

GENERAL TERMS OF DELIVERY AND PAYMENT (GTC)

1. General

All our deliveries and any services relating to the same are performed exclusively in accordance with these Conditions. These General Terms and Conditions however only apply if the Customer is an entrepreneur (Sec. 14 of the German Civil Code ("BGB")), a legal person under public law or special assets under public law. Any references by the Customer to his own Terms and Conditions of Business are hereby rejected. These Conditions also apply to each new transaction. Deviations from these Conditions require our express written approval.

2. Offer and acceptance

Our offers are not binding but should instead be regarded as an invitation to the Customer to make us an offer. The Contract comes into effect by virtue of the Customer's offer and our written acceptance of such offer. Invoices or computer printouts designated as binding by us shall constitute written acceptance of an offer. If these differ from the Customer's offer, they shall be regarded a new non-binding offer from us.

Agreements made by telephone or verbally or with our representatives only become legally valid following written confirmation from us.

3. Product quality, documents, guarantees

3.1 The quality of our products is ultimately described by performance features agreed in writing (e.g. specifications, labels and other information). A guarantee of suitability for a particular application or use is provided only to the extent agreed in writing. In addition, the risk of suitability for an application is borne exclusively by the Customer. We assume no liability for performance features other than those expressly agreed and the quality of the product otherwise. We reserve the right – provided this is not unreasonable for the Customer – to make standard commercial or technically unavoidable deviations in physical or chemical data, including colours, formulations, processes or the use of raw materials, as well as quantities ordered.

3.2 Properties of specimens and samples form part of the Contract only if expressly agreed as quality of our products.

3.3 We reserve the right of ownership and copyright of cost estimates, drafts, drawings and other documents, including those in electronic form. They may only be made accessible to third parties with our consent. If we have supplied products in accordance with the Customer's technical specifications, the Customer guarantees that no third-party protective rights are infringed. If third parties, invoking protective rights, forbid us from manufacturing or supplying such products, we shall be entitled – with no obligation to examine the legal situation – to suspend all further activity in this respect and to charge compensation for any loss. The Customer shall furthermore indemnify us without delay against all third-party claims arising in connection with the Customer's technical specifications.

3.4 Tools shall remain our property even if the Customer has paid all or some of their manufacturing costs.

3.5 In the case of make-and-hold orders we shall be entitled to purchase material for the entire order and to manufacture the entire ordered quantity immediately. Accordingly, any modifications requested by the Customer after the order has been placed can only be entertained if the Customer bears any additional costs incurred.

3.6 Guarantees must be detailed and explicitly designated as such in writing.

4. Advice

Any advisory services are provided to the best of our knowledge. Statements and information concerning the suitability and use of our products do not free the Customer from carrying out his own investigations and tests, in particular regarding their suitability for the intended purpose.

5. Delivery and delivery time

5.1 All shipments are transported at the Customer's expense and risk, generally ex works but otherwise from any shipping location. If the Customer has requested a different delivery clause, the latter shall be interpreted on the basis of the version of INCOTERMS applicable on the date of conclusion of the Contract. The Customer shall bear any consequent additional costs and risks. The Customer must report any transport damage in writing directly to the shipping company within the particular period prescribed, with a copy to us.

5.2 Delivery time indications are only approximate and non-binding – even if a delivery date has been agreed with the Customer – unless a fixed delivery date has expressly been agreed in writing. The delivery deadline is deemed fulfilled if, by this date, the shipment has left our works, we have notified the Customer that we are ready to ship, or the prerequisites for any other shipping arrangement are in place. The delivery period does not commence until the Customer has correctly fulfilled his obligations, such as the provision of technical data and documents, authorisation and any agreed down-payment or payment guarantee.

5.3 We are entitled to make part-deliveries in accordance with the project. Even if part-deliveries have not been contractually agreed, we are entitled to make part-deliveries as production

progresses. In all cases, make-and-hold orders and split deliveries require written delivery-time agreements.

5.4 All returns must be agreed with us in advance.

6. Prices and payment

6.1 Our contractually agreed prices are in EUROS ex delivery works and are subject to statutory VAT. Our prices do not include taxes, customs duties and other official duties outside Germany. If prices have not been agreed on conclusion of the Contract, our prices applicable on the date of delivery shall apply. Special packaging is charged at cost.

6.2 We may change prices accordingly in the event of unforeseen changes in the costs of raw materials, labour, energy and other costs outside our control.

6.3 Payment of our invoices is due, unless agreed otherwise, within 14 days of the invoice date and must be paid in full.

6.4 We are not obliged to accept drafts, cheques and other promissory notes. They will only be accepted on account of performance.

6.5 The date of receipt of payment is held to be the date on which the payment due is credited to one of our accounts without reservation. In the event of a failure by the Customer to pay by the due date we shall be entitled to charge interest on arrears at a level, in the case of invoicing in euros, of 8% above the base rate published by the Deutsche Bundesbank on the date on which the delay occurred or, in the case of invoicing in any other currency, 8% above the discount rate applicable at the time from the highest banking institution in the country in whose currency the invoice was made out. This does not restrict the right to a further claim for compensation.

6.6 Furthermore, in the event of a failure by the Customer to pay by the due date, we may elect to bring forward the due date of any other outstanding payment instalments and to make further deliveries under this Contract or any other contracts dependent on deposition of an advance security or making payment with delivery.

6.7 The Customer may only set off our claims against an undisputed or legally established counterclaim. He may only invoke a right of retention if and to the extent that his counterclaim is based on the same contractual relationship.

6.8 Irrespective of the place of delivery of the goods or documents, the place of fulfilment of the Customer's payment obligations shall be our registered office.

7. Customer's rights in the event of defects

7.1 The Customer's rights in the event of defects require that the Customer has properly met his examination and notification obligations in accordance with §377 HGB (Commercial Code).

7.2 Apparent defects in our delivery items shall be reported to us promptly and defects which are evident upon proper inspection at latest within two weeks of receipt, but in any case before installation, further processing or resale. Other defects shall be reported to us within two weeks of their discovery. The report must be in writing and must accurately indicate the nature and extent of the defects. If the Customer fails to send a notice of defects the delivery shall be considered approved.

7.3 In the event of a complaint, the Customer shall promptly give us the opportunity to investigate, and in particular the delivery items in question shall be made available to us upon request and at our expense. In the case of unjustified complaints, we reserve the right to charge the Customer for all costs arising in connection with transport and investigation.

7.4 No claims can be entertained in respect of defects attributable to non-compliance with operating, servicing or installation instructions, unsuitable or incorrect use or storage, deficient or negligent treatment or installation, normal wear and tear or modifications to the delivery items carried out by the Customer or third parties. If not all products of the same ESM part number are simultaneously replaced in a wind turbine, machine, vehicle, (tidal) power plant, building or test rig, our defects liability is dispensed with for the products exchanged.

7.5 If our delivery item is deficient and if the Customer has properly notified us of this in accordance with clauses 7.1 and 7.2 above we shall be liable towards the Customer for material defects including the absence of characteristics explicitly guaranteed and the breach of warranties as follows:

a) We can choose either to rectify the defect or to provide the Customer with a defect-free replacement. In the case of replacement, the Customer shall return the faulty supply to us at our request.

b) We reserve the right to make two attempts to supply a satisfactory replacement. If the replacement is unsuccessful or unacceptable to the Customer, the Customer can either withdraw from the Contract or request a reduction in the contractually agreed price. The Customer has no such claim in the case of merely minor defects.

c) Clause 8 shall apply in respect of claims for compensation and reimbursement of futile expenses

arising from a defect.

7.6 Defect claims by the Customer are subject to a limitation period of one year from the passing of the risk. Instead of this one-year period, the statutory limitation periods shall apply in the following cases:

- a) in the event of liability because of wilful intent,
- b) in the event of fraudulent concealment of a defect,
- c) for claims relating to losses from fatality, physical injury or damage to health arising from a negligent breach of duty on our part or a wilful or grossly negligent breach of duty by one of our legal representatives or agents.
- d) If we include into the delivery of our own products tools, electrical systems, fastening material or mounting devices any liability relating to defects of these goods shall also be time-barred one year from the passing of the risk, irrespective of the warranty for the ESM products. For ESM products returned after expiry of the liability period, the same limitation term shall apply with regard to product inspection, parts replacement or repair. However, the statutory periods of limitation shall always apply here, too, in cases of foregoing paragraphs a) to c).
- e) If not all products of the same ESM part number are simultaneously replaced in a wind turbine, machine, vehicle, (tidal) power plant, building or test rig, our defects liability is dispensed with for the products exchanged.

7.7 Claims for a reduction in price and the exercise of a right to withdrawal shall be excluded if the limitation period for the claim for replacement has expired.

7.8 A claim for compensation owing to delay, non-performance or the exercising of a right to withdrawal requires the Customer to have granted us with a reasonable period of grace (at least 4 weeks) and that this has expired without success.

8. Liability

8.1 We are generally liable for damages and for reimbursement of wasted expenditure as defined in §284 BGB (German Civil Code) in accordance with statutory provisions. In the case of plainly negligent infringement of essential contractual obligations, our liability shall nevertheless be restricted to compensation for typical losses that can be predicted depending on the nature of the supply; in the case of plainly negligent infringement of non-essential contractual obligations, we shall have no liability. The above liability restrictions do not apply in the case of losses arising from fatality, physical injury or damage to health.

8.2 If and insofar as intellectual property rights of a third party, which are valid in Germany and published at the time of delivery, are infringed by the delivery of our article of sale, we shall be liable for infringement of said third-party rights provided that our article of sale as delivered is directly concerned and is used as agreed. This shall not apply if we have produced the article of sale pursuant to customer's specifications, drawings or models and do not know or do not have to know, that intellectual property rights are infringed in context with the article of sale developed by us. This shall not apply either if the article of sale is installed in any kind of machinery or plant by or on behalf of our Customer, which is as such and per se subject of intellectual property rights of a third party. In such cases, our Customer shall be liable for the infringement of intellectual property rights, which have occurred or shall occur. He shall indemnify us in this regard from all third-party claims, and hold us harmless from all arising expenses and charges.

8.3 The Customer undertakes to notify us without delay of possible or alleged infringements of industrial property rights of which he becomes aware.

8.4 In cases other than those mentioned here, we shall have no liability.

9. Insolvency

9.1 An application for institution of insolvency proceedings against the Customer's assets or for institution of corresponding foreign proceedings, the becoming known of a substantial deterioration in financial circumstances, a change in ownership of the Customer's business in connection with payment difficulties, or payment default by the Customer shall entitle us to suspend supplies immediately and to decline further performance of current contracts so long as the Customer fails to provide consideration or furnish reasonable security at our request. In these cases, outstanding receivables shall fall due for immediate payment.

9.2 In the above-mentioned cases, the Customer's authority for resale under clause 11.4 and for calling in of debts assigned to us as per clause 11.5 shall lapse ipso jure.

10. Force majeure

Should events or circumstances outside our control (such as, for example, acts of God, war, labour dispute, shortages of raw materials and energy, transport and operational disruptions, fire and explosion damage and sovereign orders) reduce the availability of the supply from the works from which we deliver it, so that we are unable to fulfil our contractual obligation, we shall be (a) released from our contractual obligations for the duration of the disruption and to the extent of its effects and (b) not obliged to procure the supply from third parties.

Sentence 1 also applies if the events and circumstances make transaction of the business in question permanently uneconomic for us or if they exist at our suppliers. If the events described in sentence 1 persist for longer than six months, we shall be entitled to withdraw from the Contract.

11. Reservation of ownership and securities

11.1 The goods shall remain our property until all receivables (including qualified receivables) from the business relationship with us have been paid in full and until drafts and cheques issued in that context have been cashed. In this connection, all deliveries shall be regarded as a linked supply transaction. In the case of a current account, retention of title shall always be regarded as security for our receivables balance.

11.2 In the event the Customer processes the goods delivered by us, we shall be considered manufacturer and shall directly acquire sole title to the newly produced goods. If the processing involves other materials, we shall directly acquire joint title to the newly produced goods in the proportion of the invoice value of the goods delivered by us to the invoice value of the other materials.

11.3 If the goods delivered by us are combined or blended with material owned by the Customer, which has to be considered the main material, it is deemed to be agreed that the Customer transfers to us the joint title to such main material in the proportion of the invoice value of the goods delivered by us to the invoice value (or, if the invoice value can not be determined to the market value) of the main material. The Customer holds in custody for us any sole or joint ownership originating therefrom at no expense for us and shall insure those goods against all common risks.

11.4 Until revoked, the Customer shall be entitled, within the context of his ordinary business activities, to sell, process, mix or combine our goods with other goods. He already assigns to us all claims arising from the sale of goods to which we reserve the right of retention when concluding the sales agreement with us. Should we have acquired joint title in case of processing, combination or on other legal grounds, such assignment to us takes place in the proportion of the value of the goods delivered by us with retention of title to the value of the goods of third parties with retention of title. Sale shall include use for the fulfilment of contracts for work or work and materials.

11.5 The Customer shall be entitled to collect assigned receivables so long as we have not revoked this authorisation. The right to resale and to collect receivables will only be revoked by us if our Customer fails properly to meet his contractual obligations. It shall lapse even without express revocation if the Customer stops his payments. At our request, the Customer shall without delay provide in writing all necessary information on the inventory of goods owned by us and on the claims assigned to us. The Customer shall identify on the packaging our title to the goods and shall notify his customers of the assignment of the claims to us.

11.6 For as long as our retention of title remains in place, the Customer shall neither assign nor pledge the goods or any items manufactured therefrom as security. A pledge or other detriment to our right of ownership by third parties shall be notified to us in writing by the Customer without delay, and our right of ownership shall be confirmed in writing both to the third parties and to us.

11.7 In the event of breach of contract by the Customer, in particular in the event of payment default, we shall be entitled to recover our goods; the Customer hereby agrees to recovery in such a case. Recovery only represents withdrawal from the Contract if expressly stated by us. The costs incurred by us for the recovery, particularly the transport costs, shall be borne by the Customer. Surrender of recovered goods without express declaration of withdrawal can only be demanded by the Customer after payment of the purchase price and of all costs in full.

11.8 If our securities in accordance with the above clauses exceed our receivables by more than 20%, we will release securities of our choice at the request of our Customer.

11.9 If the above-mentioned articles are pledged as security by the Customer or seized from him, the Customer shall immediately notify us in writing.

12. Place of fulfilment, jurisdiction and applicable law

12.1 The place of fulfilment for all claims arising from the business relationship, in particular from our supplies, shall be the location of the works from which the delivery is made.

12.2 The place of jurisdiction for all claims arising from the business relationship, in particular from our supplies, shall be Darmstadt. This jurisdiction also applies to disputes concerning the origin and validity of the contractual relationship. However, we shall also be entitled at our discretion to bring an action against the Customer before courts competent for the Customer's registered office. In relation to Customers whose registered office is outside Germany, we shall be entitled to have differences of opinion or disputes arising from or in connection with the business relationship ruled upon, excluding usual legal channels, in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution by one or three arbitrators appointed in accordance with these rules. The court of arbitration sits in Zurich. The arbitral proceedings will be conducted in German. The arbitration verdict is final and is binding on the parties involved.

12.3 Exclusively German law including the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

13. Assignment

The Customer requires our written consent for assignment of his claims arising from the contract.

14. Note

In order to achieve optimum functioning and a long service life of the rubber/metal components used, we recommend that the DIN 7716 and ISO 2230 guidelines for the storage, maintenance and cleaning of rubber products be noted.