EX WORKS. The goods designated for repair or other purposes shall be delivered DDP by the Customer to EFD Induction and will be returned EXW. Other Incoterms concluded orally or over the telephone as well as written and oral agreements with agents of EFD Induction will only be binding on EFD Induction if EFD Induction has acknowledged them in writing.

3.6 If EFD Induction delivers goods free of charge to the address of the Customer once or several times, no legal claim to be granted that benefit permanently will arise therefrom.

3.7. Consequences of force majeure or similar unforeseeable events occurring at EFD Induction or third parties with whom EFD Induction maintains business relations, e.g. interruptions of operations or traffic; fire; floods; lack of workforce, energy or raw materials; strike; lock-out; official measures or the like will release EFD Induction from its obligation of timely delivery and grant EFD Induction, in addition, the right to discontinue further deliveries without having to pay damages and without being obliged to make subsequent deliveries.

3.8. Minor substantial justified modifications of our implementation of works are deemed to be permitted in advance, if reasonable for customer.

3.9. Should, after the placement of the order, for what reason ever, modifications or amendments of the order occur, the supply-/ work period is extended for an adequate period of time.

3.10. If customer desires after conclusion of the agreement that the implementation of works shall be carried out within a shorter period of time, this constitutes a modification of the agreement. It may cause over time hours and/or additional costs caused by the acceleration to acquire materials and increase the compensation in the ratio to the necessary additional efforts adequately.

3.11. Substantially justified partial supply and - service (e.g. size of installation, work progress, etc.) is admissible and maybe invoiced separately.

3.12. The risk passes to customer as soon as we keep the purchase item is ready for collection at premises or storage respectively hand over material and appliances to a carrier or mover. Dispatch, loading and unloading and transportation always is at the risk of customer.

3.13. Customer approves any adequate way of dispatch. Upon written request of customer we undertake to take out a transport insurance at the costs of customer.



3.14. We are entitled in case of dispatch to collect the costs of emballage and dispatching as well as the consideration on delivery from customer in case customer is in delay with a payment in the frame of the existing business relation with us or a credit limit has been exceeded.

3.15. Customer is responsible for the safety of the materials and appliances supplied by us and stored or assembled at the place of performance. Losses and damages are to be born by customer.

4. Prices

4.1. Prices indicated, as a rule, are not to be understood as lump sum price.

4.2. Price information is to be understood plus the applicable legal value added tax ex works. Costs for emballage, transportation, handling and dispatching plus customs and insurance are to be born by customer.

4.3. The compensation in case of permanent contractual relationships is agreed as value guaranteed according to the consumer price index 2005 allowing the adaption of the compensation. The basis is the month in which the agreement was concluded.

4.4. Costs for travelling expenses, daily allowances and night tariffs are charged separately. Travel time is deemed to be work time.

5. Terms of payment

5.1. Unless otherwise agreed the selling prices of EFD Induction as well as all offers and calculations shall be considered net amounts in Euros.

5.2. Dedications of payments made by customer are not binding for us.

5.3. If the value of a payment which has been agreed in a currency other than euro changes by more than 5% (e.g. due to a change of currency parity), EFD Induction will be entitled to adjust the price accordingly.

5.4. In the case of unforeseeable increases in the cost of raw materials, energy or production EFD Induction will be entitled to adjust the selling prices accordingly as of the date of delivery.

5.5. The amounts invoiced shall be payable promptly after receiving of invoice without any cash deductions and shall be paid free of postage and charges. Employees and agents of EFD Induction are not authorised to accept payments in the name of EFD Induction.

5.6. Advance payments and payments on account shall yield no interest.

5.7. In principle, the Customer shall transfer payments into the account advised by EFD Induction at his risk and cost. The place of performance for the Customer shall be Vienna.

5.8. Any retention or set-off by the Customer of any claims whatsoever against claims of EFD Induction shall be excluded.

5.9. If the Customer is in default of payment, EFD Induction shall be entitled to charge default interest at a rate of at least

12% p.a. If EFD Induction is entitled to a higher rate of interest due to statutory provisions or if higher interest has to be paid by EFD Induction due to higher borrowing costs, EFD Induction shall be entitled to charge such interest. In addition, the defaulting Customer shall bear any and all dunning charges, collection charges, investigation and information charges incurred in connection with collection of the accounts receivable outstanding.

5.10. In case customer is in delay of payment in the frame of other existing contractual relations with us we are entitled to suspend fulfilment of our obligation out of this agreement till customer has performed.

5.11. In such case we are also entitled to accelerate maturity of all claims for services already rendered within the current business connection with customer.

5.12. The entitlement to deduct a discount requires an express written agreement.

6. Contribution by customer

6.1. Our duty to render services start the earliest after
a) all technical details have been cleared,
b) customer has prepared the technical and legal conditions (which we are ready to communicate upon request),
c) we shall have received down payments or securities agreed, and
d) customer has met his contractual obligations for advance performance and performance contribution primarily those named in the items below.

6.2. In case of assembly works to be carried out by us customer has to take care that immediately after arrival of our assembly team works can be started.

6.3. Customer has to bring about the necessary permits of third parties and reports to and approvals by authorities at own costs. We are ready to give the relevant information.

6.4. Energy and water quantity necessary to render the service and for the test run are to be contributed by customer at his costs.

6.5. During the time of rendering the work, the customer has to make available to us rooms which can be locked, free of costs, not accessible to third parties, for the abode of the workmen and the storage of tools and materials.

6.6. Customer is liable that the necessary constructional, technical and legal preconditions for the work to be performed or the item of purchase are met, which are described in the agreement or in the information given to customer prior to the conclusion of the agreement or which customer should have constructive knowledge of, based on his professional knowledge or experience.

6.7. Customer is also liable that the technical installations like production lines, manipulators, robots, water- and electricity supply etc. are in a technically perfect and operable condition and compatible with the works or purchase items to be implemented by us.

6.8. We are entitled but not obliged to check such installations for separate consideration.

6.9. Before the beginning of the assembly works customer, most of all, has to give the necessary information on the



situation of concealed electricity-, and water conduits or similar installations, escape ways, other obstacles of constructional type, possible sources of danger and the required statical information without having been requested to do so.

6.10. Details of the necessary information referring to the order can be obtained from us.

6.11. The customer is solely liable for the construction and functionality of contributed parts. There is no obligation to examine documents eventually submitted by customer, information or instructions given – except the keeping of technical construction records and the certification of conformity with the machine directive and eventually with other applicable directives - with regard to the item to be supplied, so that the respective liability from our side is excluded. The obligation to issue the certification may be transferred by agreement to the customer marketing the item to be supplied.

6.12. Customer is not entitled to assign claims and rights out of this contractual obligation without our written consent.

7. Retention of title

7.1. EFD Induction will retain title to all goods supplied by it until full payment of the amounts invoiced. This shall also apply if the purchase price has been paid for certain shipments of goods defined by the Customer, because retention of title serves the purpose of securing the total accounts receivable by EFD Induction.

7.2. If goods which are the property of EFD Induction are mixed, blended or combined with other items, the Customer already at this point assigns his ownership rights or co-ownership rights to the new item to EFD Induction and shall hold the item in safe custody for EFD Induction with the care of a prudent businessman.

7.3. The Customer may only use or sell the goods which are the property of EFD Induction in the ordinary course of business provided that he is not in default of payment.

8. Industrial property rights of third parties

8.1. For items supplied which we produce according to customer's documents (information on design, drawings, mock-ups or other specifications, etc.) exclusively customer guarantees that the manufacturing of these items to be supplied does not infringe industrial property rights of third parties.

8.2. If however industrial property rights of third parties are claimed we are entitled to suspend production of the items to be supplied at risk of customer till the rights of third parties are clarified except the claim is obviously not justified.

8.3. The same way we may claim compensation from customer for necessary and useful costs paid by us.

8.4. In case of litigation we are entitled to demand adequate advance down payments.

9. Our intellectual property

9.1. Items supplied and the pertinent documents for performance, plans, sketches, cost estimates and other documents as well as software supplied by us or having

been created through our contribution remain our intellectual property.

9.2. Its use, most of all, distribution, copying, publishing or making available, including only partial copying, as well as imitation, processing or exploitation requires our express approval.

9.3. Furthermore, customer undertakes to keep knowledge having been obtained through the business relationship confidential with regard to third parties.

10. Warranty

10.1. The warranty period for our services is one year after delivery.

10.2. Induction Coils and brazed parts are excluded from the standard warranty. EFD Induction only gives a functional assurance on induction coils and brazed/soldered parts and never any warranty on a pre-defined life time period.

10.3. Lacking an agreement to the contrary (e.g. formal acceptance) the date of delivery is the time of completion, the latest when customer has taken over the works in his control or has refused acceptance without reasons. The day on which customer is informed about completion the works are deemed to be taken over into the control of customer in the absence of justified refusal of acceptance.

10.4. Remedying faults alleged by customer does not constitute recognition of a fault.

10.5. Under all circumstances it is the customer who has to prove that a fault existed already at the time of delivery.

10.6. Complaints about defects or objections of any kind are to be notified to us at our premises immediately (the latest after 5 workdays) indicating the description of the fault as precise as possible and indicating the possible cause in writing, as otherwise the claim for warranty is forfeited. The items or works objected are, to the extent being reasonable to be delivered by customer.

10.7. In case faults alleged by customer are not justified customer is obliged to reimburse us for expenses incurred in order to ascertain the flawlessness or to remedy the defect.

10.8. We are entitled to make any examination considered to be necessary by us or to have it made, even if it leads to the result that the items or work pieces are destroyed. In case the examination leads to the result that we are not liable for a defect customer is to bear the adequate costs for such examination.

10.9. Transportation and travelling expenses incurred in connection with the remedying of the defect are to be born by customer. Upon our request customer has to make available required manpower, energy supply and space free of costs and to cooperate according to item 7.

10.10. Customer has to allow us at least two attempts to remedy a defect.

10.11. We may elect to ward off a claim for redhibition by remedying or adequate price reduction, to the extent the defect is not essential or cannot be remedied.



10.12. In case items are manufactured upon information, drawings, plans, mock-ups or other specifications by customer we only warrant performance as agreed.

10.13. The fact that works are not fully qualified for use as agreed does not constitute a defect if it is caused exclusively by the fact that the effective situation is deviating from the informations we had at the time of performance, because customer has not fulfilled his cooperation obligation according to item 7.

10.14. Also, technical installations of customer like conduits, cabling, networks, etc. not being in technically perfect or operable condition or not being compatible with the items supplied do not constitute a defect.

10.15. Place of performance is the domicile of EFD Induction Ges. m. b. H. in Vienna or one of the other facilities of the EFD Induction Group.

11. Liability

11.1. EFD Induction will be liable for damage caused by its own fault or by the fault of its agents but not in cases of ordinary negligence. To the extent permitted by law no liability shall be assumed in cases of gross negligence either for lost profit due to delayed or defective delivery, for disadvantages due to business interruptions caused thereby, for transportation costs incurred in connection with replacing the defective goods with non-defective goods, for costs of dismantling or installation, if any, for damage to items that are in the custody of EFD Induction for processing resulting from a violation of custody or occurring during processing, or for claims asserted vis-à-vis the Customer by customers of his. EFD Induction will take out an insurance against those kind of disadvantages at the Customer's request and at his cost.

11.2. EFD Induction will be liable for personal injury according to the Austrian Product Liability Act [Produkthaftungsgesetz] as amended. Liability for damage to property will only be accepted by EFD Induction if suffered by a consumer and is otherwise excluded. In the case of resale of products purchased from EFD Induction, the purchaser shall be obliged to pass on the above exclusion of liability regarding damage to property in the commercial area to each further purchaser.

11.3. If items are produced or distributed on the basis of drawings, specimens or other documents or instructions of the Customer and rights of third parties are infringed thereby (in particular industrial property rights of third parties), the Customer shall indemnify and hold EFD Induction harmless.

12. Miscellaneous

12.1. EFD Induction and all of its affiliated companies will be entitled to offset claims against accounts receivable, whether already due or not, including future accounts receivable to which EFD Induction is entitled vis-à-vis the Customer or to which the Customer is entitled vis-à-vis EFD Induction. (If necessary, the Customer will be informed about the status of such shareholdings upon request).

12.2. If any provision of these GSC or any contractual agreement between EFD Induction and the Customer is held by any court or other competent authority to be void, illegal or unenforceable in whole or part, the other provisions of these GSC or the affected Agreement as well as the remainder of

the affected pro-visions shall continue to be valid, in force and binding. The void, illegal or unenforceable provision shall be automatically deemed replaced by such valid, legal and enforceable provision that comes closest to the business purpose of the replaced provision.

12.3. If after conclusion of the contract EFD Induction learns that the financial situation of the Customer has developed unfavourably or that insolvency proceedings have been initiated or have not been initiated for lack of assets or that proper fulfilment of the contract is not secured, EFD Induction may demand advance payment or collateral security equal to the value of the delivery. If the Customer fails to fulfil this request, EFD Induction shall be entitled to rescind the contract with immediate effect.

12.4. For all legal disputes arising out of or in connection with the business relationship between EFD Induction and the Customer (in particular in connection with supply agreements) the court having jurisdiction over the subject-matter and over Vienna, Austria, shall be the exclusive place of jurisdiction. EFD Induction shall, however, at its option be entitled to sue the Customer also before the court having jurisdiction over (i) the place of the Customer's registered office or (ii) the location of any goods which may be the subject of dispute.

12.5. Unless mandatory statutory regulations to the contrary exist, the entire business relationship between EFD Induction and the Customer (in particular the supply agreements concluded) shall exclusively be subject to Austrian substantive law. Applicability of UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements is hereby excluded.

12.6. Interpretation: – All references to 'we', 'us' 'our' and / or EFD Induction and / or the purchaser are references to EFD Induction Ges.m.b.H. – All references to agreement by EFD Induction shall entail agreement in writing signed by an authorised signatory of EFD Induction.

12.7. Customer expressly declares to agree that his data, solely for the purpose of protection of creditors, may be communicated to the officially privileged creditor protection associations AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsankunft Kubicke KG und Kreditschutzverband von 1870 (KSV).

12.8. Customer is obliged to immediately communicate to us in writing changes of his name, the company, his address, the legal form or other relevant information.