

## **General terms and conditions for contracts of AS Drives & Services GmbH**

### **1. Scope of application**

- 1.1 We conclude contracts only on the basis of our general terms and conditions for contracts (GTCC) valid at the time. Our GTCC do not apply to consumers. Once they have been sent to the customer, our GTCC apply to all subsequent transactions in the course of business. New versions shall apply from our written notice of amendment.
- 1.2 We shall not be bound by any conflicting, deviating or unilateral terms and conditions of the customer. This shall also apply if we do not expressly object to such conditions or provide or accept services without reservation.

### **2. Conclusion of contract**

- 2.1 If the placing of the order by the customer is preceded by our offer, the contract shall be concluded upon receipt of the placing of the order. If the customer submits an offer to us or if their order deviates from our offer, the contract shall only be concluded upon receipt of our order confirmation. At the request of the customer, our order confirmation shall be made in writing.
- 2.2 If our offer for the conclusion of the contract is made "without obligation", we may freely revoke it until receipt of the order placement.
- 2.3 If we do not confirm an order in response to an offer made by the customer, the contract shall be concluded upon execution of our services or, if this is prior in time, upon receipt of our invoice.
- 2.4 The customer is bound to their offer for 8 weeks from receipt by us.

### **3. Prices**

- 3.1 Unless otherwise agreed in writing, our prices are ex works (ex works per Incoterms 2010), unpacked, plus applicable value added tax, insofar as relevant.
- 3.2 We will adjust the prices to be paid on the basis of the contract concluded with the customer at our reasonable discretion to the development of the costs that are decisive for the price calculation. A price increase shall be considered and a price reduction shall be made if, for example, the costs for wages (e.g. due to tariff decisions), input material, energy, freight or public charges increase or decrease. Increases in one type of cost may only be used for a price increase to the extent that they are not offset by any decreases in costs in other areas. In the event of cost reductions, prices shall be reduced insofar as these cost reductions are not fully or partially offset by increases in other areas. When exercising our equitable discretion, we shall choose the respective points in time of a price change in such a way that cost reductions are not taken into account in accordance with standards that are less favourable for the customer than cost increases, i.e. that cost reductions have at least the same effect on the price as cost increases.

### **4. Due date and payments**

- 4.1 Our claims shall become due on the earliest collection date stated in our notice of readiness for delivery or, in the case of agreed delivery, upon delivery of the goods to the customer, unless a later payment date has been agreed in writing.
- 4.2 Payment and discount periods granted by us shall commence on the invoice date. The relevant credit entry on our business account is decisive for the timeliness of the payment.
- 4.3 Payments shall be made in EURO free of deductions, charges and costs to a banking institution designated by us. Agreed cash discounts are only permissible if the customer is not in default with another claim from our business relationship.
- 4.4 In commercial business transactions, we shall initially charge interest on arrears of 5 percentage points p.a. from the due date; from the onset of default, we shall charge interest on arrears of 9 percentage points p.a. above the respective base interest rate. The assertion of any further damage caused by default shall remain unaffected.

- 4.5 Payment terms granted shall lapse if a significant deterioration in the financial situation of the customer becomes apparent to us or if our customer provides incorrect or incomplete information or, despite being requested to do so, does not provide any information about their creditworthiness. In these cases, outstanding claims shall become due immediately insofar as the customer is not entitled to any rights to refuse performance. Furthermore, we may assert our security rights and make outstanding deliveries dependent on the provision of adequate security or step-by-step payment against delivery. If the customer refuses this, we may withdraw from the contract insofar as we have not yet performed our service, without the customer being able to derive any rights from this.

### **5. Delivery, transfer of risk, delivery periods, origin of goods**

- 5.1 The delivery condition ex works (Incoterms 2010) shall apply. The risk of price and performance shall pass to the customer at the latest at the end of our normal business hours on the earliest collection day stated in our notice of readiness for delivery, but in the case of a generic debt only once we have also sorted out the goods. The goods will only be shipped after written agreement and at the risk of the customer.
- 5.2 Fixed dates require our written confirmation. Partial deliveries are permissible to a reasonable extent.
- 5.3 Delays in delivery due to unforeseeable extraordinary events such as sovereign measures, traffic disruptions, machine damage or industrial disputes shall release us from the obligation to deliver for as long as they last, insofar as we are not responsible for the disruption. If such a disruption is permanent, we shall be released from our obligation to deliver altogether. In this case, we will refund any advance payments made by the customer.
- 5.4 Insofar as we are unable to make deliveries because we are not supplied by our own suppliers, despite us having concluded congruent hedging transactions, we shall be released from our obligation to perform and may withdraw from the respective contract concerned, unless we have culpably caused the non-delivery. We will inform the customer about this. We will reimburse the customer for any consideration already paid. The customer shall not be entitled to any further claims in such a case.

### **6. Non-contractual goods**

- 6.1 If there is a defect in the delivered goods, the customer is only entitled to demand rectification of the goods. A subsequent delivery is excluded, as this would regularly cause disproportionate costs and the customer does not suffer any significant disadvantages due to the exclusion of the subsequent delivery. Nonetheless, we can also opt to deliver replacement goods instead of rectifying the defect.
- 6.2 If the supplementary performance fails or is not carried out within a reasonable period of time set by us, the customer may withdraw from the contract or reduce the purchase price. Compensation for damages can only be claimed under the conditions of para. 7.
- 6.3 The statutory duties of inspection and notification of defects pursuant to § 377 HGB [German commercial code] shall apply. Initial sample approvals from our customer do not release the customer from its inspection and complaint obligations and do not restrict these.
- 6.4 The warranty period is 12 months. In the case of delivery ex works (Incoterms 2010), it shall commence upon collection; if a different delivery condition has been agreed in writing, it shall commence upon delivery of the goods.
- 6.5 The operational wear and tear of wear parts does not constitute a defect and therefore does not trigger any warranty claims on the part of the customer. The same applies to defects that occur due to unsuitable or improper use, faulty assembly or commissioning of the delivered goods by the customer, in particular in the case of other faulty handling, unsuitable operating materials, replacement materials or other unsuitable framework conditions.

### **7. Liability and insurances**

- 7.1 Claims for damages by the customer, irrespective of the legal grounds, as well as claims for reimbursement of futile expenses are excluded, unless the cause of the damage is based either on an intentional or grossly negligent breach of duty or on an at least negligent breach of a contractual duty, the fulfilment of which

characterises the contract and on which the customer may rely (material contractual duty); in the latter case, liability is limited in amount to the damage foreseeable at the time of conclusion of the contract and typical for the contract.

- 7.2 The aforementioned limitation of liability according to para. 7.1 also applies to the personal liability of our employees, representatives and organs as well as to our vicarious agents.
- 7.3 The limitations of liability pursuant to para. 7.1 and 7.2 do not apply to personal injury, i.e. to damage resulting from injury to life, body or health, in the case of liability under the product liability act and insofar as we have exceptionally adopted a guarantee.

## **8. Retention of title**

- 8.1 We retain title to the delivered goods ("reserved goods") until our claims against the customer ("secured claims") have been settled in full. Secured claims are all current and future claims arising from the business relationship with the customer, including any balance claims from the current account.
- 8.2 The combination or mixing of the goods subject to retention of title with other items shall also be carried out for us. We become co-owners of the new goods. Our co-ownership share corresponds to the ratio of the objective market value of the reserved goods to the objective market value of the new item at the time of combination or mixing. The new item shall be deemed to be reserved goods.
- 8.3 If our ownership lapses as a result of the reserved goods being combined or mixed with a main item, the customer hereby assigns to us the ownership to which they are entitled in the main item on a pro rata basis in accordance with the ratio of the objective market value of the reserved goods to the main item at the time of the combination or mixing. We accept the transfer. The main item shall be deemed to be reserved goods.
- 8.4 The customer is entitled to dispose of the reserved goods in the ordinary course of business as long as they are not in default of payment. This shall not apply insofar as a prohibition of assignment has been agreed between the customer and its purchasers with regard to the customer's claim to the purchase price or remuneration for work. The customer is not entitled to transfer ownership by way of security, pledge or otherwise encumber the reserved goods, nor are they entitled to sell the reserved goods in order to lease them back ("sale-and-lease-back").
- 8.5 If the reserved goods are sold by the customer, they hereby assign to us in advance their claims against their customers or third parties arising from the resale (including any balance claims from current account) with all security and ancillary rights, including claims from bills of exchange and cheques in the amount of the secured claims. We hereby accept the assignment. If the reserved goods are sold with other items at a total price, the assignment shall be limited to the pro rata amount of the customer's invoice for the reserved goods also sold. If goods are sold in which we have an interest pursuant to para 8.2 or 8.3 co-ownership, the assignment shall be limited to that part of the claim which corresponds to our co-ownership share.
- 8.6 The customer may collect the claims assigned to us pursuant to para 8.5 the customer may collect the claims assigned to us in their own name and for their own account, provided that we do not revoke this authorisation. Our right to collect the assigned claims ourselves remains unaffected by this. However, we shall not collect the assigned claims ourselves and shall not revoke the customer's direct debit authorisation, provided the customer is not in default with their performance obligations towards us or their financial situation deteriorates significantly. In such a case, the customer is obliged to provide us with all information and documents necessary for the assertion of the assigned claims.
- 8.7 In the event of resale of the reserved goods, the customer is obliged to secure our rights to the reserved goods to the amount of the secured claims, insofar as this is feasible in the ordinary course of business. This can be done by the customer making the transfer of ownership of the goods sold by them to their buyers dependent on their full payment.
- 8.8 We undertake to release the securities to which we are entitled in accordance with the above provisions at the customer's request to the extent that the realisable value from the securities exceeds 110% or the estimated value of the reserved goods exceeds

150% of the secured claims. The selection of the reserved goods released shall be at our discretion. The realisable value is the realisation proceeds to be achieved for the reserved goods in a (hypothetical) insolvency of the customer at the time of our decision on the request for release. The estimated value is the market price of the reserved goods at that time.

## **9. Property rights**

- 9.1 By concluding the contract, the customer does not acquire any rights to illustrations, drawings, models, plans, software, samples and other documents, unless this is absolutely necessary for the performance of the contract. All our rights to the illustrations, drawings, models, plans, software, samples and other documents, including copyrights, trademark rights, company rights and rights to know-how, shall therefore remain with us. Illustrations, drawings, models, plans, software, samples and other documents may not be reproduced or distributed by the customer or disclosed to third parties without our consent.
- 9.2 Upon request or if the order is not placed, the illustrations, drawings, models, plans, software, samples and other documents must be returned to us without delay.
- 9.3 We are entitled to demand reasonable remuneration for models, drawings, plans or similar documents prepared by us if the order is not placed with us.
- 9.4 It is the sole responsibility of the customer to ensure that the property rights or other rights of third parties are not infringed due to their specifications for the quality of the goods and their further processing.
- 9.5 If claims are asserted against us by a third party due to an infringement of property rights on the basis of a quality specification of the customer, the customer shall, at its discretion and at its own expense, either obtain a right of use for the relevant quality specifications or modify them in such a way that the property right is not infringed. In this respect, the customer shall indemnify us in full against all claims by third parties, including the costs of legal defence and/or prosecution, upon first written request.

## **10. Prohibition of set-off / rights of retention**

- 10.1 The customer may only offset against our claims if their counterclaim is undisputed or has been legally established or exists ready for a decision. In the event of delivery of goods that are not in conformity with the contract within the meaning of para. 6 of these GTCC, the counter rights of our customer arising from the same contractual relationship shall remain unaffected. The same applies to the assertion of a right to refuse performance or a right of retention.
- 10.2 Furthermore, the customer may only base a right of retention on claims arising from the same contractual relationship on which its obligation is based and may also only assert such a right if we have not provided adequate security despite a written request from the customer.

## **11. Other provisions**

- 11.1 The place of performance is the location of our head office in 48734 Reken. The place of jurisdiction for all disputes arising from commercial transactions with fully qualified merchants and legal persons under public law is Münster for both parties (§ 38 ZPO [code of civil procedure]). This also applies to bills of exchange and cheque processes. We may also bring a claim against our customer at their general place of jurisdiction.
- 11.2 German law applies, with the exclusion of the CISG.
- 11.3 Amendments or supplements to these GTCC must be made in writing. This shall also apply to the waiver of this written form requirement or a deviation from it.
- 11.4 If individual provisions of these GTCC or of the delivery transaction are or become invalid in whole or in part, this shall not affect the validity of the remaining provisions or other parts of such clauses.

Dated: March 2018