



## General Terms and Conditions of SOBEK Motorsporttechnik GmbH & Co. KG

### Section 1 Scope of application, form

(1) These general terms and conditions (General Terms and Conditions) apply to all our business relations with our customers ["Customer"]. The General Terms and Conditions shall apply only where the Customer is an entrepreneur (Section 14 BGB [Bürgerliches Gesetzbuch, German Civil Code]), a legal entity under public law or a special fund under public law.

(2) These General Terms and Conditions shall in particular apply to agreements on the sale and/or delivery of movable objects ["Goods"], regardless of whether we produce the Goods ourselves or purchase them from suppliers (Sections 433 and 651 BGB). Unless otherwise provided in specific cases, the General Terms and Conditions shall also apply, in the version in force at the time of the Customer's order, or at any rate in the version most recently notified to him in writing, as a framework agreement for similar future agreements without a specific notification being required in each individual case. We shall inform our customers of amendments to our General Terms and Conditions.

(3) Our General Terms and Conditions shall apply exclusively. General terms and conditions or general purchasing conditions of the Customer that deviate from, conflict with or supplement our Terms shall only become a part of the agreement to the extent that we have expressly consented to their applicability. This requirement of consent shall apply in every case, including e.g. where we deliver to the Customer without reservation in knowledge of the latter's general terms and conditions.

(4) Every individual agreement (including ancillary agreements, supplements and amendments) that we make with the Customer in the individual case shall in each case take

precedence over these General Terms and Conditions. A written contract, if such exists, or our written confirmation, is authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications by the Customer with respect to the contract (e.g. setting deadlines, notification of defects, withdrawals or reductions) shall be made in writing, i.e. in written or text form (e.g.: letter, email, fax; Sections 126, 126b BGB). Statutory provisions regarding form and the right to demand further proof, in particular in case of doubt regarding the legitimation of the person making the declaration, shall remain unaffected.

(6) References to the applicability of statutory provisions are for the purpose of clarification only. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly altered, limited or expressly excluded in these General Terms and Conditions.

### Section 2 Conclusion of the contract

(1) Our offers are not binding. This also applies when we have handed over catalogues, technical documentation (e.g. drawings, plans, estimates, calculations, references to DIN standards), other product specifications or documents, including in electronic form, in which we reserve rights of ownership and/or copyright.

(2) The order for the Goods placed by the Customer shall be deemed a binding offer to enter into a contract. Unless otherwise stated in the order, we shall be entitled to accept this order within four weeks of receipt thereof.

(3) Acceptance may be declared either in writing (e.g. through confirmation of the order) or by implied acceptance through delivery of the Goods to the Customer.

### Section 3 Delivery time and delay in delivery

(1) The delivery time shall be agreed individually or stated by us when the order is accepted. Insofar as this is not the case, the delivery time shall be approx. four weeks from the conclusion of the contract. Section 475, paragraph 1 BGB shall remain unaffected in the case of final delivery to a consumer.

(2) If we cannot comply with binding delivery deadlines on grounds for which we are not responsible ["non-availability of the work or service"], we shall notify the Customer of this immediately; at the same time, we shall inform the Customer of the probable new delivery time. If the work or service is still unavailable within the new delivery time, we are entitled to withdraw from the contract in whole or in part. If the Customer has already provided consideration, we shall reimburse this without delay. In particular, if our suppliers fail to deliver to us punctually, this shall be deemed a case of non-availability of service if we have concluded a congruent hedging transaction, neither we nor our supplier is at fault, or we are not under an obligation of procurement in the specific case.

(3) Whether our delivery is in default shall be determined according to the statutory provisions; however, a payment reminder by the Customer shall in any event be required.

The Customer may claim compensation for the damage caused to him by delay in the form of a lump-sum compensation, if and to the extent that we are in default of delivery, whereby the purchaser need not prove that damage has been caused to him through the delivery

default. The lump-sum compensation amounts to 0.5% of the net price (delivery value) for each full calendar week of delay but in total no more than 5% of the delivery value of the Goods that are delivered late. We reserve the right to prove that the Customer has suffered no damage or considerably less damage than the above-named lump-sum compensation. The right to assert damages for delay beyond the lump-sum compensation is excluded unless we have caused the delay in delivery wilfully or through gross negligence.

**(4) The Customer's rights in accordance with Section 8 of these General Terms and Conditions and our statutory rights, in particular with regard to an exclusion of the obligation to perform (e.g. due to the impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected by the provisions set forth above.**

#### **Section 4 Delivery, transfer of risk, acceptance, default in acceptance**

(1) Delivery shall be ex warehouse, which is also place of performance for delivery and any subsequent performance. At the Customer's request and expense, we shall also dispatch the Goods to another destination (sale to destination). Unless otherwise provided in individual cases, we are entitled to determine the type of shipment (in particular, transport company, shipment route, packaging) ourselves.

(2) The risk of accidental loss and the accidental deterioration of the goods shall be transferred to the Customer no later than transfer at the warehouse. In the case of sale to destination, however, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall already be

transferred on delivery of the Goods to the carrier, shipper or other person or entity appointed to carry out the shipping. If an acceptance procedure has been agreed on, acceptance shall determine the passing of risk. The statutory provisions regarding works contracts shall also apply to the agreed acceptance as appropriate. Handover or acceptance shall be deemed to have taken place if the Customer is in default with the acceptance.

(3) If the Customer is in default of acceptance or omits an act of cooperation, or if our delivery is delayed on other grounds for which the Customer is responsible, we are entitled to demand compensation for the damage arising as a result, including any additional expenditures (e.g.: warehouse costs). For this we charge a lump-sum compensation of 0.5% of the purchase price per calendar week, beginning with the delivery term or – in the absence of a delivery term – with the announcement that the Goods are ready for dispatch. However, the lump-sum compensation shall amount to no more than 5% of the purchase price – including the case of definitive non-acceptance.

In addition, we are entitled to assert our statutory claims (in particular, compensation for additional expenditures, appropriate damages, termination) and/or to establish greater damage. In this case, however, the lump-sum shall be offset against further monetary claims. The Customer is free to establish that no damage whatsoever or only a significantly lesser damage has arisen to us than the above lump-sum.

#### **Section 5 Prices and conditions of payment**

(1) Unless agreed otherwise in individual cases, our prices as valid at the time the contract is concluded

shall apply, ex warehouse plus statutory value-added tax. If delivery occurs in the framework of a continuing obligation, or if a period of over four months elapses between conclusion of the contract and the time period agreed for the total delivery or parts thereof, and if costs of the Goods to be delivered should increase by more than 5% after conclusion of the contract on grounds for which we are not responsible, in particular due to price increases on the part of the upstream supplier, we shall be entitled to raise accordingly the purchase price for the (parts) of the delivery not yet effected. We shall offset cost increases of individual price components against cost decreases of other price components. If the price increase amounts to more than 5% of the total delivery price, the Customer shall be entitled to withdraw from the contract within two weeks of receipt of our notification of the price increase.

(2) In the case of sale to destination (Section 4, paragraph 1 of these General Terms and Conditions) the Customer shall bear the costs for transport ex warehouse, in particular shipping, mailing and packaging costs, and the costs of any transport insurance desired by the Customer. The transport costs that actually arise shall be invoiced separately in individual cases. Any customs duties, charges, taxes and other public levies shall be borne by the Customer.

(3) The purchase price shall be due and payable no later than 30 days from invoicing and delivery and/or acceptance of the Goods. However, we shall be entitled at any time, including in the frame of an ongoing business relationship, to implement an entire or partial delivery only upon advance payment, especially if a Customer has already been in default with the payment of an invoice more than twice. We shall declare a corresponding reservation no later than on confirmation of the order.

(4) On expiry of the foregoing payment deadline, the Customer is in default with his payment obligation without the requirement of a separate payment reminder. The purchase price shall bear interest during the default period at the applicable statutory. We reserve the right to assert further damages for default. If the Customer is a merchant, our right pursuant to Section 353 HGB to demand interest from the time that the purchase price is due, shall remain unaffected.

(5) The Customer shall have a right of set-off or retention only insofar as its claim has been legally established or is undisputed. In the case of defective deliveries, the counter-rights of the Customer, in particular pursuant to Section 7, paragraph 6, sentence 2 of these General Terms and Conditions, shall remain unaffected.

(6) If it becomes apparent after conclusion of the contract (e.g.: through an application for the opening of insolvency proceedings **against the Customer's assets**) that our claim to the purchase price is in jeopardy due to the **Customer's** inability to pay, we are entitled to refuse performance and – where applicable after setting a deadline – to withdraw from the contract under the statutory provisions (Section 321 BGB). In the case of contracts for the manufacture of specific items (custom-built products) we may declare withdrawal immediately; this shall not affect the statutory provisions on the dispensability of setting a time limit.

## Section 6 Retention of title

(1) Until all our current and future claims under the purchase agreement and an ongoing business relationship (secured claims) have been met, we retain ownership in the goods sold. Section 6, paragraph 4 d) applies as appropriate.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as collateral until the secured claims have been paid in full. The Customer must notify us immediately in writing if an application is made to open insolvency proceedings or if third parties acquire access (e.g. attachments) to the Goods owned by us. The Customer is obliged to compensate the costs that arise to us through defensive and intervention measures insofar as the third party is not in a position to reimburse these costs to us.

(3) In the event of a breach of contract by the Customer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with statutory provisions and/or to demand return of the Goods on the basis of the retention of title. Any demand for the return of Goods shall not be deemed to include a simultaneous declaration of withdrawal; rather, we shall be entitled to demand solely the return of the Goods and to reserve the right to withdraw from the contract. If the Customer does not pay the due purchase price, we may only assert these rights if we have previously set the Customer an appropriate deadline for payment to no avail or if such a deadline is dispensable according to legal provisions.

(4) The Customer is authorised until further notice under (c) below to sell and/or process the Goods in which title is retained in the regular course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title covers the products which arise through processing, mixing or combining our Goods up to the full value of these products, whereby we shall be deemed to be the manufacturer. If the ownership rights of third parties remain in existence during the

processing, mixing or combining with their goods, we shall acquire co-ownership in the ratio of the invoiced value of the processed, mixed or combined goods. For the rest, the same applies to the resulting product as to the Goods delivered with retention of title.

(b) The Customer already cedes to us all collateral claims against third parties deriving from resale of the Goods or products, in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph. The duties of the Customer named in paragraph 2 shall also apply in view of the claims assigned.

(c) The Customer shall remain authorised, together with us, to collect receivables. We undertake to not collect the receivable provided that the Customer fulfils its payment obligations towards us, there is no deficiency in its ability to perform, and we do not assert retention of title by exercising a right under Section 6, paragraph 3. However, should this be the case, we may demand that the Customer disclose to us the assigned receivables and their debtors, provide us with all information necessary for recovery, hand over the pertinent documents and inform the debtors and/or third parties of the assignment immediately. In addition, in this case we shall be entitled to **revoke the Customer's authorisation** for the further sale and processing of the Goods in which we retain title.

(d) Should the realisable value of the collateral exceed our claims by more than 10%, we shall, upon the **Customer's request, release** collateral at our own choice.

## Section 7 Customer's claims for defects

(1) Save as otherwise provided below, the Customer's rights in case of defects of quality and title (including false and shortfall delivery and incorrect installation or defective installation instructions) shall be governed by the statutory regulations. Special statutory provisions on final deliveries of products to a consumer shall in any case remain unaffected (recourse against a supplier pursuant to Sections 478, 445 a, 445 b BGB).

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the Goods. All product descriptions that are the subject of the individual contract or have been published by us (in particular in catalogues or on our homepage) shall be deemed to be an agreement on the quality of the Goods.

(3) In the absence of any quality agreement, the assessment of the presence or absence of a defect shall be governed by the statutory provisions (Section 434, paragraph 1, sentences 2 and 3 BGB). However, we shall not be liable for public statements of the manufacturer or other third parties (e.g. advertising statements).

(4) The Customer may only assert claims for defects in the event that he has fulfilled his statutory duty to inspect and report defects (Sections 377, 381 HGB). If a defect becomes apparent on delivery, inspection or at any later time, the Customer is obliged to inform us of the same in writing without delay (i.e. in written or text form; Sections 126, 126b BGB). Obvious defects must always be notified in writing within 3 working days of delivery; defects not detectable during the examination must be notified in writing within 3 days of discovery of the defect. If the Customer fails to carry out the proper

inspection and/or fails to notify any defects, our liability for defects that have not been notified or have not been notified in a timely or proper manner shall be excluded under statutory provisions.

(5) If the delivered item is defective, we may first choose whether we shall provide subsequent performance by remedying the defect (rectification) or by delivery of a flawless item (replacement). Our right to refuse subsequent performance in accordance with the statutory pre-conditions shall remain unaffected.

(6) We are entitled to make the owed subsequent performance dependent upon the Customer paying the purchase price due. However, the Customer shall be entitled to retain a part of the purchase price which is appropriate in relation to the defect.

(7) The Customer is obliged to give us an opportunity for subsequent performance; in particular, he is obliged to hand over to us the goods that are the object of complaint for the purpose of inspection, if this is necessary for subsequent performance. The Customer shall allow us the time we require for subsequent performance. In the event of replacement, the Customer shall return the defective item to us in accordance with the statutory regulations.

(8) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, travel, work and material costs (but not the costs of de-installation and installation), shall be borne by us if there is indeed a defect. Otherwise we can demand that the Customer reimburse the costs (in particular, inspection and transport costs) arising to us from an unjustified claim for remedying a defect unless the Customer was unable to recognise that the goods were not defective.

(9) In urgent cases, e.g. where operational safety is at risk or to avert disproportionate damage, the Customer has the right to remedy the defect himself and to claim from us reimbursement of the expenses objectively necessary for this. We must be promptly informed of a **Customer's own remedy of a defect**, if possible in advance. The **Customer's right to rectify defects** shall not apply if we would have been entitled to refuse corresponding subsequent performance under the statutory provisions.

(10) If subsequent performance has failed or a reasonable deadline to be set by the Customer for subsequent performance has expired without result or may be dispensed under the statutory provisions, the Customer may withdraw from the purchase agreement or reduce the purchase price. However, there shall be no right of withdrawal in the case of negligible defect.

(11) Even in case of defects, the customer shall be entitled to claim compensation or reimbursement of expenses incurred in vain only as provided in Section 8; otherwise, such claims are excluded.

## Section 8 Other liability

(1) Unless otherwise provided in these General Terms and Conditions including the provisions set forth below, we shall be liable for a breach of contractual and non-contractual obligations in accordance with statutory provisions.

(2) We shall be liable for damages – regardless of the legal reason – in the frame of fault-based liability in the case of intent and gross negligence. In the case of simple negligence, we shall be liable, subject to a milder liability criterion in accordance with statutory provisions (e.g.: the same care as in our own affairs), only

a) for damage arising from loss of life, bodily injury or damage to health,

b) for damage arising from a not insignificant breach of a material contractual duty (obligation whose fulfilment is a sine qua non for the proper execution of the contract and the observance of which the contracting party regularly relies on and is entitled to expect); in this case, however, our liability shall be limited to reimbursement of predictable damage which can typically be expected to occur.

(3) The limitations of liability resulting from paragraph 2 shall also apply in the case of breaches of duty by or in favour of persons for whose fault we are responsible under statutory provisions. They shall not apply if we have deceitfully failed to disclose a defect or have furnished a guarantee for the quality of the goods, nor to claims of the Customer under the Produkthaftungsgesetz [Product Liability Act].

(4) In the case of a breach of duty other than relating to defects, the Customer may only withdraw from or terminate the contract if the breach occurred through our fault. A free right of termination for the Customer (in particular in accordance with Sections 651, 649 BGB) is excluded. For the rest, the statutory conditions and legal consequences shall apply to withdrawal or termination by the Customer.

## Section 9 Statute of limitations

(1) Notwithstanding Section 438, paragraph 1, no. 3 BGB, the general period of limitation for claims regarding material and legal defects shall be one year from delivery of the Goods. Section 7, paragraph 1, sentence 2 of these General Terms and Conditions shall apply accordingly. If in an individual case acceptance has been agreed, the

period of limitations begins on acceptance.

(2) However, if the product is a building or a thing that in accordance with its habitual use has been used for a building and has caused the **latter's imperfections (building material)**, the period of limitations shall be 5 years from delivery in accordance with the statutory provision (Section 438, paragraph 1, no. 2 BGB). Further statutory special provisions on limitations shall also remain unaffected (in particular Section 438, paragraph 1, no. 1; Section 438, paragraph 3; Sections 444 and 479 BGB).

(3) The periods of limitation under sales law set forth above, shall also **apply to the Customer's contractual and non-contractual claims**, for damages arising from a defect of the Goods unless the application of the regular statutory limitation period (Sections 195 and 199 BGB) would lead to a shorter period of limitation in the individual case. However, limitation of the **Customer's claims to damages under Section 8, paragraph 2, sentences 1 and 2(a)** and under the Produkthaftungsgesetz shall be governed exclusively by the statutory periods of limitation.

## Section 10 Applicable law and jurisdiction

(1) These General Terms and Conditions and the contractual relation between us and the Customer shall be governed by the law of the Federal Republic of Germany excluding referrals to the case law of other countries. Applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.

(2) If the Customer is a merchant as defined in the Handelsgesetzbuch [Code of Commercial Law], a legal person under public law, or a special

fund under public law, the exclusive place of jurisdiction – including international jurisdiction – for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in 69493 Hirschberg. The same shall apply where the Customer is an entrepreneur in the meaning of Section 14 BGB. However, we are also entitled in all cases to file suit at the place of performance of the delivery obligation pursuant to these General Terms and Conditions or pursuant to a priority individual agreement, or at **the Customer's general place of jurisdiction**. Overriding statutory provisions, in particular regarding sole jurisdiction, shall remain unaffected.