

**1 GENERAL**

1.1 In these Conditions:

- a. **"Agreement"** means any contract between SEW and Customer for the sale and purchase of the Products.
- b. **"Customer"** means any customer of SEW to whom Products are supplied under these terms and conditions.
- c. **"Products"** means all products/services and associated documentation to be supplied/rendered under the Agreement.
- d. **"SEW"** means SEW-EURODRIVE India Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its office at Plot No. 4, G.I.D.C Por Ramangamdi, Vadodara, Gujarat - 391 243.

1.2 Deliveries and services shall exclusively be handled on the basis of the applicable order confirmation, any special agreements made in writing, and in accordance with the following conditions. Any other terms and conditions, particularly purchase terms and conditions, do not apply unless SEW has approved of their validity expressly in writing.

1.3 Offers from SEW are subject to change. An Agreement comes into effect with the order confirmation from SEW in writing.

1.4 The Customer is obligated to provide correct specified data in full and check the order confirmation for the correctness of the data provided.

1.5 Specifications regarding the delivery and service item (in catalogues, product information, electronic media or labels, for example) are based on SEW's general experience and knowledge and are to be regarded as guide values or identifications. The Product specifications as well as any explicitly agreed performance characteristics/ applications do not release the Customer from checking and testing the technical and legal qualification for the intended use of the Product, especially regarding the property right. The latest versions of all information materials (catalogues and operating instructions, for example) are available on the Internet at [www.seweurodriveindia.com](http://www.seweurodriveindia.com) or [www.sew-eurodrive.com](http://www.sew-eurodrive.com).

1.6 Specifications regarding the properties and application options of SEW Products do not involve any guarantees, if not explicitly referred to as such.

1.7 Project planning support from SEW occurs only within the scope of the entire system specified by the Customer. SEW does not accept any liability for such systems, even if SEW offers and delivers Products that have integrated, functional safety.

1.8 SEW reserves the right to make any changes to technical data and designs in the interest of technical progress and development.

1.9 SEW reserves the right of ownership and copyrights for all patterns, illustrations, drawings, calculations, and similar information of corporeal and incorporeal nature, including those in electronic form. The same applies for documents

and information including records, computer software and all other information supplied by SEW under the Agreement (Technical Information) whether or not designated as "confidential." Prior written permission from SEW is required to disclose Technical Information to third parties. Technical Information is supplied on the express understanding that intellectual property rights therein is reserved to SEW. Technical information shall be kept confidential by Customer, its employees, agents or subcontractors, shall not be copied, modified or disclosed by any of them and shall not be used by them otherwise than for the purposes of the operation and maintenance of the Products. SEW grants to Customer the non-exclusive and non-transferable right to use the Technical Information, for the life of Products supplied under the Agreement for the purposes of their operation and maintenance in the place and manner anticipated and for no other purpose.

1.10 The Agreement established herein is between SEW and the Customer as principals and neither benefits nor burden is assignable by the Customer without SEW's prior written consent. The Agreement may be assigned, sub-contracted or otherwise disposed of by SEW.

1.11 These Terms and Conditions also apply to all future deliveries and services until new terms and conditions of sale and delivery from SEW come into effect.

1.12 Late delivery (LD): SEW India does not accept any LD conditions in PO unless specifically agreed in writing by SEW before order finalization.

1.13 Disassembly / Order cancellation: Such charge will be minimum 30% of the basic PO value for SEW India standard assembly range of products. No change or cancellation is acceptable for any non-standard product after 48 hours of order placement, except by paying 100% of the PO value.

1.14 PO amendment: Any PO amendment received before assembly but after order acknowledgement calls for additional charges to be indicated on case-to-case basis

**2 Prices and Terms of Payment**

2.1 Prices set by SEW are quoted ex works or delivery storage sites provided that no other written agreements have been made by SEW in writing. Unless otherwise agreed by SEW all prices are payable in Indian Rupees (INR). Prices do not include packaging, shipping, postage, insurance or the legally applicable taxes including but not limited to GST or any other tax, charge or government impost (domestic or foreign).

2.2 Time for payment of the price is of the strict essence of the Agreement. Unless otherwise agreed in writing by SEW, payments shall be made in advance without any deductions and free of charge to a designated SEW account. Variations to this regulation shall be subject to a separate written agreement.

2.3 Checks and bills of exchange shall be valid as a payment only upon encashment, whereby SEW reserves the right to

- accept bills. No payment shall be deemed to have been received until SEW has received cleared funds.
- 2.4 In the event of default in payment by Customer, SEW shall be entitled (without prejudice to any other right or remedy):-
- to suspend without notice all further deliveries on any agreement between SEW and Customer;
  - to charge interest on a daily basis (after as well as before judgment) on any amount outstanding at the rate of 24% per annum from the day it falls due until the day it is paid. Customer agrees to pay any debt recovery costs incurred by SEW including attorney's fee.
- 2.5 If SEW, after sending its order confirmation, is made aware of any deterioration of the Customer's financial circumstances, SEW's demands for all outstanding payments from the Customer shall be due immediately. In addition, SEW shall be entitled to carry out outstanding deliveries and services, in deviation to the order confirmation, only upon advance payment, and to withdraw from the Agreement after a reasonable period of grace unless the Customer provides security to the satisfaction of SEW. The same applies for failure to comply with the terms of payment, even if failure to do so concerns other orders from the mutual business relationship.
- 2.6 All payments made by the Customer to SEW under any Agreement subject to these conditions shall be made free of any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any agreement subject to these Conditions or otherwise. Notwithstanding the foregoing, the Customer shall be entitled to off-set claims if the Customer's counterclaims are undisputed or declared legally binding by SEW in writing.
- 2.7 Cancellation or amendment of any Agreement by the Customer requires the prior approval in writing of SEW and shall be conditional upon Customer indemnifying SEW against all reasonable costs and expenses incurred by SEW as a result of such cancellation or amendment, as the case may be including but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on SEW by its suppliers, and any other cost resulting from cancellation/amendment of the order which is permitted by SEW.
- 3 DELIVERY TIME**
- 3.1 All dates and periods for delivery are estimated and do not constitute fixed times for delivery by SEW. Delivery and service shall be provided within the calendar week confirmed by SEW in writing, albeit not prior to clarifying all implementation details. The Customer must fulfil all obligations incumbent upon the Customer, such as the provision of a down payment, in due time. If this is not the case, the delivery time shall be extended accordingly.
- 3.2 The delivery time shall be extended further as appropriate in the event of unforeseeable conditions, which are beyond SEW's control, regardless of whether such events arose at

- SEW or its suppliers, for example, cases of force majeure, industrial actions, import and export restrictions, approval from official authorities, and other delays beyond a party's control, in the completion of delivery parts, malfunctions, or defective goods, delays in the delivery of essential parts and raw materials, insofar as those conditions have a significant influence on the completion or sending of the goods ordered. These types of conditions shall also be deemed beyond SEW's control if they occur during a delay that is already effective. SEW shall immediately notify the Customer of the beginning and end of such conditions.
- 3.3 Unless otherwise expressly agreed in writing, SEW may deliver Products ordered in instalments in which case each instalment shall be treated as a separate Agreement governed by these conditions. No delay in the delivery of any instalment of Products or any defect therein shall entitle the Customer to terminate remaining Agreements.
- 3.4 If the Customer causes a delay in accepting the delivery or culpably infringes another obligation to co-operate, or where delivery is otherwise postponed without default by SEW, SEW shall be entitled to demand compensation for any damages incurred, including any additional expenditures. Any further claims are reserved.
- 4 PASSING OF RISK, ACCEPTANCE**
- 4.1 Risk is passed to the Customer upon transfer of the Products to the shipping company or carrier, albeit no later than when the delivery leaves SEW's factory or warehouse. This also applies if a carriage-paid delivery, ex works delivery, or similar arrangements have been agreed upon in writing. Insofar as the acceptance of delivery is to be made, acceptance is authoritative for the passing of risk. Acceptance is due immediately by the acceptance date, alternatively after SEW reports consent to accept, whichever shall be the earlier. The Customer may not refuse to accept delivery on account of a nonessential defect.
- 4.2 If shipping or acceptance is delayed or not undertaken as a result of conditions that are beyond SEW's control, risk is passed to the Customer from the day of the delivery or after SEW reports consent to accept, whichever shall be the earlier.

- 5 RESERVATION OF TITLE**
- 5.1 SEW reserves the right of title (legal and beneficial ownership) to delivered Products until either:
- SEW has received payment of all monies payable (whether or not due) to SEW under all Agreements between the Customer and SEW; or
  - When SEW serves on the Customer a specific notice in writing specifying that title in the delivered Products or any part thereof has passed to the Customer.
- 5.2 If the Customer defaults on a payment due date, SEW shall be entitled to re-enter the Products in its inventory after issuing a default notice. SEW may also repossess the Products without prior withdrawal from the Agreement. Customer herewith agrees to allow SEW's officers, employees, representatives or agents, with or without

protective force, to enter its premises (with or without vehicles) without delay during normal business hours and repossess such Products.

5.3 SEW shall be entitled to withdraw from the Agreement if the Customer acts contrary to the Agreement, in particular by defaulting payment. For returning Products as a result of cancellation or withdrawal by SEW, SEW shall only be obligated to issue credit in the amount of the invoice value with a deduction of decreased value determined by equitable discretion as well as the return and disassembly costs, however at least over 30% of the invoice value. SEW ensures higher credit if the Customer satisfactorily proves a higher recoverability of the value of the repossessed Products.

5.4 Until title to the Products has passed to the Customer under these Conditions, it shall possess the Products as fiduciary agent and bailee of SEW and shall store the Products separately from other goods. The Customer is obligated to take care of the Products; in particular the Customer is obligated to insure up to the replacement value for fire, water, and theft damage at the Customer's own expense.

5.5 The Customer is to inform SEW immediately in case of seizure, confiscation or other act of disposal or encroachment by third parties and shall hold SEW indemnified and harmless.

5.6 The Customer shall be entitled to resell the delivered Products in accordance with proper, business practices. Seizure, charging as security or other acts of disposal is prohibited. If the Customer resells Products delivered by SEW, regardless of the condition of such Products, the Customer shall cede to SEW all receivables originating from mutual business relationships arising from the sale up to the value of the Products against its purchasers with all ancillary rights to SEW. The Customer shall be entitled to collect such receivables.

5.7 Entitlement to resale and collection of receivables can be revoked, if the Customer enters into default of payment or if the Customer financial circumstances or credit worthiness deteriorates. Upon request, the Customer shall be obligated to disclose the withdrawal to its recipients unless SEW does not inform the recipients of the Customer itself, and give SEW the necessary information for the assertion of its rights against the Customer's recipients and surrender documents.

5.8 The Customer agrees to always carry out any processing or modification of delivered Products for SEW. If the Products are used with objects not belonging to SEW, SEW shall acquire joint ownership of the new object in the proportion of the value of the Products to the other processed objects at the time of processing. For objects resulting from processing, the same applies as for Products delivered with due reserve.

## 6 LIMITED WARRANTY

6.1 This Clause 6 specifies the extent to which SEW will be liable for Product warranty. Its principal terms are a financial limit on SEW's liability. SEW's entire liability and

Customer's sole remedies, whether in contract, tort or otherwise shall be as set out in this Clause 6. THE WARRANTIES SET FORTH HEREIN OR IN SEW'S WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING SOFTWARE PROVIDED WITH ANY PRODUCT) ARE THE ONLY WARRANTIES MADE BY SEW IN CONNECTION WITH SUCH PRODUCT AND THE TRANSACTION CONTEMPLATED BY THE AGREEMENT OR OTHERWISE UNDER LAW.

6.2 Any implied warranties or conditions as to quality or fitness for particular purpose is hereby excluded.

6.3 Subject to the terms of this Clause 6, SEW warrants that the Products will be free from defects as a result of faulty design, workmanship or materials (other than free issue materials). This warranty shall be for a period of 12 months from installation or 18 months from despatch one (1) year from the date of delivery of Product or Product achieving the recommended maximum life usage for product, whichever is the earlier (6 months in case of loose spares if fitment done by SEW authorised person). This warranty is subject to:

- a. SEW receiving written notification of the defect within the period of this limited warranty;
- b. Product being made available to SEW for inspection without any further use of, or alteration to, or interference with the Product (save as otherwise provided herein), within 5 days of the defect becoming apparent;
- c. the defect is not a result of any design specification or instruction given by Customer;
- d. the defect is not a result of Product being altered, modified or subject to misuse, incorrect installation, maintenance, neglect, accident, specifications and items which are outside SEW's scope of supply, damage or used with incompatible parts;
- e. that Customer has fully complied with instructions of SEW concerning the use and storage of Product.

6.4 In the event of a deficiency, the Customer must inform SEW immediately in writing in accordance with the condition prescribed under Clause 6.3. In the event of warranty defects, the Customer shall be entitled to claim performance of the Agreement, in which case SEW shall be entitled to select (at its discretion) whether to eliminate the defect or to supply a non-defective Products or service, as the case may be. Customer shall grant SEW the time and opportunity to undertake performance of Agreement and shall not charge for doing so. Products which the Customer claims to be defective shall only be returned to SEW upon the request of SEW and, where applicable, properly packaged with a packing slip indicating the order number.

6.5 Subject to the limitation of liability prescribed in Clause 7, in the event that defects are to be resolved, SEW agrees to bear expenses incurred in the resolution of the defect, particularly transportation, freight, labor and material costs, as long as such costs are not increased by the fact that the Product had been brought to another location other than

- the place of performance, unless the transport complies with designated use.
- 6.6 For the avoidance of doubt replacement/repaired Product shall have the benefit of the limited warranty for the remainder of the warranty period applicable to the original Product.
- 6.7 Any damages caused by any of the reasons listed below and for which SEW is not held responsible as a breach of duty do not constitute a right to claim under warranty: Inappropriate or improper use after passing of risk, particularly excessive use, incorrect assembly or start-up by the Customer or third party despite the provision of appropriate assembly instructions, natural wear and tear, incorrect or negligent handling, unsuitable operating material, replacement materials, inadequate construction work, inobservance of operating instructions, unsuitable operating conditions, particularly unsuitable chemical, physical, electromagnetic, electrochemical or electrical influences, climatic or environmental influences as well as excessively high or low ambient temperatures.
- 6.8 In the case of products not manufactured by SEW:
- SEW gives no assurance or warranty/guarantee that the sale or use of the products will not infringe any third party intellectual property rights; and
  - the obligations of SEW relating to defects in such products are limited to the warranty/guarantee (if any) which SEW receives from any manufacturer or supplier of such products.
- 6.9 SEW shall not be liable for, and Customer shall indemnify and hold SEW harmless against all costs, claims, damages, liabilities and expenses incurred by SEW arising from any use by Customer of Products after Customer becomes or ought reasonably to have been aware of a defect.
- 6.10 Service, Technical support & Warranty for DIB motors will not be provided outside India.

Any additional claims are exclusively subject to Section 7 of these Conditions.

## **7 LIABILITY FOR COMPENSATION OF DAMAGES AND EXPENSES**

- 7.1 SEW does not exclude liability resulting from deliberate or grossly negligent breach of duty as well as culpable injury to life, body or health, unless governed otherwise by applicable laws.
- 7.2 Any other liability for damages other than those stated above is void, without taking the legal nature of the submitted claim into consideration. Under no circumstances whatsoever shall SEW be liable in contract, tort or otherwise howsoever arising for any claim, damage, loss or costs in respect of: (a) any loss of profit; (b) loss of use of money; (c) loss of anticipated savings; (d) loss of business; (e) loss of opportunity; (f) loss of goodwill; (g) loss of reputation; (h) loss of data; (i) any wasted expenditure; or (j) any indirect or consequential loss or damage howsoever caused.

- 7.3 Without prejudice to Clause 7.2, the liability, if any, of SEW or SEW's representatives for damages whether arising from breach of the Agreement, warranty, negligence, indemnity, strict liability or other tort, or otherwise with respect to the Products shall be limited to an amount not to exceed the price of the Product (so paid by Customer) giving rise to the liability. Customer agrees and undertakes to insure adequately to cover claims in excess of such amount arising from whatsoever consequences.
- 7.4 Prices are quoted by SEW on the basis of the limitations of liability set out in Clause 7.3. Customer shall be entitled to request SEW to agree a higher limit of liability and SEW may (at its discretion) then quote a revised price taking account of any increased insurance premium to be borne by SEW.
- 7.5 Customer shall indemnify SEW against all losses, costs, claims, damages, expenses and liabilities in respect of, or arising out of, any injury, loss or damage whatsoever suffered by, or occasioned to, any person arising out of, or in connection with, the supply by SEW of products or any act or omission of Customer in its performance of its obligations under the Agreement, except where any such claim or loss is a direct result of any negligent act or default of SEW.

## **8 CUSTOMER'S LIABILITY FOR INCORRECT/DELAYED SUBMISSION/NON-SUBMISSION OF STATUTORY DECLARATION.**

- 8.1 The Customer shall be entirely responsible and liable to honour its statutory commitment including providing requisite declarations as committed in its purchase order, based on which is entitled to or has availed any tax benefits. Sales Agreement shall be executed purely on the basis of such statutory commitments/declarations.
- 8.2 In case the Customer fails to comply with its statutory commitment/declarations, SEW reserves the right, at its option, either not to execute the Agreement or charge the Customer with the entire cost associated due to such non-compliance, including interest and/or penalty, if any.
- 8.3 The Customer unequivocally admits that whatever the charged amount is an admitted debt owed by it to SEW, and undertakes to pay the same within 21 days failing which the Customer shall be deemed unable/incapable to pay its debts.
- 8.4 Units sent to SEW plants for repairs/service under job work challan must be arranged to be removed from SEW's premises within 180 days of the challan date. In case Customer fails to do so, SEW reserves the right to sell/auction/scrap such units after giving 30 days prior notice and recover the service/repair costs from the proceeds thereof.

## **9 RIGHT OF WITHDRAWAL**

SEW can withdraw from the Agreement either in part or in full by written declaration, in the event of the Customer's inability to pay on time, over-indebtedness of the Client, discontinuation of payment by the Client or if the Customer has filed for insolvency. The Customer herewith agrees to

provide SEW access to its place of business during normal business hours and repossess the Products. If SEW withdraw from the Agreement pursuant to this Clause 9, it shall have no legal responsibility whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by the Customer as a result of, or in connection with, such withdrawal.

and standards and are tested and certified accordingly. However at the component level it is not possible to furnish test reports and certificates as sourcing is from multiple overseas manufacturing units of SEW.

## **10 EXPORT RESTRICTIONS**

The delivery of Products and/or service described in the order confirmation may be subject to applicable export control regulations stipulated by Indian, German, European, or U.S laws, for example due to the type or intended use, or final destination of the delivery and/or service. This means each order applies subject to the fact that the Product/service is not prohibited under these regulations and that approvals, authorizations or permissions are given which SEW requires for fulfilling the Agreement.

Vadodara, Gujarat, India  
April 21 2023

## **11 PLACE OF PERFORMANCE, PLACE OF JURISDICTION AND APPLICABLE LAW**

- 11.1 Unless otherwise stated in the order confirmation, SEW headquarters in Vadodara, Gujarat, India is the place of performance.
- 11.2 The place of jurisdiction for any direct or indirect disputes/ legal actions resulting from the Agreement shall be Vadodara, Gujarat, India.
- 11.3 The provisions of this Agreement, even if goods and services are sent to other countries, are subject to Indian law.

## **12 MISCELLANEOUS**

- 12.1 All obligations contained in the Agreement which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of the Agreement will survive and remain binding upon and for the benefit of the parties, their successors and permitted assigns.
- 12.2 Notices or other communications under this Agreement shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the relevant party.
- 12.3 Except as otherwise specifically provided in this Agreement, a person who is not a party to this Agreement shall have no right to enforce any terms of the Agreement.
- 12.4 No waiver of or delay or failure by SEW to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.
- 12.5 If any provision of these Conditions shall be held invalid or unenforceable in whole or in part then the unaffected provision (or part of the provision, as the case may be) shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these Conditions
- 12.6 We hereby confirm that all motors assembled by SEW India confirms to the latest applicable Indian regulations