

荷贝克电源系统(武汉)及(溧阳)有限公司产品交付和安装一般性条款

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交付和安装一般性条款

一般约定

1. 本交付和安装的一般性条款(以下简称“本条款”)适用于荷贝克电源系统(武汉)有限公司和荷贝克电源系统(溧阳)有限公司(以下简称“卖方”)作为卖方与买方签订的买卖合同中买卖标的物,即卖方供应和出卖的产品的交付和安装事宜作为约定产品交付和安装的特别条款,本条款具有优先于买卖合同中有关交付和安装事宜的约定适用的效力。除非另有约定,买方与卖方在买卖合同及其他文件中的约定与本条款不一致的,以本条款的约定为准。本条款由买卖双方在卖方住所地签署生效。
2. 对本条款以及买方与卖方签订的买卖合同及其他文件进行的任何增删、修改,均应由买卖双方以书面形式进行确认,方能生效。
3. 卖方产品的图纸、图片、技术资料、重量、计量和服务规格仅涉及其各自的应用范围,因而仅具有大致确定性,除非确认订单或买卖合同明确说明上述文件对双方具有约束力。卖方保留这些文件的所有权和版权。除非得到卖方的书面同意,买方不得向任何第三方提供。卖方对产品的担保和保证,只有在能够明确界定范围且写进本条款、买卖合同或双方共同签署的其他文件中时,才具有效力。
4. 除非另有约定,本条款及买卖合同等文件,适用中华人民共和国法律。中国法律没有规定的,适用国际商会“国际贸易术语解释通则”(INCOTERMS)最新版本的有关规定。履行本条款、买卖合同等文件发生争议的,双方均可提交本条款或买卖合同签署地人民法院诉讼解决。

价款与支付

5. 除非另有约定,卖方的产品价格为工厂交货价或仓库交货价,包括将产品由工厂或仓库装上交通工具的装货费。所有其它费用及税款,如包装费、运输费、保险费,关税、增值税、所得税等不包含在产品价格内,该等费用及税款应由买方另行支付。
6. 除非买卖合同及其他文件另有书面约定,买方应在收到发票后30个自然日内付清约定的价款。买方如果用汇票支付,应当支付卖方因贴现所产生的费用,并且买方无法得到购买卖方产品的现金折扣;买方如果预先付款或者提前付款的,不得要求卖方进行利息补偿。逾期付款的,应当按照本条款、买卖合同或其他文件的约定向卖方支付违约金或承担其他违约责任。
7. 买方逾期付款的,每逾期一周,应当向卖方支付相当于应付未付款项的千分之五的金额作为违约金,不足一周按一周计算;逾期付款超过60日的,卖方有权停止继续给买方发货,直至买方付清所有逾期款为止,所造成的一切后果由买方承担。
8. 买方有下列情形之一的,卖方有权中止合同,拒绝供货:经营状况严重恶化;转移财产、抽逃资金,以逃避债务;丧失商业信誉;有丧失或者可能丧失履行债务能力的其他情形。买方在收到卖方中止合同的通知之日起15日内,向卖方提供担保或者提前为给付的,卖方应当恢复履行合同。买方在收到卖方中止合同的通知之日起15日内,未向卖方提供担保或者未提前为给付的,卖方有权解除合同。

不可抗力免责

9. 由于买方未履行或不当履行合同主要义务或附随义务而导致卖方交货延迟的,由此造成的一切损失,包括卖方的损失,均由买方承担。
10. 卖方因不可抗力不能履行交货及其他义务的,根据不可抗力的影响,应当部分或者全部免除卖方责任。不可抗力,是指不能预见、不能避免并不能克服的客观情况。
11. 除法律另有规定或者本条款、买卖合同另有约定外,卖方延迟交货超过15日的,每周应当向买方支付应交付的货物对应的金额的0.5%作为违约金。但总违约金不超过此批发运货物总价值的5%。

运输、包装及风险转移

12. 货物运输的成本和风险均由买方承担。货物一旦移交给买方或者买方指定的承运商后,货物损毁灭失的风险即转移至买方,即使卖方提供“免费交付”,货物出仓或出厂之后风险也已转移至买方。
13. 买方不得拒绝接受交付,有法定的或约定的正当理由的除外。买方拒绝接受交付的,卖方有权决定将货物运输、储存、提存或者采取其他必要的处置措施,由此产生的费用由买方承担。
14. 收到货物准备发运通知后,由于买方要求,货物运输和交付延迟超过一个月的,卖方可向买方收取仓储费,金额为准备交付的货物总价值的0.5%每周,但不超过此批发运货物总价值的5%。
15. 除非另有约定,卖方可自行选择包装、发运和运输的方式。
16. 卖方产品的专利、商标、版权等一切知识产权,不因交付给买方而转移至买方。买方不得利用履行本合同的便利而侵犯卖方的知识产权。

交付和安装一般性条款

质量缺陷处理

蓄电池安装和拆卸

我们对以下情况中出现的质量缺陷承担责任：

20. 卖方交付的同时，买方应当签收货物。
 21. 买方应在卖方交货之日起七日内对卖方交付的货物进行检验。买方应当在该约定的检验期间内将卖方供货的数量或者质量等不符合双方约定的情形(如有)书面通知卖方。如买方未在该检验期间检验或通知的，视为卖方供货的数量和质量等符合双方约定。
 22. 如发现卖方交付的货物存在质量问题，买方应在妥善保管的前提下，在前述约定的时间内书面通知卖方，并同时随附买方认为不合格产品的照片以及不合格情形的表述供卖方专业技术人员检核。如卖方确认存在质量问题，应给予书面确认并及时以同等数量合格品调换。如卖方对供货是否存在质量问题有疑问，可派员至买方检验核实，买方应予以积极配合。若双方对卖方供货是否存在质量问题存在分歧并产生争议，应尽量协商解决，若协商不成，可提交双方认可的权威技术检测机构进行质量鉴定，并以该质量鉴定为根据做出相应处理。鉴定费用根据权威技术检测机构所做的鉴定结论对双方的支持比例由双方分摊。但该鉴定费用应当先由买方垫付，鉴定完毕后，买方可根据鉴定结论对卖方应当支付的鉴定费用进行追偿。
 23. 在约定的质保期内发生质量问题的，卖方应当免费维修。超过质保期发生质量问题的，卖方可以进行维修，但买方应当按照约定支付维修费用；没有约定维修费用计算方式的，按照卖方最新的维修价格清单计算的费用进行结算。
 24. 除非合同中另有约定，质保期为 12 个月。
 25. 由于买方使用不当引起的质量问题，不是本条款所称的质量问题，卖方不承担责任。但卖方可以进行维修，维修费用按前述第 20 条的约定计算。
17. 买方需要买方对电池运行注液、设置或进行蓄电池安装的，应当按照合同约定的价格支付注液、设置、安装等费用；合同没有具体约定费用数额的，以卖方最新的价格清单计算的费用为准。
 18. 由于买方原因而导致的安装、拆卸或运行设置延迟，买方应承担包括延迟等待期间所造成的费用以及卖方人员的必要的差旅费、误工费等在内的合理金额。
 19. 注液、设置或进行蓄电池安装之前，买方应将当地具体情况以及环境特征等有关情况详细通知卖方。

【生效日期：2012 年 1 月 1 日】

GENERAL TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION

Hoppecke Battery Systems (Wuhan) Co., Ltd. & Hoppecke Battery Systems (Liyang) Co., Ltd

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GENERAL TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION

General Terms and Conditions

1. These General Terms and Conditions for Delivery and Installation (hereinafter referred to as "these terms") apply to all subject matters of all contracts executed by and between Hoppecke Battery Systems (Wuhan) Co., Ltd. & Hoppecke Battery Systems (Liyang) Co., Ltd. as the seller (hereinafter referred to as the "seller") and the buyer, that is, all delivery and installation matters concerning products supplied and sold by the seller. As special terms governing product delivery and installation, these terms take precedence of provisions on delivery and installation matters set forth in sales contracts. Unless agreed otherwise, in case of any discrepancy between mutual agreements between the buyer and the seller in any sales contract or any other document and these terms, these terms shall prevail. These terms shall become effective when executed by the buyer and the seller at the seller's domicile.
2. Any addition, deletion or amendment to these terms and any sales contract or any other document executed by the buyer and the seller shall become effective upon the written confirmation of the buyer and the seller or the written confirmation of their respective duly authorized employees or agents.
3. Drawings, pictures, technical data, weight, measure and service specifications relate only to their respective scope of application and therefore are merely approximately determinative, except the order confirmation or the sales contract expressly designates them as binding. The seller retains ownership and all copyrights with regard to these documents. They shall not be made available to third parties without the Seller's prior written consent. Warranties and guarantees shall become effective only when they are expressly designated as such and set forth in this provision, the sales contract or any other document executed by the parties hereto.
4. Unless agreed otherwise, these terms and all sales contracts and other documents between the buyer and the seller shall be governed by laws of the People's Republic of China. Where there are no applicable provisions in Chinese laws, the "INCOTERMS" of the International Chambers of Commerce apply in their latest version. In case of any dispute between the buyer and the seller for the implementation of these terms, any sales contract or any other document, either party may institute legal proceedings with the people's court at the place of signing of these terms or the sales contract.

Prices and Payments

5. Unless agreed otherwise, our prices are ex-works or ex-warehouse and include loading from the works or the warehouse to transportation facilities. Our costs are exclusive of all other costs such as costs for packaging, freight, custom duties, insurance and VAT. Such costs and taxes shall be paid separately.
6. Unless agreed otherwise in writing in the Sales Contract or any other document, the agreed price shall be paid net within 30 days after the invoice date. In case payment is made by bill-of-exchange, the buyer shall pay the seller any cost arising from discount and no cash discounts will be granted to the buyer; in case of advance payment or early payment, no interest reimbursement shall be claimed by the buyer; and in case of late payment, the buyer shall pay the seller liquidated damages as stipulated in these terms or the sales contract or any other document or assume any other liability for breach.
7. In case the buyer exceeds the time limit for payment, for each week of excess, the buyer shall pay the seller liquidated damages in a sum equivalent to 0.5 % of amount due but unpaid. Odd days less than one (1) week shall be counted as one (1) week for this purpose. Where the buyer exceeds the time limit for payment for sixty (60) days, the seller shall have the right to suspend the product shipment to the buyer till the buyer pays in full all amounts payable, and all consequences arising therefrom shall be borne by the buyer.

8. The seller shall have the right to suspend the sales contract and reject to deliver products to the buyer if the buyer is in any of the following circumstances: severe deterioration of business status; property transfer or capital withdrawing for debt escaping; loss of commercial credit; or any other circumstance of insolvency or potential insolvency. In case the buyer provides guarantees or makes early payment to the seller within fifteen (15) days after receiving the buyer's notice for suspending the contract, the seller shall resume the performance of the contract; and in case the buyer fails to provide guarantees or make early payment to the seller within the above-mentioned time limit, the seller shall have the right to rescind the contract.

Disclaimer for Force Majeure

9. In case of late delivery due to the buyer's failure in performance or improper performance of principal obligations and accompanying obligations set forth in the contract, all losses arising therefrom, including the seller's losses, shall be borne by the buyer.
10. In case the seller is unable to perform its obligation to deliver products or any other obligation due to any event of force majeure, the seller's liability shall be exempted in part or in whole in light of the influence of the event of force majeure. "Force majeure" refers to any circumstance that is unforeseen, unavoidable and insurmountable.
11. Unless otherwise prescribed by law or otherwise agreed in these terms or the sales contract, in case the seller's late delivery exceeds fifteen (15) days, for each week of delay, the seller shall pay the buyer liquidated damages in a sum equivalent to 0.5 % of that portion of the purchase price and not more than 5 % of such portion in total.

Shipment, packaging and passing of the risk

12. Shipment of the goods will be at the buyer's cost and risk. The risk passes to the buyer upon handing over of the goods to the buyer or the carrier designated by the buyer. Even in cases of "free delivery, the risk passes to the buyer when the goods leave our warehouse or factory.
13. The buyer shall not reject any delivery, unless with legitimate or agreed just reason. In case the buyer rejects any delivery, the seller shall have the right to have the goods shipped, stored or drawn or take any other necessary measures to dispose of the goods, any all costs arising therefrom shall be borne by the buyer.
14. In case shipment and delivery of the goods is delayed upon buyer's request for more than one month after receipt of notice that the goods are ready to be shipped, the buyer may be charged with costs for storage in the amount of 0.5 % of the total value of the goods for each week commenced, but not more than 5 % of the total value.
15. Unless agreed otherwise, the seller may choose the mode of packaging, shipment and transportation.
16. The patent rights, trademarks copyrights and all other intellectual property rights of the seller's products shall not pass to the buyer upon handing over of the good to the buyer. The seller shall not infringe the seller's intellectual property rights by taking advantage of the impletion of this Contract.

GENERAL TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION

Defects as to quality

The seller is liable for defects as to quality according to the following:

20. The buyer shall sign to acknowledge the receipt of goods when the buyer delivers the goods.
21. The buyer shall inspect goods delivered by the seller within seven(7) days after the date of delivery, and shall notify the seller in written of any inconformity (if any) in quantity or quality within such agreed time limit. The buyer's failure in carrying out inspection or giving notice shall be deemed the seller's conformity with the mutual agreements between the buyer and the seller with respect to quantity and quality.
22. Where goods delivered by the seller is found defective, the buyer shall keep the goods in good custody and give notice to the seller in written within the abovementioned time limit, accompanying with photos of defective goods and a document stating the status of defect for the seller's professional technical staff to verify. If the defect of goods is verified, the seller shall confirms it in written and replace the defective goods with conforming goods in the same quantity; and if the seller challenges the defect of goods, it may dispatch personnel to the buyer's site to verify the defect and the buyer shall cooperate the seller in a positive manner. In case of any dispute between the seller and the buyer arising from the difference with respect to the defect of goods, the buyer and the seller shall make their best endeavor to resolve such dispute through consultation. Where the consultation fails, the goods may be referred to any technical inspection agency acceptable to both the seller and the buyer for quality appraisal, and the seller and the buyer shall seek resolution based on the conclusion of quality appraisal. The cost of quality appraisal shall be apportioned by the seller and the buyer in proportion as per the conclusion of quality appraisal. The buyer shall pay the cost of quality appraisal in total first and then recover certain amount from the seller as per the conclusion of quality appraisal.
23. For any quality defect occurs when the agreed warranty period has not yet expired, the seller shall repair the goods free of charge; and for any quality defect occurs when the agreed warranty period expired, the seller may repair the goods but the buyer shall pay agreed cost of repairing to the seller. Where there is no agreement between the seller and the buyer with respect to the cost of repairing, the cost of repairing shall be calculated as per the seller's latest price list for repairing
24. Warranty period expires after 12 months, if not otherwise agreed in the respective contract.
25. Any quality defect caused by the buyer's improper use shall be excluded from quality defect referred to in this provision, and the seller shall not be liable for such quality defects. However, the seller may choose to repair the goods and the cost of repairing may be calculated as set forth in the foregoing Article 20.

Installation and dismantling of accumulators

17. If the buyer requires the filling, setting into operation or installation of accumulators, costs of installation, dismantling or setting into operation as specified in the contract shall be paid to the seller. Where the amount of such costs is not specified in the contract, it shall be calculated as per the seller's latest price list
18. If installation, dismantling or setting into operation is delayed due to any reason of the buyer, the buyer has to bear the costs for the waiting periods and further necessary travel expenses of our personnel to a reasonable amount.
19. The buyer has to inform us about the local circumstances and special features of the surroundings prior to the filling, setting into operation or installation of accumulators.

[Effective: January 1st, 2012]