

# Terms & Conditions of RINGFEDER POWER TRANSMISSION GMBH

## Terms and Conditions

### 01. General

01.1 The following General Terms of Sale and Supply apply to all sales. Terms of Sale and Supply proposed by a purchaser which are at variance with our terms are not binding upon us, even when they are expressly made as condition of the order and even though we do not expressly repudiate them.

01.2 This is further deemed to be the case even when the purchaser excludes the efficacy of terms which are at variance with his own in his General Terms of Sale and Supply. Performance by us does not indicate tacit acceptance by us of terms which differ from our own. Instead of itself contradicted General Terms of Sale and Supply apply the legal rules.

01.3 Our General Terms of Sale and Supply apply to all subsequent business even if, when the business is entered into, the General Terms are not further expressly referred to.

01.4 Secondary agreements, as well as changes and supplements of contract and of the General Terms of Sale and Supply, need to be confirmed in writing.

### 02. Offer, Acceptance

02.1 All offers are revocable until their acceptance. We reserve the right to make corrections or changes in the construction or manufacture of our products.

02.2 Estimates, invoices and other offer documents remain our property; the copy-right is solely ours and they may not be copied or passed on without our agreement.

02.3 If products from a previous series or earlier design are ordered (e.g. from a previous spare parts list) we are not obliged to point out to the purchaser that the goods possibly do not meet the latest general technical standards and regulations.

02.4 Orders only count as accepted when they have been confirmed by us in writing or, if entered into a contract for the supply of goods using teleservices (web shop), by electronic means.

### 03. Prices

03.1 Prices quoted in our price lists, quotations, confirmations of orders and invoices are to be understood in EURO and, unless otherwise agreed in writing, as being exclusive of statutory VAT, cost of packaging and free carrier from the relevant manufacturing units engaged by us (currently Neunkirchen, Germany and Dobrany, Czech Republic) (FCA Neunkirchen (DE) / Dobrany (CZ), Incoterms® 2010), however in the case of foreign orders exclusive of customs and any additional fees and public charges. Packaging is charged at cost and is not returnable.

03.2 In the case of deliveries or part-deliveries which, by agreement, take place later than 4 months from the date of confirmation of order, the sales price at the date of delivery is the price applying.

### 04. Delivery

04.1 The products will be delivered "free carrier" from the relevant manufacturing unit engaged by us (FCA Neunkirchen (DE) bzw. FCA Dobrany (CZ), (Incoterms® 2010).

04.2 Delivery dates or periods are only binding if expressly agreed to in writing. Delivery dates marked "ca.", "approximately" and similar are non-binding.

04.3 The delivery period is deemed to have been met if, by expiry of this period, the products have either left our site or the purchaser was notified that they are ready for dispatch.

04.4 When our products are produced in series they are subject to statistical quality control. When nothing to the contrary is agreed in writing, the testing plan for the "Simple spot-check quality control" according to guidelines laid down by the Committee for Economic Manufacturing applies for acceptance and delivery.

04.5 If the performance of our contractual duties becomes impossible or unreasonably difficult due to force majeure, these duties are suspended until the force majeure event no longer exists. This also applies if we are in culpable delay in performance (*Leistungsverzug*). We are obliged to immediately notify the purchaser of the occurrence and of the termination of such events. Should a force majeure event exist for more than three months, either party is entitled to rescind the contract. Possible statutory rights to rescission remain unaffected. Force majeure are external, unforeseeable and inevitable events, such as e.g. natural disaster, raw material and energy shortness, fire, war and riot or other incidents for which we are not responsible, regardless of whether they occur in our business or in a third party's business, upon which the production or transportation of the goods essentially depends. Industrial disputes occurring in our own or in an external business entitles us to rescind the contract if they result in our performance

becoming impossible (*Unmöglichkeit der Leistung*). We are entitled to extend our term of performance in cases of any delay due to industrial disputes occurring.

04.6 We are allowed to partial delivery, if

- the partial delivery can be used by the purchaser in line with the contractually agreed purpose,
- the delivery of the remaining products is safeguarded, and
- the partial order does not cause substantial extra effort or expense to the purchaser (unless we agree to take over these costs).

04.7 In case of default in the delivery or the performance of an obligation or in case the delivery or the performance of an obligation becomes, for whatever reason, impossible, our liability to pay damages is limited as outlined under Section 10 of these General Terms and Conditions.

## 05. Dispatch

05.1 Dispatch takes place at purchaser's own risk. With all deliveries the risk is transferred to the purchaser at the time of the delivery of the goods to the forwarding agent, carrier of whosoever has been designated to carry out the transportation.

05.2 Packaging and mode of Transport as well as dispatch route are at our discretion if the purchaser has not made a specific stipulation in good time before the expiry of the delivery period.

## 06. Payment

06.1 All invoices are to be paid in full without deduction within 30 days and are due after expiration of 30 days even without reminder, unless different payment terms have been agreed in writing. Payment may only be made in the currency agreed. Bills of exchange and cheques will only be accepted as means of payment and count as payment only when they have been cleared.

06.2 Setting off against a counter claim of any kind is excluded unless the counter claim is not undisputed or legally determined. In deviation from §366, §367 of the German CMI Code BGB and such other stipulations of the purchaser we are entitled to determine which claims are met by the payments made by the purchaser.

06.3 After the due date for payment we are entitled to charge the purchaser with interest for late payment in the amount of 5% above the base rate of interest and, as far as the purchaser is not considered to be an end-consumer,

in the amount of 9% above the base rate of interest in each case plus the applicable VAT occurring. Payment of interest is due immediately.

## 07. Arrears

07.1 If the purchaser does not adhere to the agreed terms of payment, in particular, if he becomes partly or completely in arrears with a payment, all existing payment obligations to us, also those from other contracts, become immediately due for payment without regard to the terms of any bill of exchange. The same applies if the purchaser stops payment, if the purchaser goes into receivership or applies to the court to be wound up or goes into liquidation, as well as where any facts become known which lessen his creditworthiness.

07.2 When the purchaser is in arrears, we can without prejudice to our other legal rights, refuse further deliveries arising from this or other contracts or make them dependent upon advance payment or upon the granting of security.

## 08. Reservation of rights of ownership

08.1 Our products are delivered subject to the reservation of our rights of ownership and remain our property until full settlement of all of our existing and future claims arising out of the business relationship (in the following referred to as **"Retained Goods"**).

08.2 The purchaser may process the Retained Goods within the context of the normal course of his business and/or sell them. He is nevertheless not entitled to mortgage the Retained Goods or to assign them as security. Distraint or seizure or claims by third parties are to be notified to us by the purchaser immediately. The purchaser must immediately take all such steps as may be necessary to counteract such seizure or in defence against such claims. Moreover, he must support us in every way in the upholding of our legal rights.

08.3 Any processing or transformation of the Retained Goods can always be carried out for us as manufacturer. The expectant right of the customer in the Retained Goods continues in respect of the altered goods. If the Retained Goods are processed, using items which do not belong to us, we acquire co-ownership of the new item in the same proportion as objective value of our retained goods to the other processed goods at the time of processing. The same provisions which apply to Retained Goods also apply to the items which are created by processing.

08.4 In the case of a selling-on of the Retained Goods the purchaser is bound to make clear our reservation of proprietary rights in the Retained Goods.

He, therefore, surrenders in advance all rights whatsoever under any selling-on agreement in our favour until settlement of all our outstanding claims against him. The purchaser must inform the transferee that the purchaser has surrendered his rights in our favour, unless we have released him from this obligation in writing. We are authorized at any time to notify the transferee about the assignment of claims of the purchaser against him to us.

08.5 Should the purchaser fail to fulfill his payment obligations or should he fail to fulfill correctly other obligations arising out of the retention of title, his right of possession to the Retained Goods ceases and we are entitled after setting off a reasonable term to withdraw from the contract and notwithstanding all protests and objections to the contrary to demand the immediate return of the products. The purchaser bears the costs of returning the goods whenever goods have to be recovered.

08.6 The reservation of our property rights does not lapse simply because our claims are absorbed in a current account and the balance is accepted.

08.7 We are obliged at the request of the purchaser to relinquish our reservation of rights of ownership to the same extent that the invoice value of the Retained Goods delivered by us and stored by the purchaser exceeds the value of our claims by more than 25 %.

## **09. Warranty**

09.1 Faults in our products must be immediately notified to us in writing and where the defects are obvious within one week of the arrival of the consignment at the latest, in the case of latent defects at the latest with in one week of their discovery. If this is not done all claims under the warranty of whatever kind are excluded. With regard to the burden of proof the statutory regulations will apply. Rejection of part deliveries does not give the purchaser the right to refuse performance of the rest of the contract.

09.2 Should one of our products have a fault which is our responsibility or be defective or unusable as a consequence of a materials, finishing or construction fault, then we will, at our discretion, deliver a replacement free of charge or will repair the fault. Should the replacement or the repair also be defective the purchaser may at his discretion request an appropriate reduction in the price or the cancellation of the contract. The Purchaser may claim damages only under the conditions set out in Section 10 below of these General Terms of Sale and Supply.

## **10. Liability**

10.1 In all cases the following provisions exclusively govern our liability for damages, irrespective of whether such liability is based on contractual or non-contractual claims.

10.2 We are liable in accordance with the relevant statutory provisions for damages arising out of a fraudulent concealment of a defect or in connection with a guarantee given by us in relation to the specific characteristics of the products.

10.3 Furthermore, if we or any of our representatives or vicarious agents wilfully or negligently causes any injury of body, life and health, we are liable for damages in accordance with the relevant statutory provisions.

10.4 If the purchaser claims damages based on the intent or gross negligence by us or any of our representatives or vicarious agents, or based on a negligent breach of an “essential contractual obligation” (*wesentliche Vertragspflicht*), we are also liable in accordance with the relevant statutory provisions. However, in such cases our liability is limited up to the amount of foreseeable and typical damages, unless we acted wilfully or with gross negligence or any of our representatives or vicarious agents acted wilfully. “Essential contractual obligation” in such context means any obligation contractually specified in detail, a breach of which would endanger achievement of the contractual purpose as such. Thus, the term “essential contractual obligation” describes an obligation, the accomplishment of which enables the execution of the contract in the first place, and on the adherence to which the customer may generally rely.

10.5 Furthermore, we are liable in accordance with the imperative provisions of the Product Liability Act (*Produkthaftungsgesetz*) of 15 December 1989.

10.6 In all other respects our liability for damages is excluded. Unless stipulated otherwise above, we are therefore not liable for damages which are not incurred with regard to the products themselves (for example loss of profit or other pure financial loss to the customer), or for damages resulting from the breach of incidental obligations based on contract or law, such as wrongful advice, care, information, construction of packaging and instruction regarding handling, or for claims arising out of non-contractual liability including product liability in accordance with Section 823 BGB.

10.7 To the extent our liability is excluded or limited, this also applies to the personal liability of our employees, representatives and vicarious agents.

## 11 Statutory limitation

11.1 The claims of the purchaser owing to defects become time-barred one year after delivery of the goods. §§ 478, 479 of the German Civil Code (*Bürgerliches Gesetzbuch*) remain unaffected hereby.

11.2 Claims of the purchaser for damages for other legal reasons become time-barred after one year. § 199 (1) and (3) of the German Civil Code apply to the commencement of the limitation period.

11.3 Liability for wilful acts (*Vorsatz*), damage arising from injury to life, body or health and liability arising from assumed warranties as well as liability under the Product Liability Act remain unaffected by the aforementioned retention periods; the statutory periods related to them apply.

## 12. Data processing

12.1 Customer data are registered centrally in our organization in accordance with Sect. 28 Federal Data Protection Act (*Bundesdatenschutzgesetz*) and used as far as necessary for correct order-handling. We reserve the right to transmit the data to third parties (e.g. insurances), if necessary in the course of the performance of a contract,

## 13. Invalidity

13.1 Should one or several of these General Terms of Sale and Supply be invalid or become invalid, the validity of the remaining Terms of Sale and Supply is not thereby affected.

## 14. Place of performance, competent court, applicable law

14.1 The place of performance for the responsibilities of both parties is Groß-Umstadt.

14.2 In case of disputes, even in so far as such a dispute concerns these General Terms of Sale and Supply or the contract, the competent court is Groß-Umstadt. We are also entitled to bring an action against the purchaser in his court of general competence. This does not apply in case mandatory statutory provisions stipulate the exclusive competence of a different court.

14.3 The legal relationship between ourselves and the purchaser is only subject to the laws of the Federal Republic of Germany to the exclusion of all other national laws. The validity of CISG is excluded.

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