

1. Scope of Applicability

1.1. The following General Terms and Conditions apply to all contracts for the provision of goods and services concluded between Buyer and the company Drexler Drivetrain GmbH (hereinafter Seller). They apply also to all future business transactions between these parties, even if not explicitly agreed again. We are not bound by any deviating terms of Buyer that we do not explicitly affirm, even if we do not explicitly object to the applicability of such terms. The following sales terms also apply in the event that we fulfil an order without reservation, despite knowledge of Buyer's deviating or conflicting terms.

1.2. All agreements made between Buyer and Seller for the performance of the sales contracts are set out in writing in such contracts.

2. Offer and Contract Formation

2.1. We may accept within a period of two weeks an order placed by Buyer which may be understood as an offer to conclude a sales contract; this offer may be accepted by transmission of an order confirmation notice, or by shipment of the products ordered within the same two-week period.

2.2. All offers are non-binding and subject to confirmation, unless we have expressly stated them to be binding.

2.3. Seller reserves its copyright, property rights, and all other rights to all illustrations, calculations, drawings, and other documents. Buyer may only transmit such material to third parties with Seller's written consent, regardless of whether we have expressly labelled such material as confidential.

2.4. The assignment of Buyer's rights and obligations under the sales contract, or the selling on of the purchased goods before delivery, shall require the written consent of Seller. In the event of a violation or attempted violation of this provision, Seller may withdraw from the contract with immediate effect by means of a written declaration.

3. Tools and Dies, Intellectual Property Rights

3.1. Buyer shall bear the costs for the acquisition of special tools and dies. Tools and dies remain or become the property of Seller. They shall be used only to fulfil Customer's order, and shall be retained to fulfil future contracts for delivery to Customer until discarded as a result of normal wear and tear. This obligation expires one year after the conclusion of the most recent delivery contract for which the tools or dies were required. We will destroy the special tools and dies at Customer's request.

3.2. Customer accepts liability for any losses incurred by Seller resulting from the infringement by Seller of intellectual property rights belonging to third parties in the fulfilment of Customer's order. This liability shall not apply if and insofar as the features establishing the violation of the delivered goods are suggested to the Seller or the violation results solely from the manufacturing method employed by Seller.

4. Payment Terms

4.1. All prices are ex works and do not include packaging, unless agreed otherwise in the order confirmation notice. Seller's prices do not include statutorily applicable VAT, which Seller shall separately note on the invoice in the amount applicable as of the invoice date.

4.2. A discount deduction is only permissible with a special written agreement between Buyer and Seller. The net purchase price (without deductions) is due and payable immediately upon receipt of the invoice by Buyer, unless the order confirmation provides for another payment target. Payment is only considered to have been received once Seller is able to freely dispose of the amount. For payment by check, payment is deemed to have been received when the check is cashed.

4.3. The statutory provisions shall apply in the event that Buyer enters into default on payment.

4.4. Even if notice of defects has been given or counterclaims asserted against Seller, Buyer is only entitled to offset the amount of such claims if they have been adjudged legally enforceable, have been acknowledged by Seller as legitimate, or are undisputed. Buyer is only entitled to exercise a right of retention if its counterclaim arises under the same contractual relationship.

5. Delivery, Delivery Dates, and Delayed Delivery

5.1. Delivery dates or periods which have not been explicitly declared to be binding are exclusively non-binding estimates. The delivery period stated by Seller only begins to run once an order has been fully clarified. Buyer must also timely and properly perform all obligations incumbent upon it.

5.2. If the underlying sales contract is a fixed-term transaction within the meaning of §286 Para. 2 No.4 of the Civil Code [BGB] or § 376 of the Commercial Code [HGB], Seller shall be liable in accordance with the statutory provisions. The same shall apply if Buyer is entitled as a result of a delay in delivery within Seller's sphere of responsibility to assert its lack of interest in the further performance of the contract. In this event, Seller's liability is limited to the losses typical and foreseeable for the contract in question, unless the delay in delivery is the result of an intentional breach of contract by Seller; the culpable actions of Seller's representatives or agents shall be imputed to Seller.

5.3. In the event that a delay in delivery results from a culpable violation of a material contractual obligation by Seller or its representatives or agents, Seller shall be liable in accordance with the statutory provisions, with the limitation that liability shall be limited in this case to an amount typical and foreseeable for the contract in question.

5.4. Otherwise, in the event of delayed delivery lying within Seller's sphere of responsibility, Buyer may claim liquidated damages in the amount of 3% of the value of the delivery for each full week of such delay, up to a maximum of 15% of the value of the delivery.

5.5. Any further liability for delayed delivery lying within Seller's sphere of responsibility is excluded. Any further statutory claims and rights to which Buyer is entitled in the event of a delay in delivery lying within Seller's sphere of responsibility shall remain unaffected.

5.6. The manufacturer is entitled to make changes to the construction or form of the shipment and changes in its scope during the delivery period, insofar as acceptance of the changes or deviations can reasonably be expected of Customer, taking into account Seller's interests.

5.7. Insofar as Seller or the manufacturer uses symbols or numbers to designate the order or the ordered item, no rights are conferred thereby.

5.8. Seller is entitled to make partial deliveries and render partial performance, insofar as acceptance thereof can reasonably be expected of Customer.

If Buyer is in default of acceptance, Seller is entitled to demand reimbursement for the resulting losses and any additional expenses incurred. The same shall apply if Buyer culpably violates its obligations to cooperate. The risk of accidental deterioration or loss transfers to Buyer upon Buyer's default of acceptance or payment.

6. Transfer of Risk – Shipment / Packaging

Shipment shall in all cases be at Seller's risk and on its account, including any return shipments made. The risk of loss transfers to Buyer at the latest upon shipment of the goods. Return shipments must be carriage paid, regardless of the reason for the return. Seller shall invoice the sender for any costs incurred for return shipping. For return shipments not made in exchange for other goods, Seller reserves the right to deduct a restocking fee of 10%. If shipment is delayed for reasons outside Seller's sphere of responsibility, storage of the goods shall be at Buyer's risk and expense. In this event, Seller's announcement that the goods are ready for shipment shall be equivalent to actual shipment. Shipment shall be made at Seller's discretion, yet with no risk of the cheapest means of completing the same. Buyer's shipping specifications shall be taken into account to the extent possible. Seller does not insure products against loss or damage in transit.

7. Formal Notice of Right of Rescission and Return

7.1. End users may rescind their consent to the contract within two weeks in written form (e.g. by letter, fax, or e-mail) without requirement that a reason for such rescission be given, or by returning the goods received. The return period shall commence at the earliest upon receipt of this formal notice of the end user's rights. Timely sending of the declaration of rescission shall be sufficient to comply with this two-week limit. Notice of rescission must be made to: Drexler Drivetrain GmbH, Postgasse 12c, 94121 Salzweg.

7.2. End users may return the goods received within two weeks by means of return shipment of such goods; no reason for the return need be given. The return period shall commence at the earliest upon receipt of this formal notice of the end user's rights. In the case of goods not suitable for shipment in parcel form (e.g. bulky or oversized goods) only, you may also declare the return of the goods by means of a request to return the goods in text form, e.g. by letter, fax, or e-mail. Timely shipment of the goods or of the request to return the goods shall be sufficient to comply with the two-week limit. Return shipment or the request to return the goods must be made to: Drexler Drivetrain GmbH, Postgasse 12c, 94121 Salzweg.

7.3. If the right of rescission or return is exercised, the consumer shall bear the return shipping costs up to an order value of 40.00 EUR. If the amount of the order exceeds 40.00 EUR, return shipping costs shall be borne by Seller; return shipment of small parts must be made by standard postal parcel, carriage paid. If another carrier or a different, more expensive mode of shipping are used, Seller shall assume only that portion of the return shipping costs corresponding to the amount that would have been payable for a standard parcel shipped via Deutsche Post AG. In the case of large items, such as motors, gearboxes, plastic parts, etc., Seller shall commission a carrier to pick up the items after receipt of the written notice of rescission.

7.4. Used parts, parts sold on behalf of Customer, and goods finished to a customer's specifications are not covered by the right of rescission.

8. Warranty

8.1. Buyer may only assert claims for defects if Buyer has properly fulfilled its inspection and defect notification obligations in accordance with §377 HGB.

8.2. Insofar as defects within Seller's sphere of responsibility are identified, Seller is obligated to make supplementary performance, notwithstanding Buyer's right to rescind the contract or reduce the purchase price, unless Seller is statutorily entitled to refuse supplementary performance. Buyer must set Seller a reasonable period in which to make supplementary performance. At Buyer's option, supplementary performance may take the form of eliminating the defect (remediation) or delivery of new goods. Seller shall bear the costs of defect remediation, except insofar as these are increased as the result of the goods in question having been moved to a location other than the original place of performance.

8.3. If supplementary performance has failed, Buyer may at its option demand a reduction in the purchase price or declare its rescission of the contract. Remediation shall be considered to have failed after two fruitless attempts at remediation have been made, except insofar as additional attempts at remediation are appropriate given the contractual goods in question and Buyer can reasonably be expected to accept such additional attempts.

8.4. Buyer may only assert claims for compensation for losses resulting from the defect under the following terms after supplementary performance has failed. Buyer's right to assert further claims for compensation for losses under the following terms remains unaffected thereby.

8.5. Buyer's warranty claims expire one year after delivery of the goods to Buyer, except insofar as the defect was fraudulently concealed by Seller; in that event, the relevant statutory provisions shall apply. Seller's obligations under Clause 8, Subsections 6 and 7 remain unaffected thereby.

8.6. Seller is obligated to accept the return of the new goods or a reduction in the purchase price in accordance with applicable statutes, even without the notice period otherwise required. If Buyer's customer, as the end user of the new goods sold (consumer goods purchase), could demand that Buyer accept the return of the goods or a reduction in the purchase price, or if Seller is threatened with such a resulting claim for the return of an item. In addition, Seller is obligated to reimburse Buyer for its expenses -- in particular, shipping, travel, labour, and material costs -- incurred by Buyer in providing supplementary performance for an end user as the result of a defect already present at the time the risk of loss for the goods in question was transferred from Seller to Buyer. This claim is excluded if Buyer has failed to properly perform its obligations to inspect the goods and notify Seller of any defects in accordance with §377 HGB.

8.7. The obligation set forth in Clause 8, Subsection 4 does not apply insofar as the defect is the result of assertions made in advertising or of other contractual agreements not made by Seller, or in the event that Buyer has made a special guarantee to the end user. The obligation also does not apply if Buyer was also not statutorily obligated to extend warranties to the end consumer, or if Buyer fails to challenge a claim asserted against it. This also applies in the event that Buyer assumes warranty obligations vis-à-vis the end user in excess of that required by statute.

8.8. Seller is also liable for losses resulting from simple negligence, insofar as the negligence relates to the violation of contractual obligations, the performance of which is of particular importance to the accomplishment of the purpose of the contract (material contractual obligations). However, Seller's liability is limited to the extent of such losses typical and foreseeable for the contract in question.

8.9. Any further liability is excluded, regardless of the legal nature of the claim asserted. This applies in particular to claims in tort and claims for reimbursement for wasted expenditures in lieu of performance; Seller's liability in accordance with Clause 8, Subsections 2 through 5 of this contract remains unaffected. Insofar as Seller's liability is excluded or limited, this applies also with regard to the personal liability of Seller's employees, representatives, and agents.

8.10. Buyer's claims to compensation for losses arising from defects expire one year after delivery of the defective goods.

8.11. Customer's claims to compensation for loss of life, physical injury, or injury to health resulting from a culpable breach of duty by Drexler Drivetrain GmbH or its legal representatives or agents are excluded.

9. Reservation of Title

9.1. Seller retains title to delivered goods (goods subject to reservation of title) until satisfaction of all Seller's claims against Buyer, present or future, including all outstanding balances. In the event of a contractual violation by Buyer, e.g. default of payment, Seller has the right -- after specifying a reasonable period for Buyer to return to a state of compliance -- to repossess the goods subject to reservation of title. Seller's repossession or seizure of goods subject to reservation of title represents a rescission of the contract. Seller is entitled to sell the goods subject to reservation of title after repossession. The proceeds of the sale shall be deducted from the amount of Buyer's outstanding debts to Seller, minus a reasonable amount for the costs of sale.

9.2. Buyer is obligated to handle the goods subject to retention of title with care, and to adequately insure them at their replacement value against loss or damage by fire, water, and theft. Necessary maintenance and inspection work shall be timely performed by Buyer at its own expense.

9.3. Customer is only entitled to sell on goods subject to reservation of title in the ordinary course of business as long as it is not in default of payment. No other disposal of such goods is permissible. Seller must be notified immediately of any seizure of goods subject to reservation of title. Seller is also to be provided with an affidavit testifying that the seized items are identical with the items delivered by Seller subject to reservation of title. All costs of intervention shall be borne by Customer. If Customer extends credit for the sales price to its own customers, it shall reserve title to the goods sold on the same terms under which Seller reserved title to the goods upon delivery to Customer. Customer is not authorized to sell on goods subject to reservation of title without itself ensuring that title to such goods is reserved.

9.4. Customer assigns to Seller its claims against its own customers arising from the sale of the goods subject to reservation of title. These claims serve as security in the amount of the value of the goods subject to reservation of title. Customer is only entitled to sell on goods subject to reservation of title if it is ensured that the claim from such sale is assigned to us. Seller revocably authorizes Buyer to collect in its own name on Seller's account on the claims assigned to Seller. This collection authorization may be revoked at any time if Buyer fails to properly fulfil its payment obligations. Buyer is also not entitled to assign such claims for the purpose of collection by means of factoring, unless the factor is simultaneously placed under obligation to make counter performance directly to Seller in the amount of our outstanding claims against Buyer.

9.5. If the goods subject to reservation of title are sold by Customer together with goods not supplied by Seller at an overall price, the assignment of the claim arising from such sale is made in the amount of the invoice value of the goods subject to reservation of title sold thereby. The working and processing of goods supplied by and still the legal property of Seller is made on the latter's behalf, with no obligations accruing to Seller therefrom.

9.6. If the assigned claim is added to an open account, Customer hereby assigns to Seller a portion of the balance of such account, including its final balance, corresponding to the amount of such claim.

10. Use of Our Products on Public Roads

In the event of the use of Seller's products in vehicles licensed for use on public roads, Buyer is responsible for ensuring that all modifications and conversion are made in accordance with applicable statutory provisions and are recorded in the vehicle registration paperwork.

11. Place of Jurisdiction

Passau shall be the place of performance and of jurisdiction for all claims arising between the Parties. If Buyer is not a merchant within the meaning of § 1 HGB, Passau is hereby agreed as the place of jurisdiction for the legal collections procedure in accordance with §688 et seq. of the Code of Civil Procedure [ZPO]. The relations between the Contracting Parties shall be governed exclusively by the laws of the Federal Republic of Germany. The Uniform Law on the International Sale of Goods and the Law on the Conclusion of International Sales Contracts for Goods of 17 July 1973 shall not apply.

12.

The legal invalidity of any portion of the above provisions shall have no effect upon the validity of the remainder of these terms.