1. GENERAL SCOPE OF APPLICATION

These General Terms and Conditions (GTC) apply to all business relations between the Seller and Bray Armaturen & Antriebe GmbH (hereinafter referred to as “Purchaser”) and the Seller and Purchaser hereinafter jointly the “Parties” or individually the “Party,” which concern the delivery and/or other delivery of chattels (“Goods”) to the Purchaser or which concern the use and/or possession of the Goods. This concerns irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (§ 433, 651 German Civil Code (BGB)). Those GTC shall only apply if the Seller is an entrepreneur under public law or a special fund under public law.

2. CONCLUSION OF CONTRACT

2.1 An order placed by the Purchaser shall be deemed binding at the earliest upon submission or confirmation in writing or in text form (e.g. e-mail). The Seller shall notify the Purchaser of obvious errors (e.g. typing and calculation errors) and incompleteness of the order, in so far as the order documents for the purpose of correction or completion before acceptance; otherwise the individual purchase contract shall be deemed not to have been concluded.

2.2 The Seller shall confirm in an order of the Purchaser in writing or in text form (e.g. e-mail) within a period of 2 (two) days or, in particular, to execute it without reservation according to the delivery note, the contents of the delivery (item number and quantity) and documents which the Purchaser hands over or makes available to the Seller within the scope of the execution of the contract.

2.3 Changes or adjustments to the order on the part of the Seller require the written consent of the Purchaser to be effective.

3. DELIVERY TIME AND DELAY IN DELIVERY

3.1 The order specified by the Seller in the order confirmation is generally binding. If the delivery time is stated in the order confirmation and if one of the following cases is observed, it is one week from the conclusion of the contract. The Seller is obliged to inform the Purchaser immediately if the Seller is likely to be unable to meet agreed delivery times - for whatever reason.

3.2 If the Seller does not perform his service or does not perform it within the agreed delivery time or if he is in default of the rights of the Purchaser - in particular with regard to withdrawal and compensation for damages - shall be determined in accordance with the statutory provisions. The provisions in Section 3.3 of these GTC shall remain unaffected. In addition, the Purchaser shall have the right to reject a delivery of Goods before the agreed delivery date. In such cases the Seller shall bear the costs of return shipment and shall remain obliged to perform on the agreed delivery date.

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4. PERFORMANCE, DELIVERY, PASSING OF RISK, DELAY IN ACCEPTANCE

4.1 The Seller shall not be entitled to have any performance owed by the Seller rendered by third parties (e.g. subcontractors) without the prior written consent of the Purchaser. The Seller shall be requested to procure the risk of delivery (Beschaffungsrisiko) unless otherwise agreed in individual cases (e.g. limitation to stock).

4.2 Delivery shall be DDP (delivered duly paid) to the place indicated in the order in accordance with Incoterms 2020. If the place of destination is not specified and unless otherwise agreed in individual cases (e.g. limitation to stock), the place of delivery shall be the Purchaser’s place of business at Halskestraße 25 in 47877 Willich. The respective place of destination shall also be the place of performance for the delivery and any subsequent performances (so-called ‘Brisingschuld’).

4.3 The Seller possesses all licences, official permits and other authorisations required to fulfill its obligations under the contract with the sale of the Goods to the Purchaser. The Seller undertakes to comply with all import and export regulations of the countries involved in the sale and transport of these Goods. The Seller shall be solely responsible for obtaining all the necessary import permits.

4.4 The delivery must be accompanied by a delivery note stating the date (issue date and date of dispatch), the contents of the delivery (item number and quantity) and the Purchaser’s identification (date and number). If any of the delivery note is missing, or incomplete, the Purchaser shall not be responsible for any resulting delays in processing and payment. Separated from the delivery note, the Purchaser shall be sent a corresponding invoice for the price of the delayed delivered Goods in total. The Purchaser reserves the right to prove that higher damages have occurred. The Seller reserves the right to prove that no damage at all or only a considerably lower damage has occurred.

4.5 The Seller undertakes to comply with all import and export regulations of the countries involved in the sale and transport of these Goods. The Seller shall be solely responsible for obtaining all the necessary import permits.

5. PRICES AND TERMS OF PAYMENT

5.1 The purchase price stated in the order confirmation is binding. All prices include statutory value added tax unless otherwise agreed.

5.2 Unless otherwise agreed in individual cases, the purchase price shall include all services and ancillary services provided by the Seller (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

5.3 The agreed purchase price is due for payment within 45 (forty-five) calendar days from complete delivery and performance of the delivery note (or order) and free of any deductions and any reservation (including any agreement if accepted) and receipt of a proper invoice. If the Purchaser makes the payment within 14 calendar days of complete delivery and performance (including any acceptance if accepted) the Purchaser shall grant a 3% discount on the net amount of the invoice.

5.4 The Purchaser does not owe any commercial maturity interest within the means of § 353 German Commercial Code (HGB). In cases of default of payment, the statutory provisions shall apply.

5.5 The Purchaser shall be entitled to offset rights and rights of retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, the Purchaser may offset or retain due to a corresponding claim or set-off the credit of the Seller under the law. The Purchaser may offset against all claims and not in case of counterclaims which have been legally established or are undisputed between the Parties.

6. OBLIGATION TO CONFIDENTIALITY AND RETENTION OF TITLE

6.1 All confidential information of the Purchaser which the Seller makes available to the Seller, whether disclosed or made available orally or in writing, electronically or otherwise, or in any other media, and whether marked or not marked, designated or otherwise identified as “confidential,” is confidential. They are intended solely for use in the performance of this Agreement and may not be disclosed or copied unless the Purchaser has given its prior written consent.

6.2 In any event, the Seller is strictly prohibited, for whatever purpose, from carrying out reverse engineering with regard to the products and/or items provided by the Seller to the Purchaser. In any event, the Seller is strictly prohibited, for whatever purpose, from carrying out reverse engineering with regard to the products and/or items provided by the Seller to the Purchaser. If the Purchaser has given its prior written consent.

6.3 The obligation of confidentiality shall only expire if and insofar as the business secrets and other confidential information of the Purchaser were demonstrably already known to the Seller or were already known or generally accessible to the public or were subsequently made known to the Seller by third persons not entitled to maintain the confidentiality.

6.4 The transfer of ownership of the Goods to the Purchaser must be made unconditionally and without regard to the payment of the purchase price. If, however, the Purchaser accepts a conditional offer of transfer of property made by the Seller in individual cases, the Seller’s reservation of title shall expire at the latest upon payment of the purchase price for the Goods delivered. In such a case, the Purchaser shall remain entitled to resell the Goods in the ordinary course of business prior to the payment of the purchase price, with advance assignment of the resulting claims (alternative assignment). The reservation of title (einfacher Eigentumsvorbehalt) and the extended reservation of title (verlängerter Eigentumsvorbehalt) shall be directed at the reseller. All other forms of retention of title or security interest, in particular the expansion, the ward and the retention of title extended to further processing.

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GENERAL TERMS AND CONDITIONS (PURCHASE)

1. MANUFACTURER

1.1 The statutory provisions, regarding the rights of the Purchaser in the event of material defects and defects of title of the Goods (including wrong and short delivery) as well as incorrect assembly, defective assembly and operating instructions or defective user manuals, and in the event of other breaches of duty by the Seller, shall apply unless otherwise provided for in the following.

1.2 In accordance with the statutory provisions, the Seller shall in particular be liable for

1.2.1 ensuring that the Goods have the agreed legal and factual nature at the time of passing of the risk to the Purchaser. In any event, the product descriptions which are the subject matter of the contract - in particular by designation or reference in the Purchaser's order - shall be deemed to be an agreement on the legal and factual nature. It makes no difference whether the product description originates from the Purchaser, the Seller or the manufacturer.

1.3 The Purchaser reserves the right to refuse a delivery of Goods if the quantity of the Goods delivered is less than the quantity ordered. If the Purchaser rejects the short delivery, it shall be returned to the Seller at the Seller's risk and expense. However, if the Purchaser accepts the short delivery, the total purchase price for the Goods shall be reduced proportionately. The Purchaser also reserves the right to refuse an additional delivery of the Goods if the defect is indivisible.

1.4 Notwithstanding § 442 para. 1 sentence 2 BGB, the Purchaser shall be entitled to unrestricted claims for defects even if the defect has remained unknown to him at the time of conclusion of the contract due to gross negligence.

2. COMMISSION AND INSPECTION

2.1 For the commercial duty of inspection and notification of defects, the statutory provisions (§§ 377, 381 HGB – Kaufmannsche Untersuchungs- und Rügepflicht) shall apply with the proviso that:

2.1.1 The Purchaser's duty of inspection shall be limited to defects which become apparent during the Purchaser's incoming Goods inspection within an extension (examination including the examination of the delivery documents and during the Purchaser's quality control by random sampling (e.g. transport damage, wrong and short delivery).

2.1.2 If an acceptance (cf. § 640 BGB) has been agreed, there shall be no duty to inspect the Goods. In all other respects, it depends on the extent to which an inspection is feasible in the ordinary course of business, considering the circumstances of the individual case. The Purchaser's obligation to give notice of defects discovered later, shall remain unaffected. In all cases, the Purchaser's complaint (notice of defect) shall be deemed to be prompt and timely if it is made within 5 (five) working days of the discovery of the defect.

2.2 The costs incurred by the Seller for the purpose of inspection and subsequent performance (including any dismantling and installation costs) shall be borne by the Seller even if it turns out that no defect actually existed. The Purchaser's liability for damages in the event of an unjustified request for the removal of defects shall remain unaffected; however, the Purchaser shall only be liable in this respect if it has recognised or grossly neglected to recognise that there was no defect.

2.3 If the Seller does not fulfil his obligation to supplementary performance - at the Purchaser's option by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by the Purchaser, the Purchaser may remedy the defect itself and demand reimbursement of the necessary expenses or a corresponding advance payment from the Seller. If the subsequent performance by the Seller failed or is unreasonable for the Purchaser (e.g. due to endangerment of operational safety or pending occurrence of disproportionate expenditure of time and expenses), the Purchaser shall inform the Seller of such circumstances without delay, if possible in advance.

2.4 Otherwise, the Purchaser shall be entitled to reduce the purchase price or to withdraw from the contract in the event of a material defect or defect in title in accordance with the statutory provisions. In addition, the Purchaser shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

3. SUPPLIER REGRESS

3.1 In addition to the claims for defects, the Purchaser shall have unrestricted entitlement to statutorily determined rights of recourse within a supplier chain ("Lieferantenregress" according to §§ 445a, 445b BGB).

3.1.1 The Purchaser shall in particular be entitled to demand precisely the kind of subsequent performance from the Seller (subsequent performance or substitute delivery) that the Purchaser owes to the customer in the individual case. This shall not restrict the Purchaser's statutory right of choice (§ 439 para. 1 BGB).

3.1.2 Before the Purchaser acknowledges or fulfils a claim for defects asserted by its customer (including reimbursement of expenses in accordance with §§ 478 para. 2, 439 para. 2 BGB), it shall notify the Seller and, giving a brief description of the facts, request a written statement from the Seller. If the statement is not made within a reasonable period of time and no mutual solution is found within this period of time, the claim for defects actually granted by the Purchaser shall be deemed to be owed by the Purchaser.

3.1.3 Claims of the Purchaser arising from supplier recourse ("Lieferantenregress") shall also apply if the Goods do not apply to the Purchaser or one of its customers prior to their sale to a consumer, e.g. by assembling into another product or attachment to another product.

4. MANUFACTURER'S LIABILITY

4.1 If the Seller is responsible for a product defect, it shall indemnify the Purchaser from third party claims insofar as the cause lies within the Seller's sphere of control and organisation and it is liable in itself to third parties.

4.2 Within the scope of its obligation to indemnify the Purchaser, the Seller shall indemnify all expenses pursuant to § 683, 670 BGB which arise from or in connection with a claim by third parties, including product recalls carried out by the Purchaser. The Purchaser shall inform the Seller in time of the content and scope of the recall measures - as far as achievable and reasonable - and give the Seller the opportunity to comment. Further statutory claims shall remain unaffected.

4.3 The Seller shall ensure that the Goods maintain product liability insurance with a lump sum coverage of at least EUR 10,000,000.00 (in words: ten million euros) per personal injury/damage - per occurrence. The Seller undertakes to provide the Purchaser with annual confirmations from the insurance company as proof of such coverage, such confirmation having to state its scope of cover.