

TERMS AND CONDITIONS (“AGB”)

 webertec-escalator.com/agb-english/

Weber Tec GmbH (hereinafter “Supplier”) STANDARD TERMS AND CONDITIONS

Borrowing from the VDMA 06/2007 terms and conditions

I. Generally

These standard terms and conditions shall apply to all business with the Supplier as well as to any goods and services furnished by the Supplier. Different or additional terms and conditions and / or customer provisions or standard purchasing terms and conditions shall only be incorporated into any agreement upon express written assent. Any transactions or agreements executed by any agent or employee shall be binding on the Supplier only after written acknowledgement thereof has been dispatched to the customer. Ownership and intellectual property rights in designs, cost estimates, drawings and other types of tangible and intangible information, e.g. in electronic form may not be disclosed to third parties without the Supplier’s express written assent.

II. Offers, prices and payment

1. The offers presented by the Supplier are invitations to treat and subject to change. Obvious mistakes, including but not limited to clerical or computational errors, are not binding. Cost estimates, offers, drawings and prospectuses together with all attachments may not be disclosed to third parties, especially competitors. They may only be used for their stipulated purpose.
2. Prices are ex works without packing and unloading. The orderer/customer/lessee shall bear the legally applicable value-added tax, customs duties, charges and fees. For deliverables to be assembled, prices are ex construction site. The Supplier reserves the right to adjust prices for any changes between the time of the order acknowledgement and delivery for price and cost increases, freight charges, customs duties, taxes and other charges. Prices including carriage prepaid are conditioned on open and unobstructed travel on roadways, railways and waterways. We rent or provide at cost items used for cargo loads (pallets, shipping crates, etc.). The renter must return rented items at his, her or its expense and shall bear the risk of loss.
3. Unless otherwise provided for, payments shall be remitted directly to the Supplier’s bank account. Payment must be remitted and received on the account in € (EURO) either in cash or per wire transfer 14 days after delivery or the completion of assembly. Leasing payments must be remitted so that amounts are received on the Supplier’s account on the 1st of each month. The Supplier shall have the right to

require installment or progress payments as well as a security deposit. The contractual partner may not assert any defense with respect to the loss or lack of value (§ 818(3) of the German Civil Code (BGB)). Upon payment default, default interest at 8% over the respective base interest rate and no less than 10% shall be calculated without any requirement to furnish notice of default. The client/customer/lessee shall pay liquidated damages amounting to 10% of the net sales value and no less than EURO 250.00 if in default for more than 60 days. Liquidated damages shall be due and payable even despite the failure to provided notice thereof.

4. Charges shall be deducted as follows for re-stocking and for the shipping costs incurred with respect to any credit for returns that are not attributable to the Supplier: Net value of goods up to EURO 100.00 = 20% – Net value of goods over EURO 100.00 = 15%. Returns must be sent postage and freight charges prepaid.

III. Reservation of title

1. **The Supplier reserves the right to retain title to the delivered goods until the orderer/customer/lessee has remitted full payment for all receivables accounted for by the Supplier. For customers that maintain open current accounts with the Supplier, the reservation of title shall serve to secure the balance of receivables.**
2. **The orderer/customer/lessee may not pledge or transfer title, either in whole or in part, to the deliverables or items of lease. The orderer/customer/lessee must notify the Supplier without undue delay about any levy and execution or any other encumbrance or impairment of the Supplier's rights by any third party.**
3. **The Supplier may insure deliverables/items of lease against theft, breakage, fire, water and any other damage or loss at the orderer's/customer's/lessee's cost and expense, unless the orderer/customer/lessee has provided evidence of executing such policy of insurance.**
4. **If the orderer breaches the contract – in particular defaulting on payment – the Supplier may retrieve the deliverables/items of lease after providing notice and the client/customer/lessee must surrender and return these items. The Supplier shall be entitled to charge against credit balances for any costs, declines in values, etc. incurred as a result thereof. The client/customer/lessee shall bear all costs for unwinding the transaction. If the Supplier has rescinded the agreement, it may demand the surrender and return of the deliverables/items of lease based on its reservation of title.**
5. **If the client/customer/lessee files a petition for bankruptcy, this shall entitle the Supplier to rescind the agreement and demand the immediate return of the deliverables/items of lease.**

IV. Maintenance, installation, shipment and risk of loss

1. **The Supplier generally reconditions escalator steps or travolator sections sent to it at its factory. If reconditioning is ordered and classified as special and must be carried out "on site" (e.g. in an integrated condition), environmental**

temperatures at the location must be at least 15 degrees Celsius. If these temperatures cannot be maintained, e.g. outside climate conditions, the Supplier may discontinue work. The same applies to suddenly occurring snowstorms, inclement weather, hail or rain. The client shall bear one-half of the costs associated with the discontinuance of work by employees, overnight accommodation expenses, additional costs for additional kilometers traveled (charged at EUR 1.00 per km driven) or additional flat rate travel charges. The client shall be notified about any discontinuance of work without undue delay.

2. The Supplier may engage other subcontractors to carry out work. The measures and tolerances specified in EN 115 shall be applicable.
3. Risk of loss shall pass to the forwarding agent upon tender and in cases of assembly to the client upon completion of the assembly work. This shall also be the case if installment deliveries or progressional work and other services, e.g. shipping, drop off and erection have been undertaken. Risk of loss shall pass to the client on the date goods are ready for shipping, provided that dispatch has not been delayed for any reason attributable to the Supplier.
4. For deliveries free to the client's destination, stipulated prices mean free carrier on accessible roadways open to traffic. The client/customer/lessee shall bear the cost associated with unloading the goods. The Supplier reserves the right to subsequently adjust invoice amounts for costs incurred for delays or additional work, trips, difficulties, waiting times, etc.
5. The client/customer/lessee must warrant that access roads to a construction site / location of delivery are suitable for heavy goods vehicles.
6. If goods, which have been communicated as ready for tender, are not promptly accepted on the stipulated date of tender, then they shall be stored at the discretion of the Supplier at the client's/customer's/lessee's risk of loss and expense and invoiced as being tendered and delivered ex works or warehouse. The same shall apply if shipping cannot occur because of transportation route closures or other circumstances not within the Supplier's sphere of control. Failing to accept tender after a reasonable time to accept conforming tender has been set, the Supplier may rescind the contract or declare that the contract has been breached and seek damages.

V. Delivery times and approval and acceptance

1. The contractual partners' agreement shall determine delivery times and dates. Seasonable delivery is pre-conditioned on the fact that the contractual parties have addressed all business and technical issues and that the client/customer/lessee has satisfied all of its incumbent obligations, e.g. obtaining any and all requisite government certificates and permits or satisfying its payment obligations. If these conditions have not been met, the time for delivery shall be extended appropriately. This shall not apply to the extent the Supplier has caused any delay. With respect to repairs, delivery times are approximated beginning with the conclusive acknowledgement of order and the date the Supplier receives the steps or the travolator sections. The completion date with respect to assembly jobs shall not be set until all

details associated with the work have been resolved, all supporting documents, which are necessary to carry out the job have been received, and the stipulated prepayment has been made. Delivery or completion shall be considered seasonably tendered upon notice that the deliverables are ready for shipment and/or ready to be approved and accepted. Notwithstanding any of our rights against the client/customer/lessee for default, the seasonable date of delivery or completion shall be extended by the period the client/customer/lessee remains in default on its obligations under any agreement. The client/customer/lessee may not reject deliveries because they are delivered in installments. Business disruptions, strikes, lockouts, or blockades at our factory or those of our suppliers that make tendering delivery impossible or materially difficult shall be considered outside the Supplier's sphere of control and shall entitle the Supplier to postpone delivery for the duration of the interference plus a reasonable response time, limit delivery, or rescind the agreement with respect to that portion not yet fulfilled. The client/customer/lessee shall receive notification about the beginning and end of such circumstances without undue delay.

2. Tender of delivery shall be considered seasonable when the deliverables/items of lease have left the Supplier's premises within the prescribed time or notice has been given of their readiness for shipment. The same applies analogously to assembly work. If the Supplier defaults, it must be given a reasonable time to subsequently cure. There shall be no right to a claim for damages on account of unseasonable delivery. Installment deliveries shall be permissible to the extent this is reasonable for the client/customer/lessee.
3. Seasonable delivery is contingent on the conforming and seasonable deliveries from our suppliers. The Supplier shall communicate any looming delays as soon as possible.
4. Acceptance of performance must be expressly stipulated in any agreement at the time the agreement is executed or shall occur immediately upon delivery or completion of assembly. Individual and objective costs for acceptance shall be borne by the client. If the client/customer/lessee does not completely and seasonably undertake stipulated acceptance, contractual performance shall be deemed properly tendered.
5. If the shipment or acceptance of deliverables is delayed for reasons attributable to the client/customer/lessee, then it shall be charged for the costs accruing from the delay commencing one month after the notification of their readiness for shipment or acceptance. If acceptance or shipment is delayed or stopped for reasons that are not attributable to the Supplier, then the risk of loss shall pass to the client/customer/lessee on the date notice of the readiness of shipment or acceptance is given.
6. The client/customer/lessee may rescind the contract without notice if it is conclusively impossible for the Supplier to render contractual performance before risk of loss passes. Furthermore, the client/customer/lessee may rescind the contract, if upon placement of the order a portion of contractual performance is rendered impossible and it has a justifiable interest in rejecting the installment delivery or part performance. If this is not the case, the

client/customer/lessee shall pay the contractual price applicable to the installment delivery or part performance. The same shall apply to the Supplier's incapacity.

VI. Liability, notice of non-conformity, warranty claims

The Supplier shall endeavor to render full and conforming performance. However, it should be taken into account that reconditioned / repaired escalator stairs or travolator sections are not new goods and that small optical blemishes may be seen even after repair. For reasons of cost, these optical blemishes will not be eliminated and do not impair the functionality of the escalator stairs/travolator sections and are not considered nonconforming. The Supplier warrants that the escalator steps/travolator sections that it delivers will not hamper approval of the entire escalator or travolator by the German TÜV.

- 1. If there are a number spots on a step, which require reconditioning, there may be individual flaws for which the client may have a claim to demand that reconditioning work be re-performed. At the Supplier's discretion all parts may be reconditioned or replaced as a consequence of circumstances, which subsequent to performance and before the risk of loss passes, can be proven to be unusable or the utility thereof significantly impaired. No other remedies shall be available against the Supplier. Parts that are removed shall become the Supplier's property. Notice must be promptly given if it is determined that goods or work are non-conforming or fail to exhibit promised characteristics. If there is a clear and present danger, then the client/customer/lessee upon instruction must repair or have the deliverables repaired at the Supplier's cost and expense or otherwise remove them from operative service. If the client does not comply with its obligation in this regard, it shall be deemed to have accepted the goods and work and any subsequent cure shall be excluded.**
- 2. Liability for products manufactured by a third party shall be limited to any claims the Supplier would have against the third party supplier of the product, which may be assigned. Repair and replacement warranties shall be assumed in the same manner as for the deliverables, however, time barred to no more than 3 months after the expiration of the warranty period for the deliverables. The Supplier's warranty obligation shall become void if the client/customer/lessee undertakes or authorizes modifications to or repair work on the deliverables. No warranty shall be assumed for repair work and alterations to installations and equipment.**

The Supplier shall accept liability for non-conformities and legal defects in title for deliveries to the exclusion of other claims – subject to the provisions contained in Section VII – as follows:

Non-conformities

- 1. The Supplier shall at its discretion repair or replace at no charge those parts that are determined to be non-conforming before the risk of loss passes. Parts that are removed shall become the Supplier's property.**

2. Upon consultation with the Supplier, the client/customer/lessee shall grant the Supplier the requisite time and opportunity to undertake all repairs and replacements that the Supplier considers necessary, otherwise the Supplier shall be exonerated from any and all liability and consequences arising therefrom. The client/customer/lessee may undertake or authorize a third party to undertake remedial measures only in cases where operational safety is at issue or the Supplier could suffer a large disproportionate amount of loss – in which case the Supplier must be notified immediately – and demand reimbursement of the necessary costs and expenses from the Supplier.
3. With respect to the costs and expenses accruing in accordance with number 2 herein, the Supplier shall bear the costs of replacement parts together with the price of shipment, provided that the defect complained about proves to be justified. The Supplier shall also bear the costs of replacement work together with the necessary costs of labor for assembly and travel expenses, provided that these are reasonable.
4. If the Supplier fails to effectively repair or replace any non-conformities even after being given additional adequate time to do so and taking into consideration any and all exceptions provided for by law, the client/customer/lessee may cancel the agreement within the scope of the law. The client/customer/lessee may only abate the contract price if a defect or non-conformity is immaterial, otherwise there shall be no right to abate the contract price. This notwithstanding, any other additional claims and remedies shall be governed exclusively in accordance with Subsection VII. 2 herein.
5. Liability shall be excluded in the following cases:

Unsuitable and improper use, faulty assembly or commissioning by the client/customer/lessee, its agents or employees, normal wear and tear, improper or negligent treatment, improper service and maintenance, unsuitable operating supplies, chemical, electrochemical or electrical forces – to the extent not attributable to the Supplier.

6. The Supplier shall not be held liable for any consequences if the client/customer/lessee or any third party improperly undertakes any improvements. The same shall apply if the client/customer/lessee undertakes any modifications to the deliverables without the Supplier's prior consent.
7. The client/customer/lessee must inspect the goods after delivery without undue delay. If a defect or non-conformity is discovered, the Supplier must be notified immediately. Seasonably dispatching notice shall suffice to preserve the client's/customer's/lessee's rights. To the extent legally permissible, § 377 of the German Commercial Code (HGB) shall supplement these provisions.

Legal defects in title

If the use of the deliverables results in an infringement of intellectual property rights in the client's/customer's/lessee's country, the Supplier at its own cost and expense shall procure the requisite rights so that the client/customer/lessee may continue to use the deliverables. The Supplier shall also be entitled to modify the deliverables so as to eliminate any

intellectual property right infringement. If this is not possible upon reasonable business terms or in a reasonably timely manner, the client/customer/lessee may cancel the agreement. Likewise, the Supplier may cancel the agreement in accordance with the aforementioned conditions.

Moreover, the Supplier shall indemnify and hold the client/customer/lessee harmless from any undisputed or judicially determined claims with respect to the intellectual property rights holder concerned.

- 8. The Supplier's obligations set forth in Subsection VI. 7 are conclusively subject to the provisions contained in Subsection VII. 2 in the event of an infringement of intellectual property rights.**

They shall only exist if the client/customer/lessee

- **notifies the Supplier about any asserted infringement of intellectual property rights without undue delay,**
- **assists the Supplier to a reasonable extent in defending against any asserted claims or otherwise permits the Supplier to carry out modifications pursuant to Subsection VI. 7,**
- **reserves all measures of defense including extra-judicial remedies unto the Supplier,**
- **has not been the cause of any legal defect in title because of any instruction from the client/customer/lessee, and**
- **has not taken it upon itself to alter or use the deliverables in a manner not contemplated by the agreement, which causes an infringement.**

This shall not include any claim for damages for breach of warranty in deviation to Section VI of these standard terms and conditions where any sales or lease agreement with the client/customer/lessee is for used goods or items. The exclusion of damages for a breach of warranty shall not apply where the Supplier has intentionally or been grossly negligent in the breach of its obligations or in cases of death, personal injury or harm to health.

VII. Supplier's liability and exclusion of liability

- 1. If the client/customer/lessee cannot use the deliverables as contemplated by the agreement because of an omission or defective performance by the Supplier or because of a breach of other ancillary contractual obligations – in particular instructions for operation and service of the deliverables – Section VI and Subsection VII. 2 shall be applicable to the exclusion of any other claims by the client/customer/lessee.**
- 2. The Supplier shall be held liable for damage not only to deliverables only in the event of**
- 3. intentional misfeasance,**
- 4. gross negligence by the owner, governing bodies, or executive employees,**
- 5. death, personal injury and harm to health negligently caused by the Supplier,**
- 6. latent defects that were fraudulently concealed,**
- 7. warranties or guarantees given, or**

- 8. defects of deliverables to the extent liability is imposed pursuant to the German Products Liability Act (*Produkthaftungsgesetz*) for personal injury and property damage on privately used goods.**

The Supplier shall also be held liable for the gross negligence of its non-executive employees, if such gross negligence occurred upon the culpable breach of material contractual obligations. However in cases of ordinary negligence the Supplier shall only be held liable for reasonably foreseeable damage and loss associated with the contract.

Any and all other claims shall be excluded.

VIII. Limitation of actions

Any and all claims shall be time barred after 12 months. The statute of limitations shall apply to any claims for damages pursuant to Subsections VII 2 a-d and f. This shall also apply to deliverables that are used in a customary fashion, which are defective and caused damage or loss.

IX. Duty of confidentiality

- 1. The parties each promise to keep and treat any and all confidential facts and processes of the other business partner including but not limited to business and trade secrets strictly confidential and not disclose these to any other parties or otherwise use or exploit the same. This obligation shall survive the termination of any contractual relationship. The duty is applicable as against all unauthorized third parties, i.e. unauthorized employees of the parties to the extent disclosure of information is not required for the due performance of contractual obligations.**
- 2. In cases of doubt, each party promises to obtain consent from the respective other party before such information is disclosed.**
- 3. The aforementioned obligations shall not apply to those facts, which are proven to be notorious, known to be the current state of technology, otherwise known by one party before such information is revealed by the respective other party, or have been revealed by a third party not under a duty of confidentiality to the respective other party after the respective other party was made privy to such facts by the other party.**

X. Miscellaneous provisions

The Supplier processes data (e.g. collection, processing and transmission) in accordance with legal provisions. Data and information necessary to process business transactions will be saved and disclosed to the appropriate extent to third parties in order to discharge contractual obligations. The customer expressly consents to the collection, processing and use of personal data and information.

The invalidity or unenforceability of these terms and conditions shall not affect the validity and enforceability of any other agreements. These terms and conditions shall be governed, construed and interpreted in accordance with the laws of the Federal Republic of Germany. Place of performance and personal and subject matter jurisdiction in the event of a dispute shall be the court(s) that have jurisdiction where the Supplier maintains its registered office. However, the Supplier may bring an action in the court(s) that have personal jurisdiction where the orderer maintains its headquarters.