

General terms and conditions of sale, delivery and payment

as of 1st January 2018



– Preamble –

These general terms and conditions of sale, delivery and payment are used by the following company in the GEDORE Group:

GEDORE Torque Solutions GmbH

(Registered office: Vaihingen/Enz)

1. Scope of application

1.1 Our deliveries, services and quotations are performed solely on the basis of these general terms and conditions. We do not accept contradictory terms or terms of the purchaser deviating from our general terms and conditions unless we have explicitly consented in writing to their validity. Our general terms and conditions also apply if we perform the delivery to the purchaser without reservation in the knowledge of contradictory terms or terms of the purchaser deviating from our general terms and conditions.

1.2 The following general terms and conditions only apply in relation to contractors as defined in section 14 BGB [German Civil Code], legal entities under public law and public law special funds.

2. Quotations and conclusion of contract

2.1 Our quotations are subject to change and are not binding. The order of goods by the purchaser is deemed as the binding offer of contract. Unless otherwise specified in the order, we are entitled to accept this offer of contract within one (1) week after its receipt by us.

2.2 We reserve title and intellectual property rights to illustrations, drawings, calculations and other documents. This also applies to such written documents that are designated as "confidential". The purchaser must obtain our explicit written consent before disclosing them to third parties. The purchaser has, at our request, to return these objects entirely to us and to destroy any copies that may have been made if they are no longer needed in the course of ordinary business or if negotiations do not result in the conclusion of a contract.

3. Custom-made products and forged parts

3.1 The documents provided by the purchaser (specifications, drawings, samples, models or similar) are authoritative for us; the purchaser is liable for the accuracy of their content, their technical feasibility and completeness; we are not obliged to verify the same.

3.2 In the case of custom-made products and forged parts, we reserve the right to an excess or short delivery of up to 10% of the order quantity.

4. Prices

4.1 Unless otherwise specified in the order confirmation, our prices are EXW (pursuant to Incoterms 2010 or the current version) from our plant in Vaihingen/Enz. No deliveries are made to third parties unless explicitly agreed.

4.2 All prices are net prices. Costs for dispatch, transport and packaging as well as any installation services are excluded and are subject to an additional charge as per our price list.

4.3 The statutory value added tax is not included in our prices; it is stated separately in the invoice at the statutory rate, being in force on the day of billing.

4.4 We reserve the right reasonably to amend our prices if, in the case of contracts where there are more than three months between conclusion of the contract and delivery or the last partial delivery, cost increases or cost reductions beyond our control arise, in particular owing to material costs, price increases for raw materials and auxiliary materials, wages and salaries, freight or public duties. In this case, cost increases and cost reductions will be offset against each other. We will account for the amendment of these costs to the purchaser by request.

5. Conditions of payment and default

Payment shall be due at the latest within 30 days following receipt of the invoice by the purchaser. The purchaser shall be entitled to a 2% discount for payments made within 14 calendar days following

receipt of the invoice. This does not apply to invoices for maintenance services. In the case of maintenance services, the invoice amount must be paid without discount is to be paid immediately after receipt by the purchaser.

5.1 We only accept bills of exchange and cheques pending full discharge of the debt. All costs of discounting and collection of bills of exchange and cheques are to be borne by the purchaser.

5.2 The purchaser is not entitled to withhold payments owing to counterclaims from other contractual relationships or to offset against such counterclaims, unless these are identified by us as accepted, undisputed or legally valid.

5.3 In case of significant deterioration in the purchaser's financial circumstances that endangers our claim to payment of the purchase price, further services shall only be performed concurrently with payment or collateral. Further statutory rights in accordance with section 321 BGB remain reserved.

6. Passing of risk, shipping

6.1 Unless otherwise specified in the order confirmation, delivery is agreed EXW (pursuant to Incoterms 2010 or the current version). The place of performance and place of delivery is our plant in Vaihingen/Enz. This also applies if we bear the transport costs or disburse costs for the purchaser or if partial deliveries are made.

6.2 If consignment has been agreed, the risk of accidental loss and accidental deterioration of the goods passes to the purchaser upon handover to the forwarding agent, the freight carrier or the person or establishment specified to perform consignment, unless agreed otherwise. This also applies if we bear the transport costs or disburse costs for the purchaser or if partial deliveries are made. If shipping or the handover is delayed for reasons attributable to the purchaser, the risk is transferred to the purchaser from the date on which the goods are ready for shipment and the purchaser has been notified of this.

6.3 If shipment is agreed by us, we are free to select the means of transport unless a separate agreement is stipulated in the order confirmation. Additional costs for a particular or accelerated method of shipment desired by the purchaser shall be borne by the purchaser, even if we bear the transport costs.

6.4 Insurance against damages in transit is only taken out at the request and at the expense of the purchaser.

6.5 We are entitled to make partial deliveries provided that this is reasonable to the purchaser, taking into account its interests.

6.6 If the purchaser is in default of acceptance or delivery is delayed for reasons attributable to the purchaser, we are entitled to claim compensation for the resulting damage, including additional expenses. In these cases, we will store the products at the purchaser's risk and charge the purchaser for the storage.

7. Delivery time

7.1 Unless explicitly agreed otherwise, details on delivery times are only approximate. A delivery period only initiates when all details of the execution have been clarified and both parties agree on the terms of the order. Agreed delivery dates shall be shifted accordingly.

7.2 Compliance with our delivery obligation also assumes the prompt and proper performance of the obligations incumbent upon the purchaser. The right to object to an unfulfilled contract remains reserved.

7.3 We agree to inform the purchaser immediately if we are impeded in the timely delivery by force majeure, industrial action beyond our control, official measures, scarcity of energy or raw materials, transport bottlenecks or obstacles, obstructions to operations e.g. due to fire, water and/or machinery damage or other disruptions to operations beyond our control occurring at our premises or those of our previous suppliers/subcontractors, which demonstrably have a significant impact. In these cases, we are entitled to postpone the delivery date by the duration of the event of force majeure or the disruption, provided that we have fulfilled our aforementioned duty to inform. If the delivery is made impossible, our obligation to deliver shall lapse to the exclusion of damages. If the purchaser demonstrates that the subsequent fulfillment is of no interest to it as a result of the delay, it can withdraw from the contract to the exclusion of further claims. If the event of force majeure or the disruption lasts longer than one month, we can withdraw from the contract with regard to the portion not yet fulfilled if we have fulfilled our aforementioned duty to inform and provided that we have not assumed the procurement risk or a delivery guarantee.

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- 7.4 Paragraph 3 shall apply mutatis mutandis, provided that we have concluded a congruent hedging transaction with the purchaser prior to conclusion of the contract, which would have allowed us, in case of proper performance, to fulfil our contractual delivery obligations towards the purchaser, and we are not supplied correctly and/or on time by our suppliers and we are not responsible for this.
- 7.5 If we are in default, the purchaser is entitled to set a reasonable grace period in writing and to withdraw from the contract after this has expired without result. The grace period is not required if we genuinely and definitively refuse the performance or the underlying contract is a fixed transaction within the meaning of section 323, para. 2 no. 2 BGB or section 376 HGB [German Commercial Code] or there are special circumstances that justify immediate withdrawal under consideration of the interests of both parties.
- 7.6 We are only liable for damages in accordance with section 9 of these general terms and conditions.
- 8. Material defects**
- 8.1 With regard to the purchaser's rights in case of material defects and defects of title (including incorrect and short delivery), the legal provisions apply unless stipulated otherwise below. In all cases, the legal special provisions on final delivery of the goods to a consumer remain unaffected (sections 478, 479 BGB).
- 8.2 In the event of the goods being delivered to a consumer (consumer goods purchase as per section 474 of the BGB), the special legal regulations concerning the right to recourse against the supplier as per sections 445a, 445b, 478(1) BGB shall remain unaffected. The special regulations concerning the right to recourse against the supplier shall not apply in any other cases.
- 8.3 If we perform according to drawings, specifications, samples, requirements and/or other documents of the purchaser, the purchaser shall bear the risk of suitability for the intended use.
- 8.4 The warranty rights of the purchaser assume that the purchaser has properly fulfilled its obligations to inspect and give notice of defects in accordance with section 377 HGB. If the contractual relationship between us and the purchaser is a contract for work and labour, section 377 HGB shall apply mutatis mutandis.
- 8.5 If an acceptance or initial sample test was agreed with the purchaser, the notice of defects is excluded, which the purchaser could have identified by careful inspection or initial sample test.
- 8.6 If unauthorised changes or improper maintenance work is performed by the purchaser or third parties, there shall be no claims for defects for these and any consequences resulting therefrom. The same applies to improper use, incorrect assembly by the purchaser or a third party, usual wear and tear or improper handling. In this case, the purchaser is liable for any costs incurred as a result of its complaint, in particular costs for examining the defects.
- 8.7 We must be given the opportunity to examine the defects under complaint in situ. Goods that are the subject of complaint must be returned to us upon our request against reimbursement of the necessary costs.
- 8.8 If the goods delivered or the work produced is defective, the purchaser shall have the statutory rights on the following terms:
- a) We are firstly entitled, by our own choice, either to remedy the defect or to deliver goods to the purchaser that are free of defects or, in the case of a contract for work and labour, to produce a new work (rectification). The purchaser must grant us the time and opportunity required for the supplementary performance. This does not affect our right to refuse rectification under the statutory conditions.
- b) We are obliged to bear all expenses required for the purpose of rectification, in particular transport, travel, labour and material costs, if a defect actually does exist. If the purchaser's requests to remedy the defect prove to be unjustified, we may request compensation from the purchaser for the costs incurred. Rectification does not include the removal of the defective item or new installation if the customer failed to identify the defect or installation or if the installation was carried out incorrectly. This shall also apply if, as the result of gross negligence, the customer failed to identify the defect before installation unless we deliberately kept silent about the defect or accepted a guarantee.
- c) In the event of a replacement delivery or new production for service contracts, the purchaser must return the defective goods to us at our request. We are entitled to make the rectification dependent on the purchaser paying the price agreed for the delivered goods. The purchaser is, however, entitled to retain an appropriate portion of the price.
- d) If the rectification fails, the purchaser is entitled, by his choice, to withdraw from the contract or to request a reduction in the agreed price. However, if the defect proves to be insignificant, there shall be no right of withdrawal.
- e) The purchaser shall only have claims for damages or compensation for wasted expenses as per section 9 of these General Terms and Conditions.
- 8.9 The limitation periods conform to section 10 of these general terms and conditions.
- 9. Liability/Limitation of liability**
- 9.1 Subject to the provisions in paragraph 2, we are only liable to compensation for damages – for contractual, non-contractual or other claims for damages, irrespective of their legal grounds, in particular due to defects, delay and impossibility, fault in contract negotiations and tort – in case of intent and/or gross negligence, including intent and/or gross negligence of our representatives or vicarious agents. Furthermore, we are also liable in case of simple negligence, including simple negligence of our representatives and vicarious agents, for damages resulting from a violation of a fundamental contractual obligation, i.e. an obligation the fulfilment of which allows proper performance of the contract and on fulfilment of which the purchaser may therefore regularly rely (cardinal obligation). Insofar as we are not accused of any intentional breach of obligation, the liability for damages is limited to the foreseeable, typically arising damages.
- 9.2 Claims for damages resulting from loss of life, bodily injury or damage to health and claims of the purchaser under the German Product Liability Act, the legal special provisions on final delivery of the goods to a consumer (sections 478, 479 BGB) and other mandatory legal liability provisions remain unaffected by the exclusions and limitations to liability stipulated in paragraph 1. The preceding exclusions and limitations to liability shall also not apply if we have wilfully concealed a defect or if we are liable owing to the adoption of a guarantee or owing to the adoption of the procurement risk.
- 9.3 Paragraphs 1 and 2 shall also apply if the purchaser requests compensation for wasted expense instead of a claim for compensation of damages.
- 9.4 If both we and the purchaser should be responsible for any damage caused, the purchaser must make allowance for any claims for damages due to contributory negligence pursuant to section 254 BGB.
- 9.5 Insofar as our liability is excluded or limited, this exclusion limitation also applies to the personal liability of the owner, our employees, workers, colleagues, legal representatives and vicarious agents. The clause does not affect any statutory regulations in relation to the burden of proof.
- 10. Limitation period**
- 10.1 Claims of the purchaser for material defects and defects of title shall expire, by derogation from section 438 para. 1 no. 3 BGB and section 634a para. 1 no. 1 and section 634a para. 1 no. 3 BGB, within one year from the commencement of the legal limitation period.
- 10.2 Mandatory limitation periods remain unaffected. The reduction in the limitation period stipulated in paragraph 1 shall not apply to claims arising from loss of life, bodily injury or damage to health, for claims arising from intent and/or gross negligence and for claims arising from the adoption of a guarantee or the adoption of the procurement risk. The longer limitation periods pursuant to section 438 para. 1 no. 1 BGB (real rights of a third party), sections 438 para. 1 no. 2, 634a para. 1 no. 2 BGB (buildings, building materials and components and planning services for a building), sections 438 para. 3, 634a para. 3 BGB (fraudulent intent) and section 479 BGB (recourse against suppliers) remain unaffected.
- 10.3 The limitation periods arising from paragraphs 1 and 2 for claims due to material defects and defects of title shall apply mutatis mutandis for competing contractual and non-contractual claims by the purchaser for damages that are based on a defect of the contractual goods. If however, in the specific case, the application of the

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statutory limitation period should lead to an earlier limitation period of the competing claims, the statutory limitation period applies for the competing claims. The statutory limitation periods pursuant to the Product Liability Act shall remain unaffected in any case.

10.4 If the limitation period of claims against us is reduced pursuant to paragraphs 1 to 3, this reduction shall apply mutatis mutandis for any claims of the purchaser against our legal representatives, employees, workers, appointees and auxiliary persons and vicarious agents that are based on the same legal grounds.

11. Extended retention of title

11.1 We will retain title to all of our delivered goods until payment in full has been made in relation to all outstanding debts including any costs and interest resulting from our business relationship with the purchaser.

11.2 The purchaser of the goods is entitled to dispose of the goods in the normal course of business subject to our retention of title rights as long as it is not in default. Any disposal of the goods by pledging or transfer of title as security is not permitted. In the event of access of third parties to goods subject to the retention of title, the purchaser must make reference to our ownership and immediately notify us, if necessary with the enclosure of a copy of the report of assets seized.

11.3 The purchaser shall assign to us in advance by way of security all claims arising from a resale of the goods subject to retention of title in the amount of the invoice value (purchase price) of the delivered goods. We authorise the purchaser, under right of revocation, to collect all receivables assigned to us for our invoice on behalf of the purchaser. We shall remain entitled to collect the receivables ourselves. We shall not collect the receivables ourselves as long as the purchaser does not default on payment and specifically if no application for opening insolvency proceedings against the purchaser is made.

11.4 The processing or alteration by the purchaser of the goods subject to retention of title supplied by us is always undertaken for us. If the goods subject to retention of title supplied by us are processed with other items/materials which do not belong to us, we shall acquire joint title in the new item in proportion to the value of the goods subject to retention of title to the other items/materials processed at the time of processing. Moreover, the same applies to the item created by processing as for the goods supplied under reservation.

11.5 If the goods subject to retention of title supplied by us are inextricably mixed or joined with items/materials that do not belong to us in such a way that they become essential elements of a single item, we shall acquire joint title in the new item in proportion to the value of the goods subject to retention of title to the other mixed or joined items/materials at the time of the joining or mixing. If mixing or joining takes place such that the purchaser's item is to be regarded as the main item, it shall be deemed to have been agreed that the purchaser shall transfer proportional joint title to us. The purchaser shall keep safe for us the joint title created in such a way. Moreover, the same applies to the item created by mixing or joining as for the goods supplied under reservation.

11.6 The purchaser is obliged to treat goods subject to retention of title with care, in particular it is obliged, at its own cost, to adequately

insure them at the original value against fire, water damage and theft. If maintenance and inspection work is required, the purchaser must perform this in good time at its own cost.

11.7 In the event of the loss of or damage to the goods subject to retention of title, the purchaser assigns to us in advance as additional security any claims existing in this regard to insurance services to the value of the final invoice amount (including value added tax) of our receivables in consideration of the item delivered.

11.8 If, in the case of deliveries abroad, certain measures and/or declarations by the purchaser are required in the country of import for validity of the retention of title stipulated above or the other rights on our part designated in the preceding paragraphs, the purchaser must immediately indicate this in writing or in text form and immediately perform these measures and/or issue these declarations at its own cost. If the law of the country of import does not permit a retention of title, the purchaser is obliged, at its own cost, to immediately provide other suitable collateral in the delivered goods or other collateral at reasonable discretion (section 315 BGB).

11.9 If the purchaser is in default of payment, we are entitled, in accordance with the statutory regulations, to withdraw from the contract and to demand return of the goods subject to retention of title.

11.10 We are obliged to release the collateral to which we are entitled at the purchaser's request provided that the realisable value of our collateral exceeds the secured receivables by more than 10%; it is incumbent on us to select the collateral to be released.

12. Rights of withdrawal and termination

12.1 Owing to a breach of obligation on our part, which does not consist of a defect, the purchaser is only entitled to withdraw from the contract if the breach of obligation is attributable to us.

12.2 If the contract is a contract for work and labour or a contract for work and materials for movable, non-fungible items, the free right of termination of the purchaser (sections 651, 649 BGB) is excluded.

13. Place of jurisdiction and applicable law

13.1 If the purchaser is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Vaihingen/Enz; however, we are entitled also to bring suit against the purchaser at the court of its place or residence.

13.2 The law of the Federal Republic of Germany applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

14. Sub-contractors

We are entitled to transfer the contract with all rights and obligations to third parties or to employ third parties for the purpose of fulfilment of the contract.

15. Severability clause

The invalidity of any individual clause contained in these general terms and conditions shall not affect the validity of the remaining clauses.

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