

## General Terms and Conditions of Sale - Suzuki Garphyttan GmbH, Düsseldorf

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As of: January 2021

### Article 1 General provisions

Our Conditions of Sale apply exclusively; we will only recognize General Terms and Conditions of the Purchaser which conflict with, or deviate from, our Conditions of Sale to the extent that we have provided our express, written consent thereto.

### Article 2 Offer and conclusion of the contract

2.1. Our offers are subject to change and non-binding, unless we expressly designate these as binding in writing. Declarations of acceptance and orders by the Purchaser shall, insofar as they constitute offers pursuant to § 145 German Civil Code, only become binding by means of our written confirmation of order.

2.2. Documentation pertaining to our offer within the meaning of Article 2.1, such as illustrations, drawings etc. and dimensions and weight specifications contained therein are only approximate, insofar as we have not expressly designated these as binding. The same applies for instructions for use. Tolerances customary in the trade remain reserved within the scope of what is reasonable for the Purchaser.

### Article 3 Documents submitted

We retain ownership and copyright in relation to all documentation provided to the Purchaser in connection with the order being placed, such as, for example, calculations, drawings etc. These documents may not be disclosed to third parties, unless we have provided our express agreement thereto. Insofar as we fail to accept the Purchaser's offer within the period specified in Article 2, such documents must be returned to us immediately.

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## **Article 4 Pricing and payment terms**

4.1. Unless expressly agreed otherwise, our prices are FCA SG Düsseldorf or Cretschmar-Neuss including standard packaging and plus VAT in the currently applicable amount.

4.2. Unless expressly agreed otherwise, the purchase price is to be paid net within 30 days. Default interest will be calculated at 9% above the basic interest rate of the European Central Bank. Default occurs pursuant to Section 286(3) German Civil Code within 30 days after the due date and receipt of the invoice. The right to claim a higher amount of damages caused by default remains reserved.

4.3. Insofar as no fixed price agreement has been made, we reserve the right to make reasonable price modifications due to changes in cost of wages, materials, logistics and sales for deliveries occurring 3 months or more after conclusion of the contract.

## **Article 5 Right of set-off / Rights of retention**

The Purchaser only has a right of set-off, where its counterclaims are legally binding and undisputed. The Purchaser is only entitled to exercise a right of retention to the extent that its counterclaim derives from the same contractual relationship.

## **Article 6 Delivery times**

6.1. Delivery schedules are always non-binding and approximate. In the event of uncertainty, the delivery period begins with dispatch of the confirmation of order by us.

6.2. We are entitled to make several (partial) deliveries, unless this is unreasonable for the Purchaser.

6.3. Our deliveries may vary in quantity by up to 10% compared to the agreed scope of delivery, unless deviations in quantity are expressly excluded in writing; shortfalls in quantity lead to a proportionate reduction in our remuneration and excess quantities to a proportionate increase.

6.4. Compliance with delivery times requires timely receipt of all documentation to be provided by the Purchaser, the necessary approvals and clearances, in particular of plans, compliance with the payment terms agreed and fulfilment of other obligations by the Purchaser. Where these preconditions are not met in a timely manner, deadlines will be appropriately extended; this will not apply where the delay is attributable to us.

6.5. Where non-compliance with agreed delivery periods results from force majeure, for example, mobilisation, war, riot, pandemic, epidemic or similar events, such as strike, lock-out, the periods will be appropriately extended. The same applies in the event that we are not supplied by our Suppliers in a timely and proper manner.

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6.6. Where we are culpable of default in delivery, the Purchaser can – insofar as it can prove that it has incurred resultant loss – demand damages for each complete week of delay of 0.5% of the net price for that part of the delivery which cannot be put into useful operation, up to a maximum, however, of 5%.

6.7. Both damage claims by the Purchaser due to default in delivery and compensation in lieu of performance exceeding the limits specified at Article 6.6 are excluded in all cases of delayed delivery, even after expiry of any delivery deadline set for us. This will not apply in the event of mandatory liability for intent, gross negligence or injury to life, limb or health. The Purchaser may only withdraw from the contract within the scope of statutory provisions, insofar as the delay to delivery is attributable to us.

6.8. The Purchaser undertakes to notify us, upon our request, within a reasonable period, as to whether it intends to withdraw from the Contract as a result of the delay or continues to require delivery.

### **Article 7 Transfer of risk**

7.1. Delivery is FCA SG Düsseldorf or Cretschmar-Neuss, unless expressly agreed otherwise with the Purchaser. The risk of accidental loss and accidental deterioration of the items delivered by us passes to the Purchaser upon transfer to, or collection by, the shipping agent, insofar as we have not expressly agreed to ship the object of delivery. This also applies where we make partial deliveries.

7.2. If dispatch, shipment, start, acceptance in the Purchaser's facilities or test operation is delayed for reasons attributable to the Purchaser or the Purchaser is in default of acceptance for other reasons, risk transfers to the Purchaser on the date on which default of acceptance begins.

### **Article 8 Retention of title**

8.1. We retain title to the delivered items until complete settlement of all our claims arising under the Supply Contract. This will also apply for all future deliveries, even if we do not constantly and expressly refer to this fact. We are entitled to take back goods, if the Purchaser acts in violation of the contract.

8.2. The Purchaser is obliged, as long as title has not yet been transferred to it, to handle the goods with care, being obliged, in particular, to insure these goods, at its own expense, against theft, fire and water damage at a level sufficient to cover their original value. As long as title has not yet transferred, the Purchaser must inform us immediately if the objects delivered are seized or exposed to any interference by third parties. Where the third party is not able to pay us the judicial and extra-judicial costs of our complaint under Section 771 German Code of Civil Procedure, the Purchaser shall be liable for the resultant loss incurred by us.

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8.3. The Purchaser is entitled to resell the goods subject to retention of title in the normal course of business. The claims of the customer from the resale of the goods subject to retention of title are thereby assigned to us in the amount of the agreed final invoice amount (including VAT). This assignment will apply, irrespective of whether or not the goods are resold without or subsequent to processing. The Purchaser remains entitled to collect the receivables even after the assignment. Our power to collect the receivables remains unaffected thereby. However, we will not collect the receivables, so long as the Purchaser continues to meet its payment obligations from the proceeds collected, does not enter into default of payment and, in particular, is not the subject of an application for the initiation of insolvency proceedings and has not suspended payments.

8.4. Handling, processing or remodelling of the goods by the Purchaser is always effected on our behalf and at our behest. In this case, the expectant right of the Purchaser to the goods continues for the remodelled goods. Insofar as the goods are processed with other objects that do not belong to us, we will acquire co-ownership of the new item at the ratio of the objective value of our goods to the other processed objects at the time of processing. The same applies in the event of combination. Insofar as combination is effected in such a manner that the Purchaser's item is considered to be the principal item, it is agreed that the Purchaser shall assign to us proportionate co-ownership and shall hold the resultant sole title or joint title for us. To safeguard our claims against the Purchaser, the Purchaser shall also assign to us such claims that accrue to it against third parties as a result of combination of the goods subject to retention of title with real property; we hereby accept such assignment.

8.5. We undertake to release securities available to us, upon the Purchaser's request, to the extent that their value exceeds the value of the claims being secured by more than 20%.

### **Article 9 Warranty and Notification of Defects / Recourse / Manufacturer's recourse**

9.1 The condition of the goods is defined exclusively by the agreed technical delivery specifications. In the event that we are to make deliveries in accordance with drawings, specifications, models etc. by our Partner, the latter bears the risk of suitability for the intended purpose. The point in time at which risk is transferred is decisive in determining whether the condition of the goods complies with the contract.

9.2. We will not be liable for material defects caused by unsuitable or improper use, defective installation or commissioning by the Purchaser or a third party, or for fair wear and tear or defective or negligent handling, nor for the consequences of improper modifications and modifications made without our consent or maintenance work carried out by the Purchaser or third parties. The same applies for defects which reduce the value or suitability of the item to an insignificant extent.

9.3. The Purchaser is obliged to meet its obligation to inspect and submit complaints in compliance with Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB) as a pre-requisite for making any claim on the basis of defects. Here, it must examine the delivery immediately or, at the latest, one week from receipt, for any defects and notify us where defects are discovered. If there is a defect that is imputable to us, we are entitled to choose whether to rectify the delivery or to replace it. Within the scope of supplementary

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performance, we are obliged to reimburse the Purchaser for the expenses required to remove the defective goods and for installation or fitting of repaired goods or subsequently delivered defect-free goods. Reimbursement of costs is excluded, insofar as expenses increase due to the fact that the goods are taken to another location after our delivery, unless this is in conformity with the intended use of the goods. This shall apply accordingly to claims for reimbursement of expenses by the Customer pursuant to Section 445a (seller's recourse) German Civil Code, provided that the last agreement in the supply chain is not a consumer goods purchase. If one or both of the two types of subsequent performance prove impossible or unreasonable, we are entitled to refuse them. For as long as the Purchaser fails to meet payment obligations to an extent that reflects the defect-free portion of the performance, we are entitled to refuse subsequent performance.

9.4. If the rectification or replacement delivery do not occur within a reasonable period - in consideration of our delivery possibilities - or if the rectification and/or replacement delivery fail, the Customer may demand a reduction of purchase price or withdraw from the contract.

9.5. Unless otherwise provided for below (par. 7), further claims by the Purchaser are excluded, regardless of their legal grounds (in particular claims arising from a breach of principal or subsidiary contractual obligations, reimbursement of expenses with the exception of that pursuant to Section 439 Book 2 German Civil Code, unlawful acts or other tortious liability); this applies in particular to damages not caused to the delivery item itself and to claims for loss of profit; claims which do not result from the defectiveness of the object purchased are also included.

9.6. The preceding provisions also apply in the event of delivery of another item or a lesser quantity.

9.7. The exclusion of liability regulated in paragraph 5 does not apply insofar as an exclusion or limitation of the liability for damages from injury to life, limb, or health has been agreed upon and said injury is caused by an intentional or grossly negligent violation of duties by the user; the exclusion of liability does not apply either insofar as an exclusion or limitation of the liability for other damages is agreed upon and said damages are caused by a violation of the duties by a legal representative or agent of the user. Insofar as we culpably breach a contractual or material obligation, liability is not excluded, but limited to foreseeable damages that are typical of the agreement; it is otherwise excluded pursuant to par. 5. Furthermore, the exclusion of liability does not apply if under product liability law liability exists for personal injury or material damage to privately used objects. It also does not apply in the event of assumption of a guarantee and assurance of a feature, if a defect thereby covered triggers our liability. The above shall apply also to reimbursement of expenses.

9.8. Claims on subsequent performance, damages and reimbursement of expenses become time-barred one year after delivery of the purchased object. Insofar as the law according to Section 438 Para. 1(2) (buildings and things used for buildings) and Section 445 b (right of recourse) German Civil Code prescribes longer periods, these periods shall apply.

Claims on reduction and exercise of the right to withdraw from the Agreement are excluded, insofar as the subsequent performance claim has lapsed. The Purchaser may, however, refuse

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payment of the purchase price in the event of clause 3 insofar as it would be entitled to do so based on withdrawal or reduction; in the event of exclusion of withdrawal and a subsequent refusal to pay, we are entitled to withdraw from the contract.

9.9. The Purchaser's right of recourse against us in accordance with Section 445a (seller's recourse) German Civil Code shall only exist insofar as the Purchaser has not made any agreements with its customer that exceed the statutory claims for defects.

### **Article 10 Impossibility, adaptation of the contract**

10.1. To the extent that delivery is impossible, the Purchaser is entitled to require damages, unless we are not responsible for the impossibility. However, such a claim for damages by the Purchaser shall be limited to 5% of the value of the part of the delivery which cannot be put into useful operation due to the impossibility. This limitation will not apply in the event of mandatory liability for intent, gross negligence, or injury to life, limb, or health. The right of the Purchaser to withdraw from the contract remains unaffected.

10.2. Insofar as unforeseen events within the meaning of Article 6.5 significantly alter the commercial importance or contents of the delivery or have a considerable effect on our business, the contract will be appropriately adapted in good faith. To the extent that this is not justifiable from an economic point of view, we shall be entitled to withdraw from the contract. If we want to exercise our right of withdrawal, we must notify the Purchaser immediately that we become aware of the consequences, even where we initially agreed an extension of the delivery period with the Purchaser.

### **Article 11 Other damages claims / Limitation**

11.1. Damages claims by the Purchaser on any legal grounds, in particular, due to violation of obligations under the contract or liability in tort, are excluded.

11.2. This does not apply, where liability is mandatory, for example, in accordance with German Product Liability Law, in the event of wilful intent, gross negligence, as a result of injury to life, health or limb or as a result of the violation of fundamental contractual obligations. Damages for violation of fundamental contractual obligations are, however, limited to reasonably foreseeable, contractually-typical damages insofar as there is no wilful intent or gross negligence and liability does not result from injury to life, health or limb.

11.3. Insofar as the Purchaser is entitled to claim damages, such claims become time-barred with expiry of the limitation period applicable pursuant to Article 9.8. The same applies for claims of the Purchaser in connection with measures to prevent damages (e.g. recall campaigns). In the event of damages claims under the German Product Liability Law, the statutory limitation provisions apply.

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## **Article 12 Tools, samples, drawings and similar materials / Proprietary rights**

12.1. Ownership of tools manufactured or procured by us shall pass to the Purchaser upon payment in full, but they shall remain in our possession. If the tools owned by the Purchaser have not been used to manufacture parts for five years or longer, we may destroy the tools without prior notice.

12.2. Insofar as we manufacture or deliver goods supplied according to drawings, plans, drafts or similar documents of the Purchaser (or in modification thereof), the Purchaser shall be solely responsible for ensuring that no third-party property rights are infringed; the Purchaser shall indemnify us against claims of other property right holders upon first request.

## **Article 13 Supply of materials**

If the Purchaser provides us with parts or materials for the execution of the order, the Purchaser warrants that it has checked these conscientiously, in particular with regard to their suitability. If the Purchaser provides us with materials for processing, the Purchaser undertakes to have checked their quality, processing and suitability before handing them over to us. In particular, if the Purchaser has obtained the materials from a third party, the Purchaser warrants that its inspection obligations have been fulfilled. If the product manufactured by us is defective due to a defect in the materials provided and/or if processing fails due to a defect which is causally attributable to a defect in the materials provided, we shall be entitled to demand the agreed remuneration adjusted for a saving in expenses.

## **Article 14 Miscellaneous**

14.1. This contract and all legal relations between the Parties shall be governed by the law of the Federal Republic of Germany, to the exclusion of UN Sales Law (CISG).

14.2. The place of performance shall be our business headquarters. Insofar as the Purchaser is a merchant, a legal entity under public law or special fund under public law, the sole place of jurisdiction is our business headquarters. We are also entitled to initiate claims at the Purchaser's registered office.

14.3. All arrangements made between the Parties for the purpose of implementing this Contract, are set down in the Contract in writing.

14.4. Where an individual provision of the present Conditions and additional agreements concluded is or becomes ineffective, the validity of the remaining Conditions shall be unaffected thereby. The contractual partners are required to replace the ineffective provision with a provision that comes as close as possible to the commercial purpose of the original provision. The same applies for omissions.

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