

As of 01/2019

Sec. 1 Validity of the General Terms and Conditions of Sale and Delivery

- (1) These Terms and Conditions of Sale and Delivery shall apply to all present and future business transactions between CEDS DURADRIIVE GmbH (hereinafter: "we" or "us") and customers who have their place of business outside the Federal Republic of Germany. This shall also apply if we do not expressly refer to the Terms and Conditions of Sale and Delivery to the Customer again in follow-up business transactions with the Customer.
- (2) These Terms and Conditions of Sale and Delivery shall apply exclusively. The Customer's general terms and conditions shall by no means become a part of the contract. This shall apply even if we are aware of such terms and conditions or if we do not expressly object to their validity, unless their validity is expressly approved in writing. These Terms and Conditions of Sale and Delivery shall apply in place of any general terms and conditions of the Customer (e.g. terms and conditions of purchase), even if these stipulate that acceptance of the order shall constitute unconditional acceptance of the Customer's general terms and conditions.
- (3) These Terms and Conditions of Sale and Delivery shall not apply if the Customer is a consumer within the meaning of Sec. 13 BGB [German Civil Code].
- (4) All our offers as well as supplies of goods and services shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery. If we assume additional or more extensive obligations, the validity of these General Terms and Conditions of Sale and Delivery shall not be affected.

Sec. 2 Offers and conclusion of contract

- (1) Our offers are always non-binding and subject to confirmation, unless they are expressly designated as binding or contain a specific acceptance period.
- (2) If an order placed by the Customer is to be qualified as an offer pursuant to Sec. 145 BGB, we may accept it within four weeks of receiving the order; the Customer shall be bound by his offer for a period of four weeks. If the order deviates from our suggestions or our offer, the Customer shall draw up the order in writing and identify the deviations.
- (3) If the order is placed electronically, we will usually confirm receipt of the order within six working days. This confirmation of receipt merely documents the receipt of the order and shall not constitute a binding acceptance. However, the declaration of acceptance may be linked to the confirmation of receipt.
- (4) The contract shall come into effect upon receipt of our order confirmation. Our order confirmation shall govern the entire content of the contract. This shall apply, subject to objections raised by the Customer in writing immediately after receipt of the order confirmation, even if it deviates from declarations made by the Customer.
- (5) As a rule, we send our order confirmations electronically. Alternatively, we may also confirm orders in text form or in writing. In the absence of an order confirmation, the contract shall come into effect upon execution of the order. Public statements, claims or advertisements shall not constitute contractually guaranteed characteristics of the goods. The Customer will not receive any guarantees in the legal sense.
- (6) We reserve the right to make technical modifications as well as changes as to the shape, colour and/or weight within the reasonable scope, unless the usability for any contractually agreed purpose requires exact conformity. We reserve the right to make modifications and improvements as to design, material use and finish, insofar as this does not affect the contractually stipulated or customary use of the subject matter of the contract. If the Customer wishes the goods delivered to be not only suitable for customary use or if the Customer assumes that the goods are suitable for a specific purpose or have specific characteristics or if the Customer plans to use the goods for an unusual purpose, involving increased stress or particular risks to life, limb, health or the environment, he is obliged to indicate to us the intended use or corresponding expectation in writing before conclusion of the contract.
- (7) We retain ownership of and copyright to cost estimates, drawings and other documents. Such documents may not be disclosed to third parties or used for advertising purposes without our express prior written consent. We are entitled to request their surrender by the Customer at any time. This shall only apply insofar as their transfer into ownership is not the express subject matter of the contract.
- (8) Any amendments, modifications or side agreements to the contract must be made in writing or confirmed by us in writing to take legal

effect. Our employees, commercial agents or other sales agents are not authorised to enter into side agreements or give any representations or guarantees that go beyond the agreed content of the contract. Furthermore, they are not authorised to waive the requirement of an order confirmation.

Sec. 3 Prices and payment

- (1) Prices are quoted ex works, exclusive of shipping costs and any customs duties, in euro, unless otherwise stated in the order confirmation. The Customer warrants that all requirements for a value-added tax-free delivery from a German perspective are met. Insofar as we do not receive verification of tax-free delivery or if we have to pay value-added tax due to the terms of delivery or due to circumstances within the Customer's sphere of responsibility, the Customer shall fully indemnify us without prejudice to any further claims. The indemnity shall be granted by the Customer waiving any further conditions or other objections, in particular waiving any objection of limitation, and shall include reimbursement of any expenses incurred by us. With regard to additional costs, reference is made to the provisions set forth in Sec. 4.
- (2) Unless otherwise stated in the order confirmation, the invoice amount shown shall be due for payment upon issuance of the invoice. The consequences of any possible default of payment on the part of the Customer shall be governed by the statutory provisions. The Customer is deemed to be in default if he fails to effect payment within 7 days of receipt of the invoice.
- (3) If several claims are due, we reserve the right to use a payment, instalment or advance payment made by the Customer to first discharge the debt that offers the least security, among several claims offering equal security to first discharge the oldest debt and among debts of the same age to discharge all debts proportionately.
- (4) We are not obliged to accept bills of exchange or cheques. If they are accepted, this shall only be done on account of performance on condition that they can be discounted and against reimbursement of all expenses. Likewise, we are not obliged to present a bill of exchange or cheque in due time or to lodge protests.
- (5) The Customer may only exercise a right of setoff if his counterclaims have been legally established or are ready for decision and also if the counterclaims are uncontested or have been acknowledged by us. The Customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- (6) We reserve the right to adapt our prices accordingly if any increases in costs (in particular due to collective agreements or changes in material prices) occur after conclusion of the contract.
- (7) The supply of additional goods and services agreed upon after confirmation of the order will be charged separately. Part deliveries or part performances shall be payable within the deadlines stated in the order confirmation or invoice or in these Terms and Conditions.
- (8) In the event that the payment deadlines are not observed or if we become aware of any circumstances after conclusion of the contract that are likely to adversely affect the Customer's creditworthiness, all our claims shall immediately become due for payment. In this case, we are entitled to immediately render any outstanding performance against advance payment or provision of security and, after expiry of a reasonable period, to withdraw from the contract or claim compensation for non-performance and, without prejudice to the aforementioned rights, to take back the goods delivered under retention of title at the Customer's expense. If part payments have been agreed upon and the Customer is in default of payment despite having been granted a reasonable grace period, we are entitled to withdraw from the contract.
- (9) Unless expressly otherwise agreed upon, we are not obliged to assemble and install goods, to advise the Customer or to train or instruct customers. Section 434 (2) BGB is waived. If we nevertheless provide such services on the basis of a separate agreement, these services may be charged separately.
- (10) We are entitled to assign our claims to third parties, in particular to a factoring company. From the point in time at which we inform the Customer of such assignment, payments with debt-discharging effect can only be made to the assignee. In the event of assignment of claims, we will communicate to the Customer the name and bank details of the assignee, which may already be done in the order confirmation.

Sec. 4 Passing of risk, packaging, shipping

- (1) Unless otherwise stated in the order confirmation, delivery FCA/Salzbergen (according to Incoterms 2010) is deemed to be agreed upon. This shall also apply to any part deliveries and part performances rendered by us, insofar as we are entitled to render part deliveries and part performances.
- (2) Unless otherwise agreed upon, the shipping costs, insofar as we have agreed to take care of the shipment in the order confirmation, as well as the costs of payment transactions, customs fees, etc. will be charged to the Customer separately.

Sec. 5 Delivery periods

- (1) The delivery period is stated in our written order confirmation. Adherence to the delivery period requires the Customer to meet his contractual duties and obligations as agreed. If this is not the case, the delivery period shall be extended accordingly, unless we are responsible for the delay. Binding delivery dates or deadlines require our written confirmation to become effective.
- (2) Adherence to the delivery period is subject to correct and timely delivery by our suppliers, unless we have intentionally or grossly negligently caused the incorrect or non-timely delivery by our suppliers. We will notify the Customer of the non-availability of the goods without delay. Any payments already made will be refunded, unless the Customer agrees to delivery after expiry of the delivery period. This paragraph shall apply mutatis mutandis to parts to be provided by the Customer, where such parts are stated in our order confirmation.
- (3) Delivery dates or deadlines shall be postponed or extended accordingly if we are prevented from rendering the performance in a timely manner due to force majeure, industrial action or other circumstances for which we are not responsible. The impossibility of obtaining raw materials and means of transport shall be treated in the same way as the cases referred to above. This shall also apply if corresponding circumstances affect our upstream suppliers. We accept no liability for any damage arising from this, no matter on what legal grounds. If the impediment lasts longer than 3 months, the Customer is entitled, after setting a reasonable grace period, to withdraw from the contract with regard to the part that has not yet been performed. In this case, he is not entitled to claim compensation.
- (4) Apart from that, the Customer is only entitled to rights and claims due to default if we are responsible for the default.
- (5) If the Customer incurs any damage due to a delay in delivery for which we are responsible, the statutory provisions shall apply. If we are liable to pay compensation under the statutory provisions, this shall be limited to 0.5 % for each full week of delay, but altogether no more than 5% of the value of that part of the total delivery which cannot be used in time or in conformity with the contract due to the delay. Any further claims for compensation shall be excluded.
- (6) The limitations set forth in Para. (5) above shall not apply in the event of wilful intent or gross negligence on our part or in the event of a fixed-date transaction or if the default in delivery for which we are responsible is based on the culpable breach of a material contractual obligation or if life, limb or health are affected. Except in the event of a wilful breach of contract for which we are responsible or if life, limb or health are affected, our liability to pay compensation in such cases shall be limited to the foreseeable, typically occurring damage.
- (7) If shipping has been agreed upon, the delivery periods, delivery deadlines and delivery dates refer to the time of handover to the forwarder, carrier or other third party entrusted with the shipment.
- (8) If the delivery is postponed at the Customer's request, we are entitled, after setting a reasonable grace period and its expiry without effect, to otherwise dispose of the goods and supply the Customer within a reasonably extended period. Any storage costs shall be borne by the Customer.
- (9) If the Customer defaults in accepting the performance or culpably breaches any other duty to cooperate, we are entitled to claim compensation for the resulting damage, including any additional expenditure. If the goods are stored by us, the storage costs amount to 0.25% of the invoice amount of the items to be stored for each full week. The right to assert and provide evidence of additional or lower storage costs shall remain unaffected. The right to assert further claims for compensation shall remain unaffected; the Customer may furnish proof that we have incurred no or lower damage.
- (10) If the conditions of Para. (8) are met, the risk of accidental destruction or accidental deterioration of the goods shall pass to the Customer no later than the point in time at which he is in default of acceptance or payment.
- (11) We are entitled to render part deliveries and part performances when
 - a) the part delivery can be used by the Customer for the contractually intended purpose,
 - b) the delivery of the remaining goods ordered is ensured and

- c) the Customer does not incur considerable additional expenditure or costs as a result, unless we agree to bear such costs.

- (12) Part deliveries may be invoiced separately. Complaints concerning part deliveries shall not release the Customer from the obligation to accept the remaining delivery of the goods in conformity with the contract.

Sec. 6 Liability and compensation

- (1) The Customer is only entitled to assert claims for defects if he has duly met his obligations to examine the goods and give notice of any defects in accordance with Sec. 377 HGB [German Commercial Code]. Defects must be reported in writing, stating the type and extent of the deviation from the agreed or customary quality or suitability for use. We are not obliged to check whether the goods serve or are suitable for the specific purpose intended by the Customer, unless the Customer has indicated this to us in writing before conclusion of the contract.
- (2) The goods are affected by a material defect if the goods deviate significantly from the design, quantity, quality and suitability for use agreed upon in the written order confirmation, taking into account the provisions set forth in Sec. 2 (1), (4), (5) (6) and (8) or, if nothing else has been agreed upon, from the quality and suitability for use customary in the Federal Republic of Germany. The goods are affected by a legal defect if the goods are not free from rights or claims of third parties enforceable in the Federal Republic of Germany at the time of passing of risk. Any further statutory exclusions or limitations of our liability shall remain unaffected. Unless otherwise agreed upon in the written order confirmation, we are, in particular, not responsible for the goods being free from rights/claims of third parties outside the Federal Republic of Germany. If we provide the Customer with samples or receive such samples from him, if analyses, DIN provisions, other domestic or international quality standards are designated by us or the Customer or if any other information is provided about the quality of the goods, these shall solely serve the purpose of describing the performance to be rendered by us and shall not constitute a guarantee of quality.
- (3) In the event of justified notices of defects, the Customer is entitled to demand cure. The cure will be effected, at our option, by either remedying the defect or delivering defect-free goods.
- (4) If the cure fails, the Customer may demand, at his option, either reduction of the purchase price (reduction) or rescission of the contract (withdrawal) in accordance with the statutory provisions.
- (5) In the event of damage caused by slight negligence, we are only liable if we have breached a material contractual obligation. Material contractual obligations are those the discharge of which is essential for the contract and the discharge of which the Customer may rely upon.
- (6) Except in cases of intentional breach of contract for which we are responsible, our liability shall be limited in the amount to typically occurring damage that was foreseeable upon conclusion of the contract. In particular, compensation for indirect damage, such as lost profit or loss of production, shall be excluded. The liability for culpable injury to life, limb or health shall remain unaffected by the foregoing limitations set forth in Para. (5) above. This shall also apply to mandatory liability according to the Product Liability Act, in the context of guarantees as well as pursuant to Sec. 478 BGB.
- (7) The limitation period for claims for defects shall be 12 months from passing of risk. Claims for compensation due to wilful intent, gross negligence, culpable injury to life, limb or health, claims resulting from product liability and claims under Sec. 478 BGB shall remain unaffected. Measures of cure shall not lead to an extension of the period specified in the first sentence and shall not imply an acknowledgement giving rise to recommencement of the limitation period.
- (8) Liability for normal wear and tear as well as for damage caused by unsuitable or improper use shall be excluded. If operating, safety or maintenance instructions, in particular technical data sheets, are not observed, if modifications are made to the products, if parts are replaced or consumables are used which do not conform to the original specifications, any liability for defects shall be excluded, unless the Customer is able to disprove a substantiated assertion that the defect has occurred due to these circumstances.
- (9) We accept no liability for defects of parts or components provided by the Customer or by third parties at his instigation or for defects of the end product that are attributable to the defectiveness of such externally supplied parts, unless the Customer is able to disprove a substantiated assertion that the defect has occurred due to these circumstances.

Sec. 7 Property rights

- (1) We guarantee that the goods are free from property rights of third parties in the Federal Republic of Germany.
- (2) However, the provision of this guarantee requires that the Customer notifies us without delay of any claims arising from property rights asserted against him by third parties and that he acts in agreement with

us when dealing with these claims and pursuing his rights. If one of these requirements is not met, we shall be released from our legal obligations or any obligations undertaken in accordance with these Terms and Conditions. If a violation of property rights occurs for which we are liable in accordance with these Terms and Conditions and the Customer is therefore legally prohibited from using the goods, in whole or in part, we will, at our own expense and at our option

- a) acquire the right to use the goods for the Customer or
- b) design the goods free from property rights or
- c) replace the goods with another item that does not violate any property rights or
- d) take back the goods and refund the payment rendered by the Customer.

(3) Our liability shall not apply if the Customer makes modifications to the goods or blends the goods with other materials, violating the property rights of third parties.

(4) The Customer is not entitled to any further or other claims due to the violation of property rights of third parties. In particular, we accept no liability for any consequential damage, such as loss of production or use and lost profits. These limitations of liability shall not apply if liability for foreseeable, typically occurring damage is mandatory in cases of wilful intent or gross negligence or breach of material contractual obligations or absence of warranted characteristics.

Sec. 8 Joint liability

(1) Any liability to pay compensation going beyond that stipulated in Sec. 5, 6 and 7 shall be excluded, no matter on what legal grounds.

(2) Insofar as our liability towards the Customer is excluded according to these Terms and Conditions, this shall also apply to any personal liability on the part of our representatives, vicarious agents or employees.

(3) The Customer's attention is drawn to Sec. 254 BGB. In line with this, he undertakes to take appropriate precautions to prevent, as far as possible, any damage from occurring. The obligation laid down in Sec. 254 BGB shall also be deemed an obligation the Customer has towards us (within the meaning of Sec. 280 BGB).

Sec. 9 Retention of title

(1) We retain the title to the goods delivered (goods subject to retention of title) until settlement of all our present and future claims against the Customer, including all current account balance claims. If the Customer acts in breach of the contract – in particular if he is in default with the payment of a claim for payment – we are entitled to take back the goods subject to retention of title after setting a reasonable period for performance. The transport costs for taking back the goods shall be borne by the Customer. If we take back the goods subject to retention of title, this shall constitute withdrawal from the contract. If we seize the goods subject to retention of title, this shall also constitute withdrawal from the contract. We are entitled to sell the goods subject to retention of title which we have taken back. The proceeds from the sale will be set off against the amounts owed to us by the Customer after we have deducted a reasonable amount for the cost of sale.

(2) The Customer shall handle the goods subject to retention of title with care. He shall adequately insure them at replacement value against damage caused by fire, water and theft. If maintenance and inspection work becomes necessary, the Customer shall carry out such work in good time at his own expense.

(3) The Customer may use the goods subject to retention of title and resell them in the ordinary course of business as long as he is not in default of payment. However, he may not pledge the goods subject to retention of title or transfer them as security. The Customer hereby assigns to us as security all his payment claims against his purchasers arising from the resale of the goods subject to retention of title as well as those claims in respect of the goods subject to retention of title which arise against his purchasers or third parties on any other legal grounds (in particular tort claims and claims to insurance payments), including all current account balance claims. We hereby accept the assignment.

(4) The Customer may collect the claims assigned to us in his own name and for his own account as long as we do not revoke this authorisation. This shall not affect our right to collect the claims ourselves; however, we will not assert the claims ourselves and will not revoke the collection authorisation as long as the Customer duly meets his payment obligations.

(5) If, however, the Customer acts in breach of the contract – in particular if he is in default with the payment of a claim for payment – we may request the Customer to disclose to us the assigned claims and the respective debtors, to inform the respective debtors of the assignment and to provide us with all documents and information we require to assert the claim.

(6) Any processing or transformation of the goods subject to retention of title by the Customer shall always be carried out for us. If the goods

subject to retention of title are processed with other items not belonging to us, we shall acquire co-ownership of the new product in proportion of the value of the goods subject to retention of title (invoice total including value-added tax, if applicable) to the other processed items at the time of processing. Apart from that, the same shall apply to the new product created by processing as to the goods subject to retention of title.

(7) If the goods subject to retention of title are inseparably combined or intermixed with other items not belonging to us, we shall acquire co-ownership of the new product in proportion of the value of the goods subject to retention of title (invoice total including value-added tax, if applicable) to the other combined or intermixed items at the time of combination or intermixture. If the goods subject to retention of title are combined or intermixed in such a way that the Customer's item is to be regarded as the main item, the Customer and we hereby agree that the Customer shall transfer to us proportionate co-ownership of the new product. We hereby accept the transfer.

(8) The Customer shall preserve the sole or joint ownership arising this way for us.

(9) In the event of seizure of the goods subject to retention of title or other interventions by third parties, the Customer shall indicate our ownership to them and notify us in writing without delay so that we can assert our rights of ownership. If the third party does not reimburse us for the court or out-of-court costs incurred in this connection, the Customer shall be liable to pay them.

(10) At the Customer's request, we are obliged to release the securities we are entitled to insofar as their realisable value exceeds the value of our outstanding claims against the Customer by more than 10%. However, we are entitled to choose the securities to be released.

(11) If we make deliveries outside the Federal Republic of Germany at the Customer's instigation, and if the aforementioned security rights in rem cannot be effectively agreed, such security rights in rem shall be deemed to have been agreed upon in respect of all outstanding claims arising from the business relationship between the Customer and us which most closely correspond to the aforementioned security rights and are permissible and possible under the relevant legislation.

Sec. 10 Final provisions

(1) The legal relationships shall be governed by the English version of the United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 (UN Sales Convention/CISG) as well as by the customs and practices prevailing in Salzbergen/Germany. The UN Sales Convention shall apply above and beyond its area of application and regardless of any reservations of contracting states to all contracts that are subject to these International Terms and Conditions of Sale and Delivery. The conclusion of contracts, including the agreements concerning the jurisdiction of courts and arbitrators, the contractual rights and obligations of the Parties, including any precontractual and other secondary obligations, as well as their interpretation shall be governed exclusively by the UN Sales Convention in conjunction with these International Terms and Conditions of Sale and Delivery. Outside the UN Sales Convention, the legal relationships of the Parties shall be governed by the law of the Federal Republic of Germany.

(2) If the Customer is a merchant, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract shall be Salzbergen. The same shall apply if the Customer has no general place of jurisdiction in Germany or if his place of residence or habitual abode is unknown at the time the action is filed. However, we are entitled to bring legal action against the Customer at his place of business, place of residence or at the place of his commercial branch.

(3) The place of performance, payment and fulfilment for all obligations arising from the business relationship shall be our place of business. If assembly has been agreed upon, the place of performance shall be the place of assembly.

(4) Should individual provisions of the contract with the Customer, including these General Terms and Conditions of Sale and Delivery, be found invalid, in whole or in part, the validity of the remaining contractual provisions shall not be affected. The wholly or partly invalid provision shall be replaced by a regulation whose economic success most closely corresponds to that of the invalid provision.