



GENERAL TERMS OF SALE AND DELIVERY of RECOM Power GmbH

Certified translation from the German language

1. Area of application

Sales and deliveries made by **RECOM Power GmbH**, Münzfeld, 4810 Gmunden, (referred to in the following as: "RECOM") are made exclusively in accordance with the provisions set out below General Terms of Sale and Delivery (referred to in the following as: "Delivery Terms"), which are acknowledged by the customer by the acts of placing an order or receiving a delivery. They also apply for all future business with the customer. The application of any deviating or supplementary terms and conditions of business of the customer is excluded, except in such cases where the application of these has been expressly agreed in writing.

2. Conclusion of a contract

2.1 The offers made by RECOM are non-binding. A contract is first established by the written confirmation of order by RECOM and is exclusively oriented to the content of the confirmation of order and to these Delivery Terms. Oral agreements or promises must be confirmed in writing by RECOM in order to be effective.

2.2 All orders are binding and cannot be cancelled, insofar as they have been accepted by RECOM within a period of 7 days and confirmed in writing.

2.3 RECOM retains all rights to the sales documentation (in particular to illustrations, drawings, data on weights and measures) and also to the samples. These must not be made accessible to third parties and must be returned to RECOM immediately and without delay on request.

2.4 The RECOM field sales staff members cannot conclude contracts, nor make any binding promises in respect to the delivery item or other conditions.

RECOM Power GmbH
Münzfeld 35
4810 Gmunden - Austria
Phone: +43 7612 88325 700
Fax.: +43 7612 88325 801
office@recom-power.com
www.recom-international.com
VAT REG No: ATU 57543527
FN 242403a

Local District Court:
Landesgericht Wels
Legal status:
Gesellschaft m. b. H.
Registered Office:
Gschwandt - Austria
Managing Director:
K.M. Bier, Dipl.-Ing.
Authorized Officer:
M. Katterl, Mag.
G. Reifner, Mag. (FH)

Oberbank AG
EUR-Account:
Bank Code: 15060
Account Number:
171-0694.04
IBAN:
AT591506000171069404
SWIFT:
OBKLAT2L
Currency: €

Oberbank AG
USD-Account:
Bank Code: 15060
Account Number:
171-1559.89
IBAN:
AT611506000171155989
SWIFT:
OBKLAT2L
Currency: USD

2.5 The customer undertakes the obligation to maintain the relevant applicable national, European and international anti-terrorism regulations and also the national (AußWG- Austrian Foreign Trade and Payments Act/AußHV –Austrian Foreign Trade Regulation) and European (Dual-Use-VO (regulation) 1334/2000 as amended from time to time) export control regulations. Furthermore the customer undertakes the obligation to maintain the US re-export regulations (EAR Export Administration Regulations) and also sanctions (OFAC-Office of Foreign Assets Control) for goods or for technical data, to which the US-regulations apply. Should a permit be required by any of the responsible authorities due to one of these regulations as cited above, the customer undertakes the obligation to obtain these at his own cost and also to inform RECOM about this.

3. Delivery periods and schedules

3.1 Deliveries from RECOM are made exclusively **ex works (EXW Gmunden**, Incoterms 2010) insofar as other terms have not been expressly agreed; this means: the customer shall bear the transport risk. delivery periods and schedules shall only be binding when these have been confirmed in writing by RECOM and when the customer has provided RECOM with all the information and documentation required for the delivery in good time, or has made this available and has made any advance payments as agreed. The agreed delivery periods begin with the date of the confirmation of order. In the case of additional or expanded orders the delivery periods shall be extended accordingly.

3.2 Events which are unforeseeable, unavoidable and outside of the sphere of influence of RECOM and for which RECOM has no responsibility, such as *force majeure*, war, natural disasters, operational interruptions, interruptions at suppliers as also strikes and lockouts shall release RECOM for their duration from the obligation of timely delivery or service provision. Agreed delivery dates shall be extended by the duration of the interruption; the customer shall be informed of the occurrence of the interruption in a suitable manner. Should an end to the interruption not be foreseeable, or should the duration last longer than two months, each of the parties shall have the right to withdraw from the contract.



3.3 The delivery of objects, which are not produced by RECOM itself, shall always be made by sub-suppliers to RECOM and then from RECOM to the customer, insofar as other terms have not been agreed in writing.

3.4 Should the deliveries from RECOM be delayed, the customer shall only have the right of withdrawal from the contract, when RECOM is itself responsible for the delay and when the customer has set a reasonable period of grace and this has expired without the delivery being made.

3.5 Should the customer be in default in acceptance, or otherwise infringe against the obligation to cooperate, then RECOM notwithstanding its other rights, shall be entitled to put the delivery item into appropriate storage at the risk and cost of the customer.

3.6 RECOM has the right to make partial deliveries when there is a due cause for this to be done.

4. Shipment, transfer of risk, insurance

4.1 Insofar as the customer has not made a specific other arrangement, shipment shall be by means of an appropriate dispatch method in the usual packaging.

4.2 The risk is transferred to the customer with the handing over of the delivery item either to the transport company, or to the customer himself. Should either the hand-over or the dispatch be delayed due to a reason for which the customer is responsible, the risk shall be transferred to the customer on the day when readiness to deliver the delivery item is reported to the customer.

4.3 Insurance shall be provided at the wish and cost of the customer only.

5. Prices, conditions of payment

5.1 Should the contractual parties not have agreed to a specific price, the price shall be determined in accordance with the RECOM price list as valid at the time of the conclusion of the contract.

5.2 Should the agreed delivery date be more than four months after the conclusion of a contract and should unforeseeable price increases in respect to the delivery item occur for RECOM after the conclusion of a contract, RECOM shall at its reasonable discretion have the right to increase the agreed price in line with the cost increases.



5.3 In the scope of a continuing obligation concluded with the customer, in particular in the form of long-term supply contracts, RECOM shall have the right to increase its prices as of the 1st of January of a calendar year to the extent that this is reasonable, in that cost increases have been incurred for the delivery item by RECOM in the course of the previous calendar year. RECOM shall inform the customer about the planned price increase in writing eight weeks at the latest before the coming into force of the increase.

5.4 All RECOM prices apply from the warehouse in Gmunden, Austria exclusive of the relevant turnover tax, and dispatch costs, which shall be invoiced separately.

5.5 Each invoice from RECOM shall be due for payment without discount 30 days after the invoice date; when this date passes without payment having been made, payment will be in arrears.

5.6 RECOM shall have the right to make use of customer payments to first defray any existing earlier debt. Should costs and/or interest have been incurred for these debts, RECOM shall have the right to allocate payments made firstly to the costs, then to the interest and finally to the main invoiced claim and to do this independent of any other specified purpose the customer makes for the payment.

5.7 Exchange and cheques shall only be accepted on special agreement and without charges or fees for RECOM.

5.8 The customer shall only have the right to maintain and assert a right of retention when his/her counter claim is acknowledged in writing, or when this is established with legal effect. Furthermore, in order for a right of retention to be valid the counter claim must be based on the same contract.

5.9 Should the customer come into default in acceptance or otherwise infringe against the obligation to cooperate, RECOM shall have the right to claim in addition to the damages incurred, the costs for the keeping and maintaining of the item for delivery at a flat rate of 1 % of the invoice sum per month, or payment covering the full actual costs incurred.

5.10 Should the risk of a customer being unable to meet his/her payment obligations be identified by RECOM following the conclusion of a contract, in particular through the initiation of insolvency proceedings, RECOM shall have the right to make any deliveries that are still scheduled only against pre-payment or the



provision of security. Should the pre-payments or security provisions not be provided within a reasonable period of grace, RECOM shall have the right to withdraw either from individual contracts or from all contracts and this in each case either in part or in full. RECOM shall remain free to assert further rights.

6. Retention of title

6.1 The products delivered shall remain RECOM property until the full payment of all RECOM claims arising from the business relationship with the customer has been received.

6.2 In the case of current account operations all the products delivered by RECOM shall remain RECOM property until the full payment of all RECOM accounts.

6.3 A sale of the products which are included under the retention of title ("retained products") is only permissible for the customer within the scope of its regular business activities. The customer does not have the right to pledge the retained products, to assign them for security, or to make any other disposal of them which would put the RECOM property at risk.

6.4 As a means of securing all claims, which RECOM has against the customer, the customer now assigns all claims that may arise from the onward sale to third parties to RECOM; RECOM accepts this assignment of rights on a legally binding basis.

Should the customer sell the retained products after processing or reshaping them, or do so in connection with other goods, or together with other goods, this claims assignment shall only apply to the amount of the agreed portion of the price as agreed between RECOM and the customer plus a security margin of 10% of this price. On a request to do so by RECOM the customer is obligated to inform RECOM of the name of the customer to whom the goods were delivered. RECOM shall have the right to inform the customer of the said assignment at any time. The customer is hereby revocably authorized, to collect the receivables assigned to RECOM in its own name on trust. RECOM can revoke this authorisation and the right to sell onwards, when the customer is in default or in arrears with important obligations, such as for example payments to RECOM.

6.5 A processing or reshaping of the retained products by the customer shall in all cases be carried out for RECOM. Should the retained products be processed



together with other objects, RECOM shall acquire joint ownership in the new item in the ratio of the value of the retained products to the other processed items and to the time and the processing involved. For the new item resulting from the processing the same shall apply as for the products delivered under retention.

6.6 When the retained products are combined with other items, RECOM shall acquire joint ownership in the new items in the ratio of the value of the retained products to the other processed items at the time of the combination. Should the combination be made in a manner that the customer's own item is to be regarded as the main product component, it is agreed that the customer shall transfer proportional joint ownership to RECOM. The customer shall retain the proportional joint ownership thus acquired for and on behalf of RECOM.

6.7 The customer shall provide RECOM at any time with any desired information concerning the retained products or about any claims which are to be assigned hereafter to RECOM. The customer must notify RECOM immediately of any interventions or claims by third parties on the retained products and provide RECOM with the necessary documentation. The customer shall at the same time inform the third party of the RECOM retention of title. The costs for a defence against such interventions or claims shall be borne by the customer.

6.8 The customer is under obligation to treat the retained products with due care for the duration of the retention of title.

6.9 Should the realisable value of the securities provided exceed the total RECOM security requirement by more than 10%, the customer shall have the right to request their release to this extent.

6.10 Should the customer go into arrears with important obligations, such as for example payments to RECOM, then RECOM may without prejudice to any other rights or remedies demand immediate return of the retained products with the exclusion of all and any rights of retention (with the exception of claims acknowledged in writing or established with the force of law) and dispose of these elsewhere for the purpose of satisfying any open claims against the customer. In such a case the customer shall give RECOM or the agents acting on behalf of RECOM, immediate access to the retained products and hand them over, or on request to do so provide access to the business documentation and/or information on



the location of the goods. Should RECOM request a hand-over under these terms, this shall not be deemed as a withdrawal from the contract.

6.11 In the case of deliveries to other legal systems, in which the above retention of titles regulation does not have the same security effect as it has in Austria, the customer shall without delay do all in his/her power to obtain appropriate security rights for RECOM. The customer shall cooperate in all measures, such as for example, registration, publication and the like, which shall be necessary and purposeful for the effectiveness and the implementation of security rights of this kind.

6.12 On demand by RECOM the customer shall be under obligation to have the retained products reasonably insured and shall provide appropriate verification of the insurance policy to RECOM and assign all claims arising from the insurance policy to RECOM.

7. Quality, warranty, inspection of the goods

7.1 RECOM assures that the delivery item shall be of the agreed quality on the transfer of risk; this shall be determined exclusively in accordance with the concrete agreements as established in writing between the parties on the quality, properties and performance characteristics of the delivery item.

7.2 Data in catalogues, price lists and other information material supplied to the customer by RECOM as well as all the product description data is on no account to be regarded as a guarantee for a specific property of the delivery item; any property guarantees of this kind must be expressly agreed in writing.

7.3 RECOM reserves the right to introduce minor changes to the delivery item in the context of its construction, material and/or implementation, insofar as none of these will affect its agreed properties. The same shall apply for technical further developments.

7.4 The customer is obliged to accept a delivery item with insignificant defects, without prejudice to any warranty rights in accordance with those as referred to in the following.

7.5 The warranty rights of the customer are subject to the condition that the delivery item will be checked after delivery and that RECOM will be informed in writing without delay of any faults, but at the latest two weeks after the hand-over;



RECOM must be informed without delay in writing of any hidden defects following their discovery.

7.6 In the case of every notice of defect RECOM shall have the right to examine and inspect the delivery item which is the subject of the complaint. The customer shall allow RECOM the time and opportunity that shall be required for this task. RECOM can also request from the customer that the delivery item complained about is returned to RECOM at the cost of RECOM.

7.7 Before the customer can make any claim or assert a right on the basis of defect subject to warranty, (withdrawal, reduction, compensation, payment of expenses incurred or loss of profits), RECOM shall have the right of choice on how to deal with the defective item for the customer either by rectifying the defect free of charge, or by providing a defect-free replacement for the item. Should the cure fail despite at least two cure attempts, or if a cure is either impossible or unreasonable or should RECOM refuse to carry it out, the customer can withdraw from the contract or reduce the remuneration (price reduction). Compensation claims are based on Paragraph 8.

7.8 The customer will give RECOM the reasonable period of time and the opportunity for the improvement or for the substitute delivery. Only in urgent cases of risk to operational safety, or to prevent disproportionately great damage from occurring, or when RECOM is in default in dealing with the damage, will the customer, following notification without delay to RECOM have the right to carry out the repair work itself, or to have this work carried out by a third party and to request compensation of the costs involved from RECOM.

7.9 Parts replaced by RECOM must be returned to RECOM.

7.10 The customer does not have the right to carry out repairs itself on goods delivered by RECOM, nor to have these repairs carried out by others at the risk of losing all customer warranty claims.

7.11 RECOM shall provide no warranty for any damage, resulting from unprofessional use, misuse, faulty treatment or as a result of repair work the customer has carried out him/herself, nor for unsuitable accessories, or spare parts or expendable parts, except in such cases where RECOM is itself causally responsible for this damage.



7.12 Should the fault not be rectified or the spare part not be delivered within the reasonable period of grace set by the customer, or should the repair work be a failure, or should it not be reasonable to expect it from the customer, or should RECOM have refused to carry it out, then the customer shall have the right to choose between a reduction in the purchase price or compensation as under Point 8 or to require payment of the expenses incurred.

7.13 The limitation period for guarantee claims of the customer is reduced by mutual agreement and shall be twelve months from the delivery of the delivery item at the customer.

8. Liability and damages

8.1 All the products supplied by RECOM are manufactured for non-safety-critical, commercial and industrial applications. The customer is obligated to introduce all suitable, required and reasonable safety measures to reduce potential damage.

8.2 Subject to the provisions in Item 8.3 the statutory liability of RECOM for damages is limited as follows:

(I) RECOM shall only be liable for gross negligence and/or for a case of grossly negligent or deliberate breach of important contractual obligations. Furthermore the liability sum is limited to typical foreseeable damages at the time of the conclusion of a contract, but to a maximum, however of 100 % of the contract sum (partial orders made in this context are applicable as the overall contract) and up to 2 million euros (in the event that 100 % of the contract sum exceeds 2 million euros), respectively;

(II) RECOM shall not be liable for minor negligence.

8.3 The liability limitation given above shall not apply in cases of mandatory statutory liability (especially in accordance with the Product Liability Act) or if any guarantee has been assumed, or in the event of personal losses that were culpably caused.

8.4 The customer is obligated to introduce all reasonable measures to prevent damages from occurring and to reduce their effect.

9. Product liability

When the customer sells the delivery item unchanged or after processing, reshaping or in combination with other goods, s/he will indemnify and hold harmless RECOM in the internal relationship context from any product liability claims of third parties that result, to the extent that s/he is responsible for the fault which has resulted in the liability.

10. Obligations arising from the regulation of the Austrian Federal Minister for Agriculture and Forestry, the Environment and Water Management on the avoidance of waste, the collection and processing of old electrical and electronic equipment (Ordinance Regulating the Handling of Waste Electrical Equipment – EAG-VO)

10.1 The customer undertakes the obligation to dispose of the delivered goods in an orderly manner and at own cost at the end of their useful service life in accordance with the statutory regulations. The customer releases RECOM from the obligations pursuant to Section 10 Para. 1 and Para. 2 EAG-VO (obligation of the manufacturer to accept returns) and thus also in the context of third party claims. This is done in agreement with the regulations under Section 10 Para. 3 EAG-VO.

10.2. The customer must place commercial third parties to whom he passes on the goods, under contractual obligation to dispose of the delivered goods in an orderly manner and at own cost at the end of their useful service life in accordance with the statutory regulations and to ensure that this obligation is continued in the event of a further transfer of the goods. Should the customer, however, fail to obligate third parties to whom the goods are transferred in this manner, the customer will be obligated take back the goods at the end of their useful service life at his/her own cost and dispose of them in accordance with the statutory regulations.

10.3. The customer must on no account pass on the delivered items or parts of these deliveries to private third parties on account of their classification as being exclusively for commercial use pursuant to EAG-VO.

10.4. The customer must cover all costs incurred by RECOM as a result of the customer's failure to meet the obligations under EAG-VO, or of infringements against



these regulations, in particular against the agreed acceptance of returned used goods under Section 10.

11. General provisions

11.1 Neither party shall have the right to transfer any of its claims arising from the contractual relationship to third parties without the agreement of the other party. This does not apply, however, to pecuniary claims.

11.2 Any amendments or supplements of the contract and/or these Delivery Terms and also of collateral agreements shall require the written form. This shall also apply to an amendment of this written form requirement.

11.3 Should a provision of this contract and/or these delivery terms be partially or wholly invalid, this shall not affect the validity of the remaining provisions. The parties undertake in such a case to replace the invalid provision with a valid provision that most closely approximates the business intention of the invalid one.

11.4 The exclusive court of jurisdiction for all disputes arising from this contractual relationship is the court with judicial and regional competence for these matters in A-4810 Gmunden, Austria. RECOM is entitled, however, to sue the client before any other competent court.

11.5 The law of the Republic of Austria shall apply under the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).