Terms and Conditions for Sale and Delivery of Eberspächer Sütrak GmbH & Co KG (Eberspächer Sütrak)

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I. SCOPE

The Terms and Conditions hereinafter set out in their latest version apply to all our offers and deliveries. We hereby expressly reject any conditions for purchase of the Purchaser. Conditions deviating from these Terms and Conditions are only binding upon us if we accept such conditions expressly in writing. This shall also apply in case of our execution of Purchaser's order without reservation in knowledge of possible deviating conditions of the Purchaser.

II. CONCLUSION OF CONTRACT

1. Until we have accepted the order, none of our quotations or offers shall be binding. The contract shall only be effective upon receipt of our written confirmation of order or upon delivery. The condition and quality of the goods delivered and the content and the extent of the mutual rights and obligations, in particular the scope of delivery, are exclusively determined by our written confirmation of order. Without any confirmation of order, the confirmation of order shall be replaced with such offer if we have provided an offer which has been accepted by the Purchaser in good time.

2. Any information contained in quotations, catalogues etc. as well as data relating to measures, weights and performance are only approximate and cannot be considered as a guarantee as to the condition or the durability. We reserve the right to modify the design and the form of the models which are reasonable to the Purchaser, if and to the extent that such modification does not constitute a fundamental alteration, deterioration or reduction of the value. Oral collateral agreements as well as guarantees as to the condition or durability and amendments to the contract after its conclusion shall be ineffective without our written confirmation.

III. TERMS OF PAYMENT

1. Subject to any other agreement in writing, all our invoices must be paid in cash without deduction upon receipt. Payments discharging the obligation to pay can exclusively be made to Eberspächer Sütrak in Renningen. Payments shall only be deemed to have been made after we are finally entitled to dispose of the amount paid. We will accept cheques only upon specific prior written agreement and provided that where payment is made by means of cheque, we shall not be deemed to have received payment until the cheque has been honoured and that any costs for collection and discount charges, all possible financing costs and possible taxes shall be borne by the Purchaser. Upon default, we are entitled to claim interest in the amount of 8 % above the base interest rate of the European Central Bank. The assertion of further-reaching damages caused by default shall remain unaffected.

2. If we learn of adverse circumstances with respect to the creditworthiness of the Purchaser after the conclusion of the contract, or if reasonable doubts with respect to the solvency of the Purchaser arise, we are entitled to refuse the dispatch and delivery or to request an advance payment or a security before the delivery. If the Purchaser does not effect any payment or does not provide a security within a reasonable period of time set by us, we are entitled to repudiate the contract.

3. The Purchaser shall be in default in payment after having received our reminder. A reminder is not required in case a calendar date for payment is stated or payment shall be made within a certain period of time after an event has occurred. Also in case of no reminder, the Purchaser will be in default in payment 30 days after the receipt of the invoice at the latest or, if the date of the receipt of the invoice cannot be determined, 30 days after receipt of the delivered goods.

IV. DELIVERY

1. Dates and periods of delivery are only approximate and are not binding upon us. The delivery period does not commence before submission of all documents to be provided by the Purchaser, in particular approvals and releases, and not before receipt of a down payment if such down payment has been agreed upon. The delivery period shall be met if we notified the Purchaser about the readiness of the goods for dispatch. We shall have a retention right in regard to further deliveries until all previous deliveries have been paid.

2. In case of force majeure at us or at our subcontractors the period of delivery shall be deemed reasonably prolonged. This shall also apply in case of official interference, problems in the supply by public utilities, strike, lock-out and unforeseeable difficulties in the delivery to the extent that we can not be held liable for this. If the delivery or performance has become impossible or unreasonable due to the aforementioned circumstances, we shall be released from our obligation to deliver. We shall immediately notify the Purchaser of such circumstances. Should the delivery be delayed for more than two months, the Purchaser is entitled to repudiate the contract.

3. All our prices shall be regarded as net prices in Euro. All deliveries shall be made ex-works (Incoterms 2000). This shall also apply in case we bear the shipping costs or if we assume shipment of the goods delivered. The shipping method and route will be selected by us. We shall endeavour to take into account any wish of the Purchaser. A transportation insurance will only be taken out on request and costs of the Purchaser. If we are not responsible for any delay in shipment of the goods, then the risk shall pass to the Purchaser at the time of notification of the readiness of the goods for dispatch. We are under no obligation in case of delayed or unexecuted deliveries due to negligence of our suppliers. We are entitled to partial deliveries. The Purchaser has to accept the goods delivered even in case of defects without prejudice to any possible claims for warranty, insofar as reasonable to the Purchaser with respect to the defects.

4. Our prices are based on the economic conditions at the time of the conclusion of the contract, in particular our production cost, i.e. the prices for raw and auxiliary materials, resources and wages. Should we increase the price for similar goods as a result of a change of such economic conditions within the period between the conclusion of the contract and the delivery, then the new price shall be applicable. Any change of the prices has to be notified to the Purchaser without delay. If the Purchaser objects to the increase of price within a period of two weeks after receipt of the notification, then we may at our discretion repudiate the contract or deliver at the originally agreed upon price. We shall notify the Purchaser without delay of our decision. In case of a repudiation of the contract, any further claims of the Purchaser are excluded. The same applies mutatis mutandis in regard to contracts for delivery by instalments for all goods not yet delivered.

V. RETENTION OF TITLE

1. We shall retain the title in the goods (section 449 para. 1 German Civil Code) until full payment of our invoice as well as payment for all preceding deliveries and services has been effected including all accessory claims, but always provided that where payment is made by means of cheque we shall not be deemed to have received payment for the purpose of this provision until the cheque has been honoured. If any of the reserved goods are combined, mingled or admixed with other goods not belonging to us pursuant to sections 947, 948 German Civil Code, then we shall become co-owner to the whole product in proportion of the value of the invoice of the deliveries and services to the other processed goods at the time of processing, combination, mingling or admixture. In case the Purchaser becomes sole owner by means of mingling or admixture, he shall transfer co-ownership to us already now in the proportion stated above and shall undertake to keep the goods in custody for us free of charge.

2. In case the Purchaser sells the goods under reservation of title alone or together with goods not belonging to us, the Purchaser shall assign to us already now all claims arising from such resale in the amount of the value of the reserved goods together with all accessory claims. In case we are co-owners of the resold goods, the assignment of the claim shall apply to the amount which corresponds to the proportionate value of our co-ownership. Subject to the reservation of revocation, we entitle the Purchaser to collect the claims assigned to us. In case the Purchaser defaults in his obligations towards us he has to inform us of the debtors of the assigned claims and to give notice of assignment to them. In such case we are also entitled to give notice of assignment to the respective debtors by ourselves and to make use of our collection power.

3. Should the Purchaser be in breach of the Contract, in particular be in default in payment, we shall have upon prior notice and setting of a time limit to the Purchaser the right to retake possession of the reserved goods and the Purchaser shall be obliged to return. The execution of the right to retake possession or any attachment levied upon the reserved goods by us shall not be construed as a repudiation of the contract. Already now, the Purchaser shall accept that the persons instructed by us to call for the reserved goods may enter and pass the premises for that purpose.

4. The Purchaser is entitled to resell, use or install the reserved goods only in the ordinary course of business and only under the condition that the claims assigned to us (V.3.) will be passed over to us effectively. The Purchaser shall not be entitled to other dispositions of the reserved goods. In particular, the Purchaser is not allowed to pledge the goods delivered or to transfer by way of security. The Purchaser's power to resell, use or install the reserved goods and the entitlement to collect payment pursuant to V.3. shall cease in case of cessation of payments, application for or opening of insolvency proceedings. Should any execution or distress by a third party be levied upon the reserved goods or the assigned claims, the Purchaser shall without delay notify us thereof and deliver to us any documentation required in order to object against such execution or distress.

5. The Purchaser shall insure all reserved goods at its own expense, in particular against fire and theft. The Purchaser hereby assigns to us any claims against the insurer with regard to the reserved goods and we hereby accept such assignment. During the duration of the reservation of title, the Purchaser undertakes to maintain the reserved goods in good order and to let us carry out necessary repairs by us or in a workshop authorized by us immediately, except for cases of emergency.

6. Should the value of the reserved goods be more than 20 % in excess of all sums due from the Purchaser to us, then we are obliged to release such securities granted to us to the Purchaser to the extent the agreed upon limit of cover is exceeded.

VI. WARRANTY/LIABILITY

1. In case of a commercial transaction, Purchaser must inspect the goods immediately after taking over for any defects and must give notice of a defect immediately. At the latest 14 days thereafter the period for making a claim shall be expired. Should we not be notified of any defects or other complaints within such period, all warranty rights against us are excluded.

2. Any parts which we have replaced under warranty shall be our property. Should Purchaser's notification of defects be unjustified, we will be entitled to claim for all costs that arise from such unjustified notice of the defects. Should the Purchaser transfer the goods to another place than the place of business of the Purchaser subsequently, and should the costs for repair or replacement delivery, including costs for transport, work and material, therefore increase, we may reject subsequent performance.

3. In case of a defect, should the Purchaser notify us in time as stated above, we will at our choice either repair or replace such defective goods, provided that the Purchaser shows that the defect was already existent at the point in time of the passing of the risk. The standard warranty coverage for air conditioning units is 12 (twelve) months from the date of vehicle registration or, for a registered vehicle, from the date of installation, and never more than 15 (fifteen) months from the date when Eberspächer Sütrak delivers the unit or a maximum vehicle mileage of 100.000 km (or 62.137 miles), whichever occurs first. The standard warranty coverage for spare parts is 12 (twelve) months from the date when the spare part is installed, and never more than 18 (eighteen) months from the date when Eberspächer Sütrak delivers the spare part, whichever occurs first. We shall not warrant for defects of used goods as well as glazing. The Purchaser has to give us in consultation with us the necessary time and opportunity to make a repair or a replacement delivery. We are on no obligation to repair or to any replacement delivery in case the costs for such repair or replacement delivery are unreasonably high.

4. Should the defect not have been remedied by us either by two attempts to repair the goods or one replacement delivery, or if we unjustifiably refuse a necessary repair or replacement or delay such repair or replacement without good reasons, or if it would be unreasonable to require the Purchaser to accept such repair for any other reason whatsoever, then the Purchaser shall be entitled to repudiate the contract, to reduce the price as well as to claim for damages or refund of wasted expenses, provided that the statutory requirements are given.

5. Our warranty for the defects in respect of products which have been supplied by third parties shall be limited to assigning the rights and claims as against such third party to the Purchaser. Should the Purchaser not be able to enforce its warranty rights against the supplier of such products, we shall give warranty for the defects as set out in these Terms and Conditions for Sale and Delivery. Subject to other representations given in writing, we are not liable for the operability of an installation for which we supplied refrigeration components only.

6. We do not give a warranty in case of irrelevant deviation from the agreed quality of the goods and irrelevant reduction according to the fitness of the goods and for damages which are based upon the following grounds in particular: inappropriate or improper use of the goods delivered, defective installation or putting into operation by the Purchaser or any third party, usual wear and tear, incorrect or negligent handling of the goods delivered, in particular the nonobservance of operation instructions and of recommended maintenance intervals, inappropriate, faulty or missing maintenance, excessive workload and use of inappropriate working and substitute materials, chemical or electric impact, provided that we have not violated essential contractual obligations. Usual wear and tear, damaged paint and enamel as well as damages as a result for loss of refrigerants are also excluded from any warranty.

7. In case of default, repudiation of the contract or a claim for damages instead of performance also require that Purchaser has set a reasonable time limit before and has thereby expressly stated clear that in case of non-observance of that time limit he will repudiate the contract and/or claim damages.

8. Customer may not repudiate the contract before the performance becomes due or in case of an only immaterial breach of duty by us. Further, repudiation of the contract is excluded if the Purchaser is responsible for circumstances which entitle to repudiation either alone or by far or in case a circumstance occurs during default in acceptance of the Purchaser for which we are not responsible.

9. Claims of the customer for damages which do not incur to the goods delivered directly ("consequential damage") are excluded. In derogation thereof, we shall be liable for any damage caused with intent or gross negligence, in case of a culpable violation of life, body or health, if a defect was fraudulently concealed or whose absence was guaranteed by Eberspächer, and insofar as liability exists under the German Product Liability Act for personal injury or property damage for goods used privately. In case of a culpable violation of essential contractual obligations we shall also be liable for simple negligence. In such case, however, liability shall be limited to the damage typical for the contract and reasonably foreseeable.

VII. CONDITIONS FOR INSTALLATION SERVICES FOR LUMP SUM INSTALLATION WORK

1. The aforementioned Terms and Conditions shall apply mutatis mutandis with respect to orders for installation. The usual working hours are at the moment 40 hours per week and we charge the following overtime premium on our wage rates: for the first two supplementary hours per day: 25 %; for any further overtime hour and any working hour on Sundays: 50 %; for works on bank holidays that fall on a normal working day or a Sunday on which usually nobody works, and on Easter Monday and Pentecost Monday: 100 %; for works on bank holidays that fall on a normal working day: 150 %. Our personnel shall only work on Sundays or bank holidays in urgent cases and on a particular request of the Purchaser. We invoice waiting time including a daily allowance if our installation personnel is prevented from execution of its work or return after termination of the work for whatsoever reason on grounds which we are not responsible for according to VI.9.

2. For reasons of cost efficiency, all items to be assembled and all materials and equipment which are necessary for the installation and assembly to be delivered by the Purchaser shall be transported by the Purchaser to work site and all preparatory work shall be fully completed. Additional expenses for unnecessary travelling of our personnel will be invoiced. The Purchaser shall store the material and goods delivered in such way that it is protected against weather influences and dirt.

VIII. MISCELLANEOUS

1. Place of performance for the payments of the Purchaser and for our deliveries is the principal place of business of our company in Renningen/Deutschland. Exclusive place of jurisdiction for all disputes arising from or in connection with our deliveries shall be Renningen. Besides, the claimant shall be entitled to proceedings at the defendant's place of business.

2. The contractual relationship between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is hereby excluded.

3. Any right of retention of payment based on alleged remedies of the Purchaser against us, which arise under another contractual relationship agreed with us, are excluded.
4. Any set-off of the Purchaser with its claims against our claims is not allowed, unless such claims of the Purchaser are undisputed or final and conclusive.

5. We reserve title and any copyright with respect to estimates of costs, drawings or other documents that we have provided to the Purchaser. Any such document may not be disclosed to any third party without our prior consent in writing and have to be returned to us upon request without delay.