

GENERAL TERMS OF BUSINESS AND SALE OF EMMERT FAHRZEUGE, OWNED BY ALEXANDER EMMERT, LOCATED IN BERNARDSTR. 36, 44, 47, 49809 LINGEN (EMS), GERMANY

§ 1 Area of application, form

(1) These General Terms of Business and Sale (GTS) apply to all our business relationships with our customers (“Buyers”). The GTS apply only if Buyer is an entrepreneur (§ 14 BGB (German Civil Code)), a legal entity under public law, or a special fund under public law.

(2) The GTS particularly apply to contracts for the purchase and/or delivery of movable items (“Goods”), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB (German Civil Code)). Unless otherwise agreed, the GTS apply as a framework agreement in the version that was valid at the time of Buyer’s order, or, in any case, in the version most recently transmitted to them in text form. The GTS also apply to future contracts of the same type even if we do not refer to them in each case.

(3) Our GTS apply exclusively. Buyer’s general terms of business that differ from, oppose, or supplement these GTS will become a contractual component only if and

to the extent that we have given our express written consent to their application. This requirement of consent applies in every case (e.g., even if we are aware of Buyer’s GTB but deliver to them without reservation nonetheless).

(4) Agreements concluded with Buyer in individual cases (including collateral agreements, supplements and modifications) always take precedence over these GTS. A written contract or our written confirmation will be the decisive factor for the contents of such agreements, subject to counterevidence.

(5) Buyer’s legally relevant declarations and notifications regarding the contract (e.g., setting of deadlines, notice of defects, withdrawal or reduction) must be made in writing (i.e., in written or text form, such as letter, e-mail or fax). This does not affect statutory formal requirements and other required verification, especially if the declaring party’s credentials are in doubt.

(6) The application of statutory provisions is referred to only for clarification purposes. Therefore, statutory pro-

visions will apply even without such reference, unless they are directly altered, or expressly excluded, in these GTS.

§ 2 Contract conclusion

(1) Our offers are non-binding and remain subject to change. This applies even if we have provided Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, estimates, and references to DIN standards), other product descriptions or documents—including those in electronic form—to which we reserve ownership and copyright.

(2) An order placed for the Goods by Buyer is deemed a binding contract offer. Unless otherwise specified in the order, we are entitled to accept this contract offer within 14 days after we have received it.

(3) We are entitled to declare this acceptance either in writing (e.g., by order confirmation) or by delivering the Goods to Buyer.

§ 3 Delivery period and delay in delivery

(1) The delivery period is individually agreed or indicated by us when we accept the order.

(2) If we are unable to comply with binding delivery periods due to reasons for which we are not responsible (unavailability of service), we shall inform Buyer thereof immediately and stipulate a new anticipated delivery period at the same time. If the service remains unavailable within the new delivery period, we are entitled to withdraw from the contract in part or in full. We will refund any consideration Buyer has already provided. Examples of "unavailability" in this sense particularly include (1) untimely self-delivery by our suppliers, if we have concluded a congruent hedging transaction, (2) neither we nor our suppliers are at fault, or (3) we are not obligated to procurement in individual cases.

(3) The occurrence of our delay in delivery will be determined in accordance with statutory provisions. However, Buyer shall send us a reminder in each case. Compliance with the delivery obligation assumes that the ordering party will fulfil his obligations to cooperate punctually and properly.

(4) Buyer's rights pursuant to § 8 of these GTS, and our legal rights, especially if the performance obligation is excluded (e.g., because performance or supplementary performance are impossible or unfeasible), remain unaffected.

§ 4 Delivery; Transfer of risk; Acceptance; Delay in acceptance

(1) Delivery will be made ex warehouse, which is also the place of fulfilment for the delivery and any necessary supplementary performance. On Buyer's request and at their expense, the Goods will be sent to another specified location (mail order). Customer will basically be responsible for choosing the type or route of dispatch. If she fails to make this choice, we will be entitled to specify the type of shipment ourselves (especially the transport company, shipping route and packaging).

(2) The risk of accidental loss or deterioration of the Goods will be transferred to Buyer when the Goods are handed over at the latest. If a mail order is placed, however, the risk of accidental loss or deterioration of the Goods, as well as the risk of delay, is transferred as soon as the Goods are delivered to the forwarding agent, the freight carrier or other person or institution appointed to carry out the shipment. If inspection and approval has been agreed, this will be a deciding factor in the transfer of risk. Furthermore, the statutory provisions of employment contract law will apply mutatis mutandis to the agreed inspection and approval. If Buyer delays acceptance, this will be deemed equivalent to transfer or acceptance.

(3) If Buyer delays acceptance, neglects an obligation to cooperate, or if our delivery is delayed due to other rea-

sons for which Buyer is responsible, we will be entitled to demand compensation for damages incurred thereby, including additional expenses such as storage costs. To this end, we will calculate a lump sum compensation amounting to EUR 200 per calendar day, beginning with the delivery deadline or, if none exists, with the notification that the Goods were ready to be shipped.

Our right to prove greater damages, and our legal claims (especially to reimbursement for additional expenses, reasonable damage compensation, and termination) remain unaffected, although the lump sum must be credited to further monetary claims. Buyer is at liberty to prove that we suffered no damages, or significantly less damages than that of the previous lump sum.

§ 5 Prices and payment conditions

(1) Unless otherwise agreed in individual cases, our prices which apply EX WORKS at the time of contract conclusion do not include statutory sales tax.

(2) If a mail order is placed (§ 4 (1)), Buyer shall bear the transport costs ex warehouse and the costs for any transport insurance they desire. Buyer shall bear the costs for any customs, fees or taxes, or other public levies.

(3) The purchase price is due for payment within 14 days of invoicing. However, we are also entitled at any time

to require prepayment before making a delivery, even if the business relationship is ongoing.

(4) Before delivering Goods, whether domestically or abroad, we will demand a prepayment amounting to the full purchase price of any basic vehicle that we will need to procure to this end. If expansion or upgrading work is performed, whether domestically or abroad, half the costs for such work will be demanded from the customer as a prepayment. The option of demanding a higher prepayment in accordance with paragraph 3 remains unaffected.

(5) Buyer will come into arrears if the above payment period expires. During the time of delay, the purchase price will bear interest at the statutory default interest rate applicable at that time. We reserve the right to assert further default damages. Our claim against merchants to the commercial maturity interest (§ 353 HGB (German Commercial Code)) remains unaffected.

(6) Buyer is entitled to rights of offsetting or retention only insofar as their claim is uncontested or has been upheld by a judgment debt. If delivery is defective, Buyer's reciprocal rights, especially pursuant to § 7 (6) sentence 2 of these GTS, will remain unaffected.

(7) If it becomes apparent after contract conclusion that our claim to the purchase price is jeopardised by

a lack of Buyer's ability to pay (because insolvency proceedings have been initiated, for example), statutory provisions allow us to refuse to perform and, possibly after setting a grace period, to withdraw from the contract (§ 321 BGB (German Civil Code)). If the contract in question is for manufacturing specific items (unique products), we are entitled to declare our withdrawal immediately; this will not affect statutory regulations concerning the dispensability of setting deadlines.

(8) The customer is obligated to inspect and accept the Goods after they have been manufactured and notice has been given of their manufacture. She must then make the remaining payment, and the Goods will be delivered or picked up.

§ 6 Retention of title

(1) We will reserve ownership of the sold Goods until all our present and future claims arising from the purchase contract and our ongoing business relationship have been paid (secured claims).

(2) The Goods under retention of title may not be pledged to third parties, nor assigned as a collateral security, before all our secured claims have been completely paid. Buyer shall inform us immediately if a motion is made to initiate insolvency proceedings or if third parties gain access to the Goods belonging to us (through pledges, for example).

(3) If Buyer behaves in a manner contrary to the contract, especially by failing to pay the due purchase price, we will be entitled to withdraw from the contract in accordance with statutory provisions, to demand the return of the Goods due to our retention of title, or both. The demand of return will not automatically be deemed a declaration of withdrawal; rather, we are entitled to demand only that the Goods be returned, while reserving retention. If Buyer does not pay the due purchase price, we may assert this right only if we have granted the Buyer a reasonable grace period without success, or such a setting of a deadline is dispensable in accordance with statutory provisions.

(4) Buyer is authorised to sell the Goods in the ordinary course of business, process them, or both, until revocation has been declared in accordance with (c) below. In this case, the following provisions will apply in supplement.

(a) If our Goods are processed, mixed or combined to form new products, our retention of title will extend to these products, and we will be deemed their manufacturer. If our Goods are processed, mixed or combined with goods subject to third-party ownership rights, we will acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Otherwise, the created product will be subject to the same retention of title as the delivered Goods.

(b) Buyer hereby assigns to us by way of security all claims against third parties which arise from the resale of the Goods or the product, at their full amount or in the amount of any co-ownership share we have acquired in accordance with the previous paragraph. We accept this transfer. The obligations named in paragraph 2 also apply in regard to the assigned claims.

(c) Buyer is authorised to collect the receivable just as we are. We shall not collect the receivable as long as Buyer complies with their payment obligations toward us, their ability to pay is not compromised, and we do not assert our retention of title by exercising our right in accordance with paragraph 3. However, if this is the case, we are entitled to demand that Buyer disclose the assigned claims and their debtors to us, give us all information necessary to collect, hand over the associated documents, and notify the (third-party) debtors of the assignment. Furthermore, in this case we will be entitled to revoke Buyer's authorisation to resell and process the Goods which are under retention of title.

(d) If the securities' realisable value exceeds our claims by more than 10%, we will release securities of our choice on Buyer's request.

§ 7 Buyer's claims for defects

(1) Unless otherwise agreed in the following, Buyer's rights in the event of a material defect or a defect of

title (including incorrect or short delivery as well as improper assembly or deficient assembly instructions) will be governed by the statutory provisions. In all cases, the statutory special provisions that apply to final delivery of the Goods to a consumer (recourse against suppliers pursuant to §§ 478 and 479 BGB (German Civil Code)) will remain unaffected.

(2) Our liability for defects is primarily based on the agreement made on the qualities of the Goods. Such agreements include all product descriptions, all product orders provided to us, all drawings and all production solutions agreed with the customer, as well as agreements that form the subject matter of the individual contract.

(3) If the quality was not agreed, the question of whether a defect exists or not must be judged based on the statutory regulation (§ 434 (1) sentences 2 and 3 BGB (German Civil Code)). However, we will assume no liability for public statements made by the manufacturer or other third party (such as advertising statements).

(4) Buyer's claims for defects assume she has complied with her legal obligation to inspect and give notice of defects (§§ 377, 381 HGB (German Commercial Code)). If a defect is discovered during delivery, inspection or at any later time, we must be notified immediately. In each case, obvious defects must be indicated within

five business days after delivery, and, if a defect was not discovered during the inspection, within the same period after discovery. If Buyer fails to perform the due inspection, give notice of defect, or both, our liability for the defect which was not indicated promptly or duly will be excluded in accordance with statutory provisions.

(5) If the delivered item is defective, we can initially choose whether we will provide supplementary performance by rectifying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to deny supplementary performance in accordance with statutory requirements remains unaffected.

(6) We are entitled to make the owed supplementary performance contingent on Buyer's paying the due purchase price. However, Buyer is entitled to withhold part of the purchase price in proportion to the defect.

(7) Buyer shall grant us the time and opportunity necessary to provide the owed supplementary performance, and in particular shall hand over the contested Goods for inspection purposes. If replacement delivery is chosen, Buyer shall return the defective item to us in accordance with statutory provisions. Supplementary performance will not obligate us to expand the defective

item nor reinstall it if we were not obligated to install it in the first place.

(8) If a defect actually exists, we shall bear the costs for inspection and supplementary performance (especially transport, road, labour and material costs, but not expansion or installation costs). Otherwise, we are entitled to demand that Buyer reimburse us for the costs incurred by the unjustified request to remedy the defect (especially inspection and transport costs), unless Buyer could not have identified the lack of defect.

(9) In urgent cases, such as a risk to operational safety or to defend against disproportionate damages, Buyer is entitled to rectify the defect himself and demand that we compensate him for any expenses which were objectively necessary. Buyer shall inform us immediately (and preferably in advance) of any such measures he takes himself. However, Buyer is not entitled to remedy defects himself if we would have been entitled to deny the supplementary performance in accordance with statutory provisions.

(10) If supplementary performance fails, or a reasonable grace period to be set by Buyer expires to no avail, or is dispensable in accordance with statutory provisions, Buyer may withdraw from the contract or reduce the purchase price. However, an insignificant defect will not entitle Buyer to withdraw.

(11) Buyer will also be entitled to compensation for damages or futile expenses caused by defects, but only in accordance with § 8. Otherwise, such claims will be excluded.

§ 8 Other liability and regulations regarding commissioning

(1) Unless otherwise specified in these GTS, including the following provisions, we will be liable for breach of contractual and non-contractual obligations in accordance with statutory provisions.

(2) We will be liable for damage compensation within the context of our liability for guilt in the event of intent and gross negligence, regardless of legal grounds. In the event of ordinary negligence, we will be liable, subject to a milder liability criterion in accordance with statutory provisions (e.g., for diligence in our own affairs), only

- a) for damages arising from injury to life, limb or health,
- b) for damages arising from a not-insignificant breach of an essential contractual obligation (i.e., an obligation whose fulfilment makes proper execution of the contract possible in the first place and on the compliance with which the Contract Partner ordinarily relies and may rely); in this case, however, our liability will be limited to compensation for foreseeable damages which are typical of this type of contract.

(3) The limitations on liability under paragraph 2 also apply to breaches of duty which benefit or were committed by persons for whose culpability we are responsible in accordance with statutory provisions. They do not apply (1) if we maliciously conceal a defect or (2) if we take over a guarantee for the quality of the Goods or (3) to Buyer's claims in accordance with the Product Liability Act.

(4) Buyer is entitled to withdraw or terminate due to a breach of duty not associated with a defect only if we are responsible for that breach of duty. Buyer is not entitled to a free right to terminate (especially pursuant to §§ 651 and 649 BGB (German Civil Code)). Otherwise, the statutory requirements and legal consequences will apply.

(5) Buyer shall release us from the costs of Pre-Delivery Inspection (PDI) as soon as these costs have either been established by Buyer herself or announced by us. These PDI costs essentially include the costs for the initial inspection and for the vehicle to be registered in the guarantee system at the responsible retailers in Germany or abroad.

§ 9 Statute of limitations

(1) By way of derogation from § 438 (1) No. 3 BGB (German Civil Code), the general limitation period for claims due to material defects or defects of title amounts to

one year from delivery. If acceptance has been agreed, the limitation period will begin with acceptance.

(2) The above limitation periods under laws governing the sale of goods also apply to contractual and non-contractual claims for damage compensation based on a defect in the Goods, unless the application of the normal statutory limitation period (§§ 195, 199 BGB (German Civil Code)) would lead to a shorter limitation period in individual cases. However, Buyer's claims for damages pursuant to § 8 (2) sentences 1 and 2a and the Product Liability Act become time-barred exclusively in accordance with statutory limitation periods.

§ 10 Choice of law; Place of jurisdiction

(1) These GTS and the contractual relationship between us and Buyer will be subject exclusively to the laws of the Federal Republic of Germany under exclusion of international uniform law, in particular, of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention).

(2) If Buyer is a merchant as defined by the German Commercial Code, a legal entity under public law, or a special fund under public law, our registered office in Lingen (Ems) will be the place of jurisdiction—including internationally—for all disputes which arise directly or indirectly from the contractual relationship. The same applies if Buyer is an entrepreneur as defined by § 14

BGB (German Civil Code). However, in all cases we are entitled to bring legal action at the place of performance for the delivery obligation in accordance with these GTS or an individual agreement which takes priority, or at Buyer's general place of jurisdiction. Overriding statutory provisions, especially those regarding exclusive competence, remains unaffected.