

R+S Automotive GmbH
Terms and Conditions of Sale
(Edition 01 September 2020)

1. Validity

- 1.1 These Terms and Conditions of Sale of R+S Automotive GmbH, Bocholt ("R+S Automotive GmbH" or "we" respectively "us" or respectively "Seller") shall apply to all supplies and services ("Deliveries") that we render on the basis of any agreements or contracts ("Contract") concluded between us and a company ("Buyer") (R+S Automotive GmbH and Buyer together the "Parties").
- 1.2 All and any terms and conditions of Buyer shall not apply unless we have expressly accepted them in written form. All and any terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to these Terms and Conditions of Sale, are hereby rejected and shall not be binding on R+S Automotive GmbH, whether or not they would materially alter these Terms and Conditions of Sale and/or the Contract.

2. Offers

- 2.1 The description of the composition of our Deliveries shall exclusively and conclusively be defined in our respective technical specification ("Technical Specification" or "TS").
- 2.2 We reserve all ownership and intellectual property rights in the illustrations, drawings, plans and construction or engineering documents, etc. ("Documents") relating to the offer or the Deliveries.
- 2.3 Our offers are without obligation.

3. Terms of Delivery, Transfer of Risk

- 3.1 If not expressly otherwise agreed in written form all Deliveries are EXW (Incoterms 2010); plus packaging costs.
- 3.2 Risk of loss or damage shall transfer to Buyer upon the furnishing of the Deliveries, at the latest upon tender of Deliveries to Buyer, Buyer's representative, or common carrier.
- 3.3 Prices are net prices in EURO, plus the current VAT and any other taxes directly applicable to the Deliveries at the time of delivery without further deductions.
- 3.4 R+S Automotive GmbH shall not be obliged to obtain or create any documents that may be necessary for customs clearance, duty concessions, export licenses etc.. Upon Buyer's request, its risk, and its cost, R+S Automotive GmbH shall support Buyer in obtaining the documents stated by Buyer.
- 3.5 Partial Deliveries shall be permissible insofar as they do not constitute a fundamental breach of the Contract; these partial Deliveries may be invoiced separately.
- 3.6 The cost of any special handling caused by Buyer's requirements or requests shall be added to the invoice and paid by Buyer.
- 3.7 If Buyer causes or requests a shipment delay of the Deliveries, or if R+S Automotive GmbH ships or delivers the Deliveries as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer.
- 3.8 Buyer shall have no right to order any change or modification to any Deliveries previously ordered by Buyer or cancel any order without R+S Automotive GmbH's prior written consent. Buyer has to pay all extra costs, expenses etc. which are calculated by R+S Automotive GmbH and communicated to Seller.

4. Reservation of Right for Self-Delivery

In the event that the Deliveries are not available because we have not received deliveries from our own suppliers or our delivery stock is depleted, we shall be entitled to make Deliveries that are similar in quality and price to the contractually agreed Deliveries. If this is not possible, we shall be entitled to extend the time for the Delivery Dates or to withdraw from the Contract at our choice.

5. Terms of Payment

- 5.1 Unless otherwise agreed, our invoices are due for immediate payment, without any deduction, at our place of business. Insofar as no diverging agreement has been made, the payment is to be made in EURO to the account stated by us. All costs relating to transfer, exchange and the like shall be borne by Buyer.
- 5.2 If payment is not made when due, Buyer has to immediately pay interest in an amount of 8 percentage points above the respective base interest rate of the ECB (European Central Bank) for

each commenced week of delay with the payment, and Buyer's entire account(s) with R+S Automotive GmbH shall become immediately due and payable without further notice or demand.

- 5.3 Buyer may only set off those claims that are undisputed or have been finally determined in a legally binding manner. In the event of a set-off in foreign exchange, this shall be made in accordance with the exchange rate set by the ECB at the time of the set-off or judgment.
- 5.4 All past due amounts are subject to service charges at the rate agreed upon by the Parties, otherwise at the maximum contract rate permitted by law or at 15%, whichever is higher. Buyer hereby grants R+S Automotive GmbH the maximum security interest permitted by the applicable law in the Deliveries until such time as R+S Automotive GmbH is fully paid. Buyer shall assist R+S Automotive GmbH in taking the necessary action to perfect and protect R+S Automotive GmbH's security interest.

6. Delivery Dates

- 6.1 Observance of the stipulated time for Deliveries is conditional on the timely receipt of all documents, necessary permits and approvals, especially of plans to be provided by Buyer as well as the entire fulfillment of the agreed terms of payment and other obligations of Buyer. Unless these conditions are fully fulfilled in time, the time for Deliveries shall be extended accordingly.
- 6.2 If nonobservance of Delivery dates is due to unforeseen conditions which are beyond the control of R+S Automotive GmbH, including, but not limited to, adverse governmental actions, natural phenomena (such as earthquakes or floods), atypical weather conditions, fires, terrorism, epidemics, accidents, riots, wars, shipwrecks, strikes, lockouts or other labour dispute and embargoes ("force majeure") the time limits shall be extended appropriately, at least for the time of the delay.
- 6.3 In the event that we are solely responsible for a delay to achieve the readiness for shipment of the Deliveries and provided that Buyer can credibly prove that it has suffered a loss directly due to such delay, Buyer may (only) claim liquidated damages of 0,2% of the net price of the delayed part of the Deliveries for every completed calendar week of delay. However, in no event shall the aggregate of such damages exceed a total of 2,5% of the net price of the delayed part of the Deliveries. Any further or other liability due to delay for any and all costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by Buyer which are caused by any delay, no matter which kind or duration the delay is of (for example - but not limited to - delay with the readiness for shipment or delay with any other deliveries or services) is expressly excluded. Furthermore Buyer is not entitled to assert any other rights or claims, for example - but not limited to - to rescind the contract or to reduce / lower the price. Section 6.3 sentence 3 and sentence 4 apply even if Buyer is not entitled to claim liquidated damages under this section 6.3.
- 6.4 We shall be entitled to perform any contractual duties behind schedule if Buyer was informed about the time lag and the adjusted date of performance. Buyer is entitled to oppose the postponed performance if he does so immediately and the postponed performance is unreasonable. Such rejection shall only be possible if received by us prior to starting our adjusted performance.

7. Retention of Title

- 7.1 The Deliveries shall remain our property until each and every claim against Buyer to which we are entitled under the mutual business relationship has been duly settled. The provision for risk of price and performance in section 3 of these Terms and Conditions shall not be impacted by this retention of title.
- 7.2 No Deliveries shall become a fixture through being attached to other machines or to real estate.

8. Nonconforming Deliveries

- 8.1 Our liability for nonconforming Deliveries shall be exclusively and conclusively defined by the following provisions.
- 8.2 The quality of our Deliveries is defined exclusively and conclusively in the respective TS. It is exclusively incumbent on Buyer to examine the suitability of the Deliveries for the intended use.

- 8.3 The warranty does not cover any damage resulting from normal wear and tear, operation against the operating manuals and improper maintenance.
- 8.4 In case that Deliveries do not comply with the TS and the deviation is significant (“**Defect**”) at the time of transfer of risk, we shall at our sole discretion either repair or redeliver at no charge (“**Subsequent Performance**”). In case the deviations are not significant Buyer shall have no claims against us.
- 8.5 Buyer shall give us notice of Defect in writing without undue delay (Art. 38 para. 1 CISG), as specified in this section 8.5. Claims for damage, shortage or errors in shipping, as far as shipping is our obligation, must be reported within seven (7) days following receipt of the Deliveries by Buyer. Buyer shall have fourteen (14) days from the date Buyer receives any Deliveries to inspect such Deliveries and services for Defects that are not due to damage, shortage or errors in shipping and has to notify R+S Automotive GmbH, in writing, of any Defects of such Deliveries. In the notification, Buyer must specify all details of the affected Deliveries (batch number, bar code) and the nature of the alleged Defect. After the period stipulated in this section 8.5, Buyer shall be deemed to have irrevocably accepted the Deliveries and Buyer shall have no right whatsoever to reject the Deliveries.
- 8.6 If adequate time and opportunity for Subsequent Performance is not provided to us, we shall be exempt from liability / warranty for any Defects. R+S Automotive GmbH has the right for subsequent performance attempts at least three times per each Defect occurred and Buyer has to set us a reasonable period for each Subsequent Performance attempt.
- 8.7 If all Subsequent Performance attempts or subsequent delivery attempts (Section 8.6) fail Buyer shall be entitled to set an adequate last respite (in no case less than four weeks) to us for remedying the Defect. If Seller then still fails to remedy the defect in time, Buyer shall have, as sole and exclusive claims for the respective Defect, the following rights:
- 8.7.1 Remedy the Defect himself or have it remedied by a third party and claim the adequate costs incurred from Seller or
- 8.7.2 Lower the price by an adequate amount, but in no case by more than altogether 20 % of the price of the defective units for any and all Defects; this includes the right of Buyer to claim back payments already made to Seller. UNDER NO CIRCUMSTANCES SHALL BUYER HAVE THE RIGHT DUE TO DEFECTS TO RESCIND OR TERMINATE THE CONTRACT OR SHALL HAVE THE RIGHT TO REQUIRE REDHIBITION (WANDLUNG) OF THE CONTRACT.
- 8.8 Any and all claims by Buyer for costs such as transport, route, labor and material costs incurred in connection with Sellers Subsequent Performance, are excluded.
- 8.9 Any and all claims by Buyer against us, for any Defect, that are different to those claims expressly set out in section 8 and section 9 of these Terms and Conditions shall be excluded.

9. Liability

- 9.1 AS FAR AS A LIABILITY UNDER THESE TERMS AND CONDITIONS OF SALE IS NOT ALREADY EXCLUDED, THE LIABILITY OF [NAME DER GESELLSCHAFT] IS IN ANY CASE LIMITED TO GROSS NEGLIGENCE AND INTENTIONAL ACTS.
- 9.2 UNDER NO CIRCUMSTANCES SHALL R+S Automotive GmbH BE LIABLE FOR ANY DAMAGES, LIABILITIES OR LOSSES CALCULATED BY REFERENCE TO LOSS OF PROFITS, INCOME, PRODUCTION OR BUSINESS INTERRUPTION OR FOR ANY DAMAGES OR LOSSES NOT OCCURRING TO THE DELIVERIES THEMSELVES OR FOR ANY INCIDENTAL, INDIRECT AND CONSEQUENTIAL DAMAGES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERIES OR THE CONTRACT. IT IS IRRELEVANT ON WHATEVER LEGAL GROUND - WHETHER IN CONTRACT (INCLUDING DEFECTS AND/OR DELAY) OR BREACH OF STATUTORY DUTY , INDEMNITY OR OUT OF ANY TORTUOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) - THE DAMAGE, LIABILITY OR LOSS (WHETHER ASSERTED BY BUYER OR THIRD PARTIES) IS SUSTAINED. SECTION 9.1 REMAINS UNAFFECTED.
- 9.3 FOR ALL OTHER DAMAGES OR LIABILITIES, COSTS, EXPENSES AND LOSSES (WHETHER ASSERTED BY BUYER OR THIRD PARTIES) ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY(IES) OR THE CONTRACT OR THE USE OR REPAIR OF THE DELIVERIES OF WHATSOEVER NATURE - WHETHER IN CONTRACT OR BREACH OF STATUTORY DUTY, INDEMNITY OR OUT OF ANY TORTUOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) - AND HOWSOEVER CAUSED AND INCLUDING CLAIMS BASED ON DEFECTS (ESPECIALLY INCLUDING - BUT NOT LIMITED TO - “PRICE

REDUCTION” (8.7.2), SUBSEQUENT PERFORMANCE (8.4), SELF OR THIRD PARTY REMEDY OF DEFECTS (8.7.1)) , REIMBURSEMENT OF EXPENSES OR DELAY (6.3) AND IP VIOLATION (12) R+S Automotive GmbH’S AGGREGATE LIABILITY SHALL BE LIMITED TO AND IN NO CIRCUMSTANCES SHALL EXCEED THE AMOUNT OF ALLTOGETHER 10 % OF THE NET TOTAL PRICE PAID BY BUYER (“AGGREGATE LIABILITY LIMIT”). SECTION 9.1 REMAINS UNAFFECTED.

- 9.4 THE LIABILITY OF R+S Automotive GmbH FOR HIS AUXILIARY PERSONS (IN TERMS OF ART. 101 OR (SWISS CODE OF OBLIGATIONS)) IS FULLY EXCLUDED.

10. Indemnification

- 10.1 Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the Deliveries. Buyer is aware of and acknowledges the safety standards of the Deliveries agreed in the TS. Buyer in his own responsibility verified that these safety standards are sufficient to meet any and all safety standards applicable at Buyer’s Site. Therefore, whereas Seller is, subject to the provisions of the Contract, responsible for meeting the safety standards agreed in the TS, Seller shall not take any liability for a violation of additional and / or exceeding safety standards applicable at Buyer’s Site. Buyer agrees, to the fullest extent permitted by law, to indemnify and hold Seller and Seller’s Personnel harmless from any and all liability, costs, damages, attorney’s fees and expenses from any claims or causes of action of whatever nature and regardless whichever person or entity raises such claims, arising from a violation of safety standards applicable at Buyer’s Site, unless and to the extent such violation also constitutes a violation of the safety standards agreed in the TS. R+S Automotive GmbH makes no promise or representation that the Deliveries or services will conform to any local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing in the TS by an authorized representative of R+S Automotive GmbH.
- 10.2 R+S Automotive GmbH shall not be responsible or liable for any losses or damages sustained by Buyer or any other person as a result of improper installation or misapplication of the Deliveries.
- 10.3 Buyer shall defend, indemnify and hold harmless R+S Automotive GmbH and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney’s fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer’s employees and agents) in connection with the installation, use, operation or repair of the Deliveries by Buyer.

11. Representations, Warranties, Guarantees and Recommendations

- 11.1 Buyer acknowledges that R+S Automotive GmbH does not make any representations, warranties and/or guaranties of any kind or character, expressed or implied, other than specifically contained in the acknowledgement of order or the TS, in particular, not with respect to
- 11.1.1 the Deliveries, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose;
- 11.1.2 the maintenance or other expenses to be incurred in connection with the Deliveries;
- 11.1.3 the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by R+S Automotive GmbH and/or its agents and/or employees; and
- 11.1.4 the accuracy or reliability of any information, designs or documents furnished to Buyer.
- 11.2 Any recommendations made by R+S Automotive GmbH concerning the use, design, application or operation of the Deliveries shall not be construed as representations or warranties, expressed or implied. Failure by R+S Automotive GmbH to make recommendations or give advice to Buyer shall not impose any liability upon R+S Automotive GmbH.

12. Intellectual Property Rights and other Defects of Title

- 12.1 No licenses or any other IP-Rights shall be granted or implied to Buyer apart from those licenses which Buyer requires for the use of the Deliveries in production.
- 12.2 Unless otherwise agreed, the Deliveries made by R+S Automotive GmbH shall be free from intellectual property rights and copyright of third parties at the planned operating place of the

Deliveries, if that operating place was announced to R+S Automotive GmbH by Buyer; if the planned operating place was not announced by the Buyer the Deliveries made by R+S Automotive GmbH shall be free from intellectual property rights and copyright of third parties at Buyer's Site ("Intellectual Property Rights"). However, this only applies to contrary third-party property rights which are or may have been known to R+S Automotive GmbH through due diligence in the application of customary standards. Buyer is solely responsible for the manufactured products and the absence of third-party industrial property rights concerning these products.

12.3 The provisions in sections 8.5 and 8.6 of these Terms and Conditions of Sale shall apply accordingly.

12.4 If a third party asserts legitimate claims against Buyer due to an infringement of an Intellectual Property Right by the Deliveries and used in conformity with the Contract, we shall be liable to Buyer within the time limit stipulated as follows:

12.2.1 At our own option and expense, we shall either obtain a right to modify the Deliveries so as not to infringe Intellectual Property Rights or to replace the Deliveries. If this is not possible for R+S Automotive GmbH on acceptable terms, Buyer shall have a right to rescind the Contract or to reduce the price.

12.2.2 The fulfillment of the aforesaid obligations shall be subject to the condition that Buyer immediately notifies us in writing of the claims asserted by the third party, that Buyer does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to us. If Buyer stops using the Deliveries to reduce the damage or for other important reasons, Buyer shall make it clear to the third party that the suspended use does not constitute acknowledgment of any infringement of Intellectual Property Rights.

12.5 Claims of Buyer shall also be excluded if the infringement of Intellectual Property Rights was caused by specific technical demands or specifications of Buyer, by an unforeseeable use of the Deliveries or by altering or modifying the Deliveries.

12.6 Further claims that are different to those claims expressly set out in section 12 and section 9 of these Terms and Conditions of Sale shall be excluded.

13. Cancellation of Contract and Termination of Contract by Buyer

13.1 In case of default of delivery section 6.3, in case of Nonconforming Deliveries section 8, and in case of infringement of Intellectual Property Rights or other Defects of Title section 12 of these Terms and Conditions of Sale shall apply exclusively and shall finally stipulate the legal consequences.

13.2 If R+S Automotive GmbH has not remedied any material breach of Contract (different from those events stipulated in section 13.1) within three (3) months after being notified in writing about such breach by Buyer, Buyer may terminate the Contract in whole or in part, with immediate effect, by written notice to R+S Automotive GmbH.

14. Force Majeure

Where unforeseeable events of force majeure (section 6.2) have a considerable effect on R+S Automotive GmbH's business, the Parties shall adapt the Contract accordingly in good faith. Where this is not economically reasonable, we have the right to rescind the Contract. If we exercise such right, we shall notify Buyer in writing after becoming aware of the significance of the event even where at first, an extension of the Delivery time had been agreed with Buyer.

15. Remedies of R+S Automotive GmbH based on Buyer's Default

15.1 Upon default by Buyer, Buyer agrees to reimburse R+S Automotive GmbH all attorney fees and court costs incurred by R+S Automotive GmbH in connection therewith. Buyer agrees that any of the following shall, without limitation, constitute an event of default that shall enable R+S Automotive GmbH, at its sole discretion, to cancel any unexecuted portion of an order or to exercise any right or remedy that R+S Automotive GmbH may have by law:

- a) the failure of Buyer to perform any obligation contained herein or under the Contract;
- b) any failure of Buyer to give required notice;
- c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the

appointment of a receiver for Buyer or for the materials covered by the respective order or the filing of any petition to adjudicate Buyer bankrupt;

d) the winding-down, dissolution or termination of existence of Buyer;

e) a failure by Buyer to provide adequate assurance of assisting performance within ten (10) days after a demand by R+S Automotive GmbH, if such assisting performance is provided for in the Contract; or

f) if R+S Automotive GmbH, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired.

15.2 All rights and remedies of R+S Automotive GmbH in these Terms and Conditions of Sale are in addition to, and shall not exclude, any rights or remedies that R+S Automotive GmbH may have by law. Any expenses for collection of any overdue account, reasonable collection charges, including reasonable attorney fees etc. of R+S Automotive GmbH are borne by Buyer.

16. Limitation Period and Exclusivity of the Contractual Provisions

16.1 Any and all claims of Buyer under or in connection with the Contract – irrelevant on whatever legal ground - shall expire after six months. The limitation period commences with transfer of the respective Deliveries to Buyer or, if Buyer is in default of acceptance, with the notification of readiness of shipment of the Deliveries by us, but in any case not before the contractually agreed date of readiness of shipment.

16.2 No new limitation period shall commence as a result of Subsequent Performance.

16.3 These Terms and Conditions of Sale finally and exclusively govern and settle all claims of Buyer. Any other claims of Buyer that are not explicitly regulated in these Terms and Conditions of Sale, regardless of whether they are – especially, but not limited to - based on obligations under the Contract or on any tortuous act or omission (including negligence) or breach of statutory duty etc. are excluded.

17. Amendments

17.1 If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be reduced accordingly, or, where this is not possible, be held void, and these Terms and Conditions of Sale shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their reduction or severance herefrom.

17.2 Amendments and additions to the Contract require written form in order to be effective. Information by facsimile is sufficient to fulfill the written form.

18. Applicable Law

THE APPLICABLE LAW SHALL BE SUBSTANTIVE SWISS LAW, INCLUDING THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS OF 11 APRIL 1980.

19. Jurisdiction

ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT SHALL BE FINALLY SETTLED UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE BY ONE OR MORE ARBITRATORS APPOINTED IN ACCORDANCE WITH THE SAID RULES. THE EMERGENCY ARBITRATOR PROVISIONS SHALL NOT APPLY. THE ARBITRATORS SHALL BE LEARNED JURISTS. THE PLACE OF ARBITRATION SHALL BE ZÜRICH, SWITZERLAND. REGARDING THE APPLICABLE SUBSTANTIVE LAW SECTION 18 SHALL APPLY. THE ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ENGLISH.