

General Terms and Conditions of MOTORTECH GmbH

1. Terms of Agreement

The following General Purchasing and Ordering Terms and Conditions brought to the attention of the buyer shall apply to all contracts, including future contracts, with the buyer. Terms and conditions deviating from the below require a separate, written agreement. Should the terms and conditions of the contract partners contradict each other, then our terms and conditions shall apply exclusively.

2. Conclusion of Contract, Scope of Delivery

- 2.1 All contracts shall be formed with the receipt of our written order acknowledgement, at the latest with the delivery of the ordered item. Any prior offers made by us are not binding and are subject to confirmation. The buyer has the right to withdraw its order (offer of contract) by written notification should said order not have been acknowledged in writing or executed by us within one month of receipt thereof.
- 2.2 All contracts shall be concluded on the basis of our terms and conditions. Should the order acknowledgement deviate from those of the terms of order, the contract is concluded according to the conditions of the order acknowledgement, unless the buyer objects without delay. Purchasing terms and conditions of the buyer are herewith explicitly rejected, even if stipulated as exclusively valid in the order; they shall not bind us, even should we not contradict them again upon conclusion of the contract. At the latest, our terms and conditions are deemed accepted with the acceptance of the delivery item.
- 2.3 Any statements pertaining to performance, consumption rates, measures, weights etc., unless expressly stipulated as binding by us, are approximate. We reserve the right to implement design changes until completion.
- 2.4 Should assembly personnel be provided, the buyer shall ensure that all necessary preparations are made for their immediate deployment; it shall be responsible for any and all costs incurred due to delays, e.g. waiting time, additional travel etc.

3. Delivery

- 3.1 Delivery dates and deadlines are binding only in the event that they have been confirmed by us in writing. They commence with the date of the order acknowledgement. Compliance with delivery times is subject to completion of the contractual obligations by the buyer, particularly the punctual receipt of the agreed upon funds and the timely presentation of the import licence, foreign exchange approvals, transfer approvals etc.
- 3.2 Delivery times are extended appropriately if circumstances occur outside of our control, regardless if these occur to us or our suppliers.
- 3.3 In the exceptional event that the agreed upon delivery date is exceeded by more than six (6) weeks, the buyer has the right to set a reasonable grace period and to rescind the contract by written statement should the period of grace expire without results. Claims for compensation are excluded. This shall not apply in cases of death, personal injury or impairment of health, wilful intent or gross negligence as well as in cases of the breach of essential contractual obligations, the fulfilment of which the buyer had a particular right to expect in good faith.
- 3.4 We have the right to take out insurance on the delivery item against transport damages at the buyer's expense, but are obliged to do so only on its written request.
- 3.5 Partial deliveries are admissible. Insignificant defects entitle the buyer merely to pursue warranty claims, not to refusal of acceptance.
- 3.6 In the event that delivery is made to a location other than the one contractually agreed upon, the buyer shall bear the additional costs thus incurred.

4. Passage of Risk

- 4.1 Risk of destruction (total loss), whether accidental or within the responsibility of an outside third party, or degradation (damage) passes to the buyer with the transfer of the goods to the forwarding agent, railway company, post office or with the loading thereof onto our vehicles for the purpose of delivery or in the case of collection by the buyer with the transfer thereof. Should the transfer of goods be delayed for reasons for which the buyer is responsible, the risk will pass to him at the moment the goods are ready for transfer.
- 4.2 Claims against third parties to which we are entitled due to the destruction or deterioration of the delivery item will be assigned to the buyer, should it so request.

5. Prices and Terms of Payment

- 5.1 Unless otherwise agreed, the agreed upon price shall apply ex works Celle excluding, however, the costs of packaging, transport, assembly, insurance and further additional costs. Buyer shall also bear any and all fees, levies, duties and taxes incurred at its domicile even in the event that they are based on laws yet to be passed. All contracts are concluded in EURO (€) of the European Central Bank/Deutsche Bundesbank. In the event that the price is to be paid in a foreign currency, then this shall only determine the payment instrument; the amount to be paid will be based upon the EURO amount which the buyer would have had to pay based on the official rate of exchange on the day of contract formation.
- 5.2 Unless otherwise agreed, all payments are due 30 days after receipt of invoice. Payments shall be effected on the due date in cash and without any deductions.
- 5.3 Money orders, cheques and bills of exchange are only accepted in the case of a specific agreement and only in lieu of payment, but not in lieu of fulfillment. A payment shall be deemed effected as soon as we can dispose freely of the amount in the Federal Republic of Germany; it shall not be deemed effected if we have the bill of exchange discounted for us or if we have assumed liabilities under a bill of exchange within the framework of the buyer's own discount. Collection fees and discount charges, cost for prolongation, renegotiation etc. are to be borne by the buyer. In the event that the financial situation of the buyer or drawee deteriorates during the term of the accepted bill of exchange, or if an unfavourable disclosure concerning the buyer or drawee is received after accepting the bill of exchange, the buyer is obliged to pay us upon our request in cash with immediate effect or to furnish appropriate securities, irrespective of our acceptance of the bill of exchange. Bills of exchange as well as all securities received also serve as securities for claims to which we are entitled after reclaiming the delivery item.
- 5.4 Retention of payments and items as well as set-offs against possible counter claims by the buyer are allowed only in so far as its counter claims are undisputed and have been established as legally binding. We are entitled to set-off with any and all claims we may have against the buyer and to perform offsets against any and all claims which the buyer may have against us - irrespective of its legal basis - or against companies in which the MOTORTECH GmbH is directly or indirectly a majority shareholder. This shall also apply to claims which are to be fulfilled with varying payment instruments (money, bills of exchange, cheque, letters of credit etc.), currencies, and with different maturity dates. In the event that the maturity of the claims to be offset varies, accounting shall be according to value dates. The buyer also agrees that securities it has given to us or to any of the previously mentioned companies shall also serve as guarantees for the claims of each of these companies.
- 5.5 The assignment of the buyer's claims is prohibited.
- 5.6 In the event that the agreed upon delivery date is more than four months after the formation of the contract and if after conclusion of the contract unforeseeable cost increases regarding the merchandise occur, then we have the right to increase the agreed upon price accordingly at our reasonable discretion.
- 5.7 The buyer is obliged to pay for the entire quantity ordered, even if it does not call off the complete order.

6. Delay by the Buyer

- 6.1 Should the transfer be delayed by request of the buyer, we are entitled to charge for the costs incurred through this delay; this shall also apply in the event that a transfer fails to occur due to delayed payment, irrespective of further claims.
- 6.2 In the event of delays by the buyer we are also entitled, after setting an appropriate period of grace of a maximum of two weeks for acceptance and/or payment, to withdraw from the contract or to otherwise dispose of the delivery item, and to deliver to the buyer at a reasonably later time at the prices valid at said time.

7. Reservation of Ownership

- 7.1 The delivery item remains in our ownership until any and all liabilities of the buyer, even if temporary or conditional, are satisfied, particularly those arising from this contract, other purchase, delivery and repair contracts, acquired claims as well as liabilities under current invoices (receivables) are satisfied. This also applies, if the price for certain deliveries as designated by the buyer is paid or if we accept a bill of exchange, cheque or other money orders. In the event that the reservation of ownership herewith expressly agreed upon is not recognised or only recognised in compliance with certain conditions by the laws of the country in which the delivery item is located at any point in time, the buyer is obliged to advise us of this fact at the latest upon formation of the contract. It is obliged to cooperate with any and all measures (certifications, registrations etc.) which are required for the substantiation of such reservation of ownership or for a corresponding security interest customary in said country; all arising expenses shall be borne by the buyer.
- 7.2 The buyer shall receive the delivery item during the term of our reservation of ownership (reserved property) in best condition and will execute the necessary repairs without delay and at its own cost. We shall have the right to inspect the reserved property at any time.
- 7.3 The buyer will take out, at its expense, adequate insurance for the reserved property against any conceivable damage. We shall have the right to advance the insurance premiums; these expenses are deemed part of the agreed upon price. The buyer herewith assigns any and all claims from this insurance policy to us and shall surrender without delay all documentation necessary for its enforcement.
- 7.4 Parts which have been exchanged by the buyer or any person authorised by it or which have been attached to the delivery item additionally are herewith - in so far as they have not become essential parts of the delivery item by

being exchanged or attached - assigned to us for further security of the claims secured by the reservation of ownership; assignment of title shall become effective upon exchange or attachment of the parts. Attainment of physical possession shall be compensated for through the safeguarding of those items by the buyer free of charge and with the due diligence of a prudent businessman.

- 7.5 The buyer is entitled to sell the reserved property within the framework of the ordinary course of business. In such a case, it herewith assigns to us in advance the right to remuneration against its contract partner in the amount of our invoice value. We accept the assignment. In the event that we lose our ownership in the reserved property through processing, connection or mixing, the buyer herewith assigns to us in advance a first priority portion of its claim against third parties acquired in connection with the processing, connection or mixing in the amount corresponding to the reserved property at the time of processing, connection or mixing. We accept the assignment. In case of delayed payments, we shall have the right to settle directly with the buyer's contractual partners or debtors. In this case the buyer is obliged to provide us at our request with the information necessary to enact a direct settlement, to notify its contract partners of such a settlement and to promote a direct settlement with them.
- 7.6 Upon seizure or other similar measures of third parties, the buyer is obliged to notify us without delay and, if necessary, take appropriate immediate action. If the buyer sells our reserved property, it already assigns the entire purchase price claim to us now as well as any and all accessory claims for the security of our claims, irrespective of whether the goods have been processed, converted, assembled with or connected to other goods.
- 7.7 Should the value of the claim and security interest assigned in advance exceed our claim by more than 30 %, we shall, on request of the buyer, waive the right to the security interest and claims exceeding this amount at our own discretion.
- 7.8 Should buyer fail to meet its payment obligations or other obligations resulting from the reservation of ownership, the entire remaining debt will become due for payment with immediate effect, including bills of exchange with later maturity dates. In cases of delayed payment we are entitled to demand the immediate surrender of the reserved property and to dispose of it as well as possible at the buyer's expense by sale on the open market; should the full amount not be recovered, the buyer will continue to be liable.
- 7.9 Taking back or seizing reserved property shall not be deemed as contract revocation unless opposed by mandatory rules of law.

8. Warranty

- 8.1 Unless expressly agreed upon otherwise in writing, the DIN-Standards [Deutsches Institut für Normung, German Standardisation Institute] relevant at the time of conclusion of contract shall apply as the contractually agreed quality. Statements in brochures, other advertising statements, consultations etc. are not suitable to establish concrete properties of the delivery item. The documentation belonging to the offer, e.g. pictures, drawings and weight specifications are only approximate unless they have expressly been designated as binding. Technical changes and improvements are expressly reserved. Contractually agreed upon qualities shall only represent a guarantee according to § 443 BGB [Bürgerliches Gesetzbuch, German Civil Code], if they have been agreed upon expressly in writing.
- 8.2 If the buyer is an entrepreneur in terms of § 14 BGB, it is obliged to examine the contract item diligently and immediately after delivery and, as far as necessary, to carry out random examinations. Obvious defects must be claimed and specified in writing immediately after delivery and before usage of the contract item, at the latest, however, within eight days from the date of delivery. Notice of latent defects is to be sent in the same manner within a period of three days after discovery. If notice is not given in the appropriate form and in due time, the condition of the contract item shall be deemed approved. Claims for material defects may no longer be asserted after that. The waiver of a late notification objection can only be made expressly and in writing. Any measures to remediate defects after the expiration of the above notification period are carried out as a matter of goodwill.
- 8.3 In the event of justified claims, the buyer shall grant us an appropriate period to remedy the defect(s), which, as a rule, shall be a minimum of four weeks. The supplementary performance occurs at our discretion through either the elimination of the defect or the delivery of new merchandise.
- 8.4 The warranty period for merchandise delivered by us shall be one year from the date of delivery.
- 8.5 Parts which are replaced shall be sent to us postage-free and freight-free. They will pass into our ownership. Only defective parts will be replaced. A new warranty period shall start exclusively for the parts replaced under warranty; it ends one year after warranty delivery or, in case that the warranty period for the entire delivery item has not yet expired, upon its expiration.
- 8.6 The warranty shall become void should the delivery item be modified by a third party or parts of third party origin be installed and if the modification is in causal connection with the defect. The warranty also expires if the buyer does not follow the maintenance instructions for the delivery item (operation manual).
- 8.7 Natural deterioration as well as damages for which the buyer is responsible are excluded from the warranty; the same applies in the case of design faults and deficiencies in materials whenever the delivery has been made according to design documentation of the buyer or if it supplied the materials.
- 8.8 No warranty is granted on used delivery items.

9. Liability

- 9.1 We shall be only liable for damages in cases in which we or our assistants have acted under wilful intent or gross negligence. Furthermore, we shall be liable for health or physical injuries as well as in cases of mandatory legal liability, particularly in cases according to the Product Liability Act or in cases of the acceptance of a guarantee. We are liable furthermore, even in cases of slight negligence, for the breach of essential contractual obligations, the fulfilment of which the buyer had a particular right to expect in good faith. In cases of slight negligence, in so far as it pertains to an essential contractual obligation, we are liable in the amount of those damages typically foreseeable under due consideration of all significant circumstances. Liability for further damage, subsequent damage and indirect damage is excluded.

10. Further Provisions

- 10.1 Modifications of or additions to this contract shall only be effective when made in writing. Supplementary agreements have not been made. The written form requirement itself can only be cancelled in writing.
- 10.2 German law shall apply for all legal relationships with the buyer under exclusion of the United Nations Convention for the International Sale of Goods.
- 10.3 Place of performance shall be Celle. Exclusive venue for all present and future claims deriving from this business relationship, or litigation in a bill of exchange or documentary evidence procedure (Wechsel- und Urkundenprozess) shall be Celle in so far as the buyer is a registered trader, a legal person under public law or a governmental special fund. We, however, reserve the right to raise claims against the buyer in courts with jurisdiction over it.
- 10.4 Should one or more individual provisions be invalid or unenforceable for any reason whatsoever, then this shall not affect the validity of the remaining provisions. All provisions shall be interpreted or amended in such a way that our reservation of ownership is not endangered. Any invalid/unenforceable provision shall be replaced with a provision which comes as close as possible to the economic purpose of the invalid/unenforceable provision.
- 10.5 The buyer has the right to use for its own and its affiliated companies' purposes any and all data pertaining to the contractor under consideration of the regulations of the Bundesdatenschutzgesetz [German Data Protection Act].