



# **General Terms and Conditions of Sale and Delivery**

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## § 1 Scope of application

For all deliveries of

REO AG  
Brühler Strasse 100  
42657 Solingen, Germany

as well as its affiliated companies worldwide

– hereinafter referred to as “REO” –

are only subject to the present terms and conditions, unless otherwise agreed in writing.

## § 2 General provisions

- (1) These General Terms and Conditions of Sale and Delivery shall apply to all legal relations between REO and customers in connection with deliveries and/or services (hereinafter referred to as “Deliveries”). The customer’s general business terms shall only apply insofar as REO has expressly agreed to them in writing. Mutual written declarations shall be decisive for the scope of Deliveries.
- (2) REO shall reserve its unlimited ownership and copyrights for cost estimates, illustrations and other documents (hereinafter referred to as “Documents”). The Documents may only be made accessible to third parties with prior written approval of REO and must be returned immediately on request if no contract is reached with REO. Paragraphs 1 and 2 apply accordingly to the customer’s Documents; however, these may be made accessible to those third parties to which REO has permissibly transferred Deliveries.
- (3) The customer shall have non-exclusive right of use to standard software and firmware with the agreed performance specifications in non-modified format on the agreed equipment.
- (4) Partial deliveries are permitted insofar as the customer finds them reasonable.
- (5) The term ‘claims for damages’ in these General Terms and Conditions of Sale and Delivery also includes claims for compensation for futile expenses.

## § 3 Prices, payment terms and set-off

- (1) Prices are quoted in € ex works excluding packaging plus the relevant rate of VAT and are non-binding. Where material quantity has been specifically stipulated, a surcharge for the day of order confirmation shall be incurred pursuant to the officially published prices. Where delivery items contain copper the prices include a copper basis of €1.53/kg. The current value of copper shall be calculated on the day of order placement by means of the applicable MK value + a 10% supplement for processing. This value may be fixed for a maximum of one year. Call-off orders placed once this fixed year has expired shall be recalculated by means of the applicable MK listing + 10%.
- (2) According to the EC Cartel decision for iron and steel, REO is entitled to calculate a raw material surcharge with effect from 01/01/1983. The amount of surcharge is regularly adjusted to the respective current procurement situation.
- (3) The Price Clause Act (PreisKIG) of 14/09/2007 shall apply to all contracts. The existing regulations of the Pricing Act and Price Clause Act (PrAKG) as well as the Price Clause Directive (PrKV) shall apply to contracts concluded before the law came into effect.
- (4) REO reserves the express right to adjust prices if costs are incurred up until delivery or the list prices change.
- (5) All payments must be made to REO directly without paying agents. Invoices are payable net on receipt unless otherwise agreed. Alternative payment terms may be

agreed upon whereby it should be noted that copper and other raw material surcharges are not subject to cash discount. Delivery to unknown customers shall only be carried out against prepayment.

- (6) The customer may only set off those claims that are undisputed or have been determined in a legally binding manner.
- (7) REO shall only accept transport packaging insofar as it has been returned freight paid.

## § 4 Retention of title

- (1) The delivery items (reserved goods) shall remain the property of REO until the customer has fulfilled all requirements towards it pursuant to the business relation. Insofar as the value of all security rights which REO is entitled to does not exceed the amount of all secured claims by more than 20%, at the customer’s request, REO shall release an appropriate part of the security rights; REO is free to select from various security rights.
- (2) While the retention of title exists, the customer may not encumber or pledge the goods as security and may only sell on to resellers in the usual course of business and only on the condition that the resellers receive payment from their customer or they ensure that the property is only transferred to the customer once payment obligations have been fulfilled.
- (3) Should the customer sell reserved goods on then in doing so it shall already at that point assign its future claims from reselling to its customers with all ancillary rights - including all outstanding balances - as security to REO without the need for further explanations. Should the reserved goods be sold on with other items without a unit price having been agreed for the reserved goods, the customer shall assign to REO that part of the total price that corresponds to the price REO charged for the reserved goods.
- (4) a) The customer may process the reserved goods or mix or combine them with other materials. Processing is carried out for REO. The customer shall store the new item free of charge for REO with customary due care. The new item shall be considered reserved goods.  
b) REO and the customer are already now in agreement that upon mixing or combining with other materials not belonging to REO, REO is entitled to co-ownership of the new item in the amount resulting from the ratio of the value of the mixed or combined reserved goods to the value of the remaining goods at the time of mixing or combining. In this respect the new item shall be considered reserved goods.  
c) The regulation on the assignment of claims pursuant to No. 3 also applies to the new item. The assignment however, only applies up to the amount corresponding to the value of the processed, combined or mixed reserved goods invoiced by REO.  
d) Should the customer combine the reserved goods with properties or movable objects then it shall, without the need for any special explanation, also assign its claim arising from payment for the combining work to REO together with all ancillary rights, by way of security in the amount of the ratio of the value of the combined reserved goods to the remaining combined goods at the time of combining.
- (5) Until further notice the customer is authorised to collect assigned claims from the resale. Where good cause exists, in particular upon payment delay, suspension of payment, opening of insolvency proceedings, bill protest or justified indication of excess debt or impending insolvency on the part of the customer, REO shall be entitled to revoke the customer’s direct debit authorisation. Furthermore, REO may, upon prior warning and complying with a reasonable deadline, disclose the assignment of security, use the assigned demands as well as demand

that the customer discloses the assignment of security to its customer.

- (6) The customer must notify REO immediately in the event of pledging, seizure or other transfers or interventions by third parties. If it has a credible legitimate interest, the customer must provide REO with the information it needs to assert its rights against the customer, and hand over the necessary Documents.
- (7) Upon breach of duty by the customer, in particular upon payment delay, REO, following the unsuccessful expiry of a reasonable deadline given to the customer, is entitled to withdraw from the contract and recover the goods; the legal provisions on the indispensability of setting a deadline remain unaffected. The customer must surrender the goods. Should REO recover the goods or assert its retention of title or seize the reserved goods this does not constitute a withdrawal from the contract unless REO has expressly declared this.

#### § 5 Delivery deadlines; delays

- (1) Compliance with deadlines for Deliveries assumes the prompt receipt of all Documents, authorisations and approvals to be provided by the customer, in particular drawings, and compliance with the agreed payment terms and other obligations by the customer. If these requirements are not met promptly, said deadlines may be extended accordingly; this shall not apply if REO is responsible for the delay.
- (2) Should deadlines not be met due to a) force majeure, e.g. mobilisation, war, acts of terror, riots or similar events (e.g. strike, lockout); b) a virus or other attack by third parties on the REO IT system, insofar as these occurred despite the usual careful compliance with safeguarding policies; c) epidemics and pandemics; d) hurdles resulting from German, US or other applicable national, EU or international provisions on foreign trade law or due to other circumstances for which REO is not responsible; or e) untimely or incorrect delivery by REO, the deadlines shall be extended accordingly.
- (3) Delivery times shall be adhered to as guaranteed wherever possible. A claim for damages cannot be granted on the grounds of delayed delivery unless the deadline and amount for such has been agreed in the quotation or confirmation.
- (4) The customer may neither make claims for damages due to delivery delays nor claims for damages in lieu of performance exceeding the limits specified in No. 3 in all cases of delivery delays, even if a delivery deadline set by REO expires. This shall not apply in cases of negligence, gross negligence or due to injury to life, limb or health. The customer may only legally withdraw from the contract if the delivery delay is caused by REO. Any change to the burden of proof that is to the detriment of the customer shall not be linked to the aforementioned regulations.
- (5) Upon request by REO, the customer is bound to state whether or not it wishes to withdraw from the contract due to a delivery delay within an appropriate period.
- (6) If at the request of the customer, shipment or service is delayed by more than one month following notification of readiness to dispatch, the customer may be charged warehouse fees for each additional month commenced or part thereof in the amount of 0.5% of the goods to be delivered, up to a maximum of 5%. The contracting parties shall be at liberty to prove higher or lower warehouse costs.

#### § 6 Transfer of risk

- (1) Risk shall pass to the customer, including for freight prepaid deliveries, as follows:
  - a) For deliveries without commissioning, if they have been dispatched or collected. Deliveries made by REO shall be insured against ordinary transport risks at the request of and at cost to the customer;

b) For deliveries with commissioning on the date the goods are put into operation or, if agreed, after a successful test run.

- (2) If the shipment, delivery, start, commissioning, placing into operation or test run is delayed by the customer or if the customer delays acceptance for whatever reason, risk shall be transferred to the customer.

#### § 7 Commissioning and maintenance

The following provisions apply to commissioning and maintenance insofar as nothing else has been agreed in writing.

- (1) The customer shall be required to carry out and provide at own cost:
  - a) all earth, building and other ancillary works outside the particular industry sector, including all necessary specialist and ancillary staff, building materials and tools,
  - b) the supplies and materials required for commissioning and maintenance, such as scaffolding, hoists and other equipment, fuels and lubricants,
  - c) energy and water at the place of use including the connection ports, heating and lighting,
  - d) at the place of commissioning or maintenance, the storage of machine parts, apparatus, materials, tools etc. sufficient large, suitable, dry and lockable rooms and suitable work and common rooms for REO staff as well as suitable sanitary facilities; otherwise, the customer shall implement measures on the building site for the safety of the property and staff of REO, which it would implement for the safety of its own property and staff,
  - e) protective clothing and devices which are deemed necessary due to the particular circumstances of the commissioning or maintenance on site.
- (2) Before commissioning or maintenance starts the supplies and items required for the start of work must be made available at the point of commissioning or maintenance and all preliminary work must be sufficiently advanced before work starts so that commissioning or maintenance can commence as agreed and can be performed without interruption. Access routes and the place of commissioning or maintenance must be level and cleared.
- (3) If commissioning or maintenance is delayed due to circumstances beyond the control of REO, the customer must bear the costs incurred by REO for waiting time and additional travel expenses or for REO employees.
- (4) The customer must certify for REO the working hours completed by the assemblers each week as well as the completion of commissioning or maintenance.
- (5) If REO requests acceptance of the delivery following completion, the customer must process acceptance within two weeks. Acceptance shall be deemed effective if the customer allows the two-week deadline to expire or if the delivery - if applicable, following completion of an agreed test phase - has been put into use.

#### § 8 Receipt

The customer may not refuse receipt of Deliveries due to minor defects.

#### § 9 Material defects

REO shall be liable for material defects as follows:

- (1) At the discretion of REO, all those parts or services which show material defects shall be repaired, redelivered or produced anew, free of charge, unless the cause existed at the time risk was transferred.
- (2) Claims for rectification shall lapse in 12 months from the start of the statutory limitation period; the same applies to withdrawal and reduction. This deadline does not apply insofar as the law pursuant to Article 438 (1)(2) (building works and items for building works), 479(1) (recourse claims) and 634a(1)(2) (construction defects) BGB (German Civil Code) stipulates longer deadlines, in the case of intent, fraudulent concealment of the defect as well as failure to comply with a guarantee of quality. The

statutory regulations on expiry suspension, interruption and recommencement of limitation periods remain unaffected.

- (3) The customer must submit any complaints in writing. Complaints can only be taken into consideration if they have been submitted within eight days of receipt of the goods and upon specification of the delivery note number. Transport damages must be recorded immediately by the carrier.
- (4) In the case of complaints, the customer is permitted to retain payments to an extent which is proportionate to the defects which have occurred. The customer may only withhold payments if a complaint is being made which is undoubtedly well-founded. The customer does not have a right to withhold payments if its complaints have expired. Should a wrongful complaint be made, REO is entitled to claim reimbursement for expenses incurred from the customer.
- (5) REO must be granted the opportunity to rectify the situation within a reasonable deadline.
- (6) Claims for defect shall not apply if there are only minor deviations from the agreed properties, if there are only minor restrictions on use, if there is natural wear and tear or damage, which occur after the transfer of risk as a result of incorrect or negligent handling, excessive loading, unsuitable equipment, defective building work, unsuitable foundations or due to extraordinary external influences, which are not provided for under the contract and non-reproducible software errors. If unauthorised changes or repairs are carried out by the customer or by third parties, claims of defect shall not be accepted for these and for any resulting consequences.
- (7) Claims made by the customer related to costs required for subsequent performance, in particular transport, infrastructure, labour and material costs, shall be excluded, if said costs increase because the object of delivery is subsequently transferred to a location other than a subsidiary of the customer, unless said transfer corresponds to its proper use.
- (8) Claims under a right of recourse made by the customer against REO in accordance with Article 478 of the German Civil Code (recourse by the contractor) shall only be accepted if the customer has not made any agreements with its buyers that extend beyond statutory claims of defect. The scope of claims under a right of recourse by the customer against REO in accordance with 478 (2) of the German Civil Code shall also be governed by No. 8.
- (9) The customer's rights due to a material defect are excluded. This does not apply to fraudulent concealment of the defect, to non-compliance with a quality guarantee, to injury to life or limb or health and to a wilful or grossly negligent breach of duty on the part of REO. Any change to the burden of proof that is to the detriment of the customer shall not be linked to the aforementioned regulations. Further or other claims of the customer due to a material defect other than those nine claims stipulated are excluded.

#### **§ 10 Industrial property rights and copyrights; deficiency in title**

- (1) Unless otherwise agreed, REO shall make deliveries only in the country of the place of delivery free of any industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights"). If a third party makes valid claims against the customer due to the infringement of Property Rights by supplies provided and used properly by REO, REO shall accept liability on behalf of the customer during the period defined under 9 No. 2 as follows:
  - a) REO shall choose at its discretion to either secure a right of use, to change use so that the property right is not infringed or to replace it at own cost. If this is not possible for REO under appropriate conditions, the customer shall be entitled to make deductions or withdraw from the contract.

b) Obligations on the part of REO regarding the payment of compensation shall be governed by 13.

- c) The aforementioned obligations on the part of REO shall only apply if the customer immediately notifies REO in writing of any claims asserted by third parties, if an infringement is not acknowledged and if REO retains the right to all defensive measures and conciliation negotiations. If the customer ceases use of the delivery in order to minimise damage or for any other reason, the customer shall notify the third party that ceasing use in no way acknowledges an infringement of Property Rights.
- (2) Claims by the customer shall be excluded if the customer is responsible for the infringement.
- (3) Claims by the customer shall also be excluded if the infringement is caused by the customer's special requirements, by a form of use unforeseeable by REO or by the fact that the customer has changed the delivery or used it together with products not supplied by REO.
- (4) If Property Rights are infringed, any claims made by the customer as regulated in No. 1a) shall be also governed by the provisions of 9 Nos 4, 5 and 9 accordingly.
- (5) If other deficiencies in title occur, the provisions of 9 shall apply accordingly.
- (6) Further claims made by the customer against REO and its vicarious agents other than the claims for deficiency in title set out in these 10 regulated claims shall be excluded.

#### **§ 11 Contract fulfilment reservations**

- (1) Contract fulfilment is subject to there being no hurdles resulting from German, US or other applicable national, EU or international provisions on foreign trade law or embargoes or other sanctions.
- (2) The customer shall produce all information and Documents which are necessary for export or shipment.

#### **§ 12 Impossibility of delivery; amendments to the contract**

- (1) If delivery is impossible, the customer is entitled to demand compensation unless the impossibility of delivery is caused by circumstances beyond REO's control. However, the customer's claims for damages shall be limited to 0.5% to maximum 5% of the value of the respective part of the delivery that cannot be used appropriately due to said impossibility of delivery. This restriction shall not apply if liability occurs as a result of negligence, gross negligence or due to injury to life, limb or health; this shall not be linked to any change to the burden of proof to the detriment of the customer. This shall not affect the right of the customer to withdraw from the contract.
- (2) If unforeseeable events within the meaning of 5 No. 2a) - c) significantly change the financial importance or the content of the delivery or have a significant impact on the business of REO, the contract shall be amended appropriately in accordance with the principle of good faith. If this is not financially viable, REO shall be entitled to withdraw from the contract. The same applies if the necessary export licences are not issued or usable. If REO wishes to assert this right of withdrawal, REO must notify the customer immediately based on its knowledge of the extent of the event, even if an extension to the delivery time had been agreed with the customer.

#### **§ 13 Other claims for damages**

- (1) Unless otherwise regulated in these General Terms and Conditions for Sale and Delivery, claims for damages and reimbursement of expenses made by the customer shall be excluded, irrespective of their legal basis, particularly for breach of duty under the contractual obligations, for unauthorised action.
- (2) This does not apply insofar as liability for the following exists:
  - a) pursuant to the Product Liability Act
  - b) case of intent
  - c) gross negligence of proprietors, legal representatives or

executive employees

d) fraud

e) non-compliance with an accepted guarantee

f) culpable injury to life, limb or health or

g) culpable infringement against essential contractual obligations

- (3) The compensation claim for culpable infringement against essential contractual obligations is, however, limited to contractually-typical and foreseeable damage, where no other of the above mentioned cases exist.
- (4) Any change to the burden of proof that is to the detriment of the customer shall not be linked to the aforementioned regulations.

#### **§ 14 Place of jurisdiction and applicable law**

- (1) Mutual place of jurisdiction for payment and fulfilment is the location of REO's financial reporting. Other terms, in particular pre-printed customer's purchase terms only apply upon express agreement in writing. Should the customer wish for its terms to be met for internal reasons this will affect the prices stated according to the surcharges incurred. Upon publication of these Terms and Conditions of Sale and Delivery all previous ones become invalid.
- (2) These terms as well as their interpretation are subject to the laws of Germany, excluding application of the United Nations Convention on the International Sale of Goods (CISG).

#### **§ 15 Binding effect of the contract**

The contract shall remain binding in all other parts even if individual provisions are invalid. This shall not apply if adhering

to the contract would cause unreasonable hardship to either party.

REO AG  
Brühler Straße 100 • 42657 Solingen, Germany  
Phone: +49 (0)212 8804 0 • Fax: +49 (0)212 8804 188

Email: [info@reo.de](mailto:info@reo.de)  
Homepage: [www.reo.de](http://www.reo.de)



#### DIVISIONS:

##### **REO Vibratory Feeding and Power Electronics Division**

Brühler Straße 100 • 42657 Solingen, Germany  
Phone: +49 (0)212 8804 0 • Fax: +49 (0)212 8804 188  
Email: [info@reo.de](mailto:info@reo.de)

##### **REO Train Technologies Division**

Erasmusstraße 14 • 10553 Berlin, Germany  
Phone: +49 (0)30 3670236 0 • Fax: +49 (0)30 3670236 10  
Email: [zentrale.berlin@reo.de](mailto:zentrale.berlin@reo.de)

##### **REO Drives Division**

Holzhausener Straße 52 • 16866 Kyritz, Germany  
Phone: +49 (0)33971 485 0 • Fax: +49 (0)33971 485 90  
Email: [zentrale.kyritz@reo.de](mailto:zentrale.kyritz@reo.de)

##### **REO Medical and Current Transformer Division**

Schuldholzinger Weg 7 • 84347 Pfarrkirchen, Germany  
Phone: +49 (0)8561 9886 0 • Fax: +49 (0)8561 9886 40  
Email: [zentrale.pfarrkirchen@reo.de](mailto:zentrale.pfarrkirchen@reo.de)

##### **REO Test and Power Quality Division**

Brühler Straße 100 • 42657 Solingen, Germany  
Phone: +49 (0)212 8804 0 • Fax: +49 (0)212 8804 188  
Email: [info@reo.de](mailto:info@reo.de)

##### **REO Train Power Magnetics GmbH**

Eduard-Maurer-Straße 13, 16761 Hennigsdorf, Germany  
Tel: + 49 (0) 3302 80 98 0

#### PRODUCTION + SALES:

##### **India**

REO GPD INDUCTIVE COMPONENTS PVT. LTD  
Email: [info@reogpd.com](mailto:info@reogpd.com) • Internet: [www.reo-ag.in](http://www.reo-ag.in)

##### **USA**

REO-USA, Inc.  
Email: [info@reo-usa.com](mailto:info@reo-usa.com) • Internet: [www.reo-usa.com](http://www.reo-usa.com)

#### SALES:

##### **China**

REO Shanghai Inductive Components Co., Ltd  
Email: [info@reo.cn](mailto:info@reo.cn) • Internet: [www.reo.cn](http://www.reo.cn)

##### **France**

REO VARIAC S.A.R.L.  
Email: [reovariac@reo.fr](mailto:reovariac@reo.fr) • Internet: [www.reo.fr](http://www.reo.fr)

##### **Great Britain**

REO (UK) Ltd.  
Email: [main@reo.co.uk](mailto:main@reo.co.uk) • Internet: [www.reo.co.uk](http://www.reo.co.uk)

##### **Italy**

REO ITALIA S.r.l.  
Email: [info@reoitalia.it](mailto:info@reoitalia.it) • Internet: [www.reoitalia.it](http://www.reoitalia.it)

##### **Poland**

REO CROMA Sp.zo.o  
Email: [croma@croma.com.pl](mailto:croma@croma.com.pl) • Internet: [www.croma.com.pl](http://www.croma.com.pl)

##### **Spain**

REO ESPAÑA 2002 S.A.  
Email: [info@reospain.com](mailto:info@reospain.com) • Internet: [www.reospain.com](http://www.reospain.com)

##### **Switzerland**

REO ELEKTRONIK AG  
Email: [info@reo.ch](mailto:info@reo.ch) • Internet: [www.reo.ch](http://www.reo.ch)

##### **Turkey**

REO TURKEY ELEKTRONIK San. ve Tic. Ltd. Şti.  
Email: [info@reo-turkey.com](mailto:info@reo-turkey.com) • Internet: [www.reo-turkey.com](http://www.reo-turkey.com)

##### **United Arab Emirates**

REO INDUCTIVE COMPONENTS FZCO  
Email: [info@reo-middle-east.com](mailto:info@reo-middle-east.com)  
Internet: [www.reo-middle-east.com](http://www.reo-middle-east.com)