

General Terms and Conditions of Delivery and Service of EFD Elektrotechnische Fabrik Düsseldorf GmbH

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A. General Terms and Conditions

§ 1 Scope

1. These General Terms and Conditions of Delivery and Service are effective for all our fields of activity. So these General Terms and Conditions of Delivery and Service apply to the delivery of goods, to the performance of work, in particular installations, repair and maintenance work as well as to training and other services.
2. These General Terms and Conditions of Delivery and Service are effective exclusively in our relationship with the customer. They are also effective for all future business as well as for all business-related contacting of the customer, such as for example the opening of contract negotiations or the initiation of a contract, even if they are not explicitly agreed upon again or even if they have not been explicitly pointed out again. We explicitly disagree with the effectiveness of the customer's general terms and conditions of ordering or purchasing.
3. The receipt of our services and deliveries by the customer is considered to show the acceptance of the effectiveness of these General Terms and Conditions of Delivery and Service.

§ 2 Contract conclusion

1. Unless agreed otherwise, our offers are subject to alteration and non-binding.
2. We are only bound to an order once it has been confirmed in writing by order confirmation or once we start with the execution of the order.

§ 3 Scope of the delivery and service, performance periods

1. Our written offer and/ or our order confirmation are decisive for the scope of our delivery or service. Side agreements or changes require our written confirmation. If our offer or our order confirmation is based on information provided by the customer (data, figures, illustrations, drawings, system requirements, etc.), our offer is only binding in those cases when this information was correct. If it becomes obvious after contract conclusion that the order cannot be carried out according to the customer's information, we have the right to withdraw from the contract provided and to the extent that the customer is not ready to accept the replacement solution suggested by us and to assume possibly actually incurred additional costs.

2. We have the right to partial performance of all our deliveries and services to a reasonable extent. We have the right to use subcontractors for the fulfillment of our contractual obligations.
3. As soon as we become aware of the deficient performance capacity of the customer, we have the right to provide deliveries of goods and services only against advance payments or deposits. Independent thereof is our right to withdraw from individually concluded contracts in individual cases, if and provided that the customer cannot effect an advance payment or make a deposit within a reasonable grace period.
4. Delivery and performance periods and dates are always best possible indications but they are principally non-binding. The precondition for the start of the delivery period and the adherence to bindingly-agreed delivery dates is that the customer performs the acts of cooperation he is obliged to provide orderly within the time limit, to provide all documents necessary and to effect possibly agreed advance payments.
5. In case of force majeure or other unusual circumstances beyond one's fault, in particular epidemics or pandemics, labor disputes, operational disruptions beyond one's control, unrest, government measures or other not preventable events, we are not in default. We have the right to also withdraw from the contract in this case even if we are already in default. We are in particular not in default regarding delivery delays provided that these were caused by the incorrect or untimely delivery by our suppliers, which we are not responsible for. For obstacles of temporary duration, the delivery or performance deadlines are extended or the delivery or performance dates are postponed by the period of the obstacle plus a reasonable restarting period.
6. If we are contractually obliged to advance performance, then we can deny the performance we are obliged to when it becomes evident after the conclusion of the contract that our claim to counterperformance is jeopardized by the customer's lacking performance capacity. This is particularly the case if the counterperformance we are entitled to is jeopardized by the customer's bad financial circumstances or if other performance obstacles are imminent, such as e.g. in case of force majeure or unusual other circumstances beyond one's fault, in particular epidemics or pandemics, labor disputes, operational disruptions beyond one's control, unrest, government measures or other not preventable events, or by export or import bans, acts of war, insolvency of suppliers or illness-related absence of necessary staff.

§ 4 Prices, costs

1. Our prices are net prices and, unless agreed otherwise in writing, are always “ex works“ for deliveries (EXW Incoterms 2020). For goods and services, the prices always refer to the performance at the agreed place of performance. The value-added tax at its relevant statutory amount is added at invoicing.
2. Packaging is carried out by us at cost price. Packaging material is to be disposed by the customer and will not be taken back.
3. When a performance period of more than four months between the order confirmation and the performance of the goods or services is agreed, we are entitled to accordingly pass on to the customer any increases in costs incurred by us due to mounting prices. The same applies when a performance period of less than four months was agreed but the performance can only be carried out by us after more than four months after the confirmation of the order for reasons that lie with the customer.
4. For work or services to be performed by us, even if a cost estimate has been submitted before, the remuneration is principally carried out according to a time-based fee as to the time actually spent, unless lump sum remuneration has been agreed. The units for time recording and the current hourly rates can be found in our offer and/ or our order confirmation.
5. Travel and other expenses are invoiced separately, unless otherwise agreed. The current rates for travel and other expenses can be found in our offer and/ or our order confirmation.
6. Our gross prices apply to small orders under EUR 75.00. The minimum invoice amount of EUR 25.00 is invoiced independently of the value of the delivered goods. We recommend to combine small orders.

§ 5 Payment conditions

1. Unless otherwise agreed by contract, our claims become due without any deduction within 30 days of the receipt of the delivery and/ or the complete performance of our service.
2. The customer is not allowed to deduct any amounts without express agreement.
3. If the customer is in default of payment, he has to reimburse us for the default damage incurred by us, in particular interest amounting to 9 percentage points above the basic interest rate. If the customer is in default of payment of a due amount or partial amount for more than 14 days, if the customer violates the obligations resulting from a retention of title or if the counterperformance owed to us is jeopardized by the customer’s bad financial

circumstances, then the remainder of all still open claims is due for immediate payment.

4. Payment by bill of exchange or acceptance is only permitted upon express agreement and also then is only valid as payment. If additional costs are incurred by this, these have to be borne by the customer.
5. Our remuneration claims can only be offset against undisputed or legally validated claims. The same is true for the exertion of the right of retention. As for the remainder, the customer is only authorized to exert a right of retention if this is based on the same contractual relationship.
6. The assignment of claims against us by the customer requires our prior consent, which we will only refuse for important reason.

§ 6 Retention of title

1. We retain the title to delivered goods until the complete payment of all our present and future claims from the concluded contract and an ongoing business relationship (secured claims).
2. Until complete payment of the secured claims, goods subject to retention of title must neither be pledged to any third party nor assigned by way of security. The customer has to immediately notify us in text or written form if and provided that access by third parties to goods belonging to us occurs.
3. In case of customer behavior contrary to the contract, in particular in case of non-payment of the due purchase price, we have the right to withdraw from the contract according to the legal regulations and/ or to demand the return of the goods based on the retention of title. The demand for return does not include at the same time the declaration of withdrawal; we are rather entitled to merely demand the return of the goods and to reserve the right of withdrawal. If the customer does not pay the due purchase price, we must only assert these rights if we previously have unsuccessfully set the customer a reasonable deadline for payment or if such setting of a deadline is dispensable according to legal rules.
4. The customer is entitled to resell and/ or process the goods under retention of title in the proper course of business. In this case, the following provisions apply in a supplementary way.
 - 4.1. The retention of title includes the products resulting from the processing, blending or connection of our goods at their full value, and we are deemed the manufacturer. If the right of retention of any third parties continues to exist during the processing, blending or

connection of their goods, we acquire co-ownership in proportion to the invoice values of the processed, blended or connected goods. As for the remainder, the same applies to the resulting product as to the delivered goods which are subject to retention of title.

- 4.2. The customer already now assigns to us as a security any claims against third parties arising from the resale of the goods or the products, either in total or at the amount of our possible co-ownership share according to the paragraph above. We accept the assignment. The obligations of the customer listed under section A. § 6 no. 2. above also apply regarding the assigned claims.
- 4.3. Apart from us, the customer also remains authorized to collect the claim. We commit to not collect the claim as long as the customer fulfills his payment obligations to us, is not in default of payment, has not filed an application for the initiation of insolvency proceedings and there is no other deficiency regarding his performance capacity. Is this the case, however, we can request that the customer informs us about the assigned claims and their debtors, provides all information necessary for the collection, submits the according documents and informs the debtor (third party) about the assignment.
- 4.4. If the realizable value of the securities exceeds our claims by more than 10%, upon request by the customer, we will release securities at our discretion.
5. The customer has to take good care of the goods under retention of title. Upon our request, at his own expense, the customer has to insure the goods under retention of title against fire, water and theft with the insured sum being adequate to cover the replacement value. If maintenance and inspection work is necessary, the customer has to perform it in time at his own expense.
6. To the extent that the validity of this retention of title depends on its registration, e.g. in public registers in the customer's country, we have the right and we are authorized by the customer to effect this registration at the expense of the customer. The customer is obliged to perform all acts of cooperation necessary for the registration free of charge.

§ 7 Customer's duty to cooperate and inform

1. The customer has to support us and our staff to a reasonable, usual degree.
2. Material, information and data which we require for providing our goods or services have to be made available to us by the customer. Data and data carriers have to be technically in order. In case there are particular legal or operational safety regulations at the customer's premises, the customer has to inform us accordingly before our contract performance.

3. Directly upon contract conclusion, the customer has to forward to us the effective value-added tax identification number, which was issued for him by a member state of the European Union. The customer also has to inform us at any time about any changes regarding the value-added tax identification number. Should we incur any damage due to a missing, incorrect or incomplete reporting of the value-added tax identification number by the customer, in particular due to the cancellation of the tax exemption for intra-Community deliveries as Art. 4 sect. 1 lit b), 6a UstG [*Law on Value-Added Tax*] resulting from this, the customer is obliged to reimburse us. This does not apply if the customer is not responsible for the violation of the obligation.

§ 8 Miscellaneous: Place of performance, place of jurisdiction, applicable law, data processing, severability clause

1. Place of performance is our registered office in Düsseldorf, Germany.
2. Exclusive place of jurisdiction for any disputes arising from the contractual relationship between the parties is “Landgericht Ulm“ [*Ulm District Court*], to the extent that the customer is a merchant, legal entity of public law or of special fund under public law, or the customer has no general place of jurisdiction in the Federal Republic of Germany or has relocated his place of jurisdiction abroad. As an exception to this, we also have the right to claims against the customer at his general place of jurisdiction.

A merchant is every entrepreneur who is entered in the trade register or who operates a commercial business and requires a business operation set up in a commercial way. The customer has his general place of jurisdiction abroad if his registered office is abroad.

3. The customer is aware that data from the business transactions, also personal data, has to be stored and processed and transmitted to third parties in the framework of commercial necessities. The customer agrees with this collection and processing of data.
4. Should a provision of these General Terms and Conditions of Delivery and Payment or a provision in the framework of other agreements be or become invalid, the validity of the other provisions or agreements shall not be affected.
5. The customer is entitled to offset only those claims against counterclaims from other legal relationships that are undisputed or legally validated.
6. German law shall apply to the contractual and other legal relationships by excluding the UN Sales Convention.

B. Special Terms and Conditions for the delivery of goods and for the manufacturing and delivery of goods after individual manufacturing

§ 1 Scope

The subsequent special terms and conditions are effective as a supplement to the General Terms and Conditions under Section A., for all contracts with the customers on the delivery of goods and the manufacturing and delivery of goods after individual specification by the customer (individual manufacturing).

§ 2 Scope of performance

1. The transfer of the property and the surrender of the purchased object are owed. The mounting, installation or a configuration of the purchased object is not owed, unless explicitly agreed.
2. Transport insurance for goods to be shipped is only taken out upon explicit request. The transport insurance is then taken out in the name and for the account of the customer.

§ 3 Software license conditions

If the goods supplied by us contain third-party software, the relevant license terms and conditions of the software manufacturer shall apply.

§ 4 Transfer of risk

1. Unless otherwise agreed, with the handover of the goods for shipment, the risk of loss or deterioration of the goods is transferred to the customer, and this also applies in case of partial deliveries. If the dispatch is delayed for reasons within the responsibility of the customer, then the risk is already transferred to the customer with the notification of the shipment readiness.
2. If an inspection and approval has been agreed with the customer, the risk is transferred at the moment of the approval declaration by the customer. The customer will inspect and approve the goods or the services completed within the agreed, otherwise within a reasonable period, but not later than within two weeks after the handover or – if the handover is excluded due to the type of good or service – after the completion. In the case of a good or service to be inspected and approved, the period starts with our notification of

the customer that the good or service has been completed. The good or service provided by us is considered to be inspected and approved upon expiry of the agreed period for inspection and approval if the customer declares neither in text nor in written form which defect still needs to be rectified. We will inform the customer about this legal consequence upon notification regarding the completion of the work.

§ 5 Premature termination of work performance contracts

For work performance contracts as to Art. 650 BGB [*German Civil Code*], the following applies:

1. If the contract is terminated by the customer before the completion of our work performance, the customer is obliged to pay the full remuneration which has been agreed, minus the expenses we saved due to the cancellation of the contract. Also to be taken into account is what we obtain through other use of our work resources or fail to obtain maliciously.
2. The parties agree that, deviating from Art. 648 sentence 3 BGB, it is assumed that we are entitled to 10% of the agreed remuneration for the not yet provided part of the work performance. The parties have the possibility to provide evidence for higher or lower saved expenses or other types of or maliciously not obtained earnings.

§ 6 Warranty and general liability

1. The limitation period for claims for defects of our deliveries and services is one year beginning at the legal start of limitation. We in particular can also refuse supplementary performance after the expiration of this year, and no claims against us are created thereof for the customer for reduction, withdrawal or damages. This shortening of the limitation period does not apply to other damages claims as such because of refused supplementary performance and it in general does not apply to claims for fraudulent non-disclosure of a defect.
2. Claims of the customer for supplementary performance due to defects of the services or deliveries to be provided by us exist under the following conditions:
 - 2.1. If the supplied item is deficient, we can first choose whether we want to offer supplementary performance by removing the defect (rework) or by delivering a non-defective item

(replacement delivery). The right to refuse the type of supplementary performance under the legal prerequisites remains unaffected.

- 2.2.** We have the right to condition the owed supplementary performance on whether the customer pays the due purchase price. However, the customer has the right to retain a share of the purchase price which is adequate in relation to the defect.
- 2.3.** The customer has to grant us the time and occasion necessary for the owed supplementary performance, in particular to hand over the rejected goods for examination. In the case of a replacement delivery, the customer has to return to us the deficient item according to the legal regulations.
- 2.4.** The expenses necessary for the examination and supplementary performance, in particular transport, travel, work and material costs are borne by us if there is really a defect.
 - 2.4.1.** In case the customer has mounted the deficient item according to its type and its intended purpose into another item or has attached it to another item, we are obliged to reimburse the customer for the necessary expenses for the removal of the deficient item and the mounting or attachment of the reworked or delivered faultless item in the framework of the supplementary performance. Art. 442 para. 1 BGB is to be applied provided that for the knowledge of the customer, the mounting or the attaching of the deficient item by the customer takes the place of the contract conclusion.
 - 2.4.2.** The expenses for supplementary performance which are caused by the fact that after delivery the sold item was taken to a place different to the place of residence or the commercial presence of the customer shall be borne by the customer.
 - 2.4.3.** Should it become obvious that a demand for the rectification of a defect by the customer is unjustified, we can ask the customer for the reimbursement of the costs we incurred through this.
- 3.** The customer can only claim damages:
 - 3.1.** For damage, which is caused
 - by an intentional or grossly negligent breach of obligation by us or
 - by an intentional or grossly negligent breach of obligation by one of our legal representatives, executives or persons we use to fulfill our obligations, which are not essential contractual obligations (cardinal obligations) and not main or secondary obligations in context with defects of our deliveries or services.
 - 3.2.** For damage which is caused by the intentional or grossly negligent breach of essential contractual obligations (cardinal obligations) by us, one of our legal representatives,

executives or persons we use to fulfill our obligations. Essential contractual obligations (cardinal obligations) in the meaning of the subsections 3.1 and 3.2 above are obligations the fulfillment of which only enable the proper execution of the contract and on the compliance with which the customer regularly relies.

- 3.3.** We are also liable for damage caused by the negligent or intentional breach of obligations in connection with defects of our deliveries or services (supplementary performance or secondary obligations) and
- 3.4.** for damage which falls within the scope of protection of a guarantee (undertaking) or guarantee of quality or durability explicitly granted by us.
- 4.** In case of a breach of an essential contractual obligation by simple negligence, the amount of the liability is limited to damage to be typically expected by us upon contract conclusion when applying proper care.
- 5.** The customer's damages claims in case of a breach of an essential contractual obligation by simple negligence will lapse within one year after the statutory beginning of the limitation period. Exceptions to this are damage from injury to life, body or health.
- 6.** Damages claims against us from legally mandatory liability, for example according to the product liability law as well as from the injury to life, body or health remain unaffected by the regulations above and exist within the legal scope during the statutory periods.
- 7.** Rights of the customer as to Art. 445a, 445b and 478 BGB for the case that claims are asserted against the customer or his further buyers within the supply chain, remain unaffected for the remainder while considering the regulations below:
 - 7.1.** The customer carries the burden of proof that the expenses were necessary for the supplementary performance and that he could not have refused his buyer the supplementary performance as to Art. 439 para. 4 BGB or could not have provided supplementary performance at lower costs.
 - 7.2.** The claim from Art. 445a para. 1 BGB lapses within two years upon our delivery to the customer as to Art. 445b para. 1 BGB. This period also applies in case a longer period would be valid as to Art. 438 BGB.
 - 7.3.** The limitation of the customer's claims against us as to Art. 437 and 445a para. 1 BGB for the defect of a sold, newly produced item occurs at the earliest two months after the time at which the customer has fulfilled the claims of his buyers, provided that the claims in the relationship of the customer to his buyer have not lapsed yet. This expiry suspension ends at the latest five years after the time at which we delivered the item to the customer.

8. If the customer is a merchant in the meaning of the German Commercial Code, additionally the following applies:

The condition for the customer's claims for defects, in particular claims for supplementary performance, recourse, withdrawal from the contract, reduction and damages is that the customer has complied with his legal obligation to examine and give notice of defects (Art. 377, 381 HGB). If a defect is detected during the examination or later, we have to be notified of this immediately in text or written form. A notification is deemed immediate when it is given within fourteen days after the detection of the defect, and the sending off of the notification in time is deemed an adherence to the deadline. Independent of this obligation to examine and give notice of defects, the customer has to give notice of obvious defects (including wrong or short deliveries) in text or written form within fourteen days after the delivery, and here the sending off of the notification in time is deemed an adherence to the deadline, too. If the customer fails to carry out the proper examination and/ or notification of a defect, our liability for the not indicated defect is excluded. This does not apply if we have maliciously concealed the defect.

C. Special Terms and Conditions for the performance of work services

§ 1 Scope

The subsequent special terms and conditions are effective as a supplement to the General Terms and Conditions under Section A., for all contracts with the customers on the performance of work services.

§ 2 Contractual object

Contractual object is the performance of work services.

§ 3 Appointment of project leaders

1. In separately agreed cases, for example for comprehensive assembly work, both we and the customer are obliged to appoint a project leader before taking up the work. The measures necessary for the implementation of the work are coordinated between the project leaders. We are responsible for the implementation of the work. The according

project leaders are to be appointed by the according contractual partner in text or written form within a reasonable period of time after contract conclusion.

2. The project leaders will meet regularly at agreed intervals, which are determined project by project in order to prepare and take decisions and record them in writing.

§ 4 Changes during the execution of work/ Change Request Management

1. The project leaders can agree on changes by mutual consent. The agreements are to be recorded in writing and signed by both project leaders. Provided that no agreements regarding the remuneration or other contractual provisions, in particular times schedules in view of agreed changes are made, the changes have to be executed within the framework of the contractual provisions agreed upon until then.

2. If the parties are unable to find agreement regarding the changes requested by one of the contractual parties, the following applies:

The customer has the right to make change requests to us until inspection and approval. The change requests have to be addressed to us in text or written form. We will examine the change request. We will accept changes requested by the customer provided that they are not unacceptable in the framework of the operational performance capacity. We will inform the customer within 14 days of the receipt of the change request in text or written form about whether

- the change request is accepted and is executed according to the previous regulations of the contract.
- the change request has an influence on contractual regulations, e.g. price, execution periods, etc.: In this case we will inform the customer about the conditions under which the change can be executed. The change must only be executed if the customer accepts the change regarding the conditions we informed him about within 14 days after receipt of the information.
- the review for feasibility of the change request is comprehensive: In this case we can condition the review of the change on the fact that the customer pays for the review expenses. In such a case, we are obliged to inform the customer in text or written form about the amounts of time and money for the review. The order for review is only considered to be placed once the customer asks us to do so in text or written form.
- the change request is rejected.

If we do not react to the change request within 14 days after receipt, the change request is deemed to be rejected.

3. When executing the delivery or service, we respect the generally approved testing methods and applicable legal regulations. If legal or other provisions change after contract conclusion, if new provisions are introduced or we are confronted with new or changed requirements, for example due to subsequently submitted, changed or new manufacturer documentation, works standards or risk assessments, which have an effect on the contractual good or service, and if the customer has informed us about this in time, we will take these requirements into account, if possible. Remuneration agreed in service contracts and/ or contracts for service performance will be adjusted by us at our reasonably exercised discretion (Art. 315 BGB). We here in particular take into account the expenses for changed requirements as regards testing efforts, staff and/ or changed or new tools.

§ 5 Inspection and approval

The work is handed over after completion. Provided that a handover is excluded because of the type of work, a notification regarding its completion is created. After completion and handover, or – if a handover is excluded because of the type of work – after the notification regarding its completion, the work is inspected and approved. The customer will inspect and approve the completed work within the agreed, otherwise within a reasonable period, but not later than within two weeks after the handover or – if the handover is excluded because of the type of work – after the completion of the work. The period starts with our information to the customer that the work has been completed. The work is considered inspected and approved upon expiry of the period for inspection and approval, when the customer declares neither the inspection nor approval in text or written form nor states to us in text or written form which defect still needs to be rectified.

We will inform the customer about this legal consequence upon notification regarding the completion of the work.

§ 6 Warranty and general liability

1. The limitation period for claims for defects of our deliveries and services is one year beginning at the legal start of limitation. We in particular can also refuse supplementary performance after the expiration of this year, and no claims against us are created thereof for the customer for reduction, withdrawal or damages. This shortening of the limitation

period does not apply to other damages claims as such because of refused supplementary performance and it in general does not apply to claims for fraudulent non-disclosure of a defect.

2. Claims of the customer for supplementary performance due to defects of the services or deliveries to be provided by us exist under the following conditions:

2.1. If the supplied item is deficient, we can first choose whether we want to offer supplementary performance by removing the defect (rework) or by delivering a non-defective item (replacement delivery). The right to refuse the type of supplementary performance under the legal prerequisites remains unaffected.

2.2. We have the right to condition the owed supplementary performance on whether the customer pays the due purchase price. However, the customer has the right to retain a share of the purchase price which is adequate in relation to the defect.

2.3. The customer has to grant us the time and occasion necessary for the owed supplementary performance, in particular to hand over the rejected goods for examination. In the case of a replacement delivery, the customer has to return to us the deficient item according to the legal regulations.

2.4. The expenses necessary for the examination and supplementary performance, in particular transport, travel, work and material costs are borne by us if there is really a defect

2.4.1. The expenses for supplementary performance which are caused by the fact that after delivery the sold item was taken to a place different to the place of residence or the commercial presence of the customer shall be borne by the customer.

2.4.2. Should it become obvious that a demand for the rectification of a defect by the customer is unjustified, we can ask the customer for the reimbursement of the costs we incurred through this.

3. The customer can only claim damages:

3.1. For damage, which is caused

- by an intentional or grossly negligent breach of obligation by us or
 - by an intentional or grossly negligent breach of obligation by one of our legal representatives, executives or persons we use to fulfill our obligations,
- which are not essential contractual obligations (cardinal obligations) and not main or secondary obligations in context with defects of our deliveries or services.

3.2. For damage which is caused by the intentional or grossly negligent breach of essential contractual obligations (cardinal obligations) by us, one of our legal representatives,

executives or persons we use to fulfill our obligations. Essential contractual obligations (cardinal obligations) in the meaning of the subsections 3.1 and 3.2 above are obligations the fulfillment of which only enable the proper execution of the contract and on the compliance with which the customer regularly relies.

- 3.3.** We are also liable for damage caused by the negligent or intentional breach of obligations in connection with defects of our deliveries or services (supplementary performance or secondary obligations) and
- 3.4.** for damage which falls within the scope of protection of a guarantee (undertaking) or guarantee of quality or durability explicitly granted by us.
- 4.** In case of a breach of an essential contractual obligation by simple negligence, the amount of the liability is limited to damage to be typically expected by us upon contract conclusion when applying proper care.
- 5.** The customer's damages claims in case of a breach of an essential contractual obligation by simple negligence will lapse within one year after the statutory beginning of the limitation period. Exceptions to this are damage from injury to life, body or health.
- 6.** Damages claims against us from legally mandatory liability, for example according to the product liability law as well as from the injury to life, body or health remain unaffected by the regulations above and exist within the legal scope during the statutory periods.