

The customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.
Contract: the contract between Schaltbau and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or firm who purchases the Goods from Schaltbau.
Force Majeure Event: has the meaning given in clause 10.
Goods: the goods (or any part of them) set out in the Order.
Order: in the Customer's purchase order form, the Customer's written acceptance of Schaltbau's quotation, or overleaf, as the case may be.
Specification: any specification for the Goods, including any related plans and drawings that are agreed in writing by the Customer and Schaltbau.
Schaltbau: Schaltbau Machine Electrics Limited of 335 Woodside Way, Springvale Industrial Estate, Cwmbran, Torfaen, United Kingdom (registered in England and Wales with company number 06606708).
- 1.2 Construction. In these Conditions, the following rules apply:
- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - A reference to a party includes its personal representatives, successors or permitted assigns.
 - A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- The Order shall only be deemed to be accepted when Schaltbau issues a written acceptance of the Order, at which point the Contract shall come into existence.
- The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Schaltbau which is not set out in the Contract.
- Any samples, drawings, descriptive matter, or advertising produced by Schaltbau and any descriptions or illustrations contained in Schaltbau's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- A quotation for the Goods given by Schaltbau shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. GOODS

- The Goods are described in Schaltbau's catalogue and/or website at www.schaltbau-me.com and, where agreed by Schaltbau in writing, as modified by any applicable Specification.
- The Supplier warrants that it will not make any onward sales of the Goods or any use of the Goods that would be in breach of any applicable UN or national laws in respect of restraint of trade or any UK laws or policy.
- The Customer shall indemnify Schaltbau against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Schaltbau in connection with any claim made against Schaltbau for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Schaltbau's use of the Specification, arising in relation to testing identified by the Customer in accordance with clause 3.6 or arising from the Customers breach of clause 3.2. This clause 3.3 shall survive termination of the Contract.

- Schaltbau reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- Any testing carried out on the products by Schaltbau shall be in accordance with good industry practice and Schaltbau shall use all reasonable endeavours to manufacture the Goods to an EN standard where applicable.
- If the Customer requires testing that is applicable to a specific purpose or requires additional testing procedures over and above those offered by Schaltbau, the Customer shall ensure that its requirements are fully documented with the Order. The Customer shall be entirely responsible for ensuring the tests identified meets its requirements and that it has fully set out the processes and the mechanics for carrying out such tests. Schaltbau will not be responsible for the robustness or suitability of such tests and will only carry out the tests in accordance with the Customers instructions as set out in the Order. Schaltbau reserves the right, without liability, to refuse to carry out testing for a Customer, if it is deemed in the opinion of Schaltbau to be dangerous or inappropriate.
- Unless otherwise agreed in writing by Schaltbau, purchase of Goods does not give the Customer the right to acquire any interest in any manufacturing equipment, apparatus or tooling, even where the same is purchased at the request of the Customer to enable Schaltbau to manufacture the Goods.

4. DELIVERY

- 4.1 Schaltbau shall ensure that:
- each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Schaltbau reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - if Schaltbau requires the Customer to return any packaging materials to Schaltbau, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Schaltbau shall reasonably request. Returns of packaging materials shall be at Schaltbau's expense.
- Unless otherwise agreed in the Order, the Customer shall collect the Goods from Schaltbau's premises at 335-336 Woodside Way, Springvale Industrial Estate, Cwmbran, Torfaen, United Kingdom or such other location as may be advised by Schaltbau prior to delivery (Delivery Location) within 3 Business Days of Schaltbau notifying the Customer that the Goods are ready.
 - Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.
 - Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Schaltbau shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Schaltbau with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
 - If Schaltbau fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Schaltbau shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Schaltbau with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
 - If the Customer fails to take or accept delivery of the Goods within three Business Days of Schaltbau notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Schaltbau's failure to comply with its obligations under the Contract:
 - delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Schaltbau notified the Customer that the Goods were ready and
 - Schaltbau shall at its discretion store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
 - If 10 Business Days after the day on which Schaltbau notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, Schaltbau may resell or otherwise dispose of part or all of the Goods.
 - The Customer shall not be entitled to reject the Goods if Schaltbau delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
 - Schaltbau may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.10 The Customer shall be responsible for inspecting the Goods on delivery. If following such inspection the Customer identifies that the Goods do not conform or are unlikely to conform with the Specification or the correct quantities have not been delivered, the Customer shall immediately (and in any event within 24 hours of delivery) notify the Supplier in writing. If the Customer fails to give notice of rejection within this time it shall be deemed to have accepted the Goods.

5. QUALITY

5.1 Schaltbau warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification (subject to any deviations or tolerances identified in the drawings included in the Specification); and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to Schaltbau during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Schaltbau is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Schaltbau) returns such Goods to Schaltbau's place of business at the Customer's cost,

Schaltbau shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Schaltbau shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Schaltbau's oral or written instructions (including those available on Schaltbau's website) as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Schaltbau following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Schaltbau;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Schaltbau shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods or spare parts supplied by Schaltbau.

5.7 Illustrations and descriptions of the Goods reflect those that were applicable at the time the list or other order documents went to print. Schaltbau reserve the right to make reasonable changes of all kinds, for example, where such changes arise as a result of technical progress or modified design and to make any changes or any description where such change is to comply with a legal requirement.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) Schaltbau receives payment in full (in cash or cleared funds) for the Goods and any other goods that Schaltbau has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Schaltbau's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Schaltbau immediately if it becomes subject to any of the events listed in clause 8.2; and

(e) give Schaltbau such information relating to the Goods as Schaltbau may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Schaltbau receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Schaltbau's agent; and
- (b) title to the Goods shall pass from Schaltbau to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy Schaltbau may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) Schaltbau may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Schaltbau's published price list in force as at the date of delivery.

7.2 Schaltbau may, by giving notice to the Customer at any before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Schaltbau's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Schaltbau adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Schaltbau, pay to Schaltbau such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 Schaltbau may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Schaltbau. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to Schaltbau under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Schaltbau may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Schaltbau to the Customer.

8. TERMINATION AND SUSPENSION

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, Schaltbau may terminate the Contract with immediate effect by giving written notice to the Customer.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in Schaltbau's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Without limiting its other rights or remedies, Schaltbau may suspend provision of the Goods under the Contract or any other contract between the Customer and Schaltbau if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(l), or Schaltbau reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to Schaltbau all of Schaltbau's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude Schaltbau's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for Schaltbau to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) Schaltbau shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) Schaltbau's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen,

was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Schaltbau's or subcontractors.

11. GENERAL

11.1 Assignment and other dealings.

- (a) Schaltbau may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Schaltbau.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Schaltbau.

11.7 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

11.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).