

**GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND REPAIR  
OF MITSUBISHI ELECTRIC EUROPE B.V.,**

**1. General Provisions**

Our business relationships with customers shall be governed exclusively by the following General Terms and Conditions of Sale, Delivery and Repair, unless otherwise agreed in writing in the individual case; this shall also apply with regard to deviating general terms and conditions of our customers even if such are not expressly contradicted by us.

Offers, orders as well as oral commitments by our representatives or sales personnel shall first be binding upon us upon our written confirmation thereof. Offers and orders of customers must be accepted by us in writing. With immediate delivery undertaken by us, however, a written confirmation of order can be replaced by our invoice.

Our offers are always subject to change without notice. Illustrations, descriptions, details with regard to measurements or weight in brochures or similar documents are not binding insofar as such are not expressly designated in writing to be binding by us.

Partial deliveries are permitted to the extent that they are reasonable with regard to the customer.

**2. Prices**

If not otherwise expressly agreed in writing, agreed prices shall be deemed to be as from our respective distributing warehouse without value added tax and other auxiliary costs which do not constitute the pure invoiced value of the goods and are normally shown separately.

Invoicing shall be made on the basis of our prices in effect on the date of delivery. In addition to the agreed price, the customer shall pay the statutory value added tax.

Should freight charges, insurance costs, public charges (as, e.g. customs, import or export fees, etc.) or other charges be newly introduced or increased after conclusion of the contract, we shall be authorized in such cases, also with freight pre-paid or duty paid delivery, to add such additional charges to the agreed purchase price.

**3. Delivery Term / Default**

We shall make an effort to meet delivery deadlines as foreseen; delivery date commitments are, however, only binding upon us if confirmed by us in writing. We shall not be in default as long as the customer is in default with the performance of its obligations (e.g. supply of documentation by the customer, required approvals and clearance, in particular plans, as well as compliance with agreed payment conditions). If these conditions have not been met by the customer in due time, then the respective time periods shall be prolonged appropriately; this shall not apply if we are responsible for the delay.

If the cause of the failure to observe the delivery term is due to force majeure which exists for us or our suppliers such as, e.g. fire, earthquake, official directives such as export restrictions, general mobilization, war, unrest, strike, lock-out or similar circumstances outside the scope of our influence, then the delivery term shall be extended by a reasonable period. The customer may only claim damages due to delay in delivery in addition to performance of delivery or services if our liability is based on intent or gross negligence. Any liability for ordinary negligence shall be excluded; however, this shall not apply if we are liable due to mandatory law for injury to life, limb or health. The customer can only cancel the contract within the framework of statutory provisions insofar as we are responsible for the delay of delivery. No modification to the burden of proof to the disadvantage of the customer is associated with the afore-mentioned regulations.

Upon our demand, the customer is obligated to declare within a reasonable deadline whether it shall cancel the contract due to delay of the delivery or whether it shall insist upon the delivery.

#### **4. Shipping / Transfer of Risk**

The risk shall be transferred to the customer also with freight prepaid delivery if the goods for delivery are brought to the shipping carrier or are collected:

Should it be notified that the goods for delivery are ready for shipment and the shipping is delayed due to circumstances for which we are not responsible, we shall then be entitled but not obligated to undertake all measures deemed to be suitable and appropriate for the maintenance of the goods for delivery, at the cost and risk of the customer. Should the delivery be delayed due to circumstances for which the customer is responsible or should the customer not have accepted deliveries in a timely manner, then we shall be entitled, after fixing an additional deadline of fourteen days, to sell the goods on the open market at the cost and risk of the customer and to demand the immediate payment of the purchase price; we can also instead cancel the contract and/or demand reimbursement of damages.

#### **5. Payment Terms / Default**

Insofar as no other term for payment is agreed, 30 days after the invoice date, we shall be entitled to calculate to the customer, without a warning notice, interest and commissions pursuant to the respective bank rates for short-term credit however not less than the statutory interest. All of our accounts receivable shall be (regardless of agreed payment dates or additional payment time) immediately payable and due if the payment terms are not observed by the customer or if circumstances become known to us which would be, in our opinion, appropriate to reduce the creditworthiness of the customer. In such cases, we shall also be entitled to perform still outstanding deliveries only upon the condition of payments in advance.

#### **6. Exclusion of Rights of Set-Off and Retention**

A right of retention of the customer or set-off of the customer against counterclaims shall be precluded unless the counterclaim of the customer is undisputed or legally determined with final res judicata effect.

#### **7. Import and Export Transactions**

We can cancel the contract with import and export transactions insofar as we or our suppliers are not granted the necessary official approvals of authorities or insofar as the performance of the contract as a consequence of official prohibition of authorities is or shall be impossible. The customer shall not be able to derive any rights against us herefrom.

#### **8. Defects of Quality**

To the exclusion of any additional warranties, we shall provide a warranty for defects of quality as follows:

- a) At our discretion, those parts or services which show defects of quality shall be improved or remedied or a replacement delivery or a replacement performance of those parts or services shall occur at no cost insofar as the cause thereof existed already at the time of the transfer of risk. With the agreement of the customer, the repairs can also be made by it itself in the manner that we place the necessary parts for the elimination of the defect at the customer's disposal and/or compensate it with a flat rate amount for the work hours necessary for the elimination of the defect.
- b) Claims for subsequent performance (Nacherfüllung) shall be time-barred after 12 months and begin to run from the statutory beginning of the period of limitation; this shall apply to the remedies of cancellation of the contract and reduction of the purchase price accordingly. This period of limitation shall not apply to the extent that the law provides in § 438 para. 1 No. 2 (buildings and movable things destined for buildings), § 479 para. 1 (recourse claim/Rückgriffsanspruch) and § 634a para. 1 No. 2 (defect of construction) of the German Civil Code longer periods of limitation in connection with intentional behaviour, malicious nondisclosure of the defect as well as non-compliance with a guarantee on quality (Beschaffenheitsgarantie). Statutory provisions on suspension of

the running of time, suspension and/or recommencement regarding periods of limitation shall not be affected hereby.

- c) Obvious defects are to be notified in writing without undue delay at the latest 14 days after receipt and all other defects without undue delay after their discovery. The control documents attached to the goods by us are to be simultaneously sent to us or the customer services workshop named by us together with the objection of defects.
- d) We shall first be given the opportunity to subsequent performance within a reasonable time period.
- e) Should the subsequent performance fail to succeed, the customer can – notwithstanding any damage claims pursuant to Item 11 below – cancel the contract or reduce the price.
- f) No claims for defects of quality shall exist with only immaterial deviations from the agreed quality, with only immaterial impairment of usefulness, with natural wear and tear or damages which result, after the transfer of risk, as a consequence of defective or negligent treatment, excessive demand thereon, inappropriate equipment and facilities, defective construction work, unsuitable building land, electrical influences and due to particular exterior influences which were not foreseen pursuant to the contract. Should improper modifications or repair work be undertaken by the customer or third parties, then also no defect claims shall exist in respect of such modifications or work and/or the consequences resulting therefrom.
- g) Claims of customers due to expenses necessary for the purpose of subsequent performance, in particular, transport, labor and material costs are excluded insofar as the expenses are increased because the subject matter of the delivery is later brought to another location than that of the customer unless the transfer corresponds to its use according to the terms.
- h) Recourse claims of the ordering party against us according to § 478 of the German Civil Code (right to recourse of an entrepreneur/Rückgriffsrecht des Unternehmers) shall only exist to the extent that the customer has not made any agreements which extend beyond the statutory defect claims with its customers. For the scope of the recourse claim of the customer against us according to § 478 para. 2 of the German Civil Code, the provision of the afore-mentioned letter g) shall apply also respectively.
- i) Claims for damages of the customer against us due to a defect of quality are precluded. However, this shall not apply in case of malicious nondisclosure of the defect, non-compliance with a guarantee on quality (Beschaffenheitsgarantie), injury to life, limb or health and breach of contract due to intention or gross negligence by us. No modification to the burden of proof to the disadvantage of the customer is associated with the afore-mentioned regulation. Further claims or claims other than those regulated in this Item 8 of the customer due to defects of quality shall be precluded.

## **9. Industrial Property Rights and Copyright Rights; Defect of Title**

- a) Insofar as not otherwise agreed, we are obligated to perform the delivery merely in the country of the place of delivery free from industrial property rights and copyright rights of third parties (hereinafter referred to as “Protected Rights”). Insofar as a third party files justified claims against the customer due to infringement of Protected Rights by deliveries used pursuant to the contract as delivered by us, we shall be liable to the customer within the term named in Item 8, letter b) as follows:
  - (1) At our choice and at our cost, we shall cause either a right of use for the respective goods delivered, so modify the goods delivered so that the Protected Rights are not infringed or exchange such goods delivered. Should this not be possible for us at reasonable conditions, then the customer shall be entitled to a statutory cancellation right and right of reduction of the price.
  - (2) Our obligations regarding damages are governed by Item 11.
  - (3) Our afore-mentioned obligations shall only exist insofar as the customer informs us in writing of the claims made by third parties, has not recognized an infringement and we are reserved the right to undertake all defense measures and settlement negotiations. Should the customer discontinue the use of the goods

delivered for damage mitigation reasons or other important reasons, it shall be obligated to point out to third parties that, with the discontinuation of use, no recognition of an infringement of Protected Rights is associated therewith.

- b) Customer claims shall be precluded insofar as it is responsible for the infringement of the Protected Rights.
- c) Customer claims shall further be precluded insofar as the infringement of the Protected Rights is caused by special specifications of the customer, by a use not foreseeable by us or caused due to the fact that the goods delivered are changed by the customer or are used together with products not delivered by us.
- d) In the case of infringements of Protected Rights, for the customers' claims regulated above in letter a) (1), the provisions of Item 8, letters d) and h) shall apply respectively.
- e) With the existence of other defects of title, the provisions of Item 8 shall apply respectively.
- f) Claims of the customer in addition to or different from those regulated in this Item due to defects of title are precluded.

## **10. Repairs**

Our liability for damages occurring to the equipment transferred to us for repair shall be limited to intent and gross negligence. In the case of the mislaying or loss to repair goods due to our fault, we shall make replacement by delivery of comparable equipment. Should the customer be in default with the acceptance of the equipment to be repaired, we shall then be entitled, after prior notification, to sell the repaired equipment and to settle our repair claims from the sales proceeds. Otherwise, for the performance of repair work, the warranty provisions according to the above-mentioned Item 8 as well as the other provisions of these terms shall apply respectively.

## **11. Other Damage Claims**

- a) Claims for damages and expenses of the customer (hereinafter referred to as "Damage Claims"), regardless of their legal grounds, in particular, due to breach of obligations from the contract relationship and tort, are precluded.
- b) This shall not apply insofar as mandatory liability exists, e.g. pursuant to the Product Liability Law, in case of intent, gross negligence, due to injury to life, limb or health, due to breach of fundamental contract terms. The damage claim for the breach of fundamental contract terms is limited, however, to damages which are typical for the contract and foreseeable, insofar as no liability exists due to intent or gross negligence or due to injury to life, limb or health. No modification to the burden of proof to the disadvantage of the customer is associated with the afore-mentioned regulation.
- c) Insofar as the customer is entitled to damages pursuant to this Item 11, these shall be time-barred with the expiration of the statute of limitations applicable for defects of quality pursuant to Item 8, letter b). The same shall apply with regard to customer claims in connection with measures to be taken to avert an imminent danger (e.g. recall actions). If a claim for damages is based on the Product Liability Law the statutes of limitations shall apply.

## **12. Adjustment of the contract**

In case unpredictable events within the meaning of Item 3 para. 2 (force majeure) change the economic importance or the contents of the performance to the made considerably or seriously impact on our business, then the contract shall be appropriately adjusted respectively according to the requirements of good faith. In case an adjustment of the contract is not reasonable from the economic point of view, we shall be entitled to cancel the contract. In case we intent to exercise this right, then we shall inform the customer without undue delay when having obtained knowledge about the consequences of the event even if – prior to this - an agreement was made with the customer on a prolongation of the delivery period.

### **13. Retention of Title**

We reserve the ownership title to the goods delivered up until the receipt of all payments from the delivery contract (goods subject to reservation). Further, the goods subject to reservation remain our property until the performance of all claims existing against the customer from the business relationship. Otherwise the following shall apply:

- a) The customer shall be entitled to combine our products with other products within the framework of proper business operations. As security for our claims mentioned at the outset, we shall acquire co-ownership title in the products resulting from the combination which the customer transfers to us already now. The customer shall keep the objects subject to our co-ownership title in safe custody at no cost. The extent of our co-ownership share shall be determined according to the value which our product has in the product resulting from the combination.
- b) The customer may only sell the goods subject to reservation pursuant to its normal business conditions and as long as it is not in default with the performance of its obligations to us, however, upon the condition that the accounts receivable from the further sale are transferred to us according to the following provisions. The customer shall not be entitled to make other dispositions concerning the goods subject to reservation. The accounts receivable of the customer from the resale of the goods subject to reservation are assigned to us already now. They shall serve in the same scope as security as the goods subject to reservation. Should the goods subject to reservation of the customer be sold together with goods not sold by us, then the assignment of the accounts receivable from the resale shall apply only in the amount of the invoice amount for the goods subject to reservation sold by us. The customer shall be entitled to collect the assigned accounts receivable as long as we have not revoked this authorization. The collection authorization shall dissolve without express revocation if the customer discontinues making its payments. Upon our demand, the customer shall be obligated to inform its customers immediately of the assignment to us insofar as we do not do so ourselves and to provide us with the information and documents necessary for the collection.
- c) The customer shall inform us without undue delay in writing of all attachments of third parties of the goods subject to reservation or the accounts receivable assigned to us. With conduct of the customer in breach of the contract, in particular, with default in payment, we shall be entitled to take back the goods subject to reservation or cancel the contract upon expiry of an appropriate period of time given to the customer during which the breach has not been remedied; the statutory rules which provide that setting of additional periods of time are not required shall not be affected hereby. The customer shall be obligated to return the goods subject to reservation. Asserting return of the goods subject to reservation or retention of title by us shall not be considered as cancellation of the contract; however this shall not apply if we expressly state this in writing.
- d) Insofar as the afore-mentioned security agreements are invalid pursuant to the law of the country in which the goods delivered by us are located, then every other security measure permissible pursuant to this law which shall lead to a respective security result for us shall be deemed to be agreed. If the cooperation of the customer is necessary herefor, then it shall undertake all measures which are necessary for the establishment and maintenance of such security rights according to the applicable law.
- e) Should the value of the security existing for us pursuant to the afore-mentioned provision exceed the value of the secured accounts receivable by more than 10 %, then we shall be obligated, upon the demand of the customer, to release a part of the security rights.

### **14. Software Use**

Insofar as software is contained in the scope of the delivery, the customer shall be granted a non-exclusive right to use the software delivered including its documentation. It shall be transferred for use on the delivered product foreseen therefor. A use on more than one system is prohibited.

The customer may reproduce, reprocess, translate or reorganize from the object code to the source code only within the scope allowed by law (§§ 69 a et seq. Urhebergesetz/Copyright Act). The customer agrees not to remove or to modify manufacturer details – in particular, copyright notations - without our prior express approval. However, the customer may make a backup file of standard software without express approval.

We or, respectively, the software supplier, reserve all other rights to the software and the documentation including the copies. The granting of sub-licenses shall not be permissible.

#### **15. Place of Performance, Jurisdiction and Applicable Law**

Insofar as the contract does not state otherwise, the place of performance shall be our registered office.

Sole jurisdiction, if the customer is a merchant, for all disputes directly or indirectly resulting from the contractual relationship shall be in Ratingen; we shall be authorized to choose to also file a complaint at the registered office of the customer.

German substantive law shall apply for legal relationships in connection with this contract to the exclusion of the U.N. Convention for Contracts for the International Sale of Goods (CISG).

#### **16. Miscellaneous**

In the case of the invalidity of individual contractual terms, the remaining terms shall be completely valid. Invalid provisions shall be replaced by such which come closest to the economic result pursued by the respective invalid provision.

This contract shall remain legally effective even if individual provisions are or have become invalid. This shall not apply if compliance with the contract constitutes an unreasonable hardship for one party.