

General Terms and Conditions of ENGIRO GmbH

Preamble

ENGIRO GmbH (hereinafter referred to as “ENGIRO”) is active in the development and production of electrical machines, electrical drive systems, electromechanical systems, electrical generator systems and system solutions for various applications. Its field of activity also includes system planning, simulation and optimisation of operating conditions, power distribution, control and regulation of the systems as well as their visualisation and operation of the machines and systems (hereinafter referred to as “Services”). These General Terms and Conditions (hereinafter referred to as “GTC”) govern the business relations and contractual relationships between ENGIRO and its customers.

1. General information

ENGIRO sells its products exclusively to commercial customers. These GTC therefore only refer to business relationships in which the customer is an entrepreneur (Article 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law. Consumers within the meaning of Article 13 BGB are expressly excluded from purchasing ENGIRO products.

Unless otherwise agreed in writing, the following GTC apply to all offers and orders that ENGIRO submits or receives. These GTC shall become part of the contract upon conclusion of the contract, unless they have already been agreed upon beforehand.

The GTC in their respective version (see www.engiro.de) shall also be valid as a framework agreement for future contracts with the same customer, without ENGIRO having to refer to them again in each individual case. In this case, ENGIRO shall inform the customer immediately of any changes to the GTC.

The GTC shall apply exclusively. A customer’s deviating, contradictory or supplementary General Terms and Conditions shall not be valid unless ENGIRO has expressly agreed to their validity. This requirement for approval also applies if ENGIRO provides Services without reservation in the knowledge of the customer’s general terms and conditions.

Legally relevant declarations and notifications made by the customer to ENGIRO after conclusion of the contract (e.g. setting deadlines, notifications of defects, declaration of withdrawal or reduction, terminations) must be made in writing or in text form to be effective. Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

2. Conclusion of contract, content of contract

Offers made by ENGIRO are subject to change and non-binding.

An order placed by a customer shall be considered a binding offer of contract. Unless otherwise stated in the order, ENGIRO is entitled to accept this contractual offer within 14 days of its receipt.

Acceptance can be declared either in writing (e.g. by order confirmation) or by conclusive action (in particular unconditional performance of the order).

The content of the respective contract is exclusively determined by the offer, any additional agreements made and these GTC.

3. Services

The definition of the type and scope of the Services to be provided by ENGIRO shall always require an agreement in writing or text form (letter, fax, e-mail). Services that are not explicitly agreed in one of these forms shall not be owed.

The customer must provide ENGIRO with all information necessary for the provision of the respective service in good time.

In individual cases, ENGIRO’s Services may be subject to export control regulations due to their nature (type, intended use, possible uses, etc., in particular “dual-use technologies”). The customer shall be responsible for compliance with all legal regulations in case of further use of the Services. In the event that a service is subject to the aforementioned regulations, this shall not result in a defect in the sense of Article 435 BGB unless ENGIRO expressly assures a specific quality in this connection in writing or agrees to this.

If it becomes apparent during the provision of a service that it is impossible in fact or in law, ENGIRO shall inform the customer of this immediately. ENGIRO shall be exempt from the obligation to perform if the customer does not change the order to the extent necessary in response to the notification or if the customer does not create the conditions that make it possible to provide the service. The customer must reimburse ENGIRO for any costs incurred by ENGIRO up to this point in time, unless ENGIRO is responsible for the impossibility.

In research projects and optimisation tasks, success shall not be owed. The following restrictions apply to functional samples and prototypes:

A functional model is used to check individual functions. It is not intended for delivery to the end customer/user and is used exclusively in the development process.

A prototype is an experimental model of a planned product or component that is fully functional for the respective purposes. It possesses all the essential characteristics of a future series product or component, but does not necessarily have to be manufactured using the same manufacturing processes as a later series component. Reliability and performance of a prototype may be limited by the reduced experience value.

ENGIRO does not provide any consulting services in connection with the listed Services, unless these are expressly agreed with the customer.

4. Payment, invoicing

The customer undertakes to pay the agreed remuneration to ENGIRO.

If no fixed or other type of remuneration has been agreed, ENGIRO shall receive an expensereLATED remuneration calculated according to hours of time on the basis of the current price list. Insofar as Services are performed at the customer's request on weekends or public holidays, ENGIRO shall be entitled to set an appropriate increase in remuneration for these hours.

All prices are ex works in EUR plus statutory value added tax.

Any costs for transport, packaging, insurance, customs and related processing costs shall be invoiced according to expenditure. Unless otherwise agreed, ENGIRO shall be entitled to determine the type of shipment (in particular the transport company, shipping route, packaging) itself.

If the customer does not fulfil the obligation to cooperate or if errors or disruptions occur for which the customer is responsible, or if the customer wishes to make changes or additions to the service, ENGIRO shall be entitled to charge the additional time and all other costs incurred as a result of this on a time and material basis.

If remuneration is agreed on a time and material basis, ENGIRO shall be entitled to invoice a reasonable advance payment after the order has been placed and then at the end of each month for the respective expenditure.

Air and rail travel, expenses and special costs (e.g. additional documentation and image material, extraordinary shipping costs) shall be charged additionally depending on the amount of work involved. In the case of car use, the travel costs and the respective travel times shall be invoiced according to the current price list.

Invoices shall be due without deduction and payable within 14 days of the invoice date. Upon expiry of the above payment period, the customer shall be in default. The outstanding invoice amount shall bear interest during the period of default at the statutory default interest rate applicable at the time. The right to assert further damage caused by delay shall be reserved expressly.

Compliance with the respective agreed payment deadlines is an essential basis for the provision of Services. If payment deadlines are not met, ENGIRO shall be entitled to stop work in progress and to withdraw from the contract. The customer shall bear all associated costs, including lost profits. In the event of default of payment, interest shall accrue at a rate of 5 percentage points above the base interest rate.

No discount shall be granted unless ENGIRO and the customer agree to this in writing.

The customer shall only be entitled to a right of set-off or retention if the counterclaim has been legally established or is undisputed.

5. Performance time, delays

Information on delivery and performance dates shall be non-binding, unless it has been promised in writing as binding.

ENGIRO may perform partial services provided that (a) this is expressly agreed within the framework of the contractual purpose, (b) delivery of the remaining ordered goods is ensured and (c) the customer can reasonably be expected to accept this, particularly taking into account additional expenditure.

Delivery and service deadlines shall be extended by the period during which the customer is in default of payment, as well as by the period during which ENGIRO is prevented from providing the service due to circumstances for which it is not responsible (e.g. because the customer does not fulfil its obligation to cooperate in a timely manner or does so incompletely, or other unforeseeable circumstances occur that could have an impact on production time), and also by an appropriate start-up period after the cause of the impediment has ceased to exist.

In the event of impediments to performance such as operational disruptions for which ENGIRO is not responsible, strikes or other cases of force majeure, an agreed delivery or performance period shall become invalid. Claims for damages against ENGIRO shall be excluded in such cases.

ENGIRO shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events that could not be foreseen at the time the contract was concluded (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lock-outs, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures, a pandemic or the failure of suppliers to deliver, or to deliver correctly or on time) for which ENGIRO is not responsible. If such events make it considerably more difficult or impossible for ENGIRO to deliver or provide Services, and if the hindrance is not merely temporary, ENGIRO shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, the customer may withdraw from the contract by immediate written declaration to the seller.

If ENGIRO is unable to meet binding delivery deadlines for reasons for which ENGIRO is not responsible (non-availability of the service), ENGIRO shall inform the customer of this immediately and at the same time inform the customer of the expected new delivery deadline. If the service is still not available within the new delivery period, ENGIRO shall be entitled to withdraw from the contract in whole or in part; any consideration already provided by the customer shall be refunded immediately. A case of non-availability of the service in this sense shall be deemed to be, in particular, untimely delivery by ENGIRO's suppliers, if ENGIRO has concluded a congruent hedging transaction, neither ENGIRO nor the supplier is at fault and ENGIRO is not obliged to procure in individual cases.

If any additional services are ordered subsequently which affect previously agreed Services, the corresponding deadlines shall be extended by a period to be agreed.

Any deadline set by the customer must be reasonable. A period of less than 10 working days shall only be appropriate in the event of proven urgency.

6. Transfer of risk, acceptance

The risk shall pass to the customer

- a) in the case of collection by the customer with the handover to the customer,
- b) in the case of collection by third parties commissioned by the customer, with the handover to them and
- c) in the case of sale by delivery to a place other than the place of performance, with the transfer of the delivery item to the carrier commissioned by ENGIRO or to ENGIRO's own employees.

If the customer is in default of acceptance, the risk is transferred to the customer with the justification of the default of acceptance.

The customer is obliged to collect and/or have the respective delivery item collected within two weeks of receipt of the notification of readiness for collection and thereby accept it.

If the customer is in default of acceptance or violates other obligations to cooperate, ENGIRO shall be entitled to store the delivery item appropriately at the customer's risk and expense. Other rights of ENGIRO shall remain unaffected. In particular, ENGIRO may demand compensation for damages.

7. Warranty, liability, limitation period

ENGIRO guarantees that the service provided has the agreed quality and is free of defects within the meaning of Articles 434 and 435 BGB which cancel or reduce its suitability for the assumed or normal use. No further warranty shall be given. In particular, there shall be no warranty for defects which arise after the transfer of risk to an item solely as a result of changes, modifications, dismantling, other redesign or effects, including those on the software and those affecting the operating parameters, by the customer (in particular with regard to protective devices which ensure the intended use of the item or serve to protect the item from damage or destruction). The same shall apply if the customer does not use the item in accordance with ENGIRO's specifications as set out in the operating instructions or other documentation, and this results in damage to or destruction of the item.

Insignificant deviations from the agreed quality shall not constitute a defect.

The customer is obliged to immediately and thoroughly examine every single service provided by ENGIRO that contains elements of the contract for work and services before it is used in live operation. The customer must notify any defects immediately in writing and sufficiently documented so that the defect can be rectified as quickly as possible. The customer must also enable all measures necessary for the investigation and rectification of defects to be carried out. If there are no significant defects, the customer must accept the service no later than four weeks after it has been provided.

If the customer allows the aforementioned period to elapse, the respective service shall be deemed to have been accepted. If the customer takes up real operation without acceptance, the acceptance shall also be deemed to have taken place.

If there are significant defects which make it impossible to start real operation, a new acceptance shall be carried out after the defect has been remedied, to which the above provisions shall apply accordingly.

If defects are reported during the warranty period, these shall either be rectified or ENGIRO shall replace the defective product, at ENGIRO's discretion. Replaced parts shall become the property of ENGIRO. ENGIRO shall remedy the defects at its own premises or at the customer's premises, who must grant free access for this purpose.

The customer must grant ENGIRO a reasonable period of time to remedy the defects. The warranty and limitation periods shall be 12 months, unless otherwise agreed. They shall not be interrupted upon recognition or elimination of a defect.

Claims of the customer due to minor defects shall be excluded. In particular, defects shall be considered irrelevant if they do not significantly impair the use of products and services.

Faults and malfunctions for which ENGIRO is not responsible, such as those caused by natural wear and tear, force majeure, improper handling, intervention by the customer or third parties, excessive strain, unsuitable operating materials, malfunctions caused by other machines and systems, unstable power supplies, exceptional climatic conditions or environmental influences shall be excluded from liability for defects.

Functional samples and prototypes shall be excluded from any warranty. In the case of functional samples and prototypes, any costs for dismantling and assembly, transport, packaging, travel and accommodation shall be borne by the customer.

The assignment of warranty claims to third parties shall generally be excluded.

Within the scope of the contractual relationship, the customer shall have unlimited liability to ENGIRO.

ENGIRO shall be liable for damages – for whatever legal reason – in the event of intent and gross negligence. In the event of simple negligence, ENGIRO shall only be liable

- a) in cases of injury to life, body or health of the customer or the customer's employees,
- b) in the event of a breach of an essential contractual obligation, the fulfilment of which is essential for the proper execution of the contract and on the fulfilment of which the contractual partner regularly relies and may rely; in this case, however, ENGIRO's liability shall be limited to compensation for foreseeable, typically occurring damage,
- c) for the damage caused by defects due to the absence of warranted characteristics and for such consequential damage caused by defects against which the customer was intended to be protected by the given warranty.

All claims against ENGIRO are subject to a limitation period of one year from the date of performance of the service.

8. Cancellations

The customer shall have the right to cancel an order. However, ENGIRO shall be entitled to charge a cancellation fee of 15% of the total order value in addition to the services rendered and costs incurred.

9. Data protection

ENGIRO processes personal data in accordance with applicable data protection laws. For details please refer to the data protection information [www.engiro.de/en/privacy-policy].

10. Confidentiality

Both parties and their staff, employees and agents undertake not to disclose to third parties any information from the other party's business area that is neither generally accessible nor generally known, and also to make every effort to prevent third parties from accessing such information. Information within the meaning of this agreement shall be deemed to be the knowledge, customer information, secrets, special empirical knowledge (know-how), the entrusted documents, the explanations for these documents, samples, models, all data carriers, the explanations for patents and patent applications as well as any information concerning company policy.

On the other hand, each party shall be allowed to use knowledge acquired in the course of the business in its traditional activities.

The customer shall take all necessary measures to protect design data, machine layouts, programs, parameters, work results and documentation from access or misuse by unauthorised persons.

11. Property rights, know-how

By concluding the contract, the customer acquires rights in relation to the services provided by ENGIRO exclusively to the extent described below:

The customer may use the components, machine designs, system layouts, programs, controls and parameter sets developed by ENGIRO within the scope of the customer's application. In the absence of any license agreements, the customer shall only have the right to use the delivered products. The customer does not acquire the right to imitation, production, duplication and distribution. The same shall apply to customers of the customer.

ENGIRO or its licensors shall retain ownership and the right of further use, even if the customer subsequently changes the construction, electromagnetic design, programs, parameterisation, work results or know-how records.

If ENGIRO's Services lead to work results that can be protected by industrial property rights, ENGIRO shall notify the customer of this. A mutually agreed arrangement shall then be made as to by whom and in what way the work results are to be protected.

The customer may only use the services provided by ENGIRO in the manner provided for in the contract. Any other use requires the prior written consent of ENGIRO.

12. Retention of title

All commissioned developments, Services and objects of purchase shall remain the sole property of ENGIRO until full payment of all claims arising from the business relationship. They may not be used, sold, pledged or rented as long as the reservation of title exists. The customer shall also be obliged to inform ENGIRO immediately of changes to customer's domicile or place of business or if third parties assert claims to the items delivered under retention of title.

13. Final provisions

Communication between ENGIRO and the customer must be in writing; text form (i.e. e-mail, in-app messages, etc.) shall be sufficient. This shall not be the case where the statutory written form is required.

Should any provision of these GTC be invalid, the validity of the remaining provisions shall not be affected. The invalid provision shall be replaced by the statutory provision which comes closest to the meaning and purpose of the invalid provision in economic terms.

14. Place of jurisdiction, applicable law

The place of performance shall be ENGIRO's registered office.

These GTC, their interpretation and all legal relations between ENGIRO and the customer shall be subject to the law of the Federal Republic of Germany, excluding international uniform law, including the UN Convention on Contracts for the International Sale of Goods.

The place of jurisdiction for all disputes arising from the contractual relationship shall be Aachen, Germany.

Aachen – March 14th, 2025