

## **TERMS AND CONDITIONS OF SALE AND DELIVERY** **STÖBER Antriebstechnik GmbH + Co. KG**

### **1. Scope**

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTCSD") shall apply to all of our business relationships with our customers. These GTCSD shall apply only if the customer is an entrepreneur within the meaning of Section 14 BGB [*German Civil Code*].
- 1.2 These GTCSD shall apply in particular to contracts for the sale and/or delivery of movable property (hereinafter referred to as "Goods" or "Delivery Item" or "Products"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the present GTCSD shall apply as a framework agreement also for similar future contracts in the version applicable at the time the order is placed by the customer and/or in the text form last communicated [*"text form" as defined under § 126b BGB*] to the customer, without any requirement on our part to refer to them in each individual case.
- 1.3 All deliveries and services effected by us shall be governed by these GTCSD exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the customer, unless such have been expressly approved by us. This approval requirement shall apply in each and every case, for example even if the customer refers to its general terms and conditions in the context of the order and we do not expressly object to this.
- 1.4 Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our acknowledgment of order shall take precedence over these GTCSD. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms<sup>®</sup> issued by the International Chamber of Commerce in Paris (ICC), as amended at the time the contract is concluded.
- 1.5 Legally relevant declarations and notifications from the customer relating to the contract (e.g. setting of deadlines, notification of defects, withdrawal from contract or price reduction) must be given in writing. Written form within the meaning of these GTCSD shall include written and text form (e.g. letter, e-mail, fax). Any legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declaring party, shall remain unaffected.
- 1.6 Any reference to the application of statutory provisions shall be for the purpose of clarification only. The statutory provisions shall thus also apply without such clarification, unless they are directly modified or expressly excluded by these GTCSD.

### **2. Information / Consulting / Properties of Products and Services / Cooperation**

- 2.1 Information on or explanations of our Products and services provided by us or our sales agents are based exclusively on our experience to date. They do not constitute properties or guarantees with respect to our Products. Any figures specified shall be regarded as averages for our Products.

Unless otherwise expressly agreed, we do not guarantee that our Products and/or services are suitable for the purpose intended by the customer.

- 2.2 We will only assume consulting obligations if such have been expressly stipulated by virtue of a written, separate consultancy agreement.

- 2.3 A guarantee shall be deemed to have been assumed by us only if we have declared in writing that a property and/or a successful outcome is "*legally guaranteed*".
- 2.4 Within the framework of order placement, the customer must provide us with all documents necessary for the execution of the order, including but not limited to technical drawings, technical data, test instructions, etc. The customer must in particular notify us of the tolerances and standards which must be observed. The customer shall be liable for ensuring that all the documents and information are correct. We shall not be liable for any defects resulting from any errors in these documents or information.
- 2.5 The customer undertakes to inform us if usage of the Products to be processed is associated with specific risks. Such shall apply in particular to use of the Products in safety-relevant areas, such as the automotive sector, medical engineering and dental technology, aerospace and armaments.

### **3. Conclusion of Contract / Scope of Delivery and Service**

- 3.1 Our offers are without obligation and are not binding, unless they have been expressly stipulated to be binding. Such shall also apply if we provide the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve title and copyrights.
- 3.2 The order of the Goods by the customer shall be deemed a binding contract offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 4 weeks of its receipt by us.
- 3.3 Acceptance can be declared either in writing (e.g. by way of acknowledgment of order) or by delivering the Goods to the customer.
- 3.4 Each order shall be governed by our written acknowledgment of order. An invoice sent may also be deemed to be an acknowledgment of order. If the customer has any objections as to the contents of the acknowledgment of order, the customer must oppose such acknowledgment of order without delay. Otherwise, the contract shall take effect in accordance with the acknowledgment of order. In the event of any deviations in the content of drawings the specifications in the acknowledgment of order shall be authoritative.
- 3.5 Verbal agreements or agreements by phone shall only become an integral part of the contract if they are confirmed by us in writing.
- 3.6 Any information provided by us relating to the subject-matter of the delivery or service (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as the depictions thereof provided by us (e.g. drawings and illustrations) shall only be deemed approximates unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service. Deviations customary in the trade and deviations which are the result of legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts shall be permissible insofar as they do not adversely affect the usability for the contractually intended purpose.
- 3.7 We shall be entitled to make structural modifications to the Products delivered by us insofar as such modifications are the result of enhancements of the respective series product and if the modified

Products are at least commercially and technically equivalent to the Products ordered by the customer and can be used by the customer the same way as the Products originally to be delivered.

- 3.8 If the scope of services needs to be modified due to missing or incorrect information provided by the customer, we shall be entitled to effect such modifications; any costs or damage incurred thereby must be reimbursed to us by the customer.

#### **4. Time of Delivery and Delay in Delivery**

- 4.1 The delivery time is agreed on an individual basis or is specified by us upon acceptance of the order.
- 4.2 Compliance with the delivery times is based on the proviso that all commercial and technical questions are clarified and the customer has met all obligations incumbent on it.

These are in particular:

- the defect-free, complete and timely provision of the materials and the objects on loan specified in the acknowledgment of order by the customer in accordance with Section 15 below,
- compliance with the agreed terms of payment (such as payment of a down payment by the customer),
- the provision of securities by the customer.

If this is not the case, the delivery period shall be extended accordingly. This shall not apply if we are responsible for the delay.

The plea of non-performance shall remain reserved.

- 4.3. We shall only be under the obligation to render performance out of our own stock [*German „Vorratsschuld“ – debt settled out of one’s own stock*].

- 4.4 We shall only be entitled to effect partial deliveries if:

- the partial delivery can be used by the customer within the framework of the contractually intended purpose,
- delivery of the remaining Goods ordered is ensured and if
- the customer does not incur any significant additional effort or expense on account of this (unless we agree to bear such costs).

- 4.5 The onset of our being in delay in delivery shall be determined on the basis of the statutory provisions. In any case, however, a reminder by the customer shall be required.

If the customer suffers damage due to our delay, the customer may demand a flat-rate compensation for the damage caused to it by the delay. The flat-rate compensation for damage shall amount to 0.5% of the net price for the entire delayed delivery and/or service in default (value of the delivery) for each completed calendar week of the delay but shall not exceed, however, 5% of the delivery value of the Goods and/or services delivered or provided late. Any further compensation paid by us for the damage

caused by the delay shall be excluded. Such shall not apply if we have acted on intent, with gross negligence or maliciously, in the case of claims for injury to life, limb or health and if a fixed date of delivery within the meaning of the law has been agreed and a performance guarantee has been given or a procurement risk has been assumed in accordance with Section 276 BGB and in the case of compulsory statutory liability.

We reserve the right to prove that the customer has not suffered any damage at all or that the amount of the damage was significantly below the above flat rate.

- 4.6 The rights of the customer in accordance with Section 11 of these GTCSD as well as our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or supplementary performance) shall remain unaffected.

## **5. Delivery / Passing of Risk / Acceptance / Delay in Acceptance**

- 5.1 Delivery shall be effected FCA in accordance with the Incoterms, which shall also be the place of performance for delivery and supplementary performance, if applicable. Upon the request and expense of the customer, the Goods will also be shipped to another point of destination (sale by dispatch). Unless otherwise agreed, we shall have the right to determine the respective type of shipment (in particular select the shipping company, dispatch route, packaging) ourselves.
- 5.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the customer upon delivery at the latest. However, in the case of sale by dispatch the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall already pass with delivery of the Goods to the carrier, forwarding agent or other person or entity charged with the shipping of the Goods. If acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. In other respects, the statutory provisions of the law on contracts for work and services [*German "Werkvertragsrecht"*] shall apply mutatis mutandis if acceptance has been agreed. Default in acceptance [*German "Annahmeverzug"*] by the customer shall be equivalent to delivery [*German "Übergabe"*] or acceptance [*German "Abnahme"*].
- 5.3 If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the damage incurred thereby, including additional expenditures (e.g. storage costs). For this, we will charge a flat-rate compensation amounting to 0.5% of the agreed net order value for each commencing calendar week of the delay for the part of the delivery that has not been accepted, however not exceeding a total of 10% of the agreed net order value, commencing with the delivery period or – in the absence of a delivery period – with the notification that the Goods are ready for dispatch. We shall also be entitled to store the Goods outside our factory.

The right to provide proof of a higher damage as well as our claims laid down by law (including but not limited to the reimbursement of additional expenditure, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be set off against further monetary claims. The customer shall have the right to prove that we have suffered no damage at all or that the damage was significantly below the above flat rate.

## **6. Supply by our own Suppliers, Force Majeure**

- 6.1 If, for reasons for which we are not responsible, we are not supplied, not correctly supplied or not supplied on time with the deliveries or services of our sub-suppliers for the provision of our contractually owed deliveries or services despite proper and sufficient coverage of requirements before conclusion of the contract with the customer in accordance with the quantity and quality resulting from our supply or performance agreement with the customer (matching cover transaction) or if events of Force Majeure occur which continue for a not insignificant length of time (i.e. lasting more than 14 calendar days), we will inform our customer thereof in writing or in text form in good time. In such case, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part on account of the part of the contract that has not yet been fulfilled, insofar as we have fulfilled our aforesaid obligation to provide information and have not assumed the procurement risk or a delivery guarantee.

Events of Force Majeure shall include combat operations (irrespective of whether or not a war has been declared), riots, explosions, fire, flood, earthquake, typhoon, epidemics, pandemics, diseases or quarantine, cyber-attacks, disruptions to the operation of the world wide web and labor disputes as a result of which business operations come to a complete or major standstill, as well as acts, omissions or actions of any government or when complying with government requests and official interventions.

Force Majeure shall be equivalent to energy and raw material shortages, transport bottlenecks or impediments through no fault of our own, operational impediments through no fault of our own – e.g. due to fire, water or machine damage – and all and any other impediments which, from an objective point of view, have not been culpably brought about by us.

- 6.2 If a delivery date or a delivery period has been bindingly agreed and the agreed delivery date or the agreed delivery period is exceeded due to events in accordance with item 6.1. above, the customer shall be entitled – after a reasonable grace period has expired without result – to withdraw from the contract on account of the part that has not yet been fulfilled. In such case, any further claims of the customer, in particular claims for damages, shall be excluded.
- 6.3 The above provision pursuant to item 6.2. shall apply accordingly if, for the reasons stated in item 6.1., even without contractual agreement of a fixed delivery date, further adherence to the contract cannot objectively be expected of the customer.

## **7. Prices and Terms of Payment**

- 7.1 The prices stated in the acknowledgment of order shall be authoritative. They shall be ex works and shall be exclusive of packaging, freight, postage, insurance or other value assurance and VAT.

Transport insurance is only provided on request and for the account of the customer. Half of the calculated price will be refunded for packaging returned carriage paid and undamaged.

- 7.2 In the case of sale by dispatch (item 5.1 above) the customer shall bear the transport costs ex warehouse as well as the costs of any transport insurance that the customer may require. If we do not invoice the transport costs actually incurred in individual cases, a flat rate for transport costs (excluding transport insurance) of up to 3% of the agreed net order value shall be deemed agreed. Any customs duties, fees, taxes and other public dues shall be borne by the customer.
- 7.3 The purchase price shall be due for payment within 14 days of invoicing and delivery or acceptance of the Goods. The deduction of a discount shall require special written agreement.



However, even within the scope of an ongoing business relationship we shall be entitled at any time to effect delivery, in whole or in part, only with advance payment. The respective reservation will be made with the acknowledgment of order at the latest.

- 7.4 Upon expiry of the above payment period, the customer shall be in default. The purchase price shall bear interest during the delay at the applicable statutory default interest rate. We reserve the right to assert further damage caused by the delay. With regard to merchants, our claim to the commercial maturity interest (Section 353 HGB [*German Commercial Code*]) shall remain unaffected.
- 7.5 If, after conclusion of the contract it becomes apparent that our claim to the purchase price is at risk due to the customer's inability to perform (e.g. if an application for the initiation of insolvency proceedings has been filed), based on statutory provisions we shall be entitled to refuse performance and - after setting a deadline, if applicable - to withdraw from the contract (Section 321 BGB). In the case of contracts on the production of non-fungible goods (custom-made items) we shall have the right to withdraw from the contract immediately; the statutory provisions on the waiver of deadlines shall remain unaffected.

## **8. Retention of Title**

- 8.1 We retain title to the Goods sold until payment of all current and future claims arising out of the purchase contract and an ongoing business relationship (secured claims) have been paid in full.
- 8.2 The Goods subject to retention of title may neither be pledged to any third party nor assigned as security before full payment of the secured claims. The customer must inform us immediately in writing if an application for the initiation of insolvency proceedings has been filed or in the event of third-party intervention (e.g. attachment) relating to the Goods owned by us.
- 8.3 If the customer acts in breach of the contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods based on retention of title. The demand for return of the Goods does not at the same time include the declaration of withdrawal; rather, we shall be entitled merely to demand the return of the Goods and to reserve the right to withdraw from the contract. If the customer does not pay the purchase price due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if such a deadline is dispensable under the provisions laid down by law.
- 8.4 The customer shall be entitled, subject to the revocation as per item (c) below, to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:
- a) The retention of title shall extend to the full value of the Products created by processing, mixing or combining our Goods, whereby we shall be deemed to be the manufacturer. If, our Goods are processed, mixed or combined with goods of third parties, and the right of ownership of the third parties remains in force, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the provisions applicable to the Goods subject to retention of title shall also apply to the Product created by such processing.

- b) As early as with the present, the customer hereby assigns to us as security the claims against any third party resulting from the resale of the Goods or the Product created in full or in the amount of our co-ownership share as per the preceding paragraph, if applicable. We accept the assignment. The obligations of the customer stipulated in item 2 above shall also apply with regard to the assigned claims.
- c) In addition to ourselves, the customer shall remain entitled to collect the claim. We undertake not to collect the claim ourselves for as long as the customer meets its payment obligations with respect to us, there is no defect in its capacity to perform and we do not assert retention of title by exercising a right pursuant to item 3 above. However, if such is the case, we shall be entitled to demand that the customer discloses to us both the assigned claims and the respective debtors, provides all information necessary for collection, hands over the respective documentation and informs the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the customer's authority to resell and process the Goods subject to retention of title.
- d) Upon request of the customer, we will release securities at our option, insofar as its realizable value exceeds the value of the claims to be secured by more than 10%.

## **9. Material Defects**

- 9.1 Unless otherwise provided for in the following, the provisions laid down by law shall apply to the rights of the customer in the case of material defects and defects of title (including incorrect delivery and short delivery as well as improper assembly/installation or faulty instructions). In all cases, the statutory special provisions for reimbursement of expenses in the event of end delivery of the newly manufactured goods to a consumer shall remain unaffected (supplier recourse as per Sections 478, 445a, 445b and/or 445c, 327 [5], 327u BGB) - unless an equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement.
- 9.2 Our liability for defects shall above all be based on the agreement made about the quality of the goods and the use provided for (including accessories and instructions). An agreement on the quality of the goods within this meaning shall be deemed all product descriptions and manufacturer's information that are the subject-matter of the individual contract or that have been published by us (in particular in catalogues or on our website) at the time of the conclusion of the contract. To the extent that the quality has not been agreed, it must be determined whether or not a defect exists based on the provisions laid down by law (Section 434 [3] BGB). Public statements made by the manufacturer or on behalf of the manufacturer, in particular in advertising or on the label of the Goods, shall take precedence with respect to statements of other third parties.
- 9.3 In the case of Goods with digital elements or other digital content, we shall only owe the provision and updating, if applicable, of the digital content insofar as this expressly results from a quality agreement as per item 2 above. In this respect, we assume no liability for public statements made by the manufacturer and any other third party.
- 9.4 On principle, we shall not be liable for any defects that the customer has knowledge of - or has no knowledge of due to gross negligence - at the time of conclusion of the contract (Section 442 BGB). Furthermore, the customer may only assert claims for defects on the proviso that the customer has met its statutory inspection and notification obligations (Sections 377, 381 HGB). In the case of building materials and other goods intended for incorporation or other further processing, an inspection must in any case be made immediately before processing. If a defect becomes apparent upon delivery,

during inspection or at any later date, we must be notified thereof in writing without delay. In any case, obvious defects must be reported in writing within 5 calendar days of delivery, and defects not recognizable during inspection must be reported in writing within the same time period from their detection. If the customer fails to carry out a proper inspection and/or report defects, our liability for the defect that has either not been reported at all or has not been reported in time or has not been reported in due form shall be excluded in accordance with the provisions laid down by law. In the case of Goods intended for incorporation, attachment or installation, this shall also apply if the defect that results from the breach of one of these obligations becomes apparent only after corresponding processing; in this case, in particular, the customer shall not be entitled to any claims for reimbursement of the corresponding costs ("dismantling and installation costs").

- 9.5 If the Item delivered is defective, we may first of all choose to effect supplementary performance by either remedying the defect (repair) or by delivering an item free from defect (replacement delivery). If the type of supplementary performance selected by us is unreasonable for the customer in individual cases, the customer may refuse such supplementary performance. Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.

In the event of replacement delivery, the customer must return the defective Delivery Item to us in accordance with the statutory provisions. We shall be entitled to a claim of transfer of ownership of the replaced parts.

- 9.6 Unless we have expressly confirmed the existence of a defect in writing, any repair or replacement delivery or any re-manufacturing will on principle at most be effected by us as a gesture of goodwill and ex gratia, i.e. without admitting legal responsibility.
- 9.7 We shall have the right to make the supplementary performance owed by us conditional on the customer paying the purchase price due. However, the customer shall have the right to retain part of the purchase price proportionate to the defect.
- 9.8 The customer must grant us the necessary time and opportunity for the supplementary performance owed by us and must, in particular, provide us with the rejected Goods for inspection and verification. In the case of replacement delivery, upon our request, the customer must return the defective Item to us in accordance with the provisions laid down by law; however, the customer shall have no entitlement to enforce a claim for the return of the defective Item. Supplementary performance shall include neither the disassembly, removal or deinstallation of the defective Item nor the incorporation, attachment or installation of an Item free from defects if we were not originally under the obligation to perform these services; any claims of the customer for compensation of the respective costs shall remain unaffected hereby ("dismantling and installation costs").
- 9.9 The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as dismantling and installation costs, if applicable, shall be borne or refunded by us in accordance with the statutory provisions and these GTCSD, if a defect actually exists. If such costs increase because the Goods were taken to a place other than the place of delivery such costs shall be borne by the customer. If no defect exists, we shall have the right to demand reimbursement from the customer for the costs incurred as a result of the unjustified demand for remedy of defect if the customer had knowledge of - or had no knowledge of due to gross negligence – that there was actually no defect.
- 9.10 Claims for defects by the customer shall be invalid if the customer or a third party has handled our Delivery Item improperly or has used the Delivery Item even though the customer or the third party



was aware of the defect. In such cases, liability on our part shall only be considered if the customer proves that the defects were not caused, neither in whole nor in part, by the aforementioned handling.

9.11 Claims for defects due to causes that cannot be attributed to a fault on our part shall be invalid, for example:

- if the deliveries have been improperly handled, stored, assembled, used, exposed to unsuitable chemical, electrochemical or electrical influences that have not been contractually specified or have been exposed to undue stress;
- if parts submitted are processed for chip and heat treatment, grinding, etc., if the defects result from the behavior of the material.

If parts submitted become unusable during processing due to material defects or other defects, we shall be reimbursed for the processing costs incurred.

If workpieces become unusable due to circumstances for which the customer is responsible, the customer shall take over the processing of similar replacement parts.

- if the deliveries have been altered in a manner not approved by us;
- in the event of changes, additions or modifications to the deliveries not agreed with us or if third-party accessories or spare parts are used - unless the customer provides proof that there is no causal link between the asserted defect and such measure.
- if the customer has not complied with the rules and regulations concerning the treatment, maintenance and care of the deliveries (e.g. operating instructions), as long as it cannot be ruled out that one of these instances has caused the occurrence of the defect.
- We do not provide any warranty for defects due to measures or constructions expressly requested by the customer or occurring on materials or products made available or provided by the customer or the use of which the customer has expressly requested contrary to our advice.
- The customer may not, in particular, assert any claims for defects in the following cases unless such measures have been carried out with our express written consent: natural wear and tear, excessive stress, unsuitable and improper use - in particular in breach of the information in the operating instructions or manual - faulty assembly or commissioning by our customer or any third party, subsequent wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials / replacement materials, unsuitable installation site, in particular installation surface, lack of stability or unsuitable securing of the power supply, chemical or electrical influences, harmful environmental conditions unknown to us, unless we are answerable for them.

9.12 Furthermore, claims for defects shall not arise if the software provided by the customer is combined with third-party software and such third-party software is not compatible with the software, nor if defects are based on non-contractual or improper use of the software by the customer. Neither shall claims for defects arise if the customer does not use the required system configuration, in particular infrastructure, hardware, operating system and database.

9.13 Claims for defects by the customer shall be excluded if the systems and other machines of the customer or a third party are not in technically sound and operational condition or are not compatible

with the deliveries, if the customer's technical systems such as supply lines, wiring, etc. are not in a technically sound and operational condition or are not compatible with the deliveries, insofar as the circumstance is the cause of the defect.

- 9.14 If a reasonable time period to be set by the customer for supplementary performance has expired without result or can be waived in accordance with the statutory provisions, the customer shall be entitled to withdraw from the purchase contract or to reduce the purchase price as provided for by law. However, in the event of a minor defect the right of withdrawal shall not apply.
- 9.15 Also in case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under item 11 hereof and shall be excluded in all other respects.

## **10. Property Rights**

- 10.1 In accordance with this Section 10, we warrant that the Delivery Item is free of industrial property rights or copyrights of any third party. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- 10.2 If the Delivery Item infringes industrial property rights or copyrights of any third party, we will, at our discretion and expense, modify or replace the Delivery Item in such a way that no third-party rights are infringed, but the Delivery Item continues to meet the contractually agreed functions, or provide the customer with the right of use by concluding a license agreement with the respective third party. If we fail to do so within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages of the customer shall be subject to the restrictions of Section 11 of these GTCSD.
- 10.3 In the event of infringements of rights by Products of other manufacturers delivered by us, we shall, at our discretion, assert our claims against the manufacturers and upstream suppliers for the account of the customer or assign our claims to the customer. In such cases, claims against us shall only apply in accordance with this Section 10 if the judicial enforcement of the above-mentioned claims against the manufacturers and upstream suppliers was unsuccessful or, e.g. due to insolvency proceedings, is futile.
- 10.4 In all other respects the provisions of Section 9 hereof shall apply mutatis mutandis.

## **11. Other Liability**

- 11.1 Unless otherwise provided for in these GTCSD and in the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the provisions laid down by law.
- 11.2 Within the scope of fault-based liability, we shall be liable for damages - irrespective of the legal grounds on which such claims are based - in the event of intent and gross negligence. In the event of slight negligence, we shall be liable, subject to statutory limitations of liability (e.g. due diligence in our own affairs; insignificant breach of duty), only

- a) for damage resulting from injury to life, limb or health,
- b) for damage resulting from the breach of essential contractual obligations (fundamental obligations going to the root of the contract the fulfilment of which is essential for the proper execution of the contract in the first place and the observance of which the contracting party regularly relies on and may rely on); in this case, however, our liability shall be limited to the compensation of the foreseeable damage that typically occurs.

11.3 The limitations of liability resulting from the above item 11.2. shall also apply with respect to any third party and in the event of breaches of duty by persons (also to their benefit) whose fault we are responsible for in accordance with statutory provisions. They shall not apply if a defect has been fraudulently concealed or if a guarantee for the quality of the Goods has been furnished and for claims of the customer under the Product Liability Act.

11.4 The customer may only withdraw from the contract or give notice of termination based on a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the customer (in particular pursuant to Sections 650, 648 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

11.5 If we provide technical information or act in an advisory capacity and if this information or advice is not part of the contractually agreed scope of performance owed by us, this shall be done free of charge and to the exclusion of any liability.

11.6 The interface responsibility for integrating our deliveries and services into any potential systems of the customer shall remain with the customer.

11.7 Liability for damage caused by data loss or hardware malfunctions at the customer site caused by incompatibility of the customer's existing hardware and software components with our deliveries and services shall be excluded by us in the absence of responsibility. Neither shall we be liable for system malfunctions that may occur due to existent misconfigurations or older driver software that has not been completely removed.

## **12. Set-off and Retention**

12.1 The customer may only offset counterclaims that are undisputed or recognized by non-appealable judgment.

12.2 The customer may only enforce a right of retention if its counterclaim is based on the same contractual relationship and is undisputed or recognized by non-appealable judgment.

12.3 In the event of defects in the delivery, the counterclaims of the customer, in particular in accordance with item 9.2, sentence 2, of these GTCSD, shall remain unaffected.

## **13. Title and Copyright**

We reserve title and copyrights to all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogs, models, prototypes, tools, software and similar records, data and aids made available to the customer. The customer must not make these items accessible to any third party, disclose them, use them itself or by any third party or reproduce them without our express written

consent. At our request, these items must be returned to us without delay and in full, and any copies made thereof shall be destroyed if they are no longer required in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

#### **14. Use of Software**

If software is part of the scope of delivery the customer shall be granted the non-exclusive right of use of the software delivered including its documentation. It shall be made available for use on the Delivery Item intended for this purpose. Use of the software on more than one system shall not be permitted.

The customer shall only be entitled to duplicate, rework, translate or convert the software from object code to source code within the scope permitted by law (Sections 69 a et. seq. of the German Copyright Act). The customer has no claim to the handover and/or use of the source code of the software. The customer undertakes not to remove any manufacturer's information – in particular copyright notices – or to change it without our prior express consent.

All other rights to the software and the documentation, including copies, shall remain with us or with the software supplier. The granting of sublicenses shall not be permitted.

#### **15. Goods Provided [by the Customer]; Goods Inspection**

15.1 Parts submitted for processing and assembly must be sent CTP (Incoterms) and, where required, well packed, enclosing a consignment note and delivery note. A dispatch note must be sent to us, stating the customer's order number.

15.2 The customer must deliver the goods provided no later than 14 days before the confirmed delivery date. The article description, quantity and the order number of the order for which the goods are provided must be clearly identifiable to enable unequivocal assignment to the respective acknowledgment of order. Goods provided without labelling will be returned to the sender.

15.3 Upon receipt, we only inspect the goods provided for external damage of packaging, boxes and the goods themselves. We will inform the customer of any defects which may be detected within 10 calendar days.

15.4 Goods provided, in particular engines, will not be painted.

15.5 If damage occurs to the goods provided by the customer during the manufacturing process as a result of a breach of the obligations stipulated above, we shall not be liable for this. If any damage or loss is incurred by us on account of this the customer shall be obliged to provide compensation thereof.

15.6 We do not check the interoperation of goods provided, in particular engines and gearboxes. Only the interoperation of the gearbox with an engine is checked by us. We shall not be liable for defective or incomplete deliveries or for the interoperation of the customer's supplies with our services/deliveries.

15.7 We assume no warranty for goods provided.

#### **16. Statute of Limitation**

16.1 Unless otherwise stipulated in the following and in derogation from Section 438 [1], number 3, BGB, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance.

In single-shift operation, claims for defects by the customer shall become statute-barred 24 months after delivery or, if acceptance is required, from acceptance.

16.2 However, if the Goods are a building or an object that, in conformity with its customary manner of utilization, has been used for a building and has caused its defectiveness (building material), claims will become statute-barred in 5 years from delivery in accordance with the statutory provision (Section 438 [1], no. 2, BGB). Any additional special provisions on limitation periods laid down by law shall remain unaffected (in particular Section 438 [1], no. 1, [3], Sections 444, 445b BGB).

16.3 The aforesaid limitation periods stipulated by sales law shall also apply to contractual and non-contractual claims for damages by the customer based on a defect of the Goods – unless the standard statutory limitation periods (Sections 195, 199 BGB) would, in an individual case, result in shorter limitation periods. However, claims for damages of the customer in accordance with item 11.2., sentence 1 and sentence 2 (a) above as well as claims under the Product Liability Act shall become statute-barred in accordance with the statutory limitation periods exclusively.

## **17. Confidentiality**

17.1 The contracting parties undertake to keep confidential the terms and conditions of the order execution as well as any other information made available to them for this purpose, including but not limited to information of a technical and commercial nature, intentions, experience, findings, designs and records, which become known to them as a result of the collaboration under this contract (collectively referred to as "Confidential Information"), with the exception of information which is in the public domain, for a period of 3 years after conclusion of the contract and not to make such information accessible to any third party, to protect it from third-party access and not to make it the subject-matter of their own property-right application. Affiliated companies of the contracting party within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) shall not be deemed to be third parties.

17.2 Furthermore, the contracting parties undertake to keep confidential all and any business, operational or technical matters of the respective other contracting parties that have become known or will become known to them in connection with the delivery or service, even beyond the term of the contract.

17.3 The foregoing obligations shall not apply to such Confidential Information that was already known prior to its disclosure under this agreement, was independently developed or otherwise lawfully obtained by the other contracting party, or that is generally known or becomes part of the public domain without breach of these provisions.

17.4 The contracting parties shall ensure in an appropriate manner that the employees, freelancers and subcontractors engaged by them in the execution of the contract also maintain the above confidentiality.

17.5 After termination of this contract, the Confidential Information contained in records etc., including all and any copies thereof, that are in the possession or under the control of one of the contracting parties, shall be returned by the latter to the other contracting party upon request in full and without



delay, unless such is barred by agreed or statutory retention obligations. Excluded herefrom shall also be Confidential Information contained in records etc., including all copies thereof, and other Confidential Information the destruction or return of which is technically not possible (e.g. because such Confidential Information has been saved as a backup file by an automated electronic backup system); this shall also include the technically necessary retention of master data (e.g. personnel or customer numbers) required to establish a link to the archived information.

17.6 In other respects, the provisions for the protection of trade secrets (implemented in Germany by the Trade Secrets Act and in the other EU member states by implementing Directive 2016/943) as well as the agreements made in non-disclosure agreements shall apply to the handling of trade secrets.

## **18. Compliance with Statutory Provisions**

18.1 The customer undertakes to comply with the statutory provisions applicable and relevant to it in connection with the contractual relationship. This shall apply in particular to anti-corruption and money laundering laws as well as antitrust, labor and environmental protection regulation, Directive 2002/95/EC (RoHS) and the REACH Regulation (EC) 1907/2006.

18.2 Customers with registered office in the European Union shall ensure that the goods delivered by them meet all relevant requirements for placing them on the market in the European Union. The same shall apply to customers with registered office outside the European Union but in the European Economic Area. Upon request, the customer must prove conformity to us by submitting suitable documents.

## **19. Export Control / Product Approval / Import Regulations**

19.1 In the event of export, the customer shall be responsible for compliance with the export control regulations applicable to the Delivery Items. If the customer breaches any export regulations, we shall be entitled to withdraw from the contract.

19.2 If the delivery includes an export by us that is subject to approval, the contract shall only be deemed concluded upon receipt of the respective approval. The customer undertakes to provide all documents required for approval.

19.3 The customer agrees to provide where-used lists and/or end-user confirmations upon request, even if these are not officially requested.

19.4 In the case of export to non-EU countries / transfer to EU member states delivery shall only be exempt from German VAT upon receipt of a legally valid export certificate.

19.5 If time periods or deadlines cannot be met due to delays in export control, the delivery period shall be extended and the delivery date shall be adjusted accordingly.

## **20. Place of Performance, Place of Jurisdiction, Applicable Law**

20.1 Place of performance for delivery and payment shall for both parties be our principal place of business exclusively.

- 20.2 Exclusive place of jurisdiction - also internationally - for all and any disputes arising out of the contractual relationship, either directly or indirectly, including its creation and effectiveness, shall for both parties be our principal place of business in Pforzheim provided that the customer is a merchant within the meaning of the German Commercial Code with seat in the European Union, Iceland, Norway or Switzerland when the proceedings are initiated. The same shall apply if the customer is an entrepreneur within the meaning of Section 14 BGB. In all cases, however, we shall be also entitled to take legal action at the place of performance of the delivery obligation in accordance with these GTCSD or in the event of an individual agreement taking precedence, or at the general place of jurisdiction of the customer. Any statutory provisions taking priority, in particular with regard to exclusive jurisdiction, shall remain unaffected thereby.
- 20.3 If the above item 20.2 is not applicable, all and any legal disputes arising out of the contractual relationship, including its creation and effectiveness, shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.
- 20.4 The contractual relationship shall be governed by German law exclusively, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

Effective as of May 2022