

**General Sales, Delivery and  
Payment Conditions  
of SP Antriebstechnik GmbH  
Regensburger Ring 6-8, 91154 Roth**

## **1 Scope**

These Sales Conditions apply to all entrepreneurs, legal entities under public law and special funds under public law.

Our deliveries and services are provided solely on the basis of the conditions hereinafter.

The Purchaser's terms and conditions which are not expressly accepted by us are not valid.

## **2 Offers and Conclusion of the Contract**

2.1 Our offers are subject to change and non-binding, unless we have expressly designated them as binding in textual form. Declarations of acceptance by the Purchaser shall, insofar as they constitute offers pursuant to Section 145 of the German Civil Code, become binding only through written confirmation on our part. We shall endeavour to accept orders by the Purchaser within 5 days of receiving the order.

2.2 We reserve unrestricted rights of ownership and copyright to cost estimates, drawings and other documents; they may not be made accessible to third parties. Drawings and other documents that are part of offers shall be returned immediately upon request if the order is not placed with us.

2.3 The information and illustrations contained in brochures and catalogues constitute approximate values, as customary in the industry, unless we have expressly designated them as binding.

## **3 Long-term and call-off contracts / Price adjustment**

3.1 Contracts of indefinite duration may be terminated with 3 months' notice.

3.2 For long-term contracts (contracts with a term of more than 12 months and contracts of indefinite duration), where there is a significant change to wage, materials or energy costs, each Contractual Partner is entitled to require appropriate price adjustment taking account of these factors.

3.3 If a binding order quantity has not been agreed upon, our calculation is based on the non-binding order quantity (target quantity) that is expected by the Partner for a certain time frame. If the Partner accepts a quantity smaller than the target quantity, we are entitled to increase the unit price reasonably. If the Partner accepts a quantity larger than the target quantity, we will reduce the unit price reasonably, provided that the Partner announced the extra required quantity at least 6 months prior to delivery.

3.4 For call-off contracts, unless otherwise agreed, binding quantities must be notified to us by request at least 6 months prior to the delivery date.

Additional costs, which result from a late request or subsequent changes to the order with respect to timing or quantity made by our partner, will be borne by the latter, and our calculations will be determinative in this context.

## **4 Confidentiality**

4.1 Each Contractual Partner shall use all the documentation (this includes samples, models, and data) and knowledge which it obtains under this business relationship only for the agreed joint purposes and shall keep such documentation and knowledge secret, using the same care as it does for its own comparable documentation and knowledge, where the other Contractual Partner identifies such documentation and knowledge as confidential or has an obvious interest in maintaining its secrecy.

4.2 This obligation comes into effect from the point in time at which the documentation or knowledge was first acquired and expires 36 months after termination of the business relationship.

4.3 The obligation does not apply to documents and knowledge which are generally known or which were already known to the Contractual Partner on receipt without being obliged to maintain secrecy, or which are subsequently transmitted by a third party entitled to pass them on or which are developed by the receiving Contractual Partner without using confidential documents or knowledge of the other Contractual Partner.

## **5 Samples and production equipment**

5.1 Unless otherwise agreed, the production costs for samples and production equipment (tools, moulds, templates, etc.) shall be invoiced separately from the goods to be delivered. This also applies for means of production which have to be replaced as a result of wear and tear. They are to be paid when the outturn sample is sent, or, if a sample has not been requested, within 14 days, without deduction.

5.2 The costs for maintenance and proper storage, as well as the risk of damage or destruction of the production equipment, are borne by us for the period of the calculated service life. The costs for requested tool changes and replacement shall be borne by the Purchaser.

5.3 If the Purchaser should suspend or terminate the collaboration during production of the samples or production equipment, all production costs incurred up to that point shall be charged to the Purchaser.

5.4 The production equipment remains in our possession, even if it has been paid for by the Purchaser, at least until the completion of the delivery contract. The Purchaser is subsequently entitled to reclaim the production equipment if an amicable agreement on the time of handover has been reached and the Purchaser has fully complied with its contractual obligations. In addition, the manufacturer's technical knowledge which is incorporated in the equipment must be appropriately reimbursed, in addition to the full cost of the equipment.

5.5 We shall store the production equipment free of charge for three years after the last delivery to the Purchaser. We then request the Purchaser to give directions in writing on further use of the goods within 6 weeks. Our obligation to store the equipment ends if no statement is made within the 6-week time period or no new order is placed.

5.6 Purchaser-related production equipment may be used by us for deliveries to third parties only with the Purchaser's prior written consent.

## **6 Pricing**

6.1 Unless otherwise agreed, the prices shall apply "ex works", excluding packaging, freight, postage and insurance. These amounts will be invoiced separately.

6.2 VAT at the statutory rate is added to the price.

## **7 Payment terms**

7.1 All invoices are due for payment without deduction within 30 days of the invoice date.

7.2 If it is undisputed that we have delivered partially defective goods, our Purchaser is nevertheless obliged to pay for the faultless part, unless the partial delivery is of no interest to him. In all other cases, the Purchaser may set off counter-claims only with legally established or undisputed claims.

7.3 If the due date is exceeded, we shall be entitled to charge interest on arrears in the amount of the rate charged by the Bank to us for overdrafts, but at least 9 percentage points above the applicable base interest rate of the European Central Bank.

7.4 In the event of a delay in payment, we may, after notifying the Purchaser in writing, suspend performance of our obligations until payment has been received.

7.5 Cheques shall be accepted only by arrangement and only on account of performance. Bills of exchange will not be accepted.

7.6 If it becomes apparent after conclusion of the contract that our claim for payment is endangered by the Purchaser's inability to pay, we may refuse performance and set a reasonable period of time within which the Purchaser must settle with delivery versus payment or provide security. In the event of refusal by the Purchaser or fruitless expiry of the deadline, we are entitled to withdraw from the contract and demand compensation for damages.

## **8 Delivery**

8.1 In principle, delivery times are non-binding and approximate. In the event of uncertainty, the delivery period begins with dispatch of the confirmation of order by us. For delivery times to be complied with, the Purchaser must submit all required documents in a timely manner, we must receive any necessary authorisations and releases punctually, and all contractual obligations must be met by the Purchaser, in particular the agreed terms of payment. If these requirements are not fulfilled in time, the delivery deadline shall be suitably extended. This does not apply if we are responsible for the delay.

8.2 Unless otherwise agreed, we deliver "ex works". The notification of readiness for dispatch or collection by us is determinative for compliance with the delivery date or delivery period.

8.3 Partial deliveries are permissible to a reasonable extent. These will be invoiced separately.

8.4 Production-related excesses or shortages are permissible up to 10 percent of the total order quantity. The total price will be amended accordingly.

8.5 In cases of force majeure and any other event beyond our control and influence, such as natural disasters, mobilization, war, insurgency, strikes and lockouts, official restrictions on imports and exports, unforeseen obstacles to production or deliveries - on our premises or those of our subcontractors - the delivery period deadline shall be reasonably extended. We will inform the Purchaser of the beginning and end of such circumstances as promptly as possible.

8.6 If we incur a delay and cause the Purchaser to incur a loss as a result of this, the Purchaser is entitled to demand a flat-rate compensation for delay. It shall amount to 0.5% of the value of the part of the total output which cannot be used on time or in accordance with the contract as a result of the delay for every full week of delay, up to a maximum of 5% of the value.

8.7 Both damage claims by the Purchaser due to default in delivery and compensation in lieu of performance exceeding the limits specified at Article 8.6 are excluded in all cases of delayed delivery, even after expiry of any delivery deadline set for us. This will not apply in the event of mandatory liability for intent, gross negligence or injury to life, limb or health. The Purchaser may only withdraw from the Contract within the scope of statutory provisions, insofar as the delay to delivery is attributable to us.

8.8 The Purchaser undertakes to notify us, upon our request, within a reasonable period, as to whether it intends to withdraw from the Contract as a result of the delay or continues to require delivery.

## **9 Shipping and transfer of risk**

9.1 Goods notified as ready for dispatch shall be accepted by the Purchaser without delay. Otherwise, we shall be entitled to dispatch them or to store them at the expense and risk of the Purchaser, at our own discretion.

9.2 In the absence of special arrangements, we choose the means of transport and the transport route.

9.3 The risk shall pass to the Purchaser when the goods are handed over to the railway company, the freight forwarder or carrier, or when they are placed into storage, but no later than leaving the factory or warehouse, even if we have taken over delivery.

## **10 Retention of title**

10.1 We retain title to the delivered goods until full receipt of all claims arising from the business relationship with the Purchaser.

10.2 The Purchaser is entitled to sell these goods in the ordinary course of business as long as its obligations arising from the business relationship with us are met in a timely manner. However, the Purchaser may neither pledge the goods subject to retention of title nor assign them as security. The Purchaser is obliged to secure our rights in the case of resale on credit of the goods subject to retention of title.

10.3 In the event of breaches of obligations by the Partner, in particular delay in payment, we shall be entitled to withdraw from the contract and to take the goods back after fruitless expiry of a reasonable deadline set for the Purchaser; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The Purchaser is obliged to surrender the goods.

10.4 The Purchaser hereby assigns to us as security all claims and rights arising from the sale or, if applicable, the authorised rental of goods to which we have ownership rights. We hereby accept the assignment.

10.5 Any processing or treatment of the goods subject to retention of title shall always be carried out by the Purchaser on our behalf. If the goods subject to retention of title are processed or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the other processed or mixed items at the time of processing or mixing.

If our goods are combined or inseparably mixed with other movable objects to form a single object and if the other object is to be regarded as the main object, the Purchaser shall transfer to us proportional co-ownership insofar as the main object belongs to him. The Purchaser shall hold ownership or co-ownership on our behalf. For the rest, the same shall apply to items created by processing or combination or mixing as to reserved goods.

10.6 The Purchaser must inform us immediately of any enforcement measures by third parties on the reserved goods, claims assigned to us or other securities by handing over the documents required for an intervention. This also applies to interferences of any other kind.

10.7 If the value of the existing securities exceeds the secured claims by more than 20 percent in total, we are, at the request of the Purchaser, obliged to release securities of our choice.

## **11 Warranty and liability**

11.1 The condition of the goods is defined exclusively by the agreed technical delivery specifications. In the event that we are to make deliveries in accordance with drawings, specifications, models etc. by our Partner, the latter bears the risk of suitability for the intended purpose. The point in time at which risk is transferred is decisive in determining whether the condition of the goods complies with the contract.

11.2 We will not be liable for material defects caused by unsuitable or improper use, defective installation or commissioning by the Purchaser or a third party, fair wear and tear, defective or negligent handling, nor for the consequences of improper modifications and modifications made without our consent or maintenance work carried out by the Purchaser or third parties. The same applies for defects which reduce the value or suitability of the item to an insignificant extent.

11.3 The Purchaser is obliged to meet its obligation to inspect and submit complaints in compliance with Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB) as a pre-requisite for making any claim on the basis of defects. Here, it must examine the delivery immediately or, at the latest, one week from receipt, for any defects and notify us where defects are discovered. If there is a defect that is imputable to us, we are entitled to choose whether to rectify the delivery or to replace it. Within the scope of supplementary performance, we are obliged to reimburse the Purchaser for the expenses required to remove the defective goods and for installation or fitting of repaired goods or subsequently delivered defect-free goods. Reimbursement of costs is excluded, insofar as expenses increase due to the fact that the goods are taken to another location after our delivery, unless this is in conformity with the intended use of the goods. This shall apply accordingly to claims for reimbursement of expenses by the Purchaser pursuant to Section 445a (seller's recourse) of the German Civil Code (Bürgerliches Gesetzbuch, BGB), provided that the last contract in the supply chain is not a consumer goods purchase. If one of the two types of subsequent performance or both prove impossible or unreasonable, we are entitled to refuse them. As long as the Customer fails to meet payment obligations to an extent that reflects the defect-free portion of the performance, we are entitled to refuse subsequent performance.

11.4 If the rectification or replacement delivery do not occur within a reasonable period - in consideration of our delivery possibilities - or if the rectification and/or replacement delivery fail, the Purchaser may demand a reduction of purchase price or withdraw from the contract.

11.5 Unless otherwise provided for below (par. 7), further claims by the Purchaser are excluded, regardless of their legal grounds (in particular claims arising from a breach of principal or subsidiary contractual obligations, reimbursement of expenses with the exception of that pursuant to Section 439 II of the German Civil Code, unlawful acts or other tortious liability); this applies in particular to damages not caused to the delivery item itself and to claims for loss of profit; claims which do not result from the defectiveness of the object purchased are also included.

11.6 The preceding provisions also apply in the event of delivery of another item or a lesser quantity.

11.7 The exclusion of liability regulated in paragraph 5 does not apply insofar as an exclusion or limitation of the liability for damages from injury to life, limb, or health has been agreed upon and said injury is caused by an intentional or grossly negligent violation of duties by the user; the exclusion of liability does not apply either insofar as an exclusion or limitation of the liability for other damages is agreed upon and said damages are caused by a violation of the duties by a legal representative or agent of the user. Insofar as we culpably breach a contractual or material obligation, liability is not excluded, but limited to foreseeable damages that are typical of the contract; it is otherwise excluded pursuant to par. 5. Furthermore, the exclusion of liability does not apply if under product liability law liability exists for personal injury or material damage to privately used objects. It also does not apply in the event of assumption of a guarantee and assurance of a feature, if a defect thereby covered triggers our liability. The above shall apply also to reimbursement of expenses.

11.8 Claims on subsequent performance, damages and reimbursement of expenses become time-barred one year after delivery of the purchased object. This does not apply to an object which has been used according to its usual purpose for a construction and has caused its defectiveness; in this case, claims shall only lapse after 5 years. Claims on reduction and exercise of the right to withdraw from the contract are excluded, insofar as the subsequent performance claim has lapsed. The Purchaser may, however, refuse payment of the purchase price in the event of clause 3 insofar as it would be entitled to do so based on withdrawal or reduction; in the event of exclusion of withdrawal and a subsequent refusal to pay, we are entitled to withdraw from the contract.

11.9 The Purchaser's right of recourse against us in accordance with Section 445a (seller's recourse) shall only exist insofar as the Purchaser has not made any agreements with its customer that exceed the statutory claims for defects.

## **12 Place of performance, place of jurisdiction and applicable law**

12.1 The place of performance shall be our business headquarters.

12.2 Insofar as the Purchaser is a merchant, a legal entity under public law or special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship shall be our business headquarters. We are also entitled to initiate claims at the Purchaser's registered office.

12.3 The laws of the Federal Republic of Germany shall apply, excluding conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods.