

# Standard Terms and Conditions of TDA Tech GmbH, Hückeswagen/Germany

## § 1 Scope of Application

(1) These Conditions of Sale shall apply exclusively and to companies for the purposes of § 310 (1) BGB [Bürgerliches Gesetzbuch; German Civil Code] only. Any contradictory terms or terms diverging from these Conditions of Sale of the Customer shall only be deemed accepted by us, if we have expressly approved their applicability in writing.

(2) These Conditions of Sale shall also apply to all future transactions with the Customer, provided that they are legal transactions that are related in nature.

## § 2 Offer and Conclusion of a Contract

(1) If an order is deemed as an offer for the purposes of § 145 BGB, we may accept the same within two weeks.

(2) Orders placed at sales representatives or sales agents require the approval and confirmation of an authorized firm representative to become valid.

(3) In case of export businesses we are entitled to withdraw an already delivered quotation at any time and to withdraw from a closed purchase contract if the transaction (in particular the export) is not permitted by the responsible German or European authority. If this case we are obliged to fully refund any advance payments made by the customer. Independently from the previous sentence, an expense allowance in the amount of 5% of the total order volume can be retained if the customer has provided wrong information prior or at the time of contract closure. Compensatory damages due to the withdrawal from the quotation/contract are excluded.

(4) If the financial status of the customer turns out to be less favorable after the conclusion of contract or if the payment is not made according to the agreement, the purchasing party is indentured to immediately settle any outstanding invoices to us or alternatively provide appropriate securities (e.g. bank security). Additionally, we are entitled to partly or entirely rescind from any incompletely fulfilled contract. In this case, the customer is indentured to reimburse any accrued costs that have been caused by the respective contract (including but not limited to expenses for purchased parts, materials, and man hours).

## § 3 Submitted Documentation

We shall retain all ownership rights and copyrights in any documentation, such as calculations, drawings etc., that are submitted to the Customer in connection with the order. Such documentation must not be made accessible to third parties, unless we grant to the Customer in writing express approval for such disclosure. If we do not accept the Customer's order within the period set out in Article 2, these documents must be immediately returned to us.

## § 4 Prices and Payment

(1) Unless agreed otherwise in writing, our prices will be ex works excluding packaging and plus Value Added Tax at the applicable amount. Packaging costs will be billed separately.

(2) Payment of the invoice price must be made to one of the bank accounts stated on the invoice. Discounts may only be applied if specifically agreed in writing.

(3) Unless agreed otherwise, the purchase price must be paid within 30 days after delivery. A default interest of 8 percentage points above the respective base rate p. a. shall apply. We reserve the right to make further claims for any damage caused due to the default.

(4) We reserve the right to apply reasonable price amendments due to changes in staff, material and distribution costs for deliveries that take place 3 months or later after conclusion of the contract.

(5) Our purchase price entitlements shall be subject to a limitation period of five years.

## § 5 Set-off and Right of Retention

The Customer shall only be entitled to set-off any due payments, if such counter-claims were determined in a legally binding manner and are not disputed. The Customer shall only be entitled to exercise any rights of retention, if such counter-claims arise under the same contractual relationship.

## § 6 Delivery Time

(1) The commencement of the delivery time period stated by us is subject to the clarification of all technical issues, as well as timely and proper

compliance with its obligation on behalf of the Customer. The defense of non-compliance with contractual obligations remains reserved.

(2) If the Customer should be in default of acceptance or if the Customer culpably breaches any other duties to cooperate, we shall be entitled to claim for the damage thus caused to us, including any additional expenditure. We reserve the right to make further claims. Provided that the foregoing requirements are met, the risk of accidental perishing or accidental perishing or of an accidental deterioration of the purchased goods shall pass to the Customer at the time of default in acceptance or the debtor's delay.

(3) The customer may not reject deliveries or partial deliveries made prior than the deadline of the delivery period. Claims for compensation based on a delayed delivery are excluded.

## § 7 Passing of Risk during Shipping

If the goods are shipped to the Customer on request of the Customer, the risk of accidental perishing or accidental deterioration of the goods shall pass to the Customer at the time of shipment of the goods to the Customer and on the shipment leaving the works/warehouse at the latest. The foregoing shall apply irrespective of whether shipping takes place from the place of performance or of which party pays the shipping costs.

## § 8 Retention of Title

(1) We shall retain title to the delivered goods until all claims under the delivery contract have been fully settled. This shall also apply to any future deliveries, even if we do not always make express reference to this provision. We shall be entitled to take back the purchased goods if the Customer should be in breach of contract.

(2) As long as title has not passed to the Customer, the Customer shall take good care of the goods. The Customer is in particular under the obligation, to adequately insure the goods at the Customer's expense against theft, fire and water damage at the value as new. If it should be necessary to carry out maintenance and service works, the Customer shall do this in good time and at its own expense. As long as title has not yet passed, the Customer must immediately notify us in writing, if the delivered goods should be seized or subjected to any other interference from third parties. If such a third party should be unable to reimburse to us any court and out-of-court costs of a lawsuit in accordance with s. 771 ZPO (Zivilprozessordnung; German Code of Civil Procedure), the Customer shall be liable for our losses.

(3) The Customer is authorized to resell the goods to which title has been reserved in the course of ordinary business. The Customer hereby assigns to us any entitlements of the Customer arising from a resale of the goods to which title has been reserved to the amount of the final commercial invoice amount that has been agreed with us (including value added tax). Such assignment shall apply irrespective of whether the goods were resold without or after any processing. Notwithstanding such assignment, the Customer shall continue to be authorised to collect any such claims. This shall, however, not affect our authority to collect any claims ourselves. We shall, however, not collect any claims as long as the Customer uses any collected funds to comply with its payment obligations, is not in default and in particular did not make an application for the commencement of insolvency proceedings and provided that there is no suspension of payments.

(4) Any processing or transformation of the goods by the Customer shall always take place in the name of and on behalf of us. In this case, the Customer's contingent right in the goods shall continue in respect of the transformed goods. If the goods should be processed together with other objects, which do not belong to us, we shall acquire an ownership interest in the new object that shall be proportional to the objective value of our goods in relation to the other processed objects at the time of processing. The same shall apply in case of merging. If the merging takes place in such a way, that the Customer's matter must be considered the main part, it shall hereby be deemed agreed, that the Customer shall transfer to us proportional ownership and that the sole property or joined property thus created shall be held in custody by the Customer on our behalf. To secure our claims against the Customer, the Customer hereby also assigns those entitlements to us, that arise to him against a third party from the union of the goods to which title is reserved with a real estate property; we accept such assignment already at this time.

(5) We hereby undertake to release the securities, that we are entitled to,

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on request of the Customer, insofar as the value of same exceeds the entitlements that are to be secured by more than 20 %.

### § 9 Warranty and Notification of Defects

(1) Any warranty entitlements on behalf of the Customer require that the Customer has properly complied with its inspection and notification of defects obligation under §§ 377 HGB (Handelsgesetzbuch; German Commercial Code). If there should be any complaints despite the greatest care, that has been taken, obvious defects must be notified in accordance with s. 377 HGB immediately and within 8 days after receipt of the goods at the latest, concealed defects immediately on discovery. Otherwise the goods shall be deemed approved.

(2) The limitation period for any entitlements arising from defects shall be 12 months after delivery of the goods delivered by us to the Customer. The foregoing provisions shall not apply if the statutory provisions of § 438 (1) No. 2 BGB (Buildings and Objects for Buildings), § 479 (1) BGB (Right of Recourse) and § 634 a (1) BGB (Construction Defects) prescribe longer mandatory periods. Our written approval must be obtained before the return of any goods. Any expenses for returns must be borne by the consumer.

(3) If, despite of all expended care, the delivered goods should have any defects, that were already present at the time of passing of risk, we shall have the choice of either making good such defects or delivering substitute goods, provided, however, that such defects were notified to us in a timely manner. We must always be afforded the opportunity to have defective goods repaired or replaced within a reasonable period of time.

(4) In case of a deficiency the customer is not entitled to claim for redhibition, price reduction, or compensation. Also any advanced liability claims, especially those related to consequential or financial loss and those for lost profit, are excluded. The upper limit of liability for personal and material damages is the limit of indemnity agreed upon in our product liability insurance. The aforementioned principles of liability also apply for our employees, representatives, and other agents.

(5) Entitlements arising from defects do not exist in case of negligible deviations from the agreed quality, in case of negligible impairment in respect of usability, in case of natural wear and tear and in case of damage caused after the passing of risk as a consequence of incorrect or negligent handling, excessive loads, unsuitable resources, defective construction work, unsuitable building ground or because of particular external influences which are not presumed under this contract. In case of corrective maintenance works or adjustments to the delivered goods, we do not assume any liabilities for resulting damages if the interference has been either conducted by a customer/third person not authorized by us in written form and/or in an inappropriate way.

(6) Any claims by the customer in respect of expenditure necessary for the purpose of repair or replacement, in particular transportation, travel, work and material costs shall be excluded, if such expenditure is increased because the goods delivered by us were subsequently introduced to a location other than the Customer's establishment, unless such introduction corresponds to the intended use of the goods.

(7) Any rights of recourse of the Customer against us shall only exist insofar, as the Customer did not enter into any agreements with its customers that would go beyond the legally required warranties. Subsection 6 shall apply to the rights of recourse of the Customer against the Supplier accordingly.

(8) Any further or other claims for defects, than those provided for under this Article 9, of the Customer against us and our agents shall be excluded.

(9) In case of fraudulent concealment of a defect or in case of an assumption of a guarantee of quality of the goods at the time of passing of the risk for the purposes of s. 444 BGB (representation of the vendor that the vendor shall, in case of its absence, be liable for all consequences irrespective of fault), the rights of the Customer shall be exclusively determined by the respective statutory provisions.

### § 10 Miscellaneous

(1) This agreement and the whole legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of performance and exclusive jurisdiction for all disputes arising under this contract shall be Remscheid, Germany.

(3) Any cases of acts of nature beyond control, including but not limited to mobilization, war, unrests, strikes, restriction and deficiencies on consumables, raw materials, or the machine park, entitle us to fully or partly rescind the sales contract and any related obligations. Claim damages of the customer are excluded.

(4) Any changes and amendments to this contract must be made in writing. This also applies to any changes to this written form requirement. There are no oral ancillary agreements.

(5) If individual provisions of this contract should be or should become ineffective or if they should contain a gap, the remaining provisions shall not be affected by this. The parties undertake to replace an ineffective provision with such a legally admissible regulation that is closest to the economic purpose of the ineffective provision or with one that fills the gap.