

# General terms and conditions of sale, delivery and payment („GTC“)

Status 05.02.2024



## – Preamble –

These Terms and Conditions are used by the following company in the GEDORE Group:

**GEDORE Torque Solutions GmbH**

(Based in: Vaihingen an der Enz)

### 1. Scope

- 1.1 Our deliveries, services and offers are made exclusively on the basis of these Terms and Conditions. We do not recognise any conflicting or deviating terms and conditions on the part of the Buyer unless we have expressly agreed to their validity in writing. Our Terms and Conditions will also apply if we make the delivery to the Buyer without reservation even in the knowledge of conflicting or deviating conditions from our Terms and Conditions on the part of the Buyer.
- 1.2 The following Terms and Conditions apply only with regard to business persons within the meaning of Section 14 of the German Civil Code, legal entities under public law and special funds under public law.

### 2. Offers and Conclusion of Contract

- 2.1 Our offers are subject to change and non-binding. The ordering of the goods by the Buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within one (1) week of its receipt.
- 2.2 We reserve the right of ownership and copyright to illustrations, drawings, calculations and other documents. This also applies to those written documents that are designated as "confidential". The Buyer must obtain our express written consent prior to disclosing them to third parties. At our request, the customer will return these items to us in full and destroy any copies that may have been made if they are no longer required by the Buyer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

### 3. Custom-made products and forgings

- 3.1 The documents supplied by the Buyer (information, drawings, samples, models or the like) are decisive for us. The Buyer is liable for their correctness, technical feasibility and completeness. We are under no obligation to carry out any verification of the same.
- 3.2 With regard to custom-made products and forgings, we reserve the right to over- or under-deliver by up to 10% of the order quantity.

### 4. Prices

- 4.1 Unless otherwise stated in the order confirmation, our prices apply FCA (as per Incoterms 2020 or in the current version) are valid from our works in Vaihingen/Enz. No deliveries will be made to third parties unless expressly agreed.
- 4.2 All prices are net prices. Costs for shipping, transport and packaging and for any installation work are not included and will be charged additionally as per the price list.
- 4.3 VAT is not included in our prices. It will be shown separately in the invoice at the statutory rate on the day the invoice is issued.
- 4.4 We reserve the right to change our prices appropriately if, with regard to contracts for which there are more than three months between the conclusion of the contract and delivery or the last part delivery, there are cost increases or cost reductions for which we are not responsible, in particular resulting from material costs, increases in raw material prices, auxiliary material prices, wages and salaries, freight or public charges. We will offset cost reductions and cost increases against each other.

### 5. Terms of payment and arrears

- 5.1 Payment is due no later than 30 calendar days from receipt of the corresponding invoice. The Buyer will receive 2% discount on payments made within 14 calendar days of receipt of the invoice. This does not apply to invoices for maintenance services. For invoices for maintenance services, the full invoice amount with no deduction of a discount is to be paid immediately upon receipt of the invoice by the Buyer.
- 5.2 Bills of exchange and cheques are only accepted on the basis

of performance. The costs for discounting and collecting bills of exchange and cheques are to be borne by the Buyer.

- 5.3 The Buyer is not entitled to withhold payments due to counterclaims or to offset them against such counterclaims unless these are acknowledged, undisputed or legally established by us. This shall not affect any counterclaims by the Buyer under the same contract due to defects, non-performance and / or unfinished or incomplete performance.

- 5.4 In the event of a significant deterioration in the financial circumstances of the Buyer that jeopardises our claim to payment of the purchase price, we shall be entitled to only provide further services concurrently against payment or security. Further statutory rights to Article 321 of the German Civil Code are reserved.

### 6. Transfer of risk, shipping

- 6.1 Unless otherwise stated in the order confirmation, delivery FCA (as defined in Incoterms 2020 or in the current version) is agreed. The place of delivery and fulfilment is our works in Vaihingen/Enz. This also applies if we have assumed the transport costs or advanced them for the Buyer or if partial deliveries are made.
- 6.2 If dispatch has been agreed, the risk of accidental loss and accidental deterioration of the goods passes to the Buyer upon delivery to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment, unless otherwise agreed. This also applies if we have assumed the transport costs or advanced them for the Buyer or if partial deliveries are made. If shipment or handover are delayed for reasons that are attributable to the Buyer, the risk shall then pass to the Buyer from the day on which the goods are ready for dispatch and we notify the Buyer of this.
- 6.3 If dispatch by us is agreed, then we choose the means of transport unless a special agreement is allowed in the order confirmation. Additional costs for a special or accelerated shipping method requested by the customer will be borne by the customer even if we are responsible for the transport costs.
- 6.4 Insurance against transport damage will only be taken out at the Buyer's request and expense.
- 6.5 We are free to make partial deliveries, provided this is reasonable taking the Buyer's interests into account.
- 6.6 Should the Buyer fall into default of acceptance or the delivery be delayed for reasons for which the Buyer is responsible, we shall be entitled to charge a contract penalty of EUR 150.00 and to demand compensation for the damage caused to us, including our additional expenses. In these cases we will store the products at the Buyer's risk and expense, and charge the Buyer for storage.

### 7. Delivery period

- 7.1 Unless expressly agreed otherwise, information on delivery times is only approximate. The delivery period does not begin until all the details of the performance have been clarified and both parties have agreed on the terms of the order. Agreed delivery dates will be adjusted accordingly.
- 7.2 Compliance with our delivery obligation also requires the timely and proper fulfilment of the obligations incumbent on the customer. The right to raise the objection of non-performance of the contract is reserved.
- 7.3 We are obliged to inform the customer immediately if we are prevented from timely delivery by force majeure, industrial disputes for which we are not responsible, official measures, sanctions, energy or raw material shortages, transport bottlenecks or obstacles, operational impediments e.g. due to fire, water and / or machine damage or other disruptions in the operational processes of ourselves or of our upstream suppliers / subcontractors for which we are not responsible and which are demonstrably of considerable influence. In these cases, we shall be entitled to postpone the delivery time by the duration of the event of force majeure or disruption provided we have complied with our above obligation to provide information. If delivery becomes impossible as a result, then our obligation to deliver shall lapse with no claim to damages. If the Buyer is able to prove that the subsequent fulfilment is of no interest to them as the result of the delay, they may withdraw from the contract with no further claims. If the event of force majeure or disruption lasts longer than one month, we may withdraw from that part of the contract that has not yet been fulfilled if we have complied with our above obligation to provide

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information and provided we have not assumed the procurement risk or a delivery guarantee.

- 7.4 Section 3 shall apply accordingly provided that we concluded a congruent hedging transaction prior to the conclusion of the contract with the Buyer that, if properly executed, would have enabled us to fulfil our contractual delivery obligations to the Buyer, and we did not receive the supplies or receive them correctly and / or on time from our supplier and not by our responsibility.
- 7.5 If we default, the customer shall be entitled to set a reasonable extension in writing and to withdraw from the contract after fruitless expiry of this deadline. An extension will not be required if we seriously and definitively refuse to perform or if the underlying contract is a fixed transaction within the meaning of Section 323 (2)(2) of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB) or if there are special circumstances that justify immediate withdrawal after weighing up the interests of both parties.
- 7.6 We shall only be liable for damages as per Section 9 of these Terms and Conditions.

## 8. Material defects

- 8.1 The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect delivery or delivery shortfalls) unless otherwise stipulated below.
- 8.2 If the final delivery of the goods is to a consumer (sale of consumer goods within the meaning of Article 474 of the German Civil Code), the statutory special provisions on supplier recourse as per Articles 445a, 445b, 478 (1) of the German Civil Code shall remain unaffected. In all other cases, the special provisions on supplier recourse do not apply.
- 8.3 If we act in accordance with drawings, specifications, samples, instructions and / or other documents provided by the Buyer, the Buyer shall bear the risk of suitability for the intended purpose.
- 8.4 The Buyer's warranty rights presuppose that the Buyer has duly complied with their obligations to investigate and notify as per Article 377 of the German Commercial Code. If the contractual relationship between ourselves and the Buyer is a contract for work, Article 377 of the German Commercial Code shall apply accordingly.
- 8.5 If an acceptance or an initial sample inspection has been agreed with the Buyer, no complaints concerning defects will be accepted if the Buyer could have discovered these defects in the course of a careful acceptance or initial sample inspection.
- 8.6 If any unauthorised modifications or improper repair work are carried out by the Buyer or by third parties, no claims for defects for these and the resulting consequences will be accepted. The same applies to improper use, incorrect assembly by the Buyer or third parties, normal wear and tear or incorrect handling. In this instance, the Buyer shall bear the expense caused by the complaint, in particular the expense for checking for defects.
- 8.7 We must be given the opportunity to verify the alleged defect on the spot. At our request, the disputed delivery item is to be returned to use for reimbursement of the necessary costs.
- 8.8 If the delivered goods or the manufactured work are defective, the Buyer shall have the following statutory rights: a) We may, at our own discretion, either remedy the defect or deliver defect-free goods to the Buyer or, in the case of a contract for work, produce a new work (rectification). The Buyer must give us the time and opportunity required for rectification. Our right to refuse rectification under the statutory requirements remains unaffected. b) We shall bear the expenses necessary for the purpose of inspection and rectification, in particular for transport, travel, labour and material costs, if there actually is a defect. If the Buyer's request to remedy the defect turns out to be unjustified, we may ask for the costs incurred by the Buyer to be reimbursed. Rectification does not include the removal of the effective item or the reinstallation if the Buyer was already aware of the defect at the time of installation or if the installation was not carried out as intended. This will also apply if the Buyer fails, with gross negligence, to recognise the defect before installation unless we fraudulently concealed the defect or assumed a warranty. c) In the event of a replacement delivery or new production in the case of contracts for work and services, the Buyer must return the defective good to us at our request. We are entitled to make the rectification dependent on the Buyer paying the agreed price for the delivered goods. However, the Buyer may withhold a reasonable proportion of the price. d) If the rectification fails the Buyer may, by their own

decision, withdraw from the contract or require a reduction of the agreed price. However, there shall be no right of withdrawal if the defect is insignificant. e) Claims by the Buyer for damages or reimbursement of wasted expenses exist only as indicated in Item 9 of these Terms and Conditions.

- 8.9 The limitation periods are based on Item 10 of these Terms and Conditions.

## 9. Liability / Limitation of liability

- 9.1 Subject to the provisions of Section 2, we shall only be liable for damages – in the case of contractual, non-contractual or other claims for damages, regardless of the legal grounds, in particular due to defects, delay and impossibility, fault in contract negotiations and tort – in the event of intent and / or gross negligence, including intent and / or gross negligence on the part of our representatives or vicarious agents. Furthermore, we shall also be liable in the event of simple negligence, including simple negligence on the part of our representatives and vicarious agents, for damages resulting from the breach of an essential contractual obligation, i.e. an obligation that needs to be fulfilled for the proper execution of the contract, and on the fulfilment of which the customer may therefore regularly rely (cardinal obligation). Unless we are charged with an intentional breach of duty, liability of damages shall be limited to the amount of the respective delivery value.
- 9.2 The exclusions and limitations of liability set out in Section 1 shall not affect any claims for damages resulting from injury to life, limb and health or any claims by the Buyer under the Product Liability Act, the special statutory provisions upon final delivery of the goods to a consumer, and other mandatory statutory liability provisions. In addition, the above exclusions or limitations of liability shall not apply to the extent that we have fraudulently concealed a defect or insofar as we are liable for the assumption of a warranty or because of the assumption of the procurement risk.
- 9.3 Sections 1 and 2 shall also apply if the Buyer demands compensation for wasted expenses rather than a claim for compensation for damage instead of performance.
- 9.4 If any damage is both our fault and the fault of the Buyer, then the Buyer must have their contributory negligence offset against any claim for damages pursuant to Article 254 of the German Civil Code.
- 9.5 Insofar as our liability is excluded or limited, this exclusion or limitation also applies to the personal liability of the owner, our employees, workers, colleagues, legal representatives and those helping us with the fulfilment of our duties, which is based on the same legal grounds. This does not affect the statutory provisions on the burden of proof.

## 10. Statute of limitations

- 10.1 Claims by the purchaser arising from material defects and defects of title lapse one (1) year from delivery. If acceptance has been agreed, the statute of limitations begins with the acceptance.
- 10.2 Mandatory statutes of limitation are not affected. The limitation relief stated in Section 1 does not apply to claims for injury to life, limb or health, to claims based on intent and / or gross negligence, and to claims based on the assumption of a guarantee or the assumption of the procurement risk. The longer limitation periods as per Section 438(1) of the German Civil Code (rights in rem of a third party), Section 438(1) (2), Section 634a(1)(23) of the German Civil Code (Buildings, building materials and components plus planning services for a building) Section 438(3), Section 634a(3) of the German Civil Code (malice). If the final contract in the supply chain is a sale of consumer goods within the meaning of Section 474 of the German Civil Code (i.e. when the goods are finally delivered to a consumer), the limitation periods as per Section 445b of the German Civil Code also remain unaffected.
- 10.3 The limitation periods arising from Sections 1 and 2 for claims for material defects and defects of title shall apply accordingly to competing contractual and non-contractual claims for damages by the purchaser based on a defect in the contracted goods. If, however, in an individual case the application of the statutory limitation rules should lead to an earlier limitation for competing claims, then the statutory limitation period shall apply to the competing claims. The statutory limitation periods under the Product Liability Act are never affected.

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- 10.4 If the limitation period for claims against ourselves is shortened as per Sections 1 to 3, this shall apply likewise to any claims by the Buyer against our legal representatives, employees, staff, agents and vicarious agents that are based on the same legal grounds.
- 11. Extended retention of title**
- 11.1 We reserve ownership of the delivery items (reserved goods) until all claims have been fulfilled together with any costs and interest arising from the business relationship with the customer.
- 11.2 The Buyer of the goods is entitled to sell the reserved goods in the ordinary course of business as long as they are not in default. Disposals that go beyond this, such as pledges of transfer of security, are not permitted. In the event of access to the reserved goods by third parties, the purchaser must state our ownership and inform us immediately, if necessary enclosing a copy of a seizure report.
- 11.3 As a precautionary measure, the Buyer shall assign the receivables arising from a resale of the reserved goods to the amount of the invoice value of the delivery item (purchase price) to us, now. We revocably authorise the Buyer to collect the receivables assigned to us on our behalf in the name of the Buyer. We remain entitled to collect the receivables ourselves. We will not collect the receivables ourselves as long as the Buyer is not in default of payment and, in particular, if no application is filed for the opening of insolvency proceedings against the Buyer's assets.
- 11.4 The processing or modification of the goods delivered by us to the purchaser is always carried out on our behalf. If the reserved goods delivered by us are processed with other objects / substances that do not belong to us, we shall acquire co-ownership of the new item in proportion to the value of the reserved goods to the other processed items / substances at the time of processing. In all other respects, the same applies to the goods resulting from processing as applies to the goods delivered under reservation.
- 11.5 If the reserved goods delivered by us are inseparably mixed with other objects / substances that do not belong to us or are combined in such a way that they become essential components of a single item, we shall acquire co-ownership of the new item in proportion to the value of the reserved goods in relation to the other mixed or combined items / substances at the time of combination or mixing. If the combination or mixing takes place in such a way that the purchaser's property is to be regarded as the main item, it is considered as agreed that the purchase will transfer co-ownership to us on a pro rata basis. This allows the Buyer to retain the resulting co-ownership for us. In all other respects, the same applies to the goods resulting from combination or mixing as applies to the goods delivered under reservation.
- 11.6 The Buyer is obliged to treat the reserved goods with care, and in particular is obliged to adequately insure them at their own expense against fire, water damage and theft at their replacement value. The Buyer is to carry out any maintenance and inspection work that is required in good time and at their own expense.
- 11.7 In the event of loss or damage to the reserved goods, the Buyer shall assign to us in advance any claims for insurance services in the final invoice amount (including VAT) of our claims in respect of the delivery item as additional security.
- 11.8 If, in the case of deliveries to foreign countries, certain measures and / or declarations are required by the Buyer in the importing country in order for the above retention of title or other rights specified in the preceding paragraphs to take effect, the Buyer shall inform us of this immediately in writing or in text form and immediately carry out or make such measures and / or declarations at their own expense. If the law of the importing country does not permit a retention of title, the Buyer is obliged to immediately provide us with other suitable securities for the delivered goods or other securities at their reasonable discretion (Section 315 of the German Civil Code).
- 11.9 In the event of default of payment by the Buyer, we shall be entitled, in accordance with the statutory provisions, to withdraw from the contract and to claim the return of the goods subject to the retention of title.
- 11.10 We undertake to release the collateral to which we are entitled at the request of the Buyer to the extent that the realisable value of our collateral exceeds the receivables to be secured by more than 10%; we decide what collateral is to be released.
- 12. Rights of withdrawal and termination**
- 12.1 A breach of duty on our part that does not consist of a defect only entitles the Buyer to withdraw from the contract if we are responsible for the breach of duty.
- 12.2 If the contract is a contract for work or for the supply of movable, non-justifiable goods, this rules out the Buyer's free right of termination (Sections 651 and 649 of the German Civil Code).
- 13. Jurisdiction and applicable law**
- 13.1 Insofar as the Buyer is a merchant, a legal entity under public law or a special fund under public law, Vaihingen/Enz shall be the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. However, we are also entitled to sue the Buyer at the court of their domicile.
- 13.2 The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 14. Subcontractors**
- We are entitled to use third parties for the performance of the contract provided we do not owe any highly personal services.
- 15. Severability clause**
- Should any individual points of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining conditions

## GEDORE Torque Solutions GmbH

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