

TERMS AND CONDITIONS OF SALE AND DELIVERY  
of STOBER DRIVES Limited

February 2014

1. Scope of application
- 1.1 The present General Terms and Conditions of Sale and Delivery apply only with respect to entrepreneurs in the sense of § 14 BGB (Civil Code).
- 1.2 STOBER DRIVES Limited – in the following “the supplier” - provides all its deliveries and services exclusively subject to the application of these Terms and Conditions of Sale and Delivery. Any contradicting or deviating terms and conditions from the purchaser shall not be recognized by the supplier unless the supplier has explicitly consented to their application.
2. Offer and order
- 2.1 The supplier's offers are without obligation and non-binding unless explicitly marked as a binding offer.
- 2.2 The supplier's written order confirmation is authoritative for the order. This order confirmation can also be made by the sending of an invoice. If the purchaser has objections against the content of the order confirmation he must contest the order confirmation without delay. Otherwise the contract shall come into force in accordance with the order confirmation.
- 2.3 Verbal or telephone agreements shall only become an integral part of the contract if confirmed by the supplier in writing.
- 2.4 Drawings, illustrations, dimensions, weights and other performance data outside of the offer and the order confirmation shall only be binding if this is agreed.
- 2.5 The supplier reserves rights of ownership and copyright to samples, cost quotations, drawings and similar information of a physical and non-physical nature including in electronic form; these must not be made accessible to third parties. The supplier undertakes only to make information and documents marked by the purchaser as confidential accessible to third parties with the consent of the purchaser.
3. Handling and processing as well as assembly of parts sent in
- 3.1 Parts sent in for handling and processing and assembly must be sent free the supplier's plant and if required in good packing with the inclusion of a waybill and delivery note. Notification of dispatch to the supplier must be sent indicating the supplier's order number.
- 3.2 The material or the technical quality of parts sent in must be notified. Pre-processed parts or parts provided for assembly must be delivered in the exact size and running within the required tolerances. Parts to be broached must not have been fully machined and must have an addition for taking the finishing cut.
- 3.3 In the event of failure to fulfill these preconditions the supplier is entitled to invoice the costs of additional work as well as to compensation for prematurely worn out or damaged tools or to withdraw from the contract whereby the purchaser is required to reimburse the corresponding part of the selling price as well as the above mentioned additional costs. Tools and gauges that do not conform to the supplier's normal range, as well as special devices and models shall be charged in addition. They shall remain the supplier's property. Defectively pre-processed parts or defective parts provided for assembly can be repaired or returned at the expense of the purchaser without consultation.
- 3.4 Waste material from the parts sent in for handling or processing shall become the supplier's property.
4. Prices and terms and conditions of payment
- 4.1 The prices stated in the order confirmation shall be authoritative. These shall apply ex-works and do not include packing, freight, postage, insurance and value added tax.
- 4.2 Transport insurance shall only be taken out at the request of and at the expense of the purchaser. Half of the invoiced price shall be reimbursed for packing returned freight-free and undamaged.
- 4.3 Unless otherwise agreed payment shall be made as follows:
  - a) With ongoing business relations within 14 days from date of invoice less 2% discount or 30 days net.
  - b) For initial business dealings and for repairs in advance or upon availability for dispatch. Assembly costs shall be payable upon receipt of the invoice. Partial deliveries shall be invoiced immediately.
- 4.4 Should cost increases occur between conclusion of the contract and performance of the order that are not foreseeable for the supplier e. g. as a result of increases in the wage or material costs, the supplier shall be entitled to adjust the prices within the scope of the altered circumstances and without the charging of any additional profit.
- 4.5 Should it be agreed that an order is cancelled the price laid down shall be due and payable immediately subject to deduction of the direct costs of the partial work still to be carried out by the supplier until full completion of the parts ordered.
5. Retention of title
- 5.1 The supplier shall retain title to all goods delivered by the supplier until full payment of all receivables from previous contracts. The receivables shall also include check and bills of exchange receivables as well as from current accounts. Should liability from a bill of exchange be created for the supplier in connection with the payment, the retention of title shall only expire once the claim against the supplier from the bill of exchange has been excluded.
- 5.2 The taking back of the delivered item by supplier does not constitute withdrawal from the contract unless the supplier has explicitly declared this.
- 5.3 The purchaser may neither dispose of or pledge the delivered item nor transfer it by way of security. In the event of seizure as well as confiscation or other orders by third parties he must notify the supplier of such without delay.
- 5.4 The purchaser is entitled to make use of the delivered item within the scope of the normal course of business subject to the reservation of cancellation admissible for an important reason. In the event of onward sale the purchaser hereby assigns henceforth to the supplier all claims from the onward sale, in particular payment claims as well as other claims related to the sale in the amount of the final invoice amount (including VAT). This shall apply irrespective of whether the delivered item has been sold on without or following processing. Until cancellation by the supplier admissible for an important reason the purchaser is entitled to collect the receivables assigned on a trust basis. In the event of important reason the supplier is entitled to notify the assignment of the claim to the third party debtors even on behalf of the purchaser. Upon notification of the assignment to the third party debtor the right of the purchaser to collect shall expire. In the event of cancellation of the right to collect the supplier can demand that the purchaser notifies the supplier of the assigned receivables and their debtors, provides all information required for the collection, hands over the corresponding documents and notifies the debtors of the assignment.
- 5.5 Processing and transformation of the delivered item by the purchaser shall always be carried out for the supplier. The supplier shall apply as manufacturer in the sense of § 950 BGB (Civil Code) without further obligation. If the delivered item is processed with other items not belonging to the supplier, the supplier shall acquire joint ownership of the new item in the ratio of the value of the delivered item to the value of the other items processed at the time of the processing. Apart from this the same shall apply for the item resulting through processing as for the item delivered under reserve.
- 5.6 If the delivered item is mixed or combined with other items not belonging to the supplier the supplier shall acquire joint ownership of the new item in the ratio of the final invoice amount of the delivered item to the value of the other items mixed or combined at the time of the mixing or combining. Should the mixing or combining be carried out in such a manner that the item of the purchaser is to be regarded as the principal item then it shall apply as agreed that the purchaser shall transfer pro-rata ownership to the supplier. The purchaser shall save keep the sole property or joint property for the supplier.
- 5.7 At the request of the purchaser the supplier undertakes to release the collateral to which the supplier is entitled at the supplier's discretion if the realizable value of such exceeds the receivables to be secured by more than 20%.
- 5.8 The application for the initiation of insolvency proceedings shall entitle the supplier to withdraw from the contract and to demand the immediate return of the delivered item.
6. Delivery
- 6.1 Delivery shall also be made at the risk of the purchaser if as an exception the assumption of the freight costs by the supplier has been agreed. Should the supplier select the form of dispatch, the route or the dispatch person the supplier shall only be liable if the supplier is guilty of gross culpability in the respective choice.
- 6.2 Delivery dates and deadlines indicated by the supplier are non-binding unless agreed as binding. Even deadlines agreed as binding are not fixed deadlines unless explicitly determined as such by ourselves.
- 6.3 The delivery period can be seen from the agreements of the contracting parties. The adherence to this by the supplier presupposes that all commercial and technical matters have been clarified between the contracting parties and that the purchaser has fulfilled all obligations for which he is responsible such as for example the provision of the necessary official certificates or the effecting of a down payment. Should this not be the case the delivery period shall be extended appropriately. This shall not apply if the supplier is responsible for the delay.
- 6.4 The supplier shall not be responsible for delays in delivery and performance as a result of force majeure and events not foreseeable for the supplier and not caused by the supplier which make delivery or performance fundamentally more difficult for the supplier or impossible even in cases of dates and deadlines agreed as binding even if the supplier is in default on delivery. The delivery period shall be extended to a correspondingly appropriate extent.
- 6.5 The purchaser can only withdraw from the contract or claim compensation for damages instead of the performance if he has previously set the supplier an appropriate period of grace with the threat of refusal.
- 6.6 If dispatch is delayed for reasons for which the purchaser is responsible then following notification of availability for dispatch the purchaser shall be charged for the costs resulting from storage, in the event of storage in the supplier's plant at least 0.5 % of the invoice amount applicable to the parts taken into storage for each month. The supplier is also entitled to store the delivered item outside of the supplier's plant.
- 6.7 Should the supplier default and the purchaser suffer damages as a result of this he shall be entitled to demand lump-sum compensation for default. It shall be 0.5% for each full week of the delay, in total however a maximum of 5% of the value of that part of the overall delivery that cannot be used on time or in conformity with the contract.
7. Should the purchaser grant the supplier an appropriate period for performance under consideration of the statutory exceptions and should the deadline not be adhered to the purchaser shall be entitled to withdrawal within the scope of the statutory regulations.
8. Passing of risk
- 8.1 The risk shall pass to the purchaser at the latest upon dispatch of the delivered parts ex-works and even if freight-free delivery and assembly has been agreed. However if pricing has been agreed for which the Incoterms 1990 including the extensions applicable at the time of the conclusion of the contract provide for other regulation of the passing of risk, this deviating ruling shall apply.
- 8.2 Should dispatch be delayed as a result of circumstances for which the supplier is not responsible the risk shall pass to the purchaser as from the date of availability for dispatch. Irregularities resulting from the dispatch must be notified to the supplier in writing immediately following receipt of the goods.
- 8.3 Partial deliveries are admissible if these can reasonably be expected of the purchaser.
- 8.4 Material defects
- 8.1 Upon acceptance or receipt the purchaser is obliged to check each delivery and to notify recognizable defects to the supplier without delay in writing. Concealed defects must be notified in writing without delay following detection. Otherwise the delivery shall apply as approved.
- 8.2 In the event of the presence of a defect for which the supplier is responsible the supplier is entitled to subsequent fulfillment by choosing at the supplier's discretion between removing the defect or delivering a defect-free item. If subsequent fulfillment is refused by the supplier, if such has failed or cannot be reasonably expected of the purchaser, the purchaser can choose between withdrawal from the contract or demanding a reduction in the selling price.
- 8.3 Claims by the purchaser for defects shall fall under the statute of limitations as follows from delivery, provided acceptance is necessary, from acceptance:
  - Variable speed gear units / Variable speed geared motors: 12 months in multi shift operation
  - Power transmission gear units / Asynchronous geared motors / Asynchronous motors and accessories: 36 months in single shift operation or 18 months in multi shift operation
  - Servo gear units / Servo gear units with brake / Two-speed gearboxes / Rack and pinion drives / Synchronous servo geared motors / Synchronous servo motors and accessories: 24 months in single shift operation and 12 months in multi shift operation
  - Electronics: 24 months in single shift operation and 12 months in multi shift operation
  - Goods that the supplier has procured himself: 12 months
  - Spare parts or replacement products: 12 months
- 8.4 Excluded from the above periods of limitation are the cases stated in 10.1, cases of § 438 paragraph 1 no. 2 (Civil Code (building works and items for building works)) as well as claims in the supplier's recourse on final delivery to a user. The statutory periods of limitation apply for these cases.
- 8.5 No guarantee is granted particularly in the following cases: Unsuitable or improper use after passage of risk, incorrect fitting including the incorrect fitting of motors or commissioning and use of substitute materials by the purchaser or third party, natural wear and tear, incorrect or negligent handling, maintenance not carried out in accordance with the rules, failure to observe the supplier's terms and conditions for remote maintenance, use of inappropriate equipment, unsuitable operating conditions especially with chemical, electrochemical or electrical/electromagnetic influences as well as with the influence of the weather or other influences of nature or excessive ambient temperatures - provided that they are not the responsibility of the supplier.
- 8.6 Should the purchaser or a third party repair incorrectly, the supplier shall not be liable for the resulting consequences. The same shall apply for alterations to the delivered item made without the prior consent of the supplier.
- 8.7 For claims for damages stemming from material defects, point 10 applies.
9. Defects of title
- 9.1 In the case that the delivered item infringes industrial property rights or copyright of a third party, the supplier shall at the supplier's own expense obtain the right of further use for the purchaser or modify the delivered item in a manner that can be reasonably expected of the purchaser to the extent that the infringement of rights no longer exists. Should this not be possible at economically appropriate conditions or within an appropriate period the purchaser shall be entitled to withdraw from the contract. Furthermore the supplier shall indemnify the purchaser against undisputed or legally determined claims by the corresponding owners of the rights. For claims for damages stemming from defects of title, point 10 applies.
10. Compensation for damages
- 10.1 The supplier is liable without limitation
  - In case of malicious intent or gross negligence,
  - For defects fraudulently concealed by silence,
  - For injuries or harm to the health,
  - In accordance with the regulations of product liability law as well as
  - In case of defects that are covered by the supplier's warranty.
- 10.2 The supplier shall only be liable for ordinary negligence if this concerns the violation of fundamental contractual obligations which result from the nature of the contract or the violation of which endangers the achievement of the purpose of the contract. Even then the compensation for damages is restricted to the contract-typical, foreseeable damage.
- 10.3 There is no further liability.
- 10.4 The above limitation of liability also applies to the personal liability of employees, vicarious agents, institutions and representatives of the supplier.
- 10.5 For the period of limitation for claims for damages due to material defects, the rulings in 8.3 and 8.4 apply as appropriate.
- 10.6 The supplier is at liberty to object in case of contributory negligence. Contributory negligence occurs in particular if the supplier's instructions, e.g. the terms and conditions for remote maintenance are not followed.
11. Liability for defects in the event of the processing of parts sent in
- 11.1 With the handling of parts sent in – for cutting and heat treatment, grinding etc. – the supplier shall not be liable for defects resulting from the behavior of the material. If parts sent in become unusable during the processing as a result of material defects or other defects, the processing costs incurred by the supplier must be reimbursed. If work pieces become unusable as a result of circumstances for which the supplier is responsible, the supplier shall assume the processing of identical type replacement pieces.
12. Call orders
- 12.1 Provided nothing to the contrary is agreed a period of 12 months from the date of the order confirmation is binding for both parties. If the quantity ordered is not taken by the expiration of the 12 months the supplier shall grant a period of grace of four weeks with prior notification. If no other agreement is reached the purchaser shall be obliged to take and to pay for the parts not called following expiration of the period of grace. Following expiration of the period of grace the supplier is also entitled to invoice the quantity actually taken as per the supplier's quantity discount scale with subsequent debiting of the incorrectly high discount granted.
13. Offsetting and withholding
- 13.1 The purchaser may only offset against a counter claim that is undisputed or has been determined as legally binding. The purchaser is only entitled to assert a right of withholding if this is based on the same contractual relation.
14. Right of ownership and copyright
- 14.1 All offer documentation, drawings, cost quotations and similar shall remain the supplier's property and must be returned on request. No right of withholding exists irrespective of the legal ground. The documents must not be made accessible to third parties.
15. Use of software
- 15.1 If software is included in the scope of delivery the purchaser will be granted a non-exclusive right to use the software supplied including its documentation. It will be provided to the purchaser for use on the delivered item for which it is determined. Use of the software on more than one system is forbidden.
- 15.2 The purchaser may only reproduce, rework, translate the software or convert it from the object code to the source code within the statutory scope (§§ 69 a ff. UrhG (Copyright Law)). The purchaser undertakes not to remove manufacturer's details, in particular copyright references or to alter such without the explicit prior consent of the supplier.
- 15.3 All other rights to the software and the documentation including the copies shall remain with the supplier or with the software supplier. The granting of sub-licenses is not allowed.
16. Place of performance, place of jurisdiction, applicable law
- 16.1 Place of performance for deliveries and payments for both parties is exclusively the supplier's registered office.
- 16.2 Place of jurisdiction for businessmen from both parties for all legal disputes arising from the contractual relation as well as from its establishment and its effectiveness shall be the court responsible for the supplier's registered office. The supplier can choose to initiate legal proceedings at the purchaser's registered office.
- 16.3 The contractual relation shall be governed by German Law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.