

The Terms of Delivery and Sale shall apply on the sale and delivery of "Products" by Steyr Motors AG, hereinafter referred to as "SMO". Products shall mean production engines, propulsion systems, options, spare-parts, software and manuals.

SMO exclusively concludes business-to-business (B2B) transactions. If the Terms of Delivery and Sale are in exceptional cases used as a basis for legal transactions with consumers as defined in the Austrian Consumer Protection Act (BGBl. Nr. 140/1979), they shall only apply to the extent that they do not conflict with the provisions of the Austrian Consumer Protection Act (BGBl. Nr. 140/1979).

## **1. General:**

1.1. The Terms of Delivery and Sale set forth herein are an integral part of every transaction concluded by and with SMO and shall apply unless the contractual parties have expressly agreed otherwise in writing.

1.2. SMO does not accept any Terms and Conditions which contradict the Terms of Delivery and Sale of SMO.

1.3. Any orders are deemed as binding contractual offer and must be submitted in written form, duly signed and/or countersigned by an authorized representative.

1.4. SMO does not incur any legal obligation except by returning a written order confirmation or by duly signing a contractual agreement.

1.5. Offers or quotations by SMO are considered as non-binding and subject to change without notice.

1.6. Product specifications and quotes as stated in catalogues, newsletters, brochures etc. are only binding if expressly confirmed in the Order Confirmation.

1.7. Any information, correspondence, documentations and drawings will at SMO's sole discretion be supplied either in German or English language.

## **2. Prices:**

2.1. Unless otherwise agreed in writing prices are net prices, delivered "Free Carrier" (FCA) Steyr, Austria in accordance with the International Commercial Terms (Incoterms 2010) and shall not include any taxes, duties, costs for packaging, handling fees and transport.

2.2. Prices are subject to price increases due to higher production costs, increased customs duties, exchange rates and other charges.

2.3. Prices are stated and payable in EURO.

## **3. Terms of payment:**

3.1. Unless otherwise agreed in writing payments are payable net of deductions at SMOs bank account immediately after invoicing.

3.2. Any delays in payment as well as any default in acceptance shall be subject to an interest rate of 9.2 percent p.a. above the base rate of the Austrian National Bank (OeNB) and entitle SMO to terminate the agreement and retrieve the Products with immediate effect.

3.3. SMO is entitled to declare all debts due and payable if there is any doubt concerning the creditworthiness, solvency or payment fulfillment of the purchaser.

3.4. In any case the purchaser has to refund all costs associated with a delay in payment such as dunning charges, collection costs as well as attorney's fees. These costs shall constitute a further damage.

3.5. The purchaser shall not be entitled to set off any counterclaims, unless these have been expressly accepted by SMO and SMO has agreed to such setoff on writing. The purchaser shall not be entitled to hold back payments, unless it has been expressly accepted by SMO in writing.

## **4. Retention of title**

4.1. All Products remain property of SMO until all obligations of the purchaser arising from the agreement have been fully met (reservation of ownership). The purchaser shall neither pledge the Products nor transfer their title as security. The purchaser is obliged to label these Products as property of SMO. If the purchaser is aware of any third party attempting to seize those Products subject to a reservation of ownership by SMO, the purchaser has to inform the third party about the reservation of ownership by registered letter and take all measures to prevent an infringement of ownership to the detriment of SMO. Any costs arising out of such infringement of ownership shall be borne by the purchaser.

4.2. SMO agrees to the resale of Products subject to reservation of ownership. The purchaser however simultaneously assigns with the resale of the reserved Products his claims arising there from in order to protect the rights of SMO up to their full extent. The purchaser is obliged to collect all due payments until revocation by SMO. In the event of insolvency of the purchaser, the purchaser is obliged to hand over all necessary documents to SMO required for the direct collection of the claims. SMO is entitled to recover its claims including all costs arising out of the collection of due payments.

4.3. Products subject to a reservation of ownership have to be carefully stored at the risk and expense of the purchaser, who shall also be responsible for insurance and maintenance to keep the Products in perfect condition.

**5. Delivery:**

5.1. Delivery dates are approximate statements without any obligation. Binding delivery dates require an additional written confirmation by SMO.

5.2. In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates:

- a. The date of the order confirmation,
- b. The date on which the purchaser has complied with all technical, commercial and financial preconditions for which the purchaser is responsible according to the contract, or
- c. The date on which SMO has received the due payment.

5.3. In the event of an agreed change in the order SMO is entitled to set a new delivery date.

5.4. SMO reserves the right to make modifications regarding design, color, shape and materials, provided that these modifications cause no fundamental change in the Product operation and functionality. Any technical data such as but not limited to performance, weights, consumption figures, speeds etc. are to be understood as approximate values and are subject to scattering.

5.5. SMO has the right to excess- or short-delivery in the amount of ten percent of the ordered quantity. The purchaser has no right of compensation in case of excess- or short-delivery.

5.6. SMO shall not be liable for non-performance or delay by no more than 12 weeks. SMO shall not be liable for non-performance or delay exceeding 12 weeks unless caused willfully or through gross negligence by SMO.

5.7. In the event SMO or its supplier is subject to an event of force majeure or an event beyond the control of SMO or its suppliers, such as but not limited to war, acts of terrorism, natural disasters, governmental interventions, strikes, civil unrest and bans, energy and raw-material shortages, transport damages or delay, the delivery shall be extended accordingly without entitling the purchaser to any claims resulting therefrom. If the occurrence of such circumstances lasts longer than four (4) months, SMO shall have the right to withdraw from the contract, if performance is no longer of interest to SMO as a result of the occurrence.

5.8. SMO reserves the right to cancel the order between Order Confirmation and delivery, if SMO should become aware of circumstances which lead to comprehensible doubts in the creditworthiness of the purchaser.

5.9. All deliveries to the purchaser are performed in accordance with the provisions of the International Commercial Terms (Incoterms 2010).

5.10. SMO shall have the right to make partial deliveries.

5.11. SMO shall be entitled to engage a third party to perform the service and to sub-assign the order in whole or in part provided that interests of the purchaser are not affected.

5.12. Unless otherwise agreed in writing, SMO shall be entitled to determine the type of shipment in particular the transport agent, company, route and insurance at its sole discretion.

**6. Terms of Fulfilment and Acceptance**

6.1. On performance of delivery all risks, including those of accidental destruction or loss pass to the purchaser at the agreed place and agreed time and in any case by no later than the hand-over to the carrier. 6.2. The purchaser is obliged to inspect the Products thoroughly.

6.3. If the purchaser fails or neglects to inspect the Products delivered, they are considered as properly delivered in perfect, faultless condition and delivered at the time of shipment. The purchaser may only refuse acceptance if there is a material defect. Defects have to be reported in writing within 14 days from detection. The purchaser may not assert any claims out of non-material defects.

6.4. If the purchaser delays in taking over the purchased Products (default of acceptance) or supplying delivery instructions, or if he falls in default with the payment or in providing the security agreed upon, SMO is entitled to claim at its own option either compensation for damages suffered and/or profit loss, or else, in case of non-acceptance, claim a lump-sum of 20 % of the

purchase price after granting an extension period of six weeks after due date of payment. In this case all risks shall transfer the purchaser at the agreed time of delivery. The Products will be stored at SMO's premises at the purchaser's risk and expense.

6.5. Reusable packaging such as, but not limited to pallets, lattice boxes etc. shall be returned in clean and undamaged to SMO by the purchaser free of charge at SMO's request. If the purchaser fails to do so within 6 weeks, SMO will invoice the costs thereof to the purchaser.

**7. Limitation of Liability**

7.1. In no event shall SMO be liable for any indirect, incidental, consequential, exemplary or punitive damages, including but not limited to any damages from business interruption, production stop and downtimes, loss of profits, loss of revenue or contract, cost of capital, or loss of use of any property or capital, even if SMO has been advised of, or is otherwise aware of, the possibility of such damages and/or claims.

7.2. SMO shall not be liable for any damages caused by slight negligence.

7.3. The exclusion of such damages will be deemed independent of and shall survive notwithstanding any failure of the essential purpose of any remedy arising from the services or these exclusions.

7.4. Limitations of damages shall apply regardless of the cause of loss or damage and against any theory of liability, whether based in contract, indemnity, warranty, tort or strict liability.

7.5. In case SMO provides customized Products for the purchaser, SMO shall not be liable for damages caused by false or inaccurate instructions supplied by the purchaser or its affiliates. The application of § 1168a of the Austrian General Civil Code (ABGB) is excluded.

7.6. The reversal of the burden of proof according to § 1298 of the Austrian General Civil Code (ABGB) shall not be applicable.

7.7. The purchased Product provides only that level of safety that may be expected on the basis of the registration provisions and the operating instructions submitted.

7.8. Any Claims for damages shall lapse unless the purchaser has filed them in court within six months as of the date of awareness of the damage and the damaging party, but latest after three years as of the justifying occurrence.

## 8. Confidential Information

8.1. "Confidential Information" means any information, technical data or know-how in any form that is not generally known and disclosed orally or visually, if the disclosing Party:

- a. identifies it as Confidential Information before disclosure, or
- b. reduces it to written summary form and marks it as being confidential, proprietary or trade secret and transmits the written summary form to the receiving Party within 30 days after disclosure. For 30 days from disclosure, oral or visual information will be provided the same protections as provided Confidential Information under this Agreement.

8.2. The receiving Party will not use or disclose Confidential Information, except for performance of the order or if expressly permitted in writing. Each Party will protect Confidential Information using the same degree of care it uses to protect its own Confidential

Information, but in no event less than a reasonable degree of care.

8.3. Neither Party shall be liable for inadvertent disclosure or use, provided that upon discovery of any inadvertent disclosure or use, the receiving Party notifies the original disclosing Party promptly, and endeavors to prevent any further inadvertent disclosure or use.

8.4. The receiving Party has no duty to protect information that is:

- a. developed by the receiving Party independently of the disclosing Party's Confidential Information;
- b. obtained without restriction by the receiving Party from a third party who had a legal right to make the disclosure;
- c. publicly available other than through the breach of this Agreement by the receiving Party;
- d. released without restriction by the disclosing Party to a third party; or
- e. known to the receiving Party at the time of its disclosure, without an existing duty to protect the information.

8.5. The receiving Party may disclose Confidential Information only to its employees and contract employees (collectively "employees") having a need-to-know with respect to the intent of the relevant order. Each Party must ensure that its employees are aware of these obligations and are also subject to the Parties' confidentiality obligations. The receiving Party may disclose the disclosing Party's Confidential Information to a third party with respect to the intent of the relevant order if:

- a. the disclosing Party first authorizes it in writing,
- b. the receiving Party under the relevant order requires the third-party recipient to enter into a Confidential Information agreement containing terms and conditions no less stringent than those imposed upon the receiving Party under the relevant order and
- c. the receiving Party provides an executed copy of the Confidential Information agreement to the disclosing Party within 15 days.

8.6. During the term of the relevant order, the receiving Party may use the Confidential Information strictly in connection with the intent of the order and shall not use Confidential Information for any other purpose whatsoever. The receiving Party may make a limited number of copies of Confidential Information as is necessary to complete the purpose. All copies made will reproduce the restrictive legends on the original.

8.7. Except expressly authorized, the receiving Party will not use or disclose the disclosing Party's Confidential Information, in whole or in part, for any other purpose.

8.8. Nothing grants or confers any rights on the part of any party by license or otherwise, explicit or implied, to any invention, discovery, or to any patent covering the invention or discovery.

8.9. The receiving Party will promptly notify the disclosing Party if faced with legal action or a request under government regulations to disclose any of the disclosing Party's Confidential Information. If the disclosing Party requests, the receiving Party will cooperate in all reasonable respects to contest the disclosure or obtain a protective order or other remedy. Except in connection with a failure to discharge the responsibilities set forth in the preceding sentence, neither Party will be liable in any way for any disclosures made under judicial action or government regulations.

8.10. Within (180) days after the termination of the relevant order and upon written request of the disclosing Party, the receiving Party will return all of the disclosing Party's Confidential Information and all copies to the disclosing Party. If not returned, the receiving Party will destroy and provide a written confirmation of destruction to the disclosing Party.

8.11. The provisions of this "Non-Disclosure of Confidential Information" section will survive expiration or any termination of the relevant order.

8.12. Nothing in these conditions intend to operate and shall not be construed to operate as a grant of rights, title or interest in any of SMO's intellectual property. No license or right, either expressly, implicitly, by estoppel, conduct of the parties or otherwise is granted by SMO to the purchaser unless expressly agreed.

## **9. Inventions / Industrial Rights**

9.1. Inventions, equipment and processes made by SMO collaborators within the range of the offered engineering services and/or deliveries, remain with SMO. SMO shall have all rights, titles and interest in and to all Products.

9.2. SMO shall have the exclusive right to announce patents under its own name and at its own expense worldwide.

## **10. Data protection**

10.1. The purchaser agrees that SMO processes personal data according to point (b) of Art. 6 (1) of the General Data Protection Act in order to fulfill its contractual obligations. SMO shall have the right to store, to communicate, to process and delete person-related data of the purchaser. Your personal data will be stored for a timespan in compliance with applicable laws, however no longer than seven years after performance of delivery.

10.2. You have the right to request access to and rectify or erase your personal data or restrict or object data processing as well as the right to data portability. You also have the right to lodge a complaint with a supervisory authority. The provision of your personal data is a contractual requirement.

10.3. You are obliged to provide your personal data that SMO is able to supply you with the products ordered. If you reject providing the data requested above SMO cannot fulfill its contractual obligations.

## **11. Cost distribution:**

11.1. SMO will not accept any costs arising in the recipient country, irrespective of whether such costs are customs' duties or other imposts or dues of any sort whatsoever. This also applies to any costs that may arise in Austria due to statutory provisions in the receiving country (consular fees etc.). This provision applies to the delivery of Products, advertising material, technical literature etc.

## **12. Place of Jurisdiction, Applicable Law**

12.1. Unless otherwise agreed the place of performance is the registered seat of SMO in Steyr, Austria

12.2. Place of jurisdiction is the court of jurisdiction at the registered seat of SMO in Steyr, Austria. However, SMO is entitled to file an action against the purchaser at its place of jurisdiction. The same applies if the purchaser has relocated its registered seat or residence. The parties may agree in writing that an arbitral tribunal has jurisdiction.

12.3. It is mutually agreed that the UN Convention on Contracts for the International Sale of Goods (CISG) shall not be applied.

12.4. The Terms of Delivery and Sale shall exclusively be construed and governed by Austrian law under exclusion of its conflict in laws provisions.

12.5. If a provision or part of a provision of these Terms of Delivery and Sale is or shall become invalid, this shall have no effect on the validity of the remaining provisions. The invalid provision shall be replaced with a provision that comes as close as possible to the economic outcome of the invalid provision.

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