

# General Terms and Conditions of Sale

## 1 General

- 1.1 These General Terms and Conditions of Sale apply to all orders placed with Designwerk Technologies AG, Wülflingerstrasse 147, 8408 Winterthur, Switzerland, or Designwerk Europe GmbH, Feldwiesenstr. 7, 79807 Lottstetten, Germany ("Supplier") for the delivery of Goods (such as vehicles, chargers, battery systems, components, modules, spare parts) or services (hereinafter collectively referred to as "Goods").
- 1.2 Additional or deviating terms and conditions of the Buyer, in particular general purchasing conditions of the Buyer, do not apply and are expressly rejected, even if (1) the Buyer explicitly refers to other terms and conditions within the business relationship with the Supplier, or (2) they are not expressly rejected by the Supplier in an order confirmation or (3) the Supplier delivers the Goods and accepts payment from the Buyer.

## 2 Conclusion of Contract, Amendments and Supplements

- 2.1 Cost estimates are non-binding. The Supplier is only bound by quotations with an indication of a validity date.
- 2.2 The scope and execution of the contract shall be governed exclusively by Supplier's written order confirmation or any other written agreement between the parties.
- 2.3 The Supplier may deviate from the agreed specifications and deliver technically improved Goods as long as the improved Goods do not have a negative impact on price, function and quality.
- 2.4 In the case of orders placed with Designwerk Technologies AG, the minimum order value is CHF 500, otherwise a minimum quantity surcharge of CHF 100 shall apply. In the case of orders placed with Designwerk Europe GmbH, the relevant values are EUR 500 and EUR 100 respectively.

## 3 Local Laws and Regulations, Standards

Unless the Buyer has informed the Supplier in its order of laws, regulations or standards to be complied with at the place of destination of the Goods, in particular with regard to safety, health or official permits, the Goods must comply with the relevant laws, regulations and standards in the Supplier's country.

## 4 Delivery

- 4.1 Partial deliveries are permissible and the Supplier may invoice each partial delivery, provided that the respective Goods can be used by the Buyer for the agreed purpose.
- 4.2 The delivery period shall commence as soon as the contract has been entered into, all governmental approvals such as export, import and payment licences have been obtained, all advance payments or notification of the issue or confirmation of a letter of credit have been received by the Supplier, all payments due for Goods delivered under previous contracts have been made and as soon as all technical documentation agreed between the parties has been supplied or approved by the Buyer.
- 4.3 Delivery shall be made subject to the following conditions, i.e. the delivery period shall be extended accordingly:
  - a) if the Supplier is prevented from performing the contract by Force Majeure. Force Majeure shall mean any unforeseeable event beyond the Supplier's control which makes the Supplier's performance economically impractical, excessively burdensome or impossible, such as, for example, late or defective deliveries by sub-suppliers or sub-contractors, industrial disputes, official orders or regulations, material or energy shortages, serious operational disruptions at the Supplier's premises, such as the complete

or partial destruction of equipment or the failure of essential production facilities, serious traffic disruptions (e.g. impassable roads). If the effect of force majeure and the resulting reasonable period for resumption of business exceed a total of two (2) months, either party may terminate the contract with immediate effect. In this case the Buyer shall not be entitled to claim damages.

- b) if the Buyer is in default in the performance of its contractual obligations, in particular if it fails to comply with the agreed terms of payment or if it has failed to provide an agreed security in due time.
- 4.4 Agreed delivery periods are non-binding.
- 4.5 The Supplier shall inform the Buyer immediately of the occurrence or possible occurrence of circumstances which may affect the agreed delivery date, as well as of the anticipated duration of the delay and shall endeavour to minimise the delay. If the new date stated by the Supplier is not met either, the Buyer may set a final grace period of at least 60 days and, if this is not met, withdraw from the contract.
- 4.6 If the Buyer does not take delivery of the Goods notified as ready for dispatch or revokes an order without justification and does not remedy this breach of contract within seven days of being requested to do so by the Supplier, the Supplier shall be entitled to withdraw from the contract and to claim damages in accordance with clause 6.9. In addition, the Buyer shall bear the costs of storage of the Goods. If the Goods are stored on the Supplier's premises, the weekly storage charge shall be 0.25% of the price of the Goods stored.

## **5 Shipment, Transfer of Benefit and Risk**

- 5.1 Unless otherwise agreed between the parties, delivery shall be EXW Supplier's registered office (Incoterms 2020 or latest edition).
- 5.2 If the Supplier organises the transport on behalf of the Buyer, the Buyer shall notify the Supplier in due time, at least one (1) week prior to the agreed delivery date, of any special requests regarding transport and insurance. Otherwise, the Supplier shall, at its own discretion, but without liability, arrange for the fastest and cheapest transport possible.
- 5.3 The risk for the Goods shall pass to the Buyer in accordance with the Incoterm agreed in the order. If acceptance tests at the Buyer's works have been agreed, the risk shall pass upon acceptance of the Goods.
- 5.4 Each delivery shall be accompanied by a detailed delivery note containing at least the following data: Ordering party's order number, order date, article number, quantity, gross/net weight and, if necessary, country of origin, customs tariff number.
- 5.5 The Buyer is obliged to note any transport damage, missing or incorrect items on the acknowledgement of receipt and to document the damage by means of photographs.

## **6 Prices, Invoicing, Terms of Payment and Transfer of Ownership**

- 6.1 Unless otherwise agreed, prices shall be in the currency of the Supplier's place of business and EXW Supplier's place of business (Incoterms 2020 or latest edition).
- 6.2 For deliveries made more than 2 months after the conclusion of the contract, the Supplier reserves the right to increase the price of the Goods or Services in accordance with any increase of more than 5% in the following cost components: Labour costs, prices charged by its suppliers or service providers or an increase in public charges.
- 6.3 The statutory value added tax (VAT) shall be shown as a separate item on the invoice. The Supplier's invoices must comply with the applicable VAT laws and must also contain at least the order number, the article number, the delivery date and the scope of the delivery, e.g. partial deliveries or remaining deliveries. In addition, the Supplier is obliged to indicate the country of origin of the Goods in the proper manner.
- 6.4 Unless otherwise agreed in writing, the price of the Goods shall be due and payable as follows: 50% down payment within 30 days of the invoice date; 50% final payment after delivery ex works.

- 6.5 Unless otherwise agreed in writing, the price of components and spare parts for the Goods shall be due and payable within 30 days of delivery and receipt of invoice.
- 6.6 The invoice amount is payable without deduction of any discount, costs, taxes, duties, charges or other fees.
- 6.7 Payments shall be deemed to have been made as soon as the amount due is freely available in the agreed currency in the bank account specified by the Supplier.
- 6.8 The Buyer may only set off payments against counterclaims which have either been expressly acknowledged by the Supplier or awarded to the Buyer by a final court decision. Provided that it does not have a material effect on the use of the Goods, the delay of an insignificant part of the deliveries shall not entitle the Buyer to defer payment.
- 6.9 If the Buyer is more than 14 calendar days in arrears with the payment of an instalment or the provision of an agreed security, the balance of the total price shall become due and payable. In addition, the Supplier shall be entitled - without granting a grace period - to withdraw from the contract and to claim damages in the amount of at least 10 % of the contract price.
- 6.10 In the case of payments by letter of credit (L/C), the Buyer shall bear the costs for the opening, notification and confirmation of the letter of credit.

## **7 Retention of Title**

- 7.1 The Goods shall remain the property of the Supplier until they have been paid for in full. The Supplier is entitled to take all measures necessary to protect its property rights. Prior to the transfer of ownership, the Buyer is not entitled to pledge the Goods or to grant security rights.
- 7.2 If the Buyer resells the Goods subject to retention of title in the ordinary course of business, all purchase price claims resulting from the resale, including all ancillary rights, securities and retention of title, shall be deemed to have been assigned to the Supplier by implication until all claims of the Supplier against the Buyer have been settled. Until revoked by the Supplier, the Buyer shall remain entitled to collect the assigned claims. Insofar as the value of the reserved Goods together with other securities exceeds the Supplier's claims against the Buyer by more than 20%, the Supplier shall assign the aforementioned claims back to the Buyer upon request.
- 7.3 If the Buyer is in default of payment by more than 14 calendar days, the Supplier may withdraw from the contract and request the return of the Goods at the Buyer's expense.
- 7.4 For the right to use the Goods from receipt until their return to the Supplier, the Buyer shall pay the Supplier the following remuneration a) 2% of the purchase price per calendar week in the first 6 months and b) 0.5% per calendar week thereafter. In the event of withdrawal from the contract, the Supplier may enter the Buyer's premises in order to repossess the Goods which have not been paid for in full. In the event of partial payment of the purchase price, any positive or negative balance - resulting from a) the aforesaid remuneration for the use of the Goods plus any claims for damages by the Supplier, including any claims for damages due to improper use of the Goods, and b) the Buyer's claim for repayment of its partial payments of the purchase price - shall be due for payment 10 days after the return of the Goods to the Supplier.
- 7.5 As long as the property is reserved to the Supplier, the Buyer shall insure the Goods at its own expense against theft, breakage, fire, water and similar disasters and risks, naming the Supplier as beneficiary. In addition, he shall take all other measures appropriate to protect the Supplier's property.

## **8 Incoming Goods Inspection**

- 8.1 Unless a joint acceptance inspection has been agreed between the parties, the Buyer shall inspect the Goods upon receipt for transport and other obvious defects as well as for identity and quantity.

- 8.2 In the ordinary course of business, at the latest within 1 week of receipt, the Buyer shall inspect the Goods at least on a random basis for defects and whether they comply with the agreed specifications.

## **9 Acceptance**

- 9.1 The Goods shall be deemed to have been tacitly accepted if the Buyer has stored them on his premises or used them for his own purposes for more than one month without giving notice of defects. The Buyer may not refuse acceptance due to insignificant defects, in particular those which do not substantially impair the function of the Goods. If the Buyer is entitled to refuse acceptance of the Goods, the Supplier shall remedy the deviations or defects within a reasonable period. For this purpose, the Buyer shall allow the Supplier access to the Goods. Thereafter, a further acceptance test shall take place. Should the Goods fail again, the Buyer may, subject to the limitation of liability provided for in Clause 11, exercise its statutory rights.

## **10 Warranty**

- 10.1 The Supplier warrants that the Goods: (i) will conform to the agreed specifications and will perform as agreed, (ii) will have been manufactured in accordance with all applicable laws and regulations, (iii) will be free from defects in design, materials and workmanship, (iv) will not infringe any third party intellectual property rights at the place of destination (which, unless otherwise agreed in the Contract, shall be the Buyer's place of business) and in the country of manufacture, and (v) will be fit for the purposes agreed and of good and merchantable quality. Deliveries of the wrong Goods shall be deemed to be defective deliveries.
- 10.2 For Goods manufactured according to specifications, drawings or samples of the Buyer, the Supplier's warranty shall be limited to defects in material and workmanship.
- 10.3 The Supplier undertakes to repair or replace free of charge all defective Goods at its discretion, provided that the Buyer notifies defects in writing within 15 days of receipt of the Goods or the commissioning of the vehicle or, in the case of hidden defects, no later than 15 days after the Buyer has become aware of the defect or should have become aware of it, but no later than before the expiry of the warranty period.
- 10.4 The Buyer may withdraw from the contract or demand a reduction of the purchase price,
- if the repair or replacement of the defective Goods is impossible; or
  - if the Supplier refuses to repair or replace the defective Goods or if the repair or replacement is unreasonably delayed for reasons for which the Supplier is responsible.
- 10.5 The warranty period for electric vehicles (including installed batteries and chargers) shall be 12 months and begins with the commissioning of the vehicle, at the latest 3 months after its delivery.
- 10.6 The warranty period for batteries and chargers in the context of individual sales shall be 24 months and shall commence upon receipt of the Goods by the Buyer; it shall end at the latest 30 months after notification of readiness for dispatch
- 10.7 The warranty period for repairs or replacements is 12 months from the date of the replacement or successful repair. However, it shall end at the earliest upon expiry of the original warranty period.
- 10.8 The warranty shall not apply to defects or damage caused by normal wear and tear, improper storage and maintenance, non-observance of the commissioning or operating instructions, overloading or overstressing, unsuitable equipment, improper repairs or modifications by the Buyer or third parties, non-reproducible software errors or other reasons for which the Supplier is not responsible. Furthermore, it shall not apply to defects attributable to the use of spare parts other than original spare parts.
- 10.9 No warranty is given for used Goods.

10.10 If a notice of defect is unjustified, the Buyer shall reimburse the Supplier for the expenses incurred.

## **11 Limitation of Liability**

- 11.1 The rights and remedies of the Buyer shall be governed exclusively by these General Terms and Conditions of Sale and shall be in lieu of any rights and remedies at law. Further claims for reduction of the contract price, rescission, termination or withdrawal from the contract are excluded.
- 11.2 Irrespective of the legal grounds, the Buyer shall not be entitled to claim damages for loss of production, loss of use, loss of orders, loss of profit, loss of anticipated savings, loss of data, costs for the removal or installation of the Goods, handling costs as well as claims of third parties for compensation of such damages or costs.
- 11.3 Supplier's liability for damage to property or recourse for personal injury or death shall be limited to the equivalent of EUR 500,000 per occurrence and in the aggregate to the equivalent of EUR 2,000,000 per calendar year.
- 11.4 This limitation of liability shall apply equally to the extent that the Supplier is liable for acts or omissions of its employees or third parties involved in the performance of its obligations.
- 11.5 The limitation shall not apply insofar as the Supplier's liability is mandatory, in particular in the event of unlawful intent or gross negligence on the part of the Supplier and its employees or third parties involved in the performance of the contract, in the event of fraudulent concealment of a defect, in the event of direct claims for personal injury or death or within the scope of the Supplier's mandatory liability under applicable product liability law. Claims under this sub-clause shall be time-barred pursuant to the statutory limitation periods.

## **12 Infringement of Third Party Rights**

- 12.1 In the event of a claim of infringement of third party intellectual property rights at the agreed destination of the Goods, the Supplier shall, at its sole discretion, take such steps as are necessary to ensure that the Buyer is supplied with a non-infringing source of supply, for example by obtaining any licence rights, redesigning the Goods supplied or taking such other steps as the Supplier deems necessary to ensure that the Buyer is not supplied with Goods which infringe third party intellectual property rights.
- 12.2 The Supplier shall also indemnify the Buyer against all liabilities, costs, damages, claims and expenses (including court costs, legal fees or costs of settlement) incurred by the Buyer in connection with any claim or action brought by a third party against the Buyer or its customer alleging that the Goods or their use by the Buyer or its customer infringe the Intellectual Property Rights of such third party.
- 12.3 The Supplier shall not be liable to the extent the infringement is due to the fact that the Goods were manufactured in accordance with Buyer's instructions and the Supplier could not have realised (taking all reasonable precautions) that compliance with such instructions would result in an infringement of any third party's industrial property right.
- 12.4 The Parties shall inform each other without undue delay of any actual or alleged infringement of third party rights of which they become aware. The Supplier shall assist the Buyer in investigating, defending or processing any such claim, including providing the Buyer with all documents necessary to defend the claim.
- 12.5 If the Buyer chooses its own legal counsel, the Supplier's indemnity shall extend to the reasonable costs and fees associated with such representation. If the Buyer does not choose its own legal counsel, the Buyer shall give the Supplier sole control of the defence of any such claim or action.

## **13 Ownership of Documents and Software**

- 13.1 The Supplier reserves all rights to the drawings, plans, technical specifications, illustrations, calculations, brochures, catalogues, models, tools and other documents or to the software

provided to the Buyer, unless the Buyer has expressly ordered and paid for their production. The Buyer acknowledges these rights and shall not make these documents or the software available to third parties or use them for purposes other than those agreed without the Supplier's prior written consent.

- 13.2 If software is included in the scope of delivery, the Buyer is granted a non-exclusive, non-transferable right to use the software for the agreed purpose. Copies may only be made for archiving or debugging purposes or in connection with the replacement of a defective data carrier. Without the prior consent of the Supplier, the Buyer shall not be entitled to update, extend, disassemble, decompile, decode or reverse engineer the software. In the event of a breach of these obligations, the Supplier may revoke the right to use the software with immediate effect.

## **14 Confidentiality**

- 14.1 The parties shall not disclose to third parties any confidential information of which they have become aware in their business dealings with the other party, in particular technical information, business secrets and order details, such as quantities, technical specifications, the terms of an order, etc., as well as any knowledge resulting therefrom, and shall use such information exclusively for the execution of an order.
- 14.2 The Supplier shall ensure that all subcontractors or sub-suppliers to whom confidential information is disclosed for the purpose of the performance of the subcontract or supply agree to be bound by these conditions.
- 14.3 The Buyer shall not, without the Supplier's prior consent, publish the fact that it has entered into a contract with the Supplier or use the business relationship with the Supplier for advertising purposes.
- 14.4 If the Supplier and the Buyer have not entered into a separate Non-Disclosure Agreement (NDA) and if a party or one of its agents, sub-suppliers or sub-contractors breaches the aforementioned non-disclosure obligations, it shall pay the other party a penalty of the equivalent of EUR 20,000 (twenty thousand), unless it can prove that neither it nor the sub-supplier or sub-contractor is at fault.
- 14.5 The breached party shall also be entitled to claim compensation for any higher damage and to injunctive relief. Payment of the contractual penalty shall not release the breaching party from the further fulfilment of its obligations under this contract.

## **15 Protection of Personal Data**

- 15.1 The Parties may exchange personal data such as names, telephone numbers, email addresses and other personal data in the course of their contractual relationship. In this case, both Parties shall use such personal data in accordance with applicable laws on the protection of personal data, in particular, where applicable, the requirements of the General Data Protection Regulation of the European Union of 4 May 2016 (EU 2016/679; "GDPR") and ensure that no unauthorised third party has access to such personal data without the consent of the data subjects or for any other legal reason.
- 15.2 The Parties shall treat personal data of the other party as strictly confidential and shall process such data solely for contractual purposes. The party processing personal data is responsible for the lawfulness of its processing and for safeguarding the rights of the data subjects.

## **16 Final Provisions**

- 16.1 If any provision of these General Terms and Conditions of Sale is found to be invalid or unenforceable by a court or authority of competent jurisdiction, such provision shall be deemed to be void and the remaining provisions shall continue to be in full force and effect. The parties shall replace the invalid or unenforceable provision, if necessary, with a valid and enforceable provision with a similar economic purpose, provided that the content of



these General Terms and Conditions is not substantially changed. The same shall apply in the event of any omissions.

16.2 No delay or omission by the Supplier in exercising any right or remedy available to it shall operate as a waiver of such rights.

16.3 Changes or additions to the contract must be made in writing to be valid. Communications sent by fax or electronically (e.g. by e-mail) shall also be deemed to be made "in writing".

## **17 Place of Performance**

Unless otherwise agreed, the place of performance for the parties' obligations under the contract shall be the Supplier's place of business.

## **18 Applicable Law and Place of Jurisdiction**

18.1 All legal relations between the Supplier and the Buyer shall be governed exclusively by the substantive law of the Supplier's place of business, to the exclusion of the conflict of laws rules (IPR) and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention/CISG).

18.2 The exclusive place of jurisdiction for all disputes shall be the Supplier's registered office. The Supplier shall also be entitled to bring an action before any other court having jurisdiction over the subject matter of the dispute. In this case, the law applicable at the relevant place of jurisdiction shall apply, but excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

Valid as of 1. March 2023