

## **General Terms and Conditions of Sale, Delivery and Payment of SP Antriebstechnik GmbH, Lilienweg 1, 8724 Spielberg, Austria**

### **1 Area of application**

These Terms and Conditions of Sale apply to entrepreneurs, legal entities under public law and special funds under public law.

Our deliveries and services are provided exclusively on the basis of the following terms and conditions.

Any terms and conditions of business of the customer which are not expressly accepted by us shall not be valid.

Contractual performance on our part shall not be deemed to be consent to contractual terms and conditions that deviate from our terms and conditions.

### **2 Offer and closing**

2.1 Our offers are subject to change and non-binding unless we have expressly designated them as binding in text form. Declarations of acceptance by the purchaser shall only become binding through our textual order confirmation. We shall endeavour to accept the purchaser's orders within 5 days of receipt of the order.

2.2 We reserve unrestricted property and copyright exploitation rights to cost estimates, drawings and other documents; they may not be made accessible to third parties. Drawings and other documents belonging to offers must be returned to us immediately upon request if the order is not placed with us.

2.3 The information and illustrations contained in brochures and catalogues are approximate values customary in the industry unless they have been expressly designated by us as binding.

### **3 Long-term and call-off contracts, price adjustment**

3.1 Unlimited contracts can be terminated with a notice period of 3 months.

3.2 If a significant change in wage, material or energy costs occurs with long-term contracts (contracts with a term of more than 12 months and unlimited contracts), each contracting party shall be entitled to demand an appropriate adjustment of the price taking these factors into account.

3.3 If a binding order quantity has not been agreed on, we shall base our calculation on the non-binding order quantity (target quantity) expected by the partner for a certain period of time. If the partner purchases less than the target quantity, we are entitled to increase the unit price appropriately. If the partner purchases more than the target quantity, we shall reduce the unit price appropriately, provided that the partner has given notice of the additional requirement at least 6 months before delivery.

3.4 In the case of call-off delivery contracts, binding quantities are to be notified to us through call-off at least 6 months before the delivery date, unless agreed otherwise. Additional costs caused by a delayed call-off or subsequent changes to the call-off by our partner regarding time or quantity shall be borne by him; our calculation shall be decisive in this respect.

### **4 Confidentiality**

4.1 Each contracting party shall use all documents (including samples, models and data) and knowledge which it obtains from the business relationship only for the jointly pursued purposes and shall keep them secret from third parties with the same care as its own corresponding documents and knowledge if the other contracting party designates them as confidential or has an obvious interest in keeping them secret.

4.2 This obligation shall commence from the first receipt of the documents or knowledge and shall end 36 months after the end of the business relationship.

4.3 The obligation does not apply to documents and knowledge which are generally known or which the contracting party was already aware of at the time of receipt without the contracting party being obliged to maintain secrecy, or which are subsequently transmitted by a third party authorised to disclose them, or which are developed by the receiving contracting party without exploitation of documents or

knowledge of the other contracting party that are to be kept secret.

## **5 Samples and means of production**

5.1 The manufacturing costs for samples and means of production (tools, moulds, templates, etc.) shall be invoiced separately from the goods to be delivered, unless agreed otherwise. This also applies to means of production that have to be replaced due to wear and tear. They are payable with the sending of the outturn sample, or, if such has not been requested, with a period of 14 days without deduction.

5.2 The costs for maintenance and proper storage as well as the risk of damage or destruction of the means of production shall be borne by us for the period of the calculated service life. The costs for requested tool changes as well as for renewal shall be borne by the customer.

5.3 If the customer suspends or terminates the cooperation during the production period of the samples or means of production, all production costs incurred until then shall be borne by the customer.

5.4 The means of production shall remain in our possession at least until the delivery contract has been settled, even if the customer has already paid for them. Thereafter, the Purchaser shall be entitled to demand the surrender of the means of production if an amicable agreement has been reached on the time of surrender and the Purchaser has fully complied with its contractual obligations. Furthermore, the technical knowledge of the manufacturer embodied in this tool shall be adequately remunerated in addition to the full tool costs.

5.5 We shall store the means of production free of charge for three years after the last delivery to our customer. Thereafter, we shall request our customer in writing to comment on the further use within 6 weeks. Our obligation to keep the means of production in safe custody ends if no comments are made within these 6 weeks or no new order is placed.

5.6 Customer-related means of production may only be used by us for subcontracting to third parties with the prior written consent of our customer.

## **6 Pricing**

6.1 Unless agreed otherwise, the prices shall apply "ex factory", excluding packaging, freight, postage and insurance. These shall be invoiced separately.

6.2 Unless expressly stated otherwise, all prices listed by us are to be understood excluding the value added tax (VAT). When being invoiced the the statutory value added tax shall be added to these prices.

6.3 If no justified objection to our invoice is raised in writing within 4 weeks, it shall be deemed approved in any case.

6.4 We shall also be expressly entitled to make partial invoices, provided that the service is rendered in parts.

## **7 Terms of payment**

7.1 All invoices are due for payment within 30 days after the invoice date without deduction.

7.2 If we have indisputably delivered partially defective goods, our customer shall nevertheless be obliged to make payment for the defect-free part unless the partial delivery is of no interest to him. Other than that, the customer may only offset with counterclaims that have become res judicata or are undisputed.

7.3 If the target is exceeded, we shall be entitled to charge interest on arrears at the rate charged to us by the bank for overdrafts, but at least 9 percentage points above the respective base rate of the European Central Bank.

7.4 In the event of default in payment, we may suspend the performance of our obligations until the payments have been received, after having notified the Purchaser in writing.

7.5 Cheques are only accepted by agreement and only on account of performance.

7.6 If it becomes apparent that our claim for payment is jeopardised by the customer's inability to pay after conclusion of the contract we may refuse performance and set the customer a reasonable deadline within which he must pay simultaneously with delivery or provide security. In the event of refusal by the

customer or unsuccessful expiry of the deadline, we shall be entitled to withdraw from the contract and demand compensation for damages.

## **8 Delivery**

8.1 Delivery periods are always non-binding and approximate. In case of doubt, the delivery period begins with the submission of the order confirmation by us. Compliance with the delivery period shall be subject to the timely receipt of all documents to be provided by the customer, the timely receipt of all official approvals and releases that may be required, the fulfilment of all contractual obligations of the customer, in particular agreed terms of payment. If these preconditions are not fulfilled in time, the delivery period shall be reasonably extended. This shall not apply if we are responsible for the delay.

8.2 Unless agreed otherwise, we deliver "ex factory". Decisive for compliance with the delivery date or the delivery period is the notification by us of readiness for dispatch or collection.

8.3 Partial deliveries are permissible to a reasonable extent. They shall be invoiced separately.

8.4 Production-related excess or short deliveries of 15 % are permissible. The total price shall change in accordance with their scope.

8.5 In cases of force majeure and in the case of all events beyond our will and control, such as natural disasters, mobilisation, war, riot, strike and lockout, official import and export restrictions, unforeseen hindrances in production or deliveries - at our premises or those of our subcontractors - the delivery period shall be deemed to be reasonably extended. We shall inform the customer of the beginning and end of such circumstances as soon as possible.

8.6 If we are in default and the customer suffers damage as a result, the customer shall be entitled to demand a compensation for the delay. This shall amount to 0.5 % for each full week of delay, in total, however, to a maximum of 5 % of the value of that part of the overall performance which cannot be used on time or in accordance with the contract as a result of the delay.

8.7 Both claims for damages by the purchaser due to delay in performance and claims for damages in lieu of performance exceeding the limits specified in clause 8.6. are excluded in all cases of delayed delivery, after expiry of any deadline set for us for

delivery. This shall not apply in cases of intent, gross negligence or in cases of mandatory liability for injury to life, body or health. The customer may only withdraw from the contract within the framework of the statutory provisions if we are responsible for the delay in delivery.

8.8 At our request, the customer is obliged to declare within a reasonable period of time whether he will withdraw from the contract due to the delay in delivery or whether he will insist on delivery.

## **9 Shipping and transfer of risk**

9.1 Goods notified as ready for dispatch must be taken over by the orderer without delay. Otherwise, we shall be entitled to dispatch them at our own discretion or to store them at the expense and risk of the customer.

9.2 In the absence of a special agreement, we shall choose the means of transport and the transport route.

9.3 The risk shall pass to the customer when the goods are handed over to the railway, the forwarding agent or the carrier or when storage begins, but at the latest when the goods leave the factory or the warehouse.

## **10 Retention of title**

10.1 We retain title to the delivered goods until all claims arising from the business relationship with the purchaser have been settled.

10.2 The customer is entitled to sell these goods in the ordinary course of business as long as he fulfils his obligations from the business relationship with us in time. However, he may neither pledge the reserved goods nor assign them as security. He is obliged to secure our rights in the credited resale of the reserved goods.

10.3 In the event of default, we shall be entitled to assert our rights under the retention of title. It is agreed that the assertion of the retention of title does not constitute a withdrawal from the contract unless we expressly declare the withdrawal from the contract.

10.4 All claims and rights arising from the sale or any leasing of goods to which the customer may be entitled and to which we have property rights are hereby assigned to us by the customer as security. We hereby accept the assignment.

10.5 Any processing or treatment of the goods subject to retention of title shall always be carried out by the customer on our behalf. If the goods subject to retention of title are processed or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the other processed or mixed items at the time of processing or mixing. If our goods are combined or inseparably mixed with other movable objects to form a uniform object and if the other object is to be regarded as the main object, the customer shall transfer co-ownership to us on a pro rata basis insofar as the main object belongs to him. The customer shall keep the property or co-property for us. In all other respects, the same shall apply to the item created by processing or combining or mixing as to the goods subject to retention of title.

10.6 The customer must inform us immediately of any enforcement measures by third parties against the goods subject to retention of title, against the claims assigned to us or against other securities, handing over the documents necessary for an intervention. This also applies to impairments of any other kind.

10.7 If the value of the existing securities exceeds the secured claims by more than 20 per cent in total, we shall be obliged to release securities of our choice to this extent at the request of the customer.

## **11 Warranty and liability**

11.1 The quality of the goods is exclusively based on the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples, etc. of our partner, the latter shall assume the risk of suitability for the intended use. The time of transfer of risk is decisive for the contractual condition of the goods. The goods manufactured by us shall only be inspected on a random sample basis. A 100% inspection of the goods requires an explicit written agreement.

11.2 We provide no warranty for material defects caused by unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper modifications or repair work carried out by the purchaser or third parties without our consent. The same applies to defects which only insignificantly reduce the value or suitability of the goods. The transferee must always prove that the defect was already present at the time of handover.

11.3 The goods must be inspected immediately after delivery. Defects discovered in the course of such inspection shall also be notified without delay, but no later than 7 calendar days after delivery, stating the nature and extent of the defect. Hidden defects shall be notified immediately after their discovery. If a notice of defect is not made or not made in time, the goods shall be deemed to have been approved. The assertion of warranty claims or claims for damages as well as the right to contest errors due to defects shall be excluded in these cases. Further obligations of our contractual partner according to §§ 377 ff. UGB remain unaffected.

Reimbursement of costs is excluded insofar as the expenses increase because the goods have been taken to another location after our delivery, unless this corresponds to the intended use of the goods. Justified complaints do not entitle the customer to withhold the entire invoice amount, but only an appropriate part of it. As long as the customer does not fulfil his payment obligations towards us to an extent that corresponds to the defect-free part of the performance, we can refuse the substitute performance.

11.4 Apart from those cases in which the right to rescission (termination of the contract) is due by law, we reserve the right to fulfil the warranty claim at our discretion by improvement, replacement or price reduction.

11.5 Claims for damages in cases of slight negligence are excluded; this does not apply to personal injury. Apart from personal injury, we shall only be liable if gross negligence is proven against us by the injured party.

11.6 The provisions stated above shall also apply in the event of delivery of a different item or a smaller quantity.

Any recourse claims made against us by contractual partners or third parties under the title of "product liability" as defined by the Product Liability Act (PHG) shall be excluded unless the party entitled to recourse proves that the defect was caused in our sphere and was at least due to gross negligence.

11.8 The warranty period for movable items is 6 months, for immovable items 2 years starting at the date of delivery/service. Claims for compensation shall become statute-barred 6 months after knowledge of the damage and the damaging party, in any case 2 years after performance of the service or delivery.

11.9 A right of recourse pursuant to § 933b ABGB is excluded.

## **12 Offsetting**

Offsetting against our claims with counterclaims of any kind whatsoever is excluded.

## **13 Place of performance, place of jurisdiction and applicable law**

13.1 The place of performance is our place of business.

13.2 If the customer is an entrepreneur, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office. We are also entitled to take legal action at the headquarters of the customer.

13.3 Austrian substantive law shall apply, excluding the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods.

13.4 Should individual provisions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic result comes as close as possible to the result intended by the invalid provision.