

General Terms and Conditions of Cooperation



SEW-EURODRIVE Polska Sp. z o.o.
01.11.2021

§ 1. GENERAL PROVISIONS

1. These General Terms and Conditions of Cooperation (GTCC) define the general terms and conditions of cooperation between SEW-EURODRIVE POLSKA Sp. z o. o. with its registered office in Łódź at ul. Techniczna 5, entered in the Register of Businesses of the National Court Register maintained by the District Court for Łódź Śródmieście in Łódź, 20th Commercial Division of the National Court Register, under KRS 0000079236, REGON: 471388462, NIP: 7261678845, with the share capital of PLN 3,250,000.00, (SEW) and the Client of SEW (the recipient of the device manufactured by SEW, hereinafter referred to as the Device), hereinafter referred to as the Client.
2. The acceptance of the offer of SEW obliges the Client to comply with these GTCC. The GTCC shall bind the Client to the full extent, unless SEW and the Client expressly, in writing, under pain of nullity, exclude the application of these GTCC or some of their provisions.
3. These GTCC exclude the use by the Client of its own model agreements, regulations or other general terms and conditions of concluding agreements – to the extent that they are inconsistent with these GTCC. A derogation from the principle expressed above requires the acceptance of SEW in writing, under pain of nullity, by persons authorised to represent SEW.
4. Any changes to the offer of SEW and the GTCC require the approval of the Management Board or the Proxy of SEW without the possibility to assign this right to any third party. This change may be made only in the form of a written agreement concluded by SEW and the Client, otherwise being null and void.
5. The agreement concluded on the basis of the acceptance by the Client of the offer of SEW is a final document and replaces all other documents and arrangements. This rule does not apply to agreements and arrangements concerning the obligation of confidentiality signed by SEW and the Client. In such a case, the provisions concerning the confidentiality obligation resulting from various documents shall complement each other.
6. The Agreement is deemed concluded when SEW submits a written confirmation of acceptance of the Client's order, which is placed by the Client, on the basis of an offer submitted by SEW or another document, which, due to its content and form, is binding for SEW.
7. If after the submission of an offer by SEW, but prior to its acceptance by the Client, the Client, in its order or in another document, introduces changes to the conditions, including technical and/or financial conditions presented in the offer of SEW, which influence the content of the offer of SEW, it is considered that the Parties conduct negotiations. Acceptance

of the conditions proposed by the Client requires the confirmation by SEW in the form of acceptance of an order for execution or in the form of another document which, due to its content and form, is legally binding for SEW. The absence of the above acceptance means that SEW maintains its original offer, which expires on the date of expiry of the validity period.

8. If the offer of SEW does not contain different provisions, it shall be binding for SEW for a period of 30 days from the date of its preparation by SEW.
9. Any changes to the subject of the order in the course of its performance shall require the consent of SEW, expressed in writing, otherwise being null and void.
10. It is noted that the drawings provided by SEW together with the offer are for reference only. SEW reserves the right to make changes during the performance of the subject of the agreement, provided that the functionality resulting from the SEW offer constituting the basis for conclusion of the agreement is maintained.
11. In the absence of the Client's written statement on acceptance of the offer of SEW, the Client's commencement of cooperation in the scope of performing the subject of a given offer of SEW means acceptance of the terms and conditions of the offer of SEW, including the GTCC.
12. In the event that the provisions of the offer of SEW and the GTCC are in conflict, the following documents shall apply in the appropriate order: the offer of SEW and the GTCC. This means that the provisions of the document placed higher in the hierarchy above defined in this paragraph shall apply. The contrary provisions of the document placed lower in the hierarchy above shall be null and void.

§ 2. PRICE AND TERMS OF PAYMENT

1. If the subject of the agreement concluded between SEW and the Client is the supply of Devices, the price for the Device does not include the costs of delivery of the Device. The delivery shall be performed according to the DAP+ delivery costs principle, delivery costs attributable to the buyer, shall be included in the delivery invoice of SEW.
2. If the Device is collected independently by the Client, the FCA (Incoterms 2020) rule will apply.
3. For the performance of the subject of each of the agreements, SEW shall be entitled to the price agreed in the mode of concluding the agreements provided for in § 1 of the GTCC. Each time, the price shall be increased by VAT in the amount applicable at the time when the tax obligation arises.
4. The settlement shall be made in the currency specified in the agreement concluded in the manner specified in § 1 of the GTCC.

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5. A form of payment of the price and other receivables of SEW is the transfer to SEW's bank account. Other forms of payment shall require prior agreement between the parties. Any set-off of mutual debts requires the consent of SEW, expressed in writing, otherwise being null and void.
 6. Payment for the delivered Device should take place within the deadline specified in the agreement concluded by the Parties pursuant to § 1 of the GTCC. In case of late payment, SEW has the right to charge interest for delay in commercial transactions.
 7. If delays in payments persist, SEW, regardless of the right to claim interest for delays in commercial transactions, is entitled to: 1) summon all the amounts due for the delivered Devices as immediate maturity, 2) make deliveries only after settling overdue payments and after the Client has made a prepayment in the amount determined by SEW, 3) repair of the damage, pursuant to Article 471 of the Civil Code, 4) withdrawal from the agreement. The above-mentioned rights are vested in SEW also in the case when, in the opinion of SEW, the Client's financial standing creates any risk of non-payment of the price within the deadline.
 8. In the event of withdrawal from the agreement, the parties are obliged to return what they obtained from each other. The Client hereby grants an irrevocable authorization and authority to enter the premises of its company during normal working hours and to take the Device into possession.
 9. In the event of recovery of the Device, SEW has the right to demand from the Client the appropriate remuneration for – according to the choice of SEW – its wear and tear or damage or for its use (according to market prices).
 10. The ownership of the elements and Devices delivered to the Client as part of the performance of the agreement shall pass to the Client upon payment of the entire remuneration to SEW specified in the contract.
3. During the receipt of the Device, the Client is obliged to check the Device - in terms of quality and quantity, under pain of losing the right to refer to any defects and shortages at a later date. If the Client states that there is a slight defect at the time of receipt, it cannot be a reason for refusing to accept the Device.
 4. The risk of loss or damage to the Device passes to the Client when the Devices or parts are handed over by SEW.
 5. If the release of the Device is delayed for reasons attributable to the Client, then the risk of accidental loss or damage to the Device shall be transferred to the Client at the time of preparing the Device for shipment / collection, of which SEW notifies the Client.
 6. In the event of force majeure, SEW is not responsible for risk of loss or damage to the Clients goods. The Client is not entitled to claim damages or impose penalties on SEW.

§ 4. DELIVERY DATE

1. Unless SEW and the Client agree otherwise, the Devices shall be released in the SEW warehouse. If the contract concluded by SEW and the Client stipulates that SEW will be responsible for the transport of the device and no remuneration due for this has been indicated, SEW will be entitled to remuneration for transport calculated according to the rates indicated in the price list https://www.sew-eurodrive.pl/uslugi/dostawa_i_przeplyw_materialow/kalkulator_kosztow_transportu/kalkulator_kosztow_transportu.html
 2. The Device shall be handed over to the Client at the moment when, in order to deliver the Device to its destination place, SEW is entrusted with the Device to the carrier or representatives of the Client. However, this rule does not apply
1. The Device ordered by the Client shall be handed over within the deadline specified in the agreement concluded by the Parties pursuant to § 1 of the GTCC. The hand-over date may be extended in the event of circumstances which could not have been foreseen on the date of receipt by the Client of the order confirmation. SEW shall not be liable for extending the hand-over time not attributable to SEW.
 2. The hand-over date may be changed in the event of force majeure or other unforeseeable circumstances, including the epidemic, the state of the natural disaster or the state of emergency.
 3. If SEW is already performing the subject of a given agreement, and the Client submits new demands connected with the delivered Device and the parties agree on the change of the subject of the agreement, the time limit for delivery of the Device shall run from the date of reaching the above-mentioned agreement by the parties.
 4. If SEW has prepared the Device for shipment/acceptance, and the shipment/acceptance of the Device is delayed due to reasons attributable to the Client, SEW has the right to charge the Client with the costs of storing the Device, both in its own

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warehouse and in a third party warehouse. However, it is stipulated that these costs may not be lower than the market costs of storage in the city of Łódź or the locations where the goods will be stored.

5. It is forbidden to use the Device in any way by the Client before the final acceptance tests (SAT) are performed. In the event of such use, the Device is considered to be properly made and accepted by the Client without the need to conduct final acceptance tests (SAT). In this case, SEW will be entitled to the entire agreement performance fee.

§ 5. AMENDMENTS AND SUSPENSION OF THE AGREEMENT

1. Any changes to the subject of the agreement shall be evaluated separately, and shall be prepared and implemented by SEW only after obtaining a written consent of the Client to the conditions for the implementation of the changes. The changes will not affect the agreed payment schedule and will be settled under separate (from the ones indicated in the offer of SEW) receivables of SEW agreed by the Client and SEW.
2. SEW shall commence the performance of the subject of the agreement after receiving the first payment (advance payment). The delay in payment shall result in an extension of the duration of the agreement by the number of days of delay. If the Client fails to meet the agreed payment schedule, SEW reserves the right to suspend the performance of the subject of the agreement and the Client shall be obliged to cover the costs of SEW connected with the suspension of the performance of the agreement. The Client's delay in payment of a specific part of SEW's amounts due over 60 days entitles SEW to withdraw from the agreement.
3. If, for reasons not attributable to SEW, there is a delay in carrying out the installation, commissioning or transfer of a specified Device, including during acceptance, SEW shall be entitled to charge the Client with the costs of additional working time.

§ 6. GUARANTEE

SEW grants the Client a Quality Guarantee under the terms and conditions specified in a separate document entitled General Terms and Conditions of SEW-EURODRIVE Polska Sp. z o.o. Therefore, it is agreed that the warranty is excluded.

§ 7. SCOPE OF LIABILITY CONTRACTUAL PENALTIES

1. SEW's liability towards the Client established in connection with the conclusion and performance of the agreement, including for any contractual penalties, shall not, however, include liability for lost profits or any indirect or consequential loss.

2. In the case of delays on the part of SEW and the Client suffers damage as a result, the Client is entitled to claim lump-sum compensation by way of delay. It amounts to 0.5% for each completed week of delay, but in total not more than 5% of the price for the part of the delivery or service which, due to the delay, prevented the commencement of use as intended.
3. SEW has the right to charge the Buyer with a contractual penalty in the amount of 30-100% of the order value, if, for reasons related to the Client, the contract is renounced. SEW reserves the right to claim damages in excess of the contractual penalty.

§ 8. SERVICING

1. The Device of SEW requires a minimum (maintenance) service. All parts are manufactured in accordance with the highest quality standards in order to ensure a long period of trouble-free use. However, the Client undertakes to conduct maintenance procedures at regular intervals, in accordance with the guidelines issued by SEW and included in the technical documentation delivered to the Device.
2. The service program guaranteed by SEW is covered by a separate agreement, the scope of which will be determined by the Client and SEW, depending on the Client's needs identified by SEW. The maintenance service of the Devices provided by SEW can include their maintenance at regular/agreed intervals conducted by qualified personnel to increase the efficiency and extend the life of the delivered device.
3. It is agreed that the Client is obliged to ensure the maintenance of devices in accordance with the procedures and guidelines issued by SEW. A breach of the above-mentioned obligations shall result in the expiry of the rights under the quality guarantee.
4. Other conditions for the provision of maintenance services are described in the General Terms and Conditions for the Provision of Maintenance Services available on the website www.sew-eurodrive.pl/media/sew_eurodrive/pdf/owsus.pdf

§ 9. SPARE PARTS

Spare parts which will be subject to delivery due to the maintenance service performed by SEW or a third party will be the subject of separate purchase agreements or service contracts.

§ 10. INTELLECTUAL PROPERTY AND INFORMATION CONFIDENTIALITY

1. All industrial property rights within the meaning of the Industrial Property Law of 30 June 2000 (Journal of Laws 2003.119.1117, as amended) arising in connection with the design, execution, installation, and any changes to the Device are wholly owned by SEW.

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- All technical and design documents handed over to the Client by SEW in connection with the performance of the subject of the Agreement, including drawings, plans, technical specifications, diagrams, instructions, lists are protected by SEW's property rights within the meaning of the Act of 4 February 1994 on Copyright and Related Rights (Journal of Laws 06.90.631, as amended) and without the consent of SEW cannot be used for purposes other than those indicated in the agreement concluded by the Client and SEW.
- Drawings, technical documentation or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than the purpose for which they were supplied. Without the consent of the submitting party, they may not be used, copied, reproduced, sent or transferred to a third party.
- SEW does not transfer any intellectual and industrial property rights to the Client or to any third party in connection with the agreement concluded with the Client. Unless expressly stated otherwise, none of the provisions of the agreement concluded between the Client and SEW shall be interpreted in such a way as to transfer any intellectual and industrial property rights to the Client.
- The Parties (Client and SEW) confirm that the supply and/or the service or a part thereof, in particular the export and transit of goods, technology transfer, trade and intermediation, technical support or the provision of economic services may be subject to export control laws and regulations in force in the EU, Germany, the USA or any other country (e.g. restrictions on countries, persons, use, etc.) and financial sanctions (later referred to as export control provisions).
- The Parties shall comply with all applicable export control laws. This applies in particular to any provisions of the country of destination. The Parties consider that the supply and/or service affected by such export controls may require authorisation or may be prohibited. Should any applicable export control regulation prevent SEW or the Buyer not only temporarily to comply with this agreement, either party shall have the right to cancel the deliveries and/or the service to which the application relates, in whole or in part.
- Delays caused by the authorisation procedures of the competent authorities of export control shall extend the execution time accordingly; this shall apply in particular to delivery times.
- Any claims for damages in connection with rejection or delay of an application with respect to export control regulations shall be excluded unless they relate to damage caused by detriment to health or damage resulting from wilful misconduct or gross negligence.

§ 11. EXPORT CONTROL

- Without any exceptions, the Client strictly undertakes not to sell, directly or indirectly, Devices and Services covered by the agreement with SEW to countries of the highest risk (UHRC), including to all companies operating in those countries – in accordance with all EU delegated provisions supplementing Directive (EU) No. 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for money laundering or terrorist financing, amending Regulation (EU) No 648 / of the European Parliament and of the Council of 2012 and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, including Delegated Regulation (EU) 2016/1675 and Delegated Regulation 2018/1467. The Client confirms that it is fully aware of the content of the UHRC list and has undertaken to comply with the above obligation, as well as to monitor the up-to-date UHRC list. In addition, the Client is obliged to implement mechanisms in its business in order to prevent any abuse on the part of Clients focusing on the sale of contractual products to the UHRC. These mechanisms are intended to guarantee the defensive identification of the final beneficiary who purchases the products covered by the contract with SEW. Client is obliged to take all legal steps with due diligence to prevent indirect sales to UHRC. Any violation of the Partner's sales prohibition to the institutions of companies operating in the UHRC shall be a gross violation of the material contractual provisions and shall result in the Partner's obligation to pay compensation.
- The Parties undertake to cooperate in all licensing procedures. On request, each party shall promptly provide the other party with relevant information / documents (e.g. end-use certificates) required in the application process.
- The Client undertakes to ensure that the Client and its employees/representatives comply with all obligations under Council Regulation (EC) No 428/2009 of 5 May 2009 establishing a Community regime for the control of exports, transfer, brokering and transit of dual-use items and other obligations under international agreements and regulations. Therefore, the Client undertakes to refrain from any actions involving the sale of products covered by the agreement with SEW, which would pose a risk to SEW in connection with a potential breach of the above provisions.

§ 12. FORCE MAJEURE

- Force Majeure shall mean an external event which has an impact on the performance of the Agreement, which cannot be foreseen and is beyond control of SEW or the Client, and which, with due diligence, cannot be avoided or prevented. Within the meaning of the provisions of the Agreement, the Force Majeure "shall mean, in particular, acts or omissions of authorities, strikes, lockouts, wars, blockades, uprisings, riots, epidemics, earthquakes, fires, floods and strong winds such as hurricanes or tornadoes, as well as disruptions in the supply chain of

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components/equipment used by SEW to perform the subject of the Agreement.

2. If any of the Parties to the Agreement must halt or delay its activities under the Agreement as a consequence of operation of Force Majeure" - it shall notify the other Party of this fact in writing within 14 days of the date of occurrence of such an event, specifying the event, its causes and consequences for the performance of the Agreement.
3. The Party who has submitted such written notification shall be exempted from its obligations or from keeping the deadline for its obligations for as long as this event continues. The time limit for the performance of mutual obligations shall be extended accordingly for the duration of the event referred to hereinabove.
4. The Party affected by the operation of the Force Majeure shall make reasonable efforts to minimise its effects and shall resume the performance of the Agreement immediately, as soon as this is possible.
5. A delay or failure to implement the provisions of the Agreement caused by the Force Majeure shall not be the basis for:
 - a) termination of/withdrawal from the Agreement,
 - b) lodging any claims for damage or additional costs incurred by the other Party.
6. If, as a consequence of Force Majeure, the performance of the Agreement is delayed or suspended for the continuous period of 60 days or for the total sum of several such periods which exceeds 90 days, then each of the Parties has the right to terminate/withdraw from the Agreement by delivering a written notice to the other Party under pain of being null and void.

§ 13. FINAL PROVISIONS

In matters not regulated in the agreement concluded between the Client and SEW, the provisions of Polish law shall apply.

Any disputes arising from the performance of the agreement shall be resolved by a Polish common court having jurisdiction over the Client or SEW.

If the Client has its registered office outside the territory of the Republic of Poland, the competent court shall be the court of the City of Łódź. Any agreements and international conventions establishing a different jurisdiction shall be excluded.


Tomasz Wieland
Managing Director/Chairman of the Board