



General Terms of Sales and Delivery

SPICER GELENKWELLENBAU

1. General Provisions, Scope

1.1 Parties, Scope of Application

These General Terms of Sales and Delivery (hereinafter "**Sales Conditions**") are applicable to all offers, agreements or contracts or orders concerning the sale of goods or services (hereinafter "**Performances**"), placed by an entrepreneur as defined in section 14 German Civil Code (§ 14 BGB) or a special fund under public law (hereinafter "**Buyer**") within the course of business with Spicer Gelenkwellenbau GmbH or its legal successors (hereinafter "**Seller**") by way of purchase contract, a contract to produce a work or any other agreement.

1.2 Scope, Version, Exclusion of other Conditions

1.2.1 These Sales Conditions apply exclusively to contracts between the Buyer and the Seller and orders of the Buyer, in their respective valid version, which can be accessed at www.gwb-essen.de, and which will be provided to the Buyer by the Seller upon request. The Sales Conditions are applicable to current business relationships between Buyer and Seller also in case that the Sales Conditions are not again expressly agreed on by the Parties.

1.2.2 General Terms and Conditions of the Buyer, which are contrary to or differing from these Sales Conditions, are inapplicable, unless the Seller has expressly and in writing consented to the application of such Terms and Conditions. These Sales Conditions shall also apply in case that the Seller provides a Performance without reservation, despite being aware of General Terms and Conditions of the Buyer contrary to or differing from these Sales Conditions.

2. Conclusion of Contract, Subject Matter of Contract, Deviation

2.1 Offer, Conclusion of Contract

2.1.1 Offers of the Seller are subject to change and to prior sale.

2.1.2 A binding contract shall only be concluded in case the Seller provides an order confirmation in writing or provides a Performance, or – in case the Seller has issued a binding offer subject to a time limit – in case of the Buyer's written acceptance of such offer within the time limit.

2.2 Subject Matter of the Contract, Side Agreements

2.2.1 The scope of the Performances shall be exclusively governed by the Seller's written order confirmation and any annexes hereto.

2.2.2 Side Agreements or changes to the subject matter of the contract shall only be binding upon the Seller's written confirmation.

2.3 Deviations, Partial Delivery

2.3.1 In case of custom-made products, the Seller shall be entitled to perform excess or short deliveries. Excess or short deliveries shall not be viable, if and to the extent such excess or short deliveries are not unreasonable for the Buyer with respect to both parties' relevant interests.

2.3.2 The Seller shall be entitled to perform partial deliveries to the extent reasonable for the Buyer.

2.3.3 The Seller shall be entitled to make changes to the Performances without the Buyer's prior written consent, provided the usability of the delivered goods shall not be impaired hereby.

2.3 Documentation

2.3.1 All documentation provided by the Seller regarding the respective Performance (e.g. figures, drawings, measures, weight specifications) are deemed to be regarded as approximate values only, unless such documentation is expressly marked as legally binding.

3. Prices, Payment Conditions, Default of Payment

3.1 Prices

3.1.1 All prices are agreed strictly net in EURO ex works, unless otherwise agreed between the parties in writing. The prices are especially exclusive of Value-Added-Tax, customs duties or costs for crossing borders, costs for insurance or transportation or unloading or packaging.

3.1.2 The invoicing is based on the number of units at the time of dispatch.

3.1.3 In case of an increase in price of primary products or material, wages and salaries or manufacturing costs between the conclusion of the contract and dispatch the Seller is entitled to raise the agreed prices according to such increase, taking into account any decrease of cost of other cost types. Upon the Buyer's demand the Seller shall explain to the Buyer the factors relevant for the price and the concrete increase of such factors.

3.1.4 Value-Added-Tax shall be indicated separately by the Seller in the respective statutory amount on the day of issue of the invoice.

3.2 Payment Conditions

3.2.1 The Buyer shall, unless otherwise agreed by the parties in writing, pay the invoices within 30 days after receipt without deduction.

3.2.2 The Seller reserves the right to dispatch goods only for cash on delivery or prepayment.

3.2.3 Payment by check or bill of exchange bill shall only be deemed as fulfilled upon final credit on the Seller's bank account. Any costs incurred by payment by check or acceptance bill, especially discount, acceptance or stamp costs as well as bank expenses shall be exclusively borne by the Buyer.

3.3 Default of Payment

3.3.1 In case of the Buyer's default of payment, a default interest in the amount of 8 percentage points above the basic rate of interest shall apply.

3.3.2 The Buyer's default of payment shall commence 30 days after receipt of an invoice even without any warning notice, unless the parties have agreed on a longer or shorter term of payment in writing.

4. Set-off, Retention

4.1 The Buyer is not entitled to set-off any amounts due or allegedly due unless the Buyer's claims are ascertained in a legally binding way, undisputed or acknowledged by the Seller.

4.2 The Buyer shall only be entitled to a right of retention in so far as the Buyer's counter claim is based on the same contractual relationship as the Seller's claim.

5. Packaging

5.1 In case the Buyer provides packaging containers for the fulfillment of the Seller's delivery obligations, which are owned by the Buyer or under the Buyer's responsibility, the Buyer shall safeguard that such packaging containers shall be delivered cost free to the Seller in due time before the relevant delivery time in sufficient quantity and according to the Buyer's quality demands.

5.2 The Seller may claim compensation from the Buyer for any additional costs resulting from non-compliance of the Buyer with the Buyer's obligation of proper and timely providing of packaging containers according to **No. 5.1**.

5.3 The Buyer shall not be entitled to any claims resulting from defects of the delivered goods, which are caused by defects or insufficient cleansing of packaging containers provided by the Buyer.



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- 5.4 The Buyer may return packaging materials used by the Seller at the Seller's place of business during the Seller's usual business hours. Transportation packaging may be returned Monday till Thursday from 7.00 a.m. until 2.30 p.m. and Friday from 7.00 a.m. until 1.00 p.m. at the Sellers sites at the following locations:
- (i) Werk I: Westendhof 5-9, D-45143 Essen
 - (ii) Werk II: 2. Schnieringstr. 49, D-45329 Essen
 - (iii) Werk Dachau: Röntgenstr. 8, D-85221 Dachau
- 5.5 Packaging materials returned by the Buyer shall be cleansed and free of foreign substances as well as assorted according to different packaging types. In case the Buyer returns packaging materials, which are not in compliance with the stipulations of the foregoing **no. 5.5 clause 1**, the Seller shall be entitled to reimbursement of assorting and cleansing costs or other additional costs for the redemption and disposal of such transportation packaging.
- 6. Dates and Timelines**
- 6.1 All delivery dates and other timelines shall be deemed as approximate dates.
- 6.2 All deliveries are subject to clarification of all details of fulfillment. The compliance with any timelines for delivery is subject to complete fulfillment of each and any contractual and cooperation obligation by the Buyer.
- 6.3 No dates and timelines shall commence before the Buyer has provided the necessary regulatory certificates or permissions and/or any agreed down-payment.
- 6.4 All delivery obligations are subject to correct and punctual supply to the Seller itself, unless incorrect or unpunctual supply to the Seller is caused by the Sellers default.
- 6.5 In case of force majeure or other hindrances which are beyond the Seller's control, e.g. work stoppages, strikes, lockouts, governmental bans, energy and transportation shortages as well as business disruptions etc., any dates and timelines shall be extended according to the effects of such hindrances. The Seller shall communicate such hindrances to the Buyer in good time and state their prospective beginning and ending.
- 6.6 If the Seller is in default of contractual performances for other reasons, the default damage to be proven is limited to 0.5 percent of the contractual price of the outstanding delivery for each full week of default and is limited to a maximum of 5 percent of the contractual value.
- 6.7 In case a delivery is postponed upon the Buyer's demand, the Seller is entitled, beginning one month after the Seller's notification of the goods being ready for delivery to the Buyer, to compensation of the costs of storage at the Seller's premises, in any case no less than 0.5 percent of the invoiced amount for each month of postponement. Notwithstanding the foregoing provision, the Seller is – after setting a reasonable deadline and expiry of such deadline – entitled to dispose of the goods and deliver replacement goods to the Buyer within accordingly prolonged delivery times. In case the Seller uses its right to dispose of the goods, the Seller is entitled to demand from the Buyer compensation for any losses and costs.
- 7. Retention of Title**
- 7.1 Constitution, Scope, Up-keeping, Handling, Insurance**
- 7.1.1 All goods delivered by the Seller shall remain the Seller's property until full payment of all present and future outstanding demands of the Seller against the Buyer.
- 7.1.2 The Buyer shall treat all items, which are subject to the retention of title (hereinafter "**Retention Goods**") with reasonable care. The Buyer shall insure all Retention Goods in a sufficient amount against damages caused by fire, water or theft on the Buyer's costs.
- 7.1.3 In case of the Buyer's breach of contract – especially in case of default regarding any payment – the Seller shall be entitled to revoke the Retention Goods after setting a reasonable deadline for performance of the Buyer's contractual obligation. Transportation costs arising out of such revocation of Retention Goods shall be borne by the Buyer. Any revocation of Retention Goods by the Seller shall be deemed as termination of the contract. Also any seizure of Retention Goods by the Seller shall be deemed as termination of the contract. The Seller is entitled to dispose of any Retention Goods revoked from the Buyer. Any proceeds from such disposal shall be set off against outstanding demands against the Buyer after deduction of reasonable costs of disposal.
- 7.1.4 The allocation of individual receivables to an ongoing invoice or netting-out and the recognition thereof shall not affect the retention of title.
- 7.1.5 The Buyer is granted the right to process or sell Retention Goods within the Buyer's ordinary course of business.
- 7.1.6 In case the relevant jurisdiction of a destination country of the goods to be delivered by the Seller provides particular requirements for the constitution of a retention of title – especially in relationship to the Buyer's creditors – the Buyer is obliged to undertake without undue delay any necessary actions to safeguard the legally effective constitution of the retention of title and its up-keeping until full payment of the purchase price.
- 7.1.7 In case the relevant jurisdiction of a destination country of the goods to be delivered by the Seller disallows the legally effective agreement on the retention of title, but allows the Seller to reserve other rights or titles to the delivered goods serving the purpose of securing the purchase price, the Seller shall be entitled to exercise such rights. The Buyer shall be obliged to cooperate in all of the Seller's actions aiming at securing the Seller's property rights or other rights or titles to the delivered goods serving the purpose of securing the purchase price.
- 7.2 Processing, Mixing, Compounding, Safekeeping**
- 7.2.1 In case the delivered goods are processed to form new commodities by the Buyer, such processing shall take place on behalf of the Seller, without any obligation of the Seller. Any newly generated goods shall become the Seller's property. In the case of processing with goods that are not the Buyer's property, the Seller shall acquire joint ownership of the new goods in accordance with the proportion between the value of the Retention Goods and the other goods at the time of processing.
- 7.2.2 The Buyer is obliged to store Retention Goods separately from goods of any third party's or the Buyer's goods (hereinafter "**Foreign Goods**"). In case of Mixing or compounding of Retention Goods with Foreign goods in breach of such obligation the Retention goods cannot be separated again from the Foreign Goods, the Seller shall become joint owner according to the statutory provisions.
- 7.2.3 In case the Buyer acquires sole ownership or joint ownership as a result of the mixing or compounding, the Buyer now already agrees to transfer the sole or joint ownership to the Seller in accordance with the proportion between the value of the Retention Goods and the Foreign Goods at the time of the mixing or compounding. The value of the goods of the Seller shall be determined in accordance with the list price with an appropriate used parts discount. In such cases, the Buyer is obliged to store the goods, which are the property or joint property of Seller, which shall also be deemed to be Retention Goods cost free for the Seller.
- 7.4 Disposal**
- In case Retention Goods are sold by the Buyer alone or with other goods, the Buyer now already agrees to assign the receivables from the resale thereof in an amount equal to the value of the Retention Goods together with all ancillary rights and with priority over the remainder. The Seller agrees to such assignment. In case the sold



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Retention Goods are the joint property of the Seller the assignment of the receivables shall comprise the amount corresponding with the Seller's portion of the joint ownership. The value of the goods shall be determined in accordance with the list price with an appropriate used parts discount.

7.4 Collection

7.4.1 The Seller grants the Buyer the right to collect the receivables mentioned in the previous paragraph (7.3) and reserves the right to cancel such right.

7.4.2 The Seller shall not exercise its own right to collect as long as the Buyer settles its payment obligations including payment obligations in relation to third parties.

7.4.3 Upon the Seller's request the Buyer shall indicate the debtors of the assigned receivables and notify such debtors of the assignment. The Seller shall also be entitled to notify the debtors of the assignment itself.

7.4.4 In case the Buyer incorporates a receivable assigned to the Seller from resale of delivered goods as part of a current account relationship existing with its customer, the receivables from this current account are assigned in their entirety. After netting out, such receivables are replaced by the accepted account balance, which is deemed to be assigned to the Seller in an amount equal to the amount of the original receivable.

7.5 Enforcement, Insolvency

7.5.1 The Buyer shall inform the Seller immediately of any compulsory execution proceedings by third parties with regard to the Retention Goods or the assigned receivables, and provide any the documents necessary for opposition. In case of non-payment, application for or opening of insolvency proceedings (any statutory rights of the insolvency administrator remaining unaffected) or judicial composition proceedings, the right to resell, use or install the Retention Goods as well as any title or authorization to collect the assigned receivables shall be revoked. In case of proceedings concerning a check or bill of exchange, the right to collect shall also be revoked. In such cases, the Seller shall be entitled to collect the Retention Goods.

7.5.1 In case the Buyer has mixed or compounded the Retention Goods with Foreign Goods, the Seller has the right, in good understanding with the Buyer and based on the invoicing documents, to separate out its Retention Goods. In case the Buyer should not cooperate in such separation, the Seller shall be entitled to perform such separation itself in consultation with an authorized expert.

7.6 Excessive Security

In case the Seller's security resulting from of the prior assignment exceeds the value of the secured receivables by more than 10 percent, the Seller shall be obliged at the Seller's choice to re-transfer or release goods in such extent. The value of the Seller's secured receivables is determined by the price at which the Seller issued invoices to the Buyer.

8. Transfer of Risk

8.1 Delivery of goods shall be ex-works on the Buyer's cost and risk, unless otherwise agreed in writing. The Buyer has to indicate any damages or losses to the freight carrier in good time according to statutory law. This shall also be valid in case of delay.

8.2 Upon the Buyer's written demand, the Seller shall insure the respective delivery against theft, breakage, transportation, fire, water or other damages; the Buyer shall bear the costs for such insurance.

8.3 In case of delay of dispatch caused by circumstances within the Buyer's responsibility, the risk shall pass to the Buyer on the day of readiness for dispatch; however, in this case the Seller shall be

obliged to procure any insurance according to the Buyer's demand on the Buyer's costs.

8.4 Any goods delivered shall be received by the Buyer notwithstanding minor defects; the Buyer's rights in connection with defective products shall remain unaffected.

9. Tooling, Drawings, Patterns, Documents and the Like

9.1 The Seller reserves all property or intellectual property rights to all figures, drawings, calculations and other documents; they shall not be made available to third parties. Before any passing on to third parties, the Buyer shall request the Seller's written permission. This shall also apply in case tooling is manufactured upon the Buyer's demand and costs.

9.2 The Seller shall not be liable for the accuracy of any models, patterns, drawings, data, information or tooling provided to the Seller by the Buyer. In case neither drawings nor order provide unambiguous specifications for the tolerances of execution, the Seller shall manufacture the goods according to the tolerances customary in the trade and/or the tolerances conditioned by the manufacturing process.

10. Notice of Defects, Warranty and Liability

10.1 The Buyer's demand for warranty claims shall require that the Buyer has properly fulfilled its obligation of timely inspection and notice of defects according to section 377 German Commercial Code (Handelsgesetzbuch, HGB). Noticeable deviations in quantity and quality shall be indicated to the Seller without undue delay, however no later than 8 days after the Buyer's receipt of the goods. The relevant time is the Seller's receipt of the notification.

10.2 The limitation period for claims regarding the goods delivered by the Seller shall be 12 months. The limitation period commences with the delivery of the goods. The limitation period shall be valid for all claims in connection with the goods, especially for consequential damages and claims for unlawful acts.

10.3 The Seller's warranty and liability shall be limited to the Seller's obligation to deliver new products free of cost in replacement for products, which are proven to be defective in the first instance. In case of failure of such remedy according to **no. 10.3 clause 1**, the Buyer shall be entitled to terminate the contract. In case of only minor breach of contract, especially in case of minor defects, the Buyer shall not be entitled to terminate the contract. The Buyer's right to reduce the purchase price is excluded.

10.4 In case the Buyer chooses to terminate the contract due to a defect of title or a defect of product, the Buyer shall not be entitled to claim damages in addition.

10.5 In case the Buyer chooses to claim damages after remedy has failed, Buyer shall keep the goods as far as such is reasonable. The claim for damages shall be limited to the balance between purchase price and the value of the defective product. Such limitation shall not apply in case of intentional breach of contract.

10.6 The Seller's indications of the product shall be deemed as descriptive declarations. Public announcements and promotions shall not be deemed as contractually relevant characterization of the goods.

10.7 The Buyer shall only be entitled to claim damages for non-fulfillment, if the Seller fails to provide remedy according to **no. 10.3 clause 1** despite of setting a reasonable deadline or in case such remedy is not reasonable for the Buyer.

10.8 Unless otherwise stipulated in the following, any further claims of the Buyer – irrespective of the legal grounds – are excluded. Therefore, the Seller shall not be liable for any damages not occurring in the delivered goods themselves, especially not for loss of profit, or damages of other assets of Buyer. Such exclusion of liability shall not apply to damages of life, body, health or if and to the extent,



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damages are caused by gross negligence or willful misconduct or breach of an elementary contractual obligation, i.e. an obligation the compliance with is prerequisite for the proper execution of the contract and on the compliance of which the other party regularly will and may rely on ("Kardinalpflicht"). Such exclusion of liability shall furthermore not apply in case the Buyer is entitled to demand damages for non-fulfillment based on a guarantee; in such cases the liability is, however, limited to the predictable, typical damages, to the exceptions of the cases of **no. 10.8 clause 3 and 5**.

10.9 The foregoing provisions of **no. 10.8** shall not be deemed to establish any reversal of evidence at the Buyer's disadvantage.

11. Liability for Defects in Processing of Materials provided by Buyer

11.1 In case of the Seller's processing of material provided by the Buyer (hereinafter "**Provided Material**"), the Seller shall not be liable for any defects arising in processing (e.g. thermal treatment, shaping by stock removal, grinding) due to characteristics of construction material of Provided Material. With respect to thermal treatment of Provided Material the special provisions of the Seller shall apply, which are provided on www.gwbdriiveshaft.com and which will be sent to the Buyer by the Seller upon the Buyer's request. In case Provided Material becomes unusable while being processed due to defects in material or other properties of the Provided Material, the Buyer shall be obliged to compensate the Seller for the costs of processing.

11.2 In case a workpiece out of the Provided Material cannot be processed due to circumstances within the Seller's responsibility, the Seller shall undertake the processing of an equal replacement workpiece. The Buyer shall not be entitled to any additional claims.

12. Additional Liability

12.1 Any liability of the Seller for damages exceeding **no. 10** and **no. 11** shall be excluded without regard of the legal nature of the respective claim.

12.2 The Seller's liability according to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected; the same shall also apply for all other compulsory statutory provisions.

12.3 To the extent the Seller's liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of the Seller's clerks, employees, members of staff, representatives and vicarious agents.

13. Quality, Usability, Safety

13.1 According to the Seller's knowledge, the goods delivered by the Seller comply to the generally accepted standards of good practice and of science, the legal provisions, regulations, safety regulations, general safety standards and the agreed technical data at the time of delivery.

13.2 The inspection of the ordered and delivered goods shall be exclusively performed by the Buyer. It is the Buyer's sole responsibility to safeguard that all information and documentation, including drawings and data sheets provided to the Seller concerning the properties of the goods, shall be accurate and comply with the Buyer's special profile of requirements. The Seller shall not be liable for the usability of the delivered goods for the purposes intended by the Buyer.

13.3 Any security or handling directions – irrespective of form – provided by the Seller shall be observed unconditionally.

14. Confidentiality

14.1 Confidential Information

14.1.1 The Buyer shall treat all business and technical details and secrets, which are not obvious and which come to the Buyer's knowledge in

connection with an Order or the execution of the contract, as well as all figures, drawings, models, molds, calculations and other documents and information Seller may make available to the Buyer, strictly confidential. Confidential information may only be passed on, exposed or made available to third parties, if and to the extent that the Seller has approved beforehand in writing.

14.1.2 The Buyer may only store or copy confidential information in the extent, which is necessary for the proper execution of contract.

14.1.3 The Buyer shall return all confidential information to the Seller upon the fulfillment of the contract or destroy such confidential information upon Seller's request and provide evidence for such destruction.

14.2 Continuing Confidentiality

The obligation of confidentiality shall remain in force after complete fulfillment of the contractual relationship. It shall expire if and to the extent that confidential information has become known to the public without breach of the obligation of confidentiality by the Buyer, latest for a period of five years after the conveyance of the last confidential information and complete fulfillment of the contractual relationship.

15. Miscellaneous

15.1 Place of Performance

Unless otherwise agreed in writing, the place of performance (Erfüllungsort) is Essen.

15.2 Applicable Law

The contract and all non-contractual claims and rights in connection with the contract shall be subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the provisions on conflict of law.

15.3 Place of Jurisdiction

For all contractual and non-contractual disputes in connection with the contract, the competent courts for Essen shall have exclusive jurisdiction. This shall also apply in case that the Buyer has no statutory residence or place of effective management within the Federal Republic of Germany.

15.4 Language version

These Sales Conditions are issued in German and English language. In case of deviations between the different language versions, the German version shall prevail.

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