

General Terms and Conditions of Torque Marine IPS GmbH + Co. KG

1. General / Scope of Application

- (1) Our sales conditions apply exclusively; conditions of the purchaser/customer (in the following referred to as orderer, purchaser, customer or contractor) being in contrary to or deviating from our sales conditions are not accepted by us, unless we had expressly agreed to their applicability in writing. These terms of delivery shall also apply in the event that we take on or fulfill orders, aware of general terms and conditions of business of the customer which are contrary to or deviate from these terms of delivery.
- (2) Our general terms and conditions apply exclusively towards registered businessmen/businesswomen if the contract is integrated in operating their business and towards legal entities under public law and separate estates or assets under public law in terms of § 310 BGB (German Civil Code).
- (3) Deliveries, services and offers by the supplier are made exclusively on basis of these business conditions. The general terms and conditions are thus applicable to all future business transactions, even when not expressly mentioned or agreed again. This applies particularly to subsequent and supplementary orders.

2. Offer, Conclusion of Contract, Subject-matter of the Contract and Copyright

- (1) If an offer of the orderer can be qualified according to § 145 BGB, the orderer is bound to this offer for four weeks. We may accept such an offer during the binding period.
- (2) All descriptions, quotations and offers are non-binding and non-obligatory, if not specifically expressed otherwise in writing. Information, statements made in our brochures and instructions for use or descriptions are only for information purposes and general knowledge. They do not constitute a part of this agreement, unless otherwise agreed.
- (3) We reserve the right to make technical changes, as far as this is the result of technical development and/or if it is advantageous for the performance of the plant or any other good or service and in a scope reasonable for the customer.
- (4) We reserve our title and copyright to all illustrations, drawings, sketches or other documents. This is also valid for any written document which is labeled as confidential. Prior to its dissemination to third parties, the purchaser requires our expressed written agreement.
- (5) We have the right to employ other reliable companies or persons to fulfill our obligations.

3. Prices

- (1) To the extent that nothing contrary is agreed to in writing, our prices are quoted ex-works, excluding packing, dispatch, cargo insurance, custom duties, TÜV fees and mounting. We reserve the right to correct any calculation- or other mistakes regarding prices in our offers or invoices.

- (2) Independent of paragraph 3.1, we reserve the right to adjust our prices accordingly if cost reductions or cost increases occur after the conclusion of the contract, especially due to changes in the price of materials, public charges, other fees or freight charges and if a period of more than four months elapses between conclusion of the contract and rendering of the performance. Evidence of the same will be provided to the purchaser on request. If a fixed price has been explicitly agreed, changes of the price cannot be granted. Cost increases after conclusion of contract are excluded.
- (3) All prices shall apply exclusive of value-added tax, which shall be added at the respective statutory rate.

4. Terms of Payments

- (1) The deduction of cash discounts shall require a separate written agreement.
- (2) Unless otherwise stated in our order confirmation, all invoices are payable with fourteen (14) days from date of invoice, without any deductions.
- (3) If the orderer is in default of payment, we are entitled to bill in addition to dunning fees in the amount of eight percent points above the prime interest rate. If we sustain a demonstrably higher damage because of the default, we shall be entitled to enforce such damage.
- (4) The orderer only has set-off rights provided his counterclaim has been established legally or is undisputed or acknowledged. The orderer shall furthermore be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship
- (5) Cheques, bills of exchange or any other payment promise are only accepted on account of performance and this shall be done subject to clearance of the funds against reimbursement of all fees to us. Discount and bill charges are for the orderer's account and are payable immediately.
- (6) In the case of partial deliveries or -services, we are entitled to demand partial payment.
- (7) Any of our receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange, or suspension of the orderer's payments if other circumstances become known to us, which give rise to justified and serious doubts as to the solvency or creditworthiness of that orderer.

5. Erection, Maintenance, Repair and Service of/for Plants

For any kind of erection, mounting, repair, maintenance and service, the following conditions shall apply, unless otherwise agreed in writing:

- (1) The orderer will pay us the cost rates for work time agreed in the ordering phase of the work plus surcharges for overtime, night work, Sunday and holiday work, for work in difficult conditions and for planning and supervision. This also applies to the usage of material including material waste, as well as for the erection and the commissioning of the plant.
- (2) Preparation- and operation times and feedback reports are part of the working time. For travel times, which particularly

include labor and vehicle costs, only the actual expenses are charged, unless otherwise agreed.

- (3) Apart from this, the following costs will be covered: Travel costs, costs for the transport of the tools, freight and packaging, for delivering all material and equipment and for the ordered technical documentation.

6. Delivery and Performance Time, Delivery

- (1) Delivery times and dates given shall generally not be binding unless the delivery date has been said to be binding in writing.
- (2) A delivery time quoted by us shall not start until all technical questions have been clarified.
- (3) The fulfillment of our obligation to perform delivery shall be subject to the prior timely and appropriate fulfillment of the orderer's obligations. The defense of non-performance of contract shall remain reserved.
- (4) If the orderer is in default for acceptance or if he violates other duties of cooperation, then we are authorized to claim the damage incurred by us, including possible additional expenses. Apart from that, the dead lines for outstanding service commitments are extended for the time period in which the orderer is in default of his obligations. We reserve the right to further legal claims.
- (5) To the extent that the conditions of paragraph (4) are given, the risk of accidental loss or an incidental deterioration of the object of sale shall be transferred to the customer from the moment the customer delays acceptance or defaults on payment.
- (6) In case of force majeure and other inevitable, unforeseeable, extraordinary circumstances beyond our control, e.g. difficulties in material sourcing, operational breakdowns, lockouts, lack of means of transport, acts of government, energy supply problems, etc. - this also applies if these circumstances occur in connection with suppliers - the delivery period shall be extended by the duration of the handicap and appropriate starting time. If, due to such circumstances, it is impossible or unreasonable for us to fulfill our obligations to deliver, we will be freed of these obligations, if the circumstances are not to be attributed to us. We can only refer to such circumstances if we inform the orderer immediately.
- (7) We have the right to make partial deliveries or fulfill partial services at any time, if this is reasonable for the orderer.
- (8) If no special agreement has been made about the shipment, this is done at our discretion. We are not obliged to choose the cheapest transport or shipment.
- (9) If we are responsible for delayed delivery or performance, and if we have not acted grossly negligent or intentional, or if we culpably violated a fundamental contractual duty, our contract partner is, after a reasonable grace period and excluding any further claims, entitled to a compensation for default or to withdraw from the contract. The compensation for default shall be 0.5% of the purchase price for each completed week of the delay up to a total of 5% of the net price of the deliveries or services affected by the delay. The contract

partner has no right to claim compensation or withdraw from the contract should he be in default of acceptance. The contract partner reserves the right to submit evidence of greater damages.

7. Reservation of Ownership

- (1) We reserve the title to the goods, respectively the delivery item (in the following "goods") until all payments resulting from the supply contract have been received. In the case that the orderer fails to fulfill its duties, including failure to make payments due, we shall be entitled to cancel the contract and take back the goods after reasonable grace period, and when the grace period has expired without rectification. Taking back the goods does not constitute withdrawal from the contract unless this has been expressly declared in writing. Seizure of the delivered goods by us shall always represent withdrawal from the contract. Following the taking-back of the delivered goods by us, we shall be entitled to realize their value and the proceeds shall be set against the liabilities of the customer less appropriate utilization costs.
- (2) The orderer is obligated to handle the delivered goods with care; he is especially obligated to insure them at his own cost up to their value as new against damages from fire, water and theft. Insofar as maintenance and inspection works are required, the orderer must carry them out in good time at their own cost.
- (3) In case of levies of execution or other intervention of third parties, the orderer must immediately notify us in writing, so that we may raise suite as per §771 ZPO (German Code of Civil Procedure). Insofar as the third party is not able to reimburse us for court costs and extra-judicial costs of an action pursuant to § 771 ZPO, the orderer shall be liable for the loss.
- (4) The orderer is entitled to resell the purchase item in the orderly course of business; however he must immediately surrender all claims to us in the amount of the recognized balance (including value-added tax) of our claims that they have accrued from the resale to his purchaser or third party, and that is independent of whether the purchase has been resold with or without subsequent treatment. The orderer remains authorized for collection of these receivables even after assignment. Our right to collect the claim ourselves shall remain unaffected by this. However, we undertake to refrain from collecting the claim as long as the orderer meets the payment obligations from the collected revenues, is no in delay of payment or, in particular, has not filed an application to open insolvency proceedings, or cessation of payments is given. If this is the case, however, we can demand that the orderer makes his accrued claims and his debtors known to us, report all necessary information for collection, hand over the corresponding documentation and inform the debtors of the surrender.
- (5) Processing or transformation of the purchased goods by the orderer is in each case performed for us. If the goods are processed together with other items not belonging to us, we acquire co-ownership of the new item according to our

proportion of the value of the goods (final invoice total including VAT) in relation to the processed items at the time of processing. For the item produced as a result of this processing, the same applies as to the purchased goods delivered under reservation.

- (6) We shall be obliged to release the securities entitled to us insofar as the feasible value of our securities will exceed the claims to be safeguarded by more than 10 %, while we remain entitled to choose the security to be released.

§ 8 Acceptance, Transfer of Risks, Packaging Costs

- (1) The acceptance of engines and its components will be realized, unless otherwise agreed, before delivery, on our engine test stand with corresponding protocol.
- (2) Unless otherwise agreed in the order confirmation and if no other written agreements have been made, delivery is agreed ex works (place of business or manufacturing location). The transfer of risks is realized according to §§ 446, 447 BGB (German Civil Code).
- (3) Transport packaging and all other packaging, in accordance with the regulation on packaging, will not be accepted back. The orderer shall be obligated to arrange for disposal of the packaging at his own expense.
- (4) If the orderer so desires, then we will cover the delivery by transport insurance; the cost incurred in this respect is borne by the orderer.

§ 9 Warranty for Defects / Compensation

- (1) Claims for defects by the orderer presuppose that he has complied in an orderly manner with his obligations to inspections and complaints according to § 377 HGB
- (2) Should a product or service be faulty we are entitled to choose either to provide a repair or remedy of the fault, or a replacement product. In the case of rectification of defects we shall be obliged to bear all incurring expenses, in particular those associated with transportation, shipping, work and material, unless the above increase because the goods have been placed in a location that is different from the place of performance.
- (3) In case that the repair or the replacement fails twice, the orderer shall be entitled to demand a reduction in the price or rescission of the contract.
- (4) The warranty period for new goods shall be 1 year from the transfer of risk, unless otherwise agreed in writing. This is a time-limited period and also applies to replacement claims for consequential damage, insofar as no claims are made stemming from illicit actions, in such case the legal statutory period of limitation shall prevail. If not agreed otherwise in writing, we do not give any warranty for defects as to quality of any used items delivered.
- (5) Objections as to defects shall not be valid if the condition of the goods only slightly deviates, if usability is only slightly affected or in cases involving natural wear and tear or damages

occurring after the risk is passed as a result of erroneous or negligent use, excessive usage, incorrect mounting or commissioning, unsuitable production equipment or due to special outside influences (e.g. dampness, excessive heating, intense radiation with sunlight or artificial light, other temperature- or climatic influence, chemical, electronic or electrical influences) which are not provided for in the contract, except if such damage can be imputed to an intentional act or gross negligence. Should our contract partner or third parties make improper alterations or repairs to the product, no claims of material defects may be asserted for these or any resulting consequences.

- (6) Precondition for any rights relating to defects is that the goods are kept in good condition, maintained and handled according to our operation- and service manuals and operated according to their intended use.

§ 10 Liability

- (1) We shall be liable for any damage due to intent or gross negligence and intent or gross negligence by our legal representatives or agents. In all other respects, the liability for damages is hereby expressly excluded.
- (2) The exclusion of liability in accordance with the paragraph above shall not apply in the case of negligent infringement of contractual obligations, the absence of any promised qualities, in cases of assumption of a guarantee, injury to life, body or health, claims in accordance with the product liability law.
- (3) Damages claims based on a breach of major contractual obligations (cardinal obligation) due to ordinary negligence shall be limited to the foreseeable damage typical of the contract. Cardinal obligations are those obligations that enable the realization of the contract according to the rules in the first place and on whose observance the user regularly trusts.
- (4) Claims for compensation based on the absence of any promised qualities are limited to such damages against which the orderer is protected by the warranty. This shall not apply in the event of intentional actions or gross negligence by us.

§ 11 Place of Jurisdiction, Place of Performance, Applicable Law and Severability Clause

- (1) If the order confirmation does not specify otherwise, our business headquarter is the place of performance. Place of jurisdiction is Hamburg, Germany.
- (2) These conditions and legal relationships between ourselves and the orderer shall be exclusively governed by the law of the Federal Republic of Germany. The application of the UN right of purchase is excluded.
- (3) Should any individual provisions in the above options terms be or become invalid or impracticable, this will not affect the validity of the other provisions.