

# General Terms and Conditions for Delivery and Services (GTCDs) of AMAG components Übersee GmbH and AMAG components Karlsruhe GmbH

## 1. General, Scope

- 1.1. The present general terms and conditions for delivery and services (GTCDs) shall be valid for all business relationships between AMAG components Übersee GmbH and/or AMAG components Karlsruhe GmbH and our clients. The GTCDs shall only apply if the client is entrepreneur (§ 14 BGB - German Civil Code), a legal person under public law or special fund under public law.
- 1.2. The GTCDs shall especially apply for contracts concerning the sale and/or delivery of moveable goods (in the following also „Goods“), regardless if we manufacture the Goods ourselves or if we purchase them from suppliers (§§ 433, 651 BGB). The GTCDs in the respective version shall serve as frame agreement for future agreements, especially concerning the sale and/or delivery of moveable goods, with the same client, even if we don't make reference to them again in each and every particular case; we will inform the clients about any and all changes in our GTCDs without undue delay.
- 1.3. Our GTCDs shall apply exclusively. Dissenting, conflicting or additional general terms and conditions by clients will only be integral part of the agreement if we have accepted them explicitly. This approval requirement shall prevail in any and all cases, e.g. even if we execute the delivery or service without reservation having knowledge of the customer's T&C.
- 1.4. Any and all individual understandings agreed with the customer (including supplements to an agreement, amendments and changes) shall prevail, as long as these contain divergent provisions.
- 1.5. Material declarations and notifications, that have to be given to us by customer after conclusion of the contract (e.g. deadlines, notes of defects, declaration of withdrawal or reduction of price) need to be made in writing in order to be valid.
- 1.6. Customer shall keep any and all information obtained by us (e.g. offers, price lists, technical documents) confidential and may only pass them to third parties or reveal them upon written consent.

## 2. Conclusion of Contract

- 2.1. All our offers are subject of change and non-binding. This also shall apply if customer obtains catalogues, technical documentation (e.g. designs, plans, evaluations, calculations, references to DIN-norms), any other product descriptions or documentation from us – also in electronic form – and which are subject to reservation of property and rights.
- 2.2. The ordering of Goods by customer shall be considered a binding offer. Providing that the order does not state anything else, we have the right to accept this contractual offer within 28 days upon our receipt.
- 2.3. The acceptance of the contractual offer can be declared in writing (e.g. by order confirmation) or by way of delivering the Goods to customer.

## 3. Delivery Period and Default of Delivery

- 3.1. Delivery periods declared by us when accepting the order shall only be binding if they have explicitly been marked as binding. Otherwise, this is only a reference of estimated delivery periods or times.
- 3.2. If we are unable to keep binding delivery periods for reasons that we are not responsible for (Non-Availability of Service), we will inform customer without undue delay and communicate the estimated new delivery period. Should the service not be available at the new delivery period, we have the right to rescind from contract in total or partially; any compensation already rendered by customer will be reimbursed immediately. As case of Non-Availability of Service, to that effect, especially shall be considered the non-timely self-delivery by our supplier, if we have concluded a congruent hedging-transaction, if neither we nor our supplier can be held liable or if in an individual case we have no obligation to provide.
- 3.3. Default of delivery by us occurs according to the legal regulations. In any case, purchaser shall send us a reminder.
- 3.4. The customer's rights according no. 8 of this GTCDs and all our legally granted rights, especially in case of exclusion of the duty to perform (e.g. in case of impossibility or unreasonableness of performance and/or re-performance), shall remain unaffected.

## 4. Delivery, Passing of Risk, Acceptance, Default of Acceptance

- 4.1. The delivery takes place „Ex Works ...“ (Place of Destination) according to the then valid Incoterms, unless for the particular case other provisions have been agreed.
- 4.2. Unless otherwise agreed, we have the right to determine the way of delivery (especially the delivery company, way of delivery, packaging) ourselves.
- 4.3. We have the right to perform partial deliveries and services, unless unacceptable for customer).
- 4.4. If acceptance is stipulated, it shall be decisive for the passing of risk. Also in other respects, for a stipulated acceptance the legal provisions regarding the contracts for works and services („Werkvertragsrecht“) shall apply. If the customer is in default of acceptance, the services shall be deemed delivered or accepted.
- 4.5. Should customer come into default of acceptance, should he omit an action of cooperation or is there a delay of delivery due to reasons the customer is liable for, we have the right to claim damages arising thereof including additional costs (e.g. storage costs).

## 5. Pricing and Payment Conditions

- 5.1. Unless otherwise agreed, our prices current at the time of conclusion of contract do apply, namely „Ex Works ...“ (Place of Destination) in accordance with the respective valid Incoterms, plus VAT.
- 5.2. The agreed price is due and payable within 14 days upon invoicing and delivery, or acceptance respectively, unless other provisions have been stipulated.
- 5.3. With expiry of the aforementioned payment period customer gets into default of payment. During default period, the agreed price is subject to the respective legally applicable rate of interest of default. We reserve the right to claim any and all further damage caused by default. With respect to businessmen our right to claim the com-

mercial rate of interest for default (§ 353 HGB, German Commercial Code) remains unaffected.

- 5.4. Customer shall only have the right to credit against or of retention if his entitlement has been legally established or is undisputable. In case of defects of delivery the opposing rights of customer, especially according to no. 7.5 of these GTCDs, shall remain unaffected.
- 5.5. If after conclusion of the contract it becomes evident that our entitlement to the purchase price is endangered due to lack of financial capacity of customer (e.g. in case of commencement of filing of insolvency procedures) according to the legal provisions regarding the refusal of services – and given the case, after granting a period of grace – to rescind from contract (§ 321 BGB). In case of contracts regarding the manufacturing of specific items (Making to Specification) we can rescind from contract immediately; the legal regulations regarding the dispensability to grant a period of grace shall remain unaffected.

## 6. Retention of Title

- 6.1. Until complete payment of all our present and future claims arising from the contract and any and all existing business relationships (Secured Claim) we reserve the right of title of the sold Goods.
  - 6.2. The Goods under retention of title must neither be pledged to third parties nor be transferred by way of security. Customer shall inform us without undue delay in writing if and when third party access to the Goods belonging to us takes place.
  - 6.3. In case of contractual breach by customer, especially in case of non-payment of due purchase price, we have the right, according to legal provisions, to rescind from contract and/or demand Goods due to retention of title. This request does not comprise the declaration of rescission from contract at the same time; we have the right to only demand the Goods and reserve the right to rescind from contract. If the customer does not pay the due purchase price we can only make use of our rights if we have granted him a fruitless period of grace for payment or if such a period of grace is legally superfluous.
  - 6.4. Customer has the right to resell and/or process the Goods under retention of title within the proper course of business.
  - 6.5. The retention of title includes any and all products resulting from processing, integrating or combining our Goods with their entire value. In such case we shall be considered as manufacturer of the products. If in cases of processing, integration or combination with third parties' goods their property right remains, we acquire a co-property in relation to the invoice value of the processed, integrated or combined Goods. Furthermore, for the resulting product the same shall apply as for the Goods delivered under retention.
  - 6.6. Customer already assigns to us the claims against third parties arising from resale of Goods or of the product manufactured or in the amount of our respective joint ownership according to the afore paragraph as security. We accept the assignment. The customer's duties named in no. 6.2 do also apply with regard to the assigned claims.
  - 6.7. Besides us, customer keeps the right to collect the claim. We undertake not to collect the claim as long as customer is keeping up with his payment obligations with us, is not in delay of payment, does not file for commencement of insolvency proceedings and no other defect of his capability is given. Nevertheless, should this become the case, we can ask from customer to inform us about the assigned claim and the respective debtor, to give us any and all respective documentation and to inform debtor (Third Party) about the assignment.
  - 6.8. If the realizable value of the security surpasses our claims by more than 10% we will, upon customer's request, release securities of our choice.
- ## 7. Customer's Rights to Claim for Defects
- 7.1. Concerning the customer's rights in case of defect of quality or rights (including wrong or incomplete delivery as well as improper or incorrect installation instruction) the legal provisions apply unless stated otherwise in the following. In all cases the special legal provisions concerning the final delivery to a consumer (Supplier Recourse „Lieferantenregress“ according to §§ 478, 479 BGB) remain unaffected.
  - 7.2. Basis for our liability for defects especially is the agreement made according to the property of Goods. Any and all product and service descriptions that are subject to every individual contract shall be considered as agreement about the property of Goods. If no agreement regarding the property of Goods has been made, the legal provisions shall prevail in order to determine whether a defect is given or not. We are not liable for public statements made by manufacturer or any and all other third parties (e.g. advertising messages).
  - 7.3. In case of defects of components made by other manufacturers that we cannot remediate due to license rights or actual reasons, we will, at our choice, claim our rights for defects towards the manufacturers and suppliers for the account of customer or assign our rights to customer. Customer can only claim his rights in case of defects towards us according to the other provisions and as set out in this GTCDs only in case the judicial enforcement of the aforementioned claims against the manufacturer and supplier remained ineffective or is pointless, e.g. due to insolvency. For the duration of the litigation the limitation period of the respective customer's rights to claim for defects towards us is suspended.
  - 7.4. The right to claim for defects is not applicable if customer, without our consent, amends the delivered Good himself or has it amended by third parties and the remedy of defects is therefore rendered impossible or unreasonably difficult. In any case customer has to bear the additional costs of remedy resulting from the amendment of the goods.
  - 7.5. The right to claim for defects is excluded:
    - a. With regard to a deterioration of such parts that are subject to natural wear and tear, unless the deterioration has any other reason than wear or tear, or
    - b. If operating or maintenance instructions or if mandatory legal provisions concerning the operation or maintenance are not kept, unless the defect or the deterioration is due to another reason than the non-compliance with such instructions or provisions.
  - 7.6. The customer's rights to claim for defect imply that customer has complied with his legal obligation of inspection, notification and rejection (§§ 377, 381 HGB). If during inspection or later a defect shows, customer has to inform us in writing without undue delay. Such a notification will be considered as made without undue delay, if made

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within two weeks; in order to keep this period, the timely sending off of the notification is enough. Irrespective of this obligation of inspection, notification and rejection customer has to notify in case of evident defects (including wrong and short delivery) within two weeks after delivery in writing, again being sufficient to send off the notification in time. If customer fails to perform the due inspection or notification of defect, our liability for the not reported defect is excluded.

- 7.7. If the delivered good is defective, we at first have the right to choose if supplementary performance takes place by way of re-performance or remediation of defect (improvement „Nachbesserung“) or if we redeliver a non-defective good (replacement „Ersatzlieferung“).
- 7.8. We have the right to make the due supplementary performance dependent of customer's payment of the due purchase price. Nevertheless, customer has the right to retain part of the due payment appropriate in relation to the defect.
- 7.9. Customer has to grant us the time and chance needed for the due supplementary performance; especially he has to hand over rejected goods for purposes of inspection. In case of compensation delivery customer has to return the defective good according to legal provisions. Supplementary performance does neither include the dismounting of defective good nor the re-mounting if we initially did not have the duty to install.
- 7.10. The expenses necessary for inspection and supplementary performance, especially the costs for transportation, travelling, work and material (not including dismounting and re-mounting) will be borne by us if there really is a defect. However, should it become evident that the claim of elimination of defects by customer is unjustified, we have the right to claim such costs from customer.
- 7.11. In urgent cases, e.g. where there is a risk to operational safety and in order to avert disproportionate further damage, customer has the right to remedy defect himself and to claim from us the expenses objectively necessary. In case of such self-remedy of defects customer has to notify us without undue delay, if possible in advance. The right of self-remedy does not exist if according to legal provisions we had the right to reject the respective supplementary delivery.
- 7.12. If supplementary delivery has failed or if a due period of grace granted by customer has elapsed fruitless or is dispensable according to legal provisions customer can rescind from contract or reduce the agreed price. In case of an insignificant defect customer does not have a right to rescind from contract.
- 7.13. The customer's rights to claim damage or reimbursement of frustrated expenditures are only given according to no. 8 and are excluded in any and all other cases.

#### **8. Further Liability**

- 8.1. Unless otherwise stated in this GTCDS including the following provisions we are liable in case of breach of contractual or non-contractual duties according to the respective legal provisions.
- 8.2. We shall be liable for damages – no matter what legal ground – in case of intentional act or gross negligence. In case of slight negligence we are only liable
- a) For damages due to injury of life, body or health,
  - b) For damages due to infringement of essential contractual obligations obligation the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer regularly relies and may rely); however, in such cases our liability is limited to the compensation of the foreseeable, typically incurring damage.
- 8.3. The limitation of liability as stated in no. 8.2 does not apply in cases where we fraudulently concealed a defect or have given a guarantee for the condition of the Goods. The same shall apply for customer's claims arising from the Product Liability Act (Produkthaftungsgesetz).
- 8.4. Customer can only rescind from contract or terminate the contract due to contractual breach that does not consist in a defect, if we are liable for the breach. The unrestricted right of customer to terminate contract (especially according to §§ 651, 649 BGB) is excluded. As for the rest, the legal provisions and the respective legal consequences shall apply.

#### **9. Limitation Period**

Notwithstanding the legal limitation periods the general limitations period for claims arising due to material and legal defects is one year from delivery. If acceptance has been agreed, limitation period starts with acceptance. If mandatory legal provisions provide for longer limitation periods, these shall prevail.

#### **10. Choice of Law and Place of Jurisdiction**

- 10.1. For these GTCDS and all legal relationships between us and the customer the law of the Federal Republic of Germany with exclusion of the international uniform law, especially the UN Sales Convention. Conditions and effects of the retention of title according to no. 6 are subject to the law prevailing at the respective location of the good, as long as according to this law the choice of law made at favor of the German law is inadmissible or invalid.
- 10.2. If the customer is merchant according to the German Commercial Code, legal person or special fund under public law sole – and also international - place of jurisdiction for any and all disputes arising from the contractual relationship is our seat. Nevertheless, we have the right to sue the customer at the general place of jurisdiction of customer.