

# General Terms and Conditions of Sale

## General Terms and Conditions of Sale for SOMMER Antriebs- und Funktechnik GmbH, D-73230 Kirchheim/Teck

### Art. 1 Scope

1. Solely our general terms and conditions shall apply. These shall apply to all businesspersons (§ 14 of the German Civil Code), legal entities governed by public law and special assets governed by public law. We shall not recognise any general terms and conditions of the customer to the contrary unless we agree to such in writing. Our general terms and conditions shall also apply if we carry out a delivery without reservation and are aware of contrary general terms and conditions of the customer.
2. These terms and conditions shall apply to all future business relations even if they are not expressly mentioned once again in agreements.
3. All agreements affecting this Agreement shall be set out in writing. This shall apply in particular to the issue of declarations of guarantee.

### Art. 2 Offers, conclusions of agreements, content of the Agreement

1. Our offers are subject to change without notice. We can accept contractual offers within a period of 4 weeks.
2. We retain title and copyright to all illustrations and drawings, calculations and other files and documents; such may not be made available to third parties. This applies in particular to those files and documents which are labelled confidential; the customer must obtain our express consent prior to passing such on to third parties. Documents such as e.g. samples, brochures, catalogues, illustrations, drawings, weight and dimensions are only approximate if such are not expressly declared to be binding in writing.

### Art. 3 Prices, terms and conditions of payment, prepayment, right to withdraw, return, right of retention, setting off, counterclaim

1. If nothing to the contrary is contained in the confirmation of order, all prices shall be deemed to be ex works, not including freight, insurance, customs duties, agreed-upon installation, foreign taxes, etc. plus respectively applicable value-added tax. Cost estimates are subject to charge.
2. To meet our obligations under the provisions of the Packaging Regulation (Verpackungsverordnung), we have affiliated ourselves with a national waste-disposal enterprise (ISD Interseroh AG, Cologne). If we have the waste-disposal company take back packaging for us in accordance with the provisions of the Packaging Regulation, such shall occur by having the customer making packaging emanating from ourselves and related packaging made available to the waste-disposal company free of charge at a collection point named by ISD for collection.
3. The price list which applies on the day when the order is placed shall apply. If set-up, installation or commissioning have been agreed upon, the rates agreed upon on the day the order is placed shall also apply. If our purchase prices rise or wage or salary increases take place between the placement of the order and delivery, we retain the right to adjust prices commensurately.
4. If nothing to the contrary is agreed upon, invoices shall be due for payment 8 days after the invoice date minus 2 % discount or within 30 days of the invoice date net. Instructions to pay, checks or bills of exchange shall only be accepted following special agreement and only on account of performance. The costs of discounting and collection shall be borne by the customer.
5. If the customer is at least 2 instalments late in the case of payment by instalment, we shall be entitled to make the entire amount due even if checks or bills of exchange have been accepted. In such case the papers shall be returned in return for immediate cash payment.
6. If after the conclusion of the agreement the financial situation of the customer deteriorates considerably or changes in such occur which jeopardise our claim to counterperformance, or if the customer was already in such a situation when the agreement was concluded, but such only becomes known later, we may refuse our performance until the customer renders counterperformance. This shall apply in particular to cases in which mandatory enforcement measures, bill or check protests, the customer files for bankruptcy or seeks relief from creditors, liquidation or similar. In such cases we shall be able to set the customer a grace period for the rendering of counterperformance or payment of security. If the counterperformance is not rendered or security not deposited, we shall be entitled to withdraw from the agreement.
7. If the customer is late in effecting payment, we shall be entitled if the setting of a grace period cannot be waived by law to take back the goods following the expiry of a grace period we have set, if need be enter the offices of the customer and take back the goods there.
8. If the goods we deliver are taken back, such goods shall be credited to the customer notwithstanding the pressing of additional damage claims with a reasonable mark-up and set off against our unpaid claims. The customer shall retain the right to demonstrate that the value of the goods has declined in particular cases.
9. Only claims which have been recognised by us or a court of law may be set off against our claims. It shall not be allowed to advance a counterclaim in legal proceedings. The customer shall only be entitled to exercise a right of retention if the customer's claim is based on the same contractual relationship.

### Art. 4 Freedom to render performance, delivery period, partial delivery, right of withdrawal, damage due to delay.

1. Delivery is subject to our being supplied correctly and in due time.
2. The commencement of the delivery period stated by us is subject to all technical details being resolved. Partial deliveries shall be allowed.

3. If nothing to the contrary is agreed upon, we shall not be responsible for delays in delivery as a result of force majeure or any other circumstances for which we are not responsible, in particular disruptions in traffic and operations for which we are not responsible, strikes, lock-outs, shortages of raw materials and war. If in such case we are unable to deliver within the agreed-upon delivery period, the delivery period shall be extended commensurately. If in such case there is an impediment preventing delivery going beyond the delivery date which has been commensurately extended, we shall be entitled to withdraw from the agreement.
4. If we are unable to adhere to the agreed-upon delivery period, the customer shall be obligated to declare upon our request within a reasonable period of time whether the customer continues to desire the delivery. If the customer fails to issue such declaration, we shall be entitled to withdraw from the agreement or rescind the agreement after the expiry of a reasonable period of time.
5. If we are in delay, the following shall apply:
  - a. If a firm deal has been made or the customer is able to claim that it no longer has an interest in the fulfilment of the agreement or if the delay is due to wilful violation of the agreement by one of our employees, our representatives or parties hired by us to carry out the agreement, we shall be liable for damage due to delay in accordance with statutory provisions. In the event of grossly negligent violation of the agreement for which we are responsible, our liability for damage due to delay shall be limited to the foreseeable damage which typically occurs in such cases.
  - b. If we, our representatives or parties we hire to carry out the agreement violate an important contractual obligation and if liability is not stipulated by statutory provisions in the meaning of letter a., our liability for damage due to delay shall be limited to the foreseeable damage which typically occurs in such cases.
  - c. In all other cases our liability for delay shall be limited to a maximum of 5 % of the delivery value.
  - d. This does not exclude other statutory claims of the customer.

### Art. 5 Transfer of risk

1. If nothing to the contrary emanates from our confirmation of order, delivery shall be deemed to be agreed upon "ex works". Shipment shall always be effected at the risk of the customer, including in the case of delivery to a place other than the place of execution – and including by shipment free freight and/or shipment by our own staff or vehicles.
2. If we have agreed to effect delivery, the customer shall provide trained staff and any technical equipment required (e.g. forklifts) in due time to ensure smooth unloading at the customer's offices. It is required for the vehicle to be able to drive directly to the unloading site and unload the goods without undue delay. If this requirement is not met, we shall charge the customer for the extra expenses incurred as a result thereof.
3. If the goods are ready for shipment and the shipment or receiving is delayed for reasons for which the transporting company is not responsible, risk shall be transferred to the customer upon receipt of notification of readiness to effect delivery; beginning on this day the customer shall in addition bear the storage costs which arise along with incidental expenses to an amount at least 0.5 % of the invoice amount for each month commenced with beginning with notification of readiness to effect delivery unless the customer can demonstrate a lower amount of damage.

### Art. 6 Claims for defect

1. Delivered goods shall be examined by the customer without undue delay after unloading if such is warranted in the normal course of business. If a defect is discovered, we shall be notified immediately. If the customer fails to notify us, the goods shall be deemed to have been approved unless there is a defect which could not be recognised upon inspection. If such a defect is discovered later, the notification must be provided without undue delay after such defect is discovered, otherwise the goods shall be deemed to have been approved in spite of this defect. This shall not affect § 377 of the German Commercial Code (HGB). The customer shall not be released from its obligation to inspect the goods even if it has recourse to other parties as set out under § 478 of the German Civil Code (BGB). If in such cases the customer fails to notify defects which the customer's customer discovers immediately, the goods shall be deemed to have been approved in spite of this defect.
2. If there is a defect, we shall be entitled taking into account the type of defect and the legitimate interests of the customer to determine the type of subsequent fulfilment. With regard to these agreements, subsequent fulfilment shall be deemed to have failed if three attempts are not successful. (This subsection shall not apply in the event of recourse as set out under § 478 of the German Civil Code).
3. In the effect of subsequent fulfilment in the case of defects we shall only be obligated to bear the expenses required as a result, in particular transport, travelling expenses, labour and material costs to the extent that these do not increase because the object has been delivered at a site other than the headquarters or the business branch of the customer to which delivery has been effected. (this number shall not apply in the event of recourse as set out under § 478 of the German Civil Code).

4. The claims for defect of the customer shall be subject to a statute of limitations of one year. This shall not apply in the event of recourse as set out under § 478 of the German Civil Code, nor shall this apply if we deliver objects which have been used for a building construction in accordance with their usual purpose and have caused such to be defective. Nor shall this apply to damage claims as a result of fatality, personal injury or health impairment or as a result of a grossly negligent, wilful violation of an obligation by us or parties hired by us to carry out the agreement.
5. There shall be no warranty obligation for damage to parts delivered – and the consequences of such – as a result of the quality of the material or which are subject to premature wear and tear after use of such, nor for damage – and the consequences of such – which result from faulty or negligent handling, unwarranted heavy use, unsuitable operating resources, defective maintenance or other circumstances which the supplier has no influence on or is unable to influence. The warranty shall in particular also become null and void with respect to objects delivered which the party placing the order or the customer itself have attempted to repair or have repaired.

#### **Art. 7 Liability for payment of damages**

1. In the event we are liable for the payment of damages, the following shall apply:
  - a. If the claims are based on a wilful violation of obligations by ourselves, our representatives or parties hired by us to carry out the agreement, we shall bear liability for the payment of damages in accordance with statutory provisions. If claims are based on a grossly negligent violation of obligations by ourselves or our representatives or parties hired by ourselves to carry out the agreement, liability shall be limited to foreseeable damage which typically occurs in such cases.
  - b. If we or our representatives or parties we hire to carry out the agreement culpably violate an important obligation and such case does not involve liability in accordance with statutory provisions as set out in letter a., liability shall be limited to foreseeable damage which typically occurs in such cases.
  - c. If nothing to the contrary is set out under a. and b., our liability to pay damages shall be excluded.
2. The exclusion and limitations on liability set out under no. 1 shall not only apply to contractual claims. Such shall also apply to other, in particular tortious claims. Such shall also apply to claims for compensation for expenses incurred in vain in lieu of performance.
3. The exclusion and limitations on liability set out under no. 1 shall not apply to any claims which may arise under § 1.4 of the Product Liability Act (Produkthaftungsgesetz) or as a result of culpable injury to life, physical harm or impairment to health.
4. If limitation on liability does not apply as set out under no. 1 in the case of manufacturer's liability under § 823 of the German Civil Code, our liability shall be limited to payment of compensation for the insurance. If this does not occur or does not occur to the full amount, we shall be obligated to meet liability to the amount of coverage. This subsection shall not apply in the event of culpable injury to life, physical harm or impairment to health.
5. If our liability is excluded or limited, this shall also apply to the personal liability of our white-collar workers, blue-collar workers, employees, representatives and parties we hire to carry out the agreement.
6. There is a special provision for damage due to delay in Art. 4, no. 5.

#### **Art. 8. Amending and deviating stipulations in the event of international agreements**

1. If the customer has its offices outside the Federal Republic of Germany, the following provisions shall apply:
  - a. We shall not be liable for the admissibility of the use of the objects delivered set out in the agreement under the statutory provisions of the country which the goods are delivered in. Nor shall we be liable for any taxes which accrue there.
  - b. We shall not be liable for impediments to delivery resulting from government measures, in particular import or export restrictions.
2. If the customer has its offices outside the Federal Republic of Germany and the United Nations Convention on Contracts for the International Sale of Goods (CISG, Viennese UN Purchasing Law) applies in its respectively valid version, the following provisions shall apply as well:
  - a. Changes in or rescission of the agreement are required to be in writing.
  - b. The following shall apply in place of Art. 6 and 7:
    - aa. We shall only be liable for damage toward the customer in accordance with statutory provision if such is based on wilful or grossly negligent violation of the agreement by ourselves, our representatives or parties we hire to carry out the agreement. We shall also bear liability under statutory provisions if we violate an important contractual obligation. The aforementioned restrictions on liability shall not apply in the event of any claims under § 1.4 of the German Product Liability Act or in the event of claims resulting from fatalities or personal injury caused by the goods.
    - bb. If objects are delivered which are not in conformity with the agreement, the customer shall only be entitled to rescind the agreement or demand delivery of substitutes if damage claims against us are excluded or the customer can not be reasonably expected to use the goods which are contrary to the agreement and to claim for the damage which remains. In such cases we shall first be entitled to rectify the defects. If the attempt to rectify the defect fails and/or it leads to an unreasonable delay, the customer shall be entitled to rescind the agreement or demand delivery of a substitute as the customer sees fit. The customer shall also be entitled to the same if the effort to rectify the defect causes an unreasonable inconvenience or uncertainty regarding the reimbursement of outlays of the purchaser.

cc. The customer's claims to defect shall be subject to a one-year statute of limitation.

#### **Art. 9 Security on reservation of title to ownership**

1. We reserve title to the goods delivered until all payments from the agreement and in the case of existing or ongoing business relations until all payment emanating from these are received. This shall also apply if our claims have been included in a current account and the balance has been netted and recognised as well as for future claims.
2. The customer shall be obligated to treat the goods delivered with care, and in particular to store such in a proper manner; the customer shall moreover be obligated to adequately insure the goods at the customer's own expense against fire, water and theft at their value new.
3. In the case of levies of execution and any other actions by third parties against the goods, the customer shall notify us immediately in writing to defend our rights (e.g. lawsuit under § 771 of the Civil Procedure Code (ZPO)). If such third party is unable to reimburse us for court or out-of-court expenses of a lawsuit in accordance with § 771 of the Civil Procedure Code, the customer shall be liable to us for such losses.
4. The customer shall be entitled to sell and to use goods supplied in normal business operations; the customer assigns to us here and now, however, all claims which accrue to the customer due to resale to its customers or third parties to the amount of the value of the conditional commodities regardless of whether the goods supplied have been resold without or following processing. The value of the conditional commodities shall be the final invoice amount (including value-added tax) agreed upon with us. If we have co-title to the resold conditional commodities, the claims shall be assigned in the amount commensurate with our share in the conditional commodity. The customer shall not be entitled to otherwise sell the goods, in particular to assign or use such as security.
5. The customer shall also be entitled after assigning title to collect the claim emanating from the resale. This shall not affect our right to collect such claim ourselves. We shall be required, however, to refrain from collecting the claim as long as the customer meets its payment obligations emanating from the earnings it has taken in, the customer is not in arrears on payment and in particular no petition has been filed for the opening of a bankruptcy procedure or payments discontinued. If such is the case, we may demand that the customer disclose the claims it has assigned and its creditors, all information required to collect such, turns over to us the documents relating hereto and notifies its creditors that it has assigned such.
6. If the customer processes or changes the goods supplied, this shall always be deemed to be on our behalf. The vested rights of the customer to goods supplied shall continue to apply to the unchanged object. If the goods supplied are processed with objects which do not belong to us, we shall obtain co-title to the other objects processed at the time of such processing. In addition, the same shall apply to the object created through such processing as with respect to the conditional commodities we supply.
7. If goods supplied are mixed, combined or connected with other objects which do not belong to us or mixed so such can no longer be separated out, we shall acquire co-title to the new object in the ratio of the objective value of the goods supplied to the other objects at the point in time when such were mixed, combined or connected. If such procedure takes place in such a manner that the object of the customer must be deemed to be the main part, it is herewith agreed that the customer shall transfer prorated title to such and keep such sole goods for which we have title or co-title for us free of charge.
8. The customer also assigns to us those claims securing our claims against the customer to the amount of the value of the conditional commodities with all subsidiary rights and priorities before the remainder which the customer obtains through connection of the conditional commodities as the main part of a property, ship, ship structure or aircraft of another party towards a third party. Art. 9, section 4, subsections 2 and 3 shall apply accordingly.
9. The customer herewith assigns to us those claims securing our claims against the customer to the amount of the value of the conditional commodities with all subsidiary rights and priority before the remainder which the customer acquires in a third party through sale of its own property, ship, ship structure or aircraft with which the customer has linked the conditional commodity as the main part. Art. 9, section 4, subsections 2 and 3 shall apply accordingly.
10. We shall be obligated to only release the security we are entitled to upon the request of the customer if the realised value of our securities exceeds the claims to be secured by more than 10 % or the nominal amount by more than 40 %; we shall be able to select the security to be turned over as we see fit.

#### **Art. 10 Applicable law, place of performance, legal venue**

The law of the Federal Republic of Germany shall apply to this Agreement. The place of performance for all services emanating from this Agreement is D-73230 Kirchheim/Teck. In the case of agreements with businesspersons, legal persons under public law, special assets under public law and foreigners who have no legal venue in Germany, the legal venue shall be D-73230 Kirchheim/Teck. We reserve the right, however, to also file suit at the headquarters of the customer.

SOMMER Antriebs-und Funktechnik GmbH; status 2007/05-dr