

## General conditions of sale of diff speed engineering GmbH

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## **§1 General – scope of validity**

1. These general conditions of sale shall apply to all current and future contracts with companies and legal persons under public law for the provision of supplies and services. The buyer's conditions of sale shall not be recognized, even if they are not expressly excluded by us following their receipt.
2. In case of doubt, the Incoterms in their respective latest version shall be decisive for the interpretation of trade terms.
3. Our quotes are without obligation. Any verbal agreements, promises, assurances and guarantees made by our employees in connection with the conclusion of the contract shall become binding only following written confirmation.

## **§ 2 Prices – payments and invoices**

1. Unless otherwise agreed, our prices are "ex works" plus VAT at the applicable statutory rate at the time of supply. All prices are subject to the addition of other - agreed - surcharges.
2. Unless otherwise agreed or stated in our invoices, the purchase price without discount shall be due immediately upon delivery and independently of the receipt of an invoice, and shall be payable in such a manner that we receive the full amount on the due date.
3. The buyer shall be deemed to be in default no more than 10 days after receiving our delivery without the need for a reminder. If payment terms are not adhered to, we shall reserve the right to charge interest at 8% above the current base rate no later than the point at which the account is in default.
4. The buyer may only offset against recognized, undisputed or legally valid debt claims or only assert a lien against such debt claims.
5. If a significant change in the cost of wages, material, energy or transport occurs between the conclusion of the contract and the scheduled delivery, then we shall reserve the right to re-negotiate the prices that were originally negotiated.
6. If it becomes apparent following the conclusion of the contract that our purchase price claim is threatened by various circumstances which show a significant deterioration in the buyer's ability to pay following the conclusion of the contract, or that the buyer is in default of a substantial amount, we shall refuse to provide any further services under the specific contract and other contracts and shall make all debt claims arising from the ongoing business relationship with the buyer due with immediate effect, irrespective of whether they are currently due or not.  
With respect to any circumstances that occur following the conclusion of the contract, and which give rise to a significant deterioration in the buyer's financial situation, thus endangering our payment claim, we shall then be entitled to make it due with immediate effect - irrespective of the credited bill period - unless the buyer is not responsible for the payment arrears. This shall also apply if the buyer is in arrears which indicate a threat to our claim. In such cases we shall be entitled to recover the goods, through entering the buyer's premises if required, and seize the goods; we shall also be entitled to prohibit the further processing of the delivered goods. The return of goods shall not constitute a withdrawal from

the contract. The buyer can avert the aforementioned legal consequences by securing our endangered payment claim to its full value.

### **§ 3 Content and scope of delivery**

1. Variations in dimensions and quality shall be permitted within the scope of the applicable standard or agreement, or within the framework of the commercially accepted tolerance.
2. The various technical data, illustrations, drawings, dimension and weight specifications contained in the Internet, in brochures, offers, operating manuals and other printed items shall serve merely as the product description and shall be regarded as non-binding average values. They shall not be an indicator of characteristics. Agreed specifications and the details or agreement of an intended use shall not constitute a guarantee. Guarantees shall require express written agreement.

### **§ 4 Delivery times – consequences of default**

1. Details regarding delivery times are approximate. We shall always ensure that written warning is sent to the buyer to inform it of a delay in delivery. Delivery times shall only apply subject to the timely clarification of all contractual elements and the timely fulfilment of all buyer obligations, e.g. production of official certificates, provision of credit terms and guarantees and payment of deposits.
2. Our delivery shall be carried out ex works. The date of dispatch ex works shall prevail for compliance with delivery times. If the goods cannot be dispatched on time through no fault of our own then the delivery times with notification of readiness for shipment shall be regarded as adhered to.
3. We are entitled to make part deliveries to an acceptable extent.
4. All delivery times and deadlines are subject to unforeseen production problems and the timely availability of necessary materials and, provided that completion volumes consisting of additional purchases are agreed or are customary within the industry, are subject to delivery capability and self-supply in good time.
5. If we are in default of delivery, the buyer may, following a reasonable period of grace stipulated by him, withdraw from the contract in writing. In principle, the buyer's right to withdraw shall only extend to the unfulfilled part of the contract. If part deliveries are no use to the buyer without the rest of the delivery, the buyer shall then be entitled to withdraw from the contract as a whole.
6. In case of default we shall only be liable for any damages caused by the delay that the buyer can provide evidence for in line with the requirements of § 7 (1) of these conditions.

### **§ 5 Transfer of risk**

1. In the absence of specific instructions, we shall determine the ways and means of transport as well as forwarding agents or hauliers.
2. If the loading or transportation of goods is delayed for any reason for which the buyer is responsible, we shall be entitled at our reasonable discretion to take all appropriate

measures to preserve the goods at the expense and risk of the buyer, and shall invoice the goods as having been delivered. The same shall apply if any goods that have been notified as ready for shipment have not been picked up within four days. The legal provisions regarding default of acceptance remain unaffected.

3. If any damage has been caused during transit, the buyer shall immediately submit a damage report to us.
4. The date of availability ex works shall prevail for the transfer of risk.
5. Unless otherwise customary within the industry or agreed, the goods shall be unpacked and shall be supplied unprotected against rust.
6. Should a buyer which is located outside of the Federal Republic of Germany (customers outside the area) or its representative pick up goods and transport them to the external territory, then the buyer must present us with the required export bill of lading for tax purposes. If such proof is not provided, the buyer shall then have to pay the applicable VAT rate for deliveries within the Federal Republic of Germany for the total invoice amount.
7. Provided that the buyer requests it, the delivery shall be covered by transportation insurance. Any costs resulting from this shall be borne by the buyer.

## **§ 6 Defect claims**

1. The goods shall be deemed to be in accordance with the contract if, at the point of transfer of risk, they do not deviate or only deviate slightly from the agreed characteristics; the contractual conformity and defect-free nature of our goods shall be measured solely in accordance with the express agreements on quality and quantity of the goods ordered. Liability for a particular purpose or particular suitability shall only be assumed provided this is expressly agreed upon; otherwise any risks associated with suitability and use shall remain exclusively with the buyer. We shall not be liable for the deterioration, destruction or improper handling of the goods following the transfer of risk.
2. The buyer must inspect any goods immediately upon receipt. Defect claims shall only exist if any defects are reported immediately in writing; hidden defects must be notified immediately following their discovery. Once acceptance has been agreed and executed this shall exclude the submission of all further complaints regarding defects that are determined under this acceptance.
3. The buyer shall allow us the opportunity to immediately examine any goods that are the subject of a complaint; the goods that are the subject of a complaint or a sample from the same batch shall be made available to us at our expense. If complaints are unfounded then we shall reserve the right to charge the freight and handling costs and inspection expenses to the buyer.
4. For any goods that are sold as declassified material – e.g. so-called II A material – no claims shall be due to the buyer with respect to the specified defects and any such defects that it had readily expected.
5. If a defect is present then we shall, at our discretion, and also whilst taking into account the concerns of the buyer, perform remedial action either through the supply of a replacement or repair work. If subsequent delivery by us cannot be carried out successfully within a

reasonable period of time, the buyer may stipulate a reasonable period of time to remedy the situation; should this also prove to be fruitless, the buyer shall be entitled to request a reduction in the purchase price or withdraw from the contract. Clause VII of this condition remains unaffected.

6. The limitation period in the case of defective delivery shall expire - except in the case of intent - one year following delivery. This shall not affect the statutory limitation periods for goods which are used for a building in accordance with their normal mode of use and whose defects were caused by this. The limitation period for repairs or replacements shall not recommence.
7. Recourse claims made by the buyer against us pursuant to § 478 German Civil Code (BGB) are limited to the legal extent of defect claims by third parties asserted against the buyer and shall assume that the buyer has complied with its obligation of defect notification in relation to us pursuant to § 377 German Civil Code (BGB).

### **§ 7 General limitations of liability**

1. Unless otherwise regulated in these conditions, we shall be liable for damage caused by breach of contractual or non-contractual obligations, or during contract negotiations only in cases of intent or gross negligence on the part of our legal representatives or agents, or by the violation of essential contractual obligations for which we are culpable. In cases where essential contractual obligations are violated and we are culpable for this, we shall only be liable - except in cases of intent or gross negligence on the part of our legal representatives or agents - for any damage that can be predicted and that is covered under the contract.
2. The limitations of liability set out above shall not apply to damage to life, limb and health.
3. Liability according to the German Product Liability Act (Produkthaftungsgesetz) remains unaffected by this regulation. Any change to the burden of evidence to the detriment of the buyer shall not be linked to this regulation.

### **§ 8 Retention of title**

1. The goods delivered shall remain our property (retained goods) until all debt claims arising from these commercial relationships that are due to us are settled, particularly outstanding account balances. This shall also apply in future for any debt claims arising from the commercial relationship and conditional debt claims, e.g. from reverse exchange. The buyer shall be required to handle the objects of sale with care, and shall in particular be required, at its own expense, to insure these objects to their replacement value against fire, water and theft.
2. The handling and processing of retained goods shall be carried out for us as a manufacturer within the meaning of § 950 German Civil Code (BGB) without obligating us. If the retained goods are processed, handled and amalgamated by the buyer alongside other objects not belonging to us, we shall acquire joint ownership of the new objects in the ratio of the invoice value of the retained goods to the value of the other objects at the time of processing. If our ownership should cease as a result of combination, amalgamation or processing, the buyer shall transfer its ownership or expectancy rights for the new stock or items to the extent of the invoice value of the retained goods; in the case of processing, this shall be in the ratio of the invoice value of the retained goods to the value of the other goods

used, and shall be kept for us free of charge. The joint ownership rights of handled and processed goods shall apply as retained goods within the meaning of paragraph 1.

3. The buyer shall be entitled to resell the objects of sale in the ordinary course of business provided that it has agreed retention of title and is not in default; it shall agree to assign all debt claims to us to the value of the agreed final invoice amount (including VAT if this is applicable) that it has incurred from its customers or third parties as a result of the resale, and regardless of whether the goods have been resold without processing or after processing. The buyer shall retain its authority to collect the debt even following the assignment. Our right to collect the claim ourselves shall remain unaffected in this case. We shall not take any further action to collect the debt as long as the buyer meets its payment obligations from any revenues made, is not in arrears and there is, in particular, no application for insolvency proceedings or cessation of payments as shown in § 2 (6). However, if this is the case, we may request that the buyer disclose the claim assigned and the debtor in question, make all indications required for collection, surrender the relevant documents, and notify the debtor (third party) of such assignment of claims. The term "resale" shall also include the use of retained goods to fulfil labour contracts and contracts for labour and materials.
4. In case of seizure or another form of intervention by third parties, the buyer shall immediately notify us in writing so that measures pursuant to § 771 German Code of Civil Procedure (ZPO) can be taken. If the third party is not in a position to reimburse us for the legal and court costs incurred, the buyer shall then be liable for the incurred loss.
5. The buyer shall not be entitled to assign the debt claims, not even on the basis of our authority to collect them. This non-assignment clause shall not apply if it relates to an assignment by way of genuine factoring that is notified to us and for which the proceeds that arise from the factoring process exceed the value of our secured debt. Our debt claim shall become due immediately upon crediting of the factoring proceeds.
6. If the value of the existing securities exceeds the nominal value of the secured debts by more than 50%, we shall be obliged, if requested by the buyer, to release securities of our choosing to this extent.

#### **§ 9 Place of jurisdiction – place of performance – applicable law**

1. The buyer is personally responsible for observing the applicable national and international export control regulations. It must be noted that, with respect to material of U.S. origin, the various U.S. regulations shall also apply.
2. The place of performance and jurisdiction for both parts of the contract shall be the place of the vendor's registered office. We shall however be entitled at our discretion to choose the buyer's registered office as the place of jurisdiction.
3. The laws of the Federal Republic of Germany shall apply to all legal relationships between us and the buyer with the exception of international civil law regulations. The UN Convention on Contracts for the International Sale of Goods (CISG) and other intergovernmental agreements shall not apply, even if implemented in German law.