

These Terms and Conditions of Sale and Delivery are intended for use only with

1. a person who on conclusion of the contract acts in the exercise of his/her commercial or professional activity (entrepreneur);
2. legal entities under public law or entities having special assets under public law.

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## 1. General

1.1 All goods delivered and services provided by VAG Armaturen GmbH (here in after referred to as the „Supplier“) shall be subject to these Terms and Conditions plus any possible separate contractual agreements. Any of the Customer's terms and conditions deviating from VAG's terms and conditions shall not become part of the contract by VAG's accepting the Customer's order. Unless otherwise provided in a special agreement, the contract shall be deemed brought about by the Supplier's written confirmation of the Customer's order.

1.2 All offers shall be subject to confirmation at all times. Unless otherwise provided, the Supplier's order confirmation shall prevail concerning the scope of goods to be delivered and services to be provided (hereinafter referred to as the „Goods“ supplied or „Services“ provided).

1.3 The Supplier reserves the unlimited right of ownership, copyright and exploitation rights for all estimates, drawings, models, plans and other documents and information provided in physical and non-physical form, in particular in digital form (hereinafter referred to as the „Documents“) provided to the Customer. Documents of a confidential nature must not be made available to third parties without the Supplier's prior written consent. Should the Customer not award the contract to the Supplier, the Customer shall return the Documents immediately upon the Supplier's request. Information provided in non-physical form - in particular in digital form - shall be deleted by the Customer and their deletion shall be confirmed in writing.

1.4 Not later than upon its awarding the contract to the Supplier the Customer shall inform the Supplier about the intended use of the Goods. This shall apply in particular if the products to be supplied under the contract are to be used in connection with hazardous substances or under specific application or environmental conditions or if specific conditions of operation, dangers or risks of any other kind exist.

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## 2. Prices and payment

2.1 Unless otherwise provided, prices quoted shall be ex works including loading ex works, but exclusive of packaging and unloading.

2.2 Unless otherwise provided, payment shall be made without discount to the Supplier's account in the following manner: One third upon receipt of the Supplier's order confirmation, one third upon the advice that the goods are ready for dispatch; the balance shall become payable within one month after the passing of risk.

2.3 Should the Customer be in default of payment of the full price or parts thereof, the Customer shall pay interest on the remaining balance in the amount of 8% above the base lending rate from the day payment falls due until and including the date of receipt of payment by the Supplier. This shall not exclude the Supplier's right to claim further compensation for any damage caused by default.

2.4 The Customer shall not be entitled to withhold payment or offset payments due with counter-claims unless the Customer's counter-claims are undisputed or have become res iudicata.

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## 3. Delivery time, delays in delivery

3.1 Delivery time shall result from the agreements made between the parties. The Supplier shall meet its deadlines subject to the fact that all commercial and technical questions between the parties have been clarified and that the Customer has fulfilled all its obligations such as the provision of the required official certificates or permits or has made the required down payment. Should any of the foregoing not have been fulfilled, delivery time shall be reasonably extended unless the Supplier is responsible for the delay.

3.2 The observance of the delivery time by the Supplier shall be subject to the Supplier's receiving its own goods correctly and in time. Should the Supplier foresee any delays, the Supplier shall notify the Customer of such possible delays immediately.

3.3 The delivery time shall be deemed observed if the Goods have left the Supplier's premises or advice of dispatch has been given by the end of the delivery time stipulated.

3.4 VAG-Armaturen GmbH has to be informed latest 6 weeks in advance before the goods are in presenting status. Otherwise the delivery date will be postponed accordingly. If the customer approval needs to be canceled and can't be conducted within 4 weeks after the planned customer approval appointment :

- all goods are shipped without inspection to the final destination or
- the client is charged for stocking costs at VAG-Armaturen GmbH

3.5 Should the dispatch of the Goods be delayed for reasons within the Customer's responsibility, the Customer shall be charged the

expenses arising from such delay, beginning one month after the Customer's receipt of the advice of dispatch.

3.6 Should delivery be delayed due to Force Majeure, industrial disputes or any other circumstances beyond the Supplier's control, the delivery period shall be reasonably extended. The Supplier shall notify the Customer in due time about the commencement and the end of such circumstances.

3.7 The Customer shall be entitled to withdraw from the contract immediately if the Supplier is definitely unable to deliver the Goods or provide the services ordered before the passing of risk. In addition to this, the Customer shall be entitled to withdraw from the contract if the Supplier is unable to carry partial delivery of the Goods and if the Customer has a rightful interest in refusing partial delivery. Should this not be the case, the Customer shall pay the contractual price due for such partial delivery. The same shall apply for the Supplier's inability to supply. For all other cases, Section 7.2 herein shall apply.

Should the impossibility or inability to deliver arise during the delay in the Customer's accepting delivery or should the Customer be solely or mainly responsible for such circumstances, the Customer shall remain liable for consideration

3.8 Should the Supplier fail to deliver on time and should the Customer suffer damage from such delay, the Customer shall be entitled to claim reasonable flat compensation for the delay. For each full week of delay the Customer shall receive 0.5% but not more than a total of 5% of the value of such part of the entire delivery which cannot be used in time or not be used according to the contract as a consequence of such delay.

In case the Customer fixes a reasonable period of time after delivery becomes due - taking the statutory exceptions into account - and if the Supplier fails to observe such period of time, the Customer shall be entitled to withdraw from the contract as prescribed by law.

Any other claims arising from delays in delivery shall be governed exclusively by the provisions laid down in Section 7.2 herein.

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## 4. Passing of risk

4.1 The risk shall pass to the Customer as soon as the Goods have left the Supplier's premises. This shall also apply to partial deliveries or if the Supplier has agreed to provide other services, e.g. payment of the transportation costs, delivery of the goods and installation on the Customer's premises.

4.2 Should dispatch be delayed or not be effected at all due to circumstances for which the Supplier is not responsible, risk shall pass to the Customer on the date on which the Customer receives advice of dispatch. The Supplier



undertakes to take out any insurance the Customer may request against advance payment and at the Customer's expense.

4.3 Partial deliveries shall be permissible to the extent acceptable to the Customer.

## 5. Reservation of ownership

5.1 The Supplier shall retain title to the Goods (goods supplied under reservation of ownership) until full payment of all receivables for whatever legal reason including future receivables or contingent receivables, also from contracts concluded at the same time or at a later point of time. This shall also apply in case payments are made for specifically denominated receivables.

5.2 Processing and finishing of the Goods to be delivered are effected for the Supplier as the manufacturer without obliging the Supplier in any way. The processed Goods shall be deemed goods subject to reservation of ownership pursuant to Section 5.1 herein. When the Goods delivered are processed, combined or mixed with other goods by the Customer, the Supplier shall have co-ownership of the new goods thus created at the invoiced value of the Goods delivered by the Supplier and processed in proportion to the invoiced value of the other goods processed by the Customer. If the Supplier's ownership becomes extinct due to combination or mixing, the Customer hereby transfers its rights of ownership of the new stock or goods to the Supplier in the amount of the invoiced value of the Goods subject to reservation of ownership and shall store such Goods free of charge for the Supplier. The right of ownership arising thereafter shall be deemed Goods subject to reservation of ownership pursuant to Section 5.1 herein.

5.3 The Customer shall be entitled to sell the Goods supplied only in the ordinary course of business, subject to its standard terms and conditions and as long as the Customer has not fallen into arrears, provided that the receivables from the resale of the Goods pursuant to Sections 5.4 to 5.6 herein devolve on the Supplier. The Customer shall not be entitled to dispose of the Goods subject to ownership in any other way.

5.4 The Customer herewith assigns its receivables from the resale of the Goods subject to reservation of ownership to the Supplier. Such receivables shall serve the Supplier as a security to the same extent as the Goods under reservation of ownership. If the Customer sells the Goods subject to reservation of ownership together with other goods not sold to it by the Supplier, the Customer shall assign its receivables from resale to the Supplier only in such amount as corresponds to the resale value of the Goods delivered by the Supplier. When the Customer sells goods in which the Supplier has co-ownership pursuant to Section 5.2 herein, the receivables shall be assigned in the amount of the Supplier's proportion of co-ownership.

5.5 If the Customer includes its receivables from the resale of the Goods under reservation of ownership into a current account relationship with its own customer, the full amount of the current account receivables shall be assigned to the Supplier. After balancing of the account, the confirmed balance shall replace such receivables and this balance shall be deemed assigned up to the amount of the original current account receivables.

5.6 The Customer shall be entitled to collect the sums due from the resale of the Goods until revoked by the Supplier. The Supplier may revoke such entitlement at any time. The Customer shall not assign receivables - this shall also apply to the sale of accounts receivable to factoring banks - without the Supplier's prior written permission. Upon the Supplier's request, the Customer shall be obliged to notify its own customers of such assignment, unless the Supplier himself decides to do so, and to provide the information and documents required for collection to the Supplier.

5.7 In case of payment by cheque, the ownership of the cheque shall pass to the Supplier as soon as the Customer acquires ownership of the cheque. In case of payment by bill of exchange, the Customer shall assign its rights arising there from in advance to the Supplier. The handing over of such documents shall be replaced by the Customer's keeping them in safe custody for the Supplier or, in case the Customer does not obtain immediate possession of such documents, by the Customer's hereby assigning its claim for return against third parties in advance to the Supplier. The Customer shall hand over such documents bearing the Customer's endorsement immediately to the Supplier.

5.8 The Customer shall notify the Supplier immediately of any attachment of a debt, seizure or detriment by third parties and shall provide the Supplier with all information and documents required for the Supplier's assertion of its rights.

5.9 The Supplier shall be entitled to withdraw from the contract in case of voluntary or involuntary insolvency proceedings against the Customer's assets and to request the immediate return of the Goods delivered.

5.10 Should the value of the existing securities exceed the secured receivables by more than 20 per cent in total, the Supplier, upon the Customer's request, shall be obliged to release such securities as the Supplier may choose to release.

5.11 The Customer shall be obliged to take out insurance for the Goods subject to reservation of ownership against theft, breakage, fire, damage by water or any other damage unless the Customer can furnish proof of its already having taken out such insurance.

5.12 In case there are special preconditions or formal requirements for the transfer of ownership of the Goods supplied or the securities in the Customer's country, the Customer shall be responsible for fulfilling such preconditions or requirements at its own expense.

5.13 Should the Customer act contrary to the terms of the contract, and in particular fail to make payment when due, the Supplier shall be entitled to repossess the Goods following a reminder and the Customer shall be obliged to hand over the Goods to the Supplier.

5.14 Due to the reservation of ownership, the Supplier shall only be entitled to demand the return of the Goods delivered if the Supplier has withdrawn from the contract.

## 6. Claims of the Customer based on defects

The Supplier shall warrant for any material defects or defects of title, excluding any further claims, subject to Section 7 herein, as follows:

### Material defects

6.1 All those parts shall - at the Supplier's choice - be reworked or replaced by the Supplier which turn out to be defective due to a circumstance occurring prior to the passing of risk. Should the Customer detect any such defects, the Customer shall notify the Supplier immediately. The Supplier shall acquire ownership of any replaced parts.

6.2 To enable the Supplier to perform all rework and replace all parts the Supplier deems necessary, the Customer, upon consultation with the Supplier, shall allow enough time and afford sufficient opportunity to the Supplier to remedy the defects. Should the Customer fail to do so, the Supplier shall be released from any liability or consequences arising therefrom. Only in urgent cases involving endangering of the operational safety and/or to prevent unreasonably serious damage - in which case the Customer shall notify the Supplier immediately - shall the Customer be entitled to either remedy the defect itself or have such defect remedied by third parties and to demand compensation from the Supplier for the expenses incurred.

6.3 Should the Customer's claim of defects be justified, the Supplier shall bear the costs of the replacement part including shipping costs as part of the expenses incurred directly in connection with rework or supply of replacement parts. The Supplier shall also bear the costs of disassembly and reassembly plus the labour costs of fitters and auxiliary staff as may become necessary including travelling expenses unless this means an unreasonably high charge of the Supplier.

6.4 Within the limits imposed by the law the Customer shall have the right to withdraw from the contract if the Supplier - under consideration of the exceptions provided by law - fails to remedy the material defect or to replace the defective parts within the reasonable time period fixed by the Customer. In case of minor defects the Customer shall only be entitled to claim a reduction of the contract price. The right to reduce the contract price shall be excluded in all other cases.

Any other claims shall be handled pursuant to the provisions of Section 7.2 herein.

6.5 The Supplier shall not be obliged to assume any warranty in the following cases: Unsuitable or improper use, improper assembly or putting into operation by the Customer or by third parties, normal wear and tear or premature consumption due to the nature of the material or the kind of its use, improper or negligent handling or storage, improper maintenance, defective construction works, unsuitable building ground, chemical, electro-chemical or electrical influences unless the Supplier is responsible for such influences.

6.6 In case of improper rework performed by the Customer or by third parties, the Supplier shall not be liable for any consequential damage arising there from. The same shall apply in case the Customer modifies the Goods supplied without the Supplier's prior written consent.

#### Defects of title

6.7 Should the use of the Goods supplied result in any infringement of domestic industrial property rights or copyrights, the Supplier shall, at its own expense, procure the right of further use to the Customer in general or the Supplier shall reasonably modify the Goods delivered to the Customer in a way as to avoid the infringement of any property rights.

Should such modification be impossible under economically reasonable conditions or within a reasonable period of time, the Customer shall be entitled to withdraw from the contract. Under the conditions stated above, the Supplier shall also be entitled to withdraw from the contract.

6.8 The Supplier's obligations with regard to defect of title shall be limited to those stated in Section 6.7 herein except its obligations pursuant to Section 7.2 in the event of infringement of industrial property rights or copyrights.

Such obligations shall only become due if

- the Customer notifies the Supplier immediately of any claims asserted with regard to the infringement of industrial property rights or copyrights;

- the Customer provides reasonable support to the Supplier to ward off the claims asserted and/or allows the Supplier to perform the modifications pursuant to Section 6.7;

- the Supplier has the right to take all measures to ward of claims, including out-of-court settlements, at the Supplier's discretion;

- the defect in title is not due an instruction given by the Customer; and

- the violation of a right was not caused by the Customer's unauthorised modification of the Goods delivered or by the Customer's using the Goods delivered contrary to the terms of contract.

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## 7. Liability

7.1 Should the Customer be unable to use the Goods delivered according to contract due to the Supplier's failure to implement or faulty implementation of suggestions and advice made or given prior to or after the conclusion of the contract or due to the violation of any other collateral obligations by the Supplier - in particular instructions for the operation and maintenance of the Goods delivered - the provisions laid down in Sections 6 and 7.2 shall apply accordingly to the exclusion of further claims by the Customer.

7.2 The Supplier shall only be liable for damage not caused to the Goods delivered themselves, for whatever legal reason, in case

- of specific intent;
- of gross negligence by executive bodies or executives;
- of negligent conduct causing loss of life, physical injury or damage to health;
- the Supplier fraudulently concealed defects or guaranteed the absence of such defects;
- of defects of the Goods supplied to the extent the Supplier is liable pursuant to the Product Liability Act for physical injury or property damage to privately used goods.

In case of culpable violation of stipulations going to the root of the contract the Supplier shall also be liable for gross negligence of non-executive employees and for slight negligence. In the latter case, the Supplier's liability shall be limited to reasonably foreseeable damage inherent in the nature of the contract.

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## 8. Limitation of actions

8.1 Claims which may be asserted for any defects of a construction or of Goods supplied which have been used according to their normal intended use in a construction and have caused the defectiveness of the latter shall be extinguished by limitation pursuant to the statutory warranty periods (5 years pursuant to BGB = German Civil Law Code). The statutory limitation periods shall also apply for damage claims according to Section 7. 2a - e. In all other respects any of the Customer's claims for whatever legal reason shall be extinguished by limitation after 12 months.

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## 9. Applicable law, place of performance and place of jurisdiction

9.1 All legal relationships between the Supplier and the Customer shall be exclusively governed by the laws applicable to legal relationships between domestic parties in the Federal Republic of Germany.

9.2 The place of jurisdiction shall be Mannheim. The Supplier shall also be entitled to take legal action at the place of the Customer's domicile or any other legally permissible place of jurisdiction. If the Customer is an entrepreneur, a legal entity under public law or an entity having spe-

cial assets under public law, the foregoing venues shall also apply in case of a cancellation of or withdrawal from the contract and any other similar cases.

9.3 The place of performance for all products delivered and services provided as well as for the Customer's payments and for claims arising from cheques and bills of exchange shall be Mannheim.