

- 1 DEFINITIONS:** In these General Terms and Conditions of Sale ("**Conditions of Sale**") the following definitions will apply:
- 1.1 "**Buyer**" means the other party detailed in Seller's quote, order acknowledgment or invoice;
- 1.2 "**Buyer's Design Specifications**" means any designs, specifications, parameters or machining or detailed part drawings produced by Buyer, together with any design and applications engineering support provided by Seller to Buyer in respect of any Buyer Designed Product;
- 1.3 "**Buyer Designed Product**" means a Product made by Seller in accordance with Buyer's Design Specifications;
- 1.4 "**Contract**" means the parties' agreement regarding the sale of Products by Seller to Buyer;
- 1.5 "**Product**" means Buyer Designed Product or Seller Designed Product whichever the case may be and "Products" will be construed accordingly;
- 1.6 "**Prototype**" means a non-final type, form or instance of a Product;
- 1.7 "**Seller**" means Morgan Rekofo GmbH;
- 1.8 "**Seller Designed Product**" means a Product made by Seller in accordance with Seller's Design Specifications; and
- 1.9 "**Seller's Design Specifications**" means any designs, specifications, parameters or machining or detailed part drawings produced by the Seller in respect of any Seller Designed Product.
- 2 ACCEPTANCE:**
- 2.1 Subject to the provisions of these Conditions of Sale and the body of any quote, order acknowledgement or invoice, Seller will accept Buyer's order for the Products at the prices specified by Seller PROVIDED THAT:
- 2.1.1 prices may be increased by Seller on a pro rata basis during the course of manufacture or delivery of Products to reflect unforeseeable cost increases with respect to raw materials, components, heat and power, wages or any other term contributing to the cost of manufacturing and/or delivering the Products that Seller incurred after conclusion of the Contract;
- 2.1.2 any alteration by Buyer in the agreed design or specifications of a Product or any modification and any suspension of work following Buyer's instructions or Buyer's failure to give instructions will involve a proportionate increase in the price if the costs of manufacture and/or delivery are thereby increased.
- 2.2 In the event of any conflict or inconsistency between these Conditions of Sale, the body of the quote, order acknowledgement or invoice, the body of the quote, order acknowledgement or invoice will prevail. UNLESS ACCEPTED IN WRITING BY AN EXECUTIVE OFFICER OF SELLER, ANY ADDITIONAL DIFFERENT OR INCONSISTENT TERMS OR CONDITIONS IN BUYER'S PURCHASE ORDER, INCLUDING, WITHOUT LIMITATION, ANY DIFFERENT OR ADDITIONAL DRAWINGS, SPECIFICATIONS, PERFORMANCE STANDARDS OR TESTING REQUIREMENTS, WHICH ARE NOT ATTACHED TO OR INCORPORATED BY REFERENCE IN THESE CONDITIONS OF SALE OR IN ANY QUOTE, ORDER ACKNOWLEDGEMENT OR INVOICE, ARE REJECTED BY SELLER AND WILL NOT BE BINDING ON SELLER NOR HAVE THE EFFECT OF PREVENTING THE FORMATION OF A CONTRACT OR OF VARYING OR OTHERWISE LEAVING OPEN ANY TERMS OR CONDITIONS OF THAT Contract. Neither Seller's failure to respond to any such additional, different or inconsistent terms or conditions, nor Seller's commencement of performance will constitute assent thereto.
- 3 ASSIGNMENT:** These Conditions of Sale are issued solely to Buyer and Buyer will not assign or transfer, in whole or in part, any of its rights hereunder. Section 354 a German Commercial Code (*HGB*) shall remain unaffected hereby.
- 4 BUYER DESIGNED PRODUCTS:** Where a Product supplied by Seller to Buyer is a Buyer Designed Product, the Buyer acknowledges that such Buyer Designed Product has been prepared solely in accordance with Buyer's Design Specifications. So long as Seller manufactures and supplies each Buyer Designed Product in accordance with the Buyer's Design Specification, Buyer agrees to indemnify and hold harmless Seller and its affiliates, shareholders, directors, officers, employees, successors and assigns from and against any and all liabilities, demands, claims, assessments, costs, judgments, awards, fines, sanctions, penalties, charges, damages, expenses (including any appropriate amounts paid in settlement, investigative costs, court costs and attorneys' fees and costs), or losses at any time incurred by any of them if and to the extent arising out of, related to or in connection with the design, manufacture, sale, re-sale or use of such Buyer Designed Product by any person, and any claims for personal injury or death, infringement, property damage or other economic loss, whether arising in contract, tort or under any other legal theory. Buyer's duty to defend Seller against any such claim is triggered by written notice of any such claim submitted to Buyer by Seller or on Seller's behalf. Seller will have the right to approve defence counsel retained to represent Seller in any such claim, such approval not to be unreasonably withheld or delayed. The provisions of this clause will not operate so as to exclude Seller's liability for its own fraud or wilful misconduct.
- 5 CHANGES:** Buyer may modify a Contract only with Seller's written consent, which may be granted or withheld at Seller's sole discretion.
- 6 INVOICES, PAYMENT AND TAXES:**
- 6.1 Payment will be due 30 days after the date of Seller's invoice. All overdue amounts will bear interest at the applicable statutory amount. If any amount due hereunder is collected through a collection agency or attorney, Buyer will pay Seller's reasonable cost of collection, including reasonable attorneys' fees.
- 6.2 Prices for Products do not include any excise, sales, value added, products and services, privilege use or similar taxes or levies, or import or export duties payable in connection with sale or delivery of any Products or performance of any services, all of which will remain the sole responsibility of Buyer. If Seller is required to collect or pay any such taxes, levies or duties, Buyer will pay such amounts to Seller upon invoice.
- 7 DELIVERY/RETENTION OF TITLE:**
- 7.1 All Products are supplied "**EXW**" (as that term is understood in the International Chamber of Commerce INCOTERMS 2000) respective Seller's place of business and all delivery charges will be separately charged to Buyer in addition to the price. Delivery estimates and performance timetables specified in Buyer's purchase order or any Contract are only binding if they have been agreed as binding and Buyer has provided Seller with the information and documentation required for the performance of such delivery and Buyer has made any advance payments in the manner and amount as agreed upon by the parties. Seller will, however, use commercially reasonable efforts to meet any such estimates and timetables.
- 7.2 With regard to Products that Seller does not produce itself, the obligation to deliver shall be subject to Seller's correct and timely receipt of such Products from its suppliers.
- 7.3 Property in the Products will not pass to Buyer until the contract price and any tax levied on sale of Products by Seller to Buyer has been paid in full. Products delivered by Seller to Buyer will, so long as they are the property of Seller ("**Products subject to Retention of Title**") and in the possession of Buyer, be stored separately by Buyer so that they can be readily identified as the property of Seller and be protected, insured for their full value with a reputable insurer (and if Seller so requests, ensure that Seller's name be noted on the insurance policy) and marked as Seller's property. Buyer shall only be allowed to sell the Products subject to Retention of Title within normal and proper business transactions. Buyer hereby assigns its receivables arising from the resale of the Products subject to Retention of Title to Seller, and Seller hereby accepts such assignment. Should Buyer sell the Products subject to Retention of Title after processing or transformation or joining or mixing of such products with other products or together with other products, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between Seller and Buyer plus a safety margin of 10% of this price. Buyer is granted the revocable authorization to collect in trust the claims assigned to Seller in its own name. Seller may revoke such authorization and the right to resell the Products subject to Retention of Title if Buyer is in default of the performance of material obligations such as making payment to Seller. Any processing or transformation of the Products subject to Retention of Title by Buyer shall always

- be performed for Seller. If Products subject to Retention of Title are processed with other products, Seller shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other processed products at the time of processing. The new goods created by way of processing shall be subject to the same provisions as applicable to the Products subject to Retention of Title. Should the Products subject to Retention of Title be joined or mixed with other products, Seller shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other products at the date of joining or mixing. Should the joining or mixing of the products occur in such manner that Buyer's products are to be viewed as the main goods, it shall be deemed to be agreed that Buyer assigns proportionate joint ownership to Seller. Buyer shall hold the joint ownership created in such manner in custody for Seller. To the fullest extent permitted by applicable law, in the event that Buyer has not made full payment for the Products by the due date and should Seller rescind the Contract, the Buyer - notwithstanding any other rights of Seller - will allow the Seller, at any time, to retake possession of all or any part of the Products subject to Retention of Title and enter Buyer's premises during normal business hours and do all things needed to repossess the Products subject to Retention of Title and to remove them from Buyer's premises, which Buyer hereby authorises in advance. Buyer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products subject to Retention of Title, but if Buyer does so, and to the maximum extent permitted by applicable law, any monies owing by Buyer to Seller will (without prejudice to any other right or remedy of Seller) forthwith become due and payable.
- 8 INSPECTION AND TESTING:** Buyer will inspect and test all Products supplied by Seller and will verify that they meet all agreed specifications and other requirements of any Contract.
- 9 WARRANTIES:**
- 9.1 Products:**
- 9.1.1 Seller warrants that each Buyer Designed Product sold by Seller to Buyer pursuant to any Contract will conform to Buyer's Design Specification upon passing of risk and each Seller Designed Product sold by Seller to Buyer pursuant to any Contract will conform to Seller's Design Specification upon passing of risk ("**Warranty**"). Public statements, praises or Seller advertisements may not be construed to be a guarantee for any specific quality of the Products. Unless expressly agreed in writing, Buyer accepts that Seller is not providing and will not provide any guarantee pursuant to Section 443 of the German Civil Code (*BGB*).
- 9.1.2 Buyer's rights in case of defects of the Products shall require that Buyer inspects the Products upon delivery without undue delay and notifies Seller of any defects in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to Seller in writing without undue delay upon their discovery.
- 9.1.3 In the event of a notification of a defect, Seller shall have the right to inspect and test the Products to which objection was made. Buyer will grant Seller the required period of time and opportunity to exercise such right. Seller may also demand from Buyer that Buyer returns to Seller at its expense the Products to which objection was made. Should Buyer's notification of the defect prove to be unjustified and provided Buyer has realized this prior to the notification of the defect or has not realized it in a negligent manner, Buyer shall be obliged to reimburse Seller for all costs incurred in this respect, e.g. travel expenses or shipping costs.
- 9.1.4 Seller shall be entitled to remove the defect at its option by remedying the defect or, alternatively, by delivering a replacement, both free of charge to Buyer (together "**Subsequent Performance**").
- 9.1.5 Buyer shall give Seller the necessary reasonable time and opportunity for the Subsequent Performance.
- 9.1.6 Items that have been replaced by Seller shall, upon its demand, be returned to Seller.
- 9.1.7 Buyer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the Products due to reasons for which Buyer bears responsibility, such as inappropriate or improper use, the non-observance of the operational instructions, incorrect start-up of operation or faulty treatment (e.g. excessive wear), (iii) incorrect assembly and/or installation by Buyer or a third party commissioned by Buyer, and (iv) the use of unsuitable accessories or unsuitable spare parts or the performance of inappropriate repair works by Buyer or a third party commissioned by Buyer.
- 9.1.8 Should the Subsequent Performance fail, should such remedy be unreasonable for Buyer or has Seller refused such remedy pursuant to Section 439 (3) *BGB*, Buyer may, at its option, rescind the Contract in accordance with the statutory provisions, reduce the purchase price and/or claim either damages pursuant to Section 10 or the reimbursement of its futile expenses pursuant to Section 10.
- 9.1.9 The limitation period for Buyer's claims for defects shall be twelve months beginning with the handover of the Products to Buyer. For damage claims of Buyer due to other reasons than defects of the Products or for rights of Buyer with respect to defects concealed in bad faith or caused intentionally, the statutory limitation period shall apply.
- 9.2 Services:**
- 9.2.1 Seller warrants that all services provided to Buyer (including any design and application engineering support services in connection with the production of any Prototypes) will be performed in a workmanlike manner as set forth in these Conditions of Sale. In the event of any breach of the foregoing warranty, Seller's sole obligation, and Buyer's sole remedy, will be to re-perform the relevant service, without additional charge, or to refund any price paid with respect to such non-conforming service, at Seller's option. Buyer's right to claim damages pursuant to Section 10 shall remain unaffected.
- 9.3 EXCEPT AS EXPRESSLY PROVIDED IN THE SECTIONS 9.1 AND 9.2 ABOVE, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO ANY PRODUCTS, SERVICES OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THESE CONDITIONS OF SALE TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 9.4 Any input from Seller regarding any aspect of the Products or suitability for any application is provided solely as a convenience to Buyer, on an as-is basis and without any warranty (express or implied) and does not constitute a recommendation or suggestion as to any aspect of the particular Product or use for any particular application.
- 10 SELLER LIABILITY:**
- 10.1 Seller's contractual and statutory liability for damages caused by slight negligence shall, irrespective of its legal ground, be limited as follows:
- (i) Seller shall be liable up to the amount of the foreseeable damages typical for this type of contract due to a breach of material contractual obligations;
- (ii) Seller shall not be liable due to a breach of any non-material contractual obligations nor for the slightly negligent breach of any other applicable duty of care.
- 10.2 The aforesaid limitations of liability shall not apply to any mandatory statutory liability, in particular to liability under the German Product Liability Act (*Produkthaftungsgesetz*), and liability for culpably caused personal injuries. In addition, such limitations of liability shall not apply if and to the extent Seller has assumed a specific guarantee.
- 10.3 Sections 10.1 and 10.2 shall apply accordingly to Seller's liability for futile expenses.
- 10.4 Buyer shall be obliged to take adequate measures to avert and reduce damages.
- 10.5 Buyer covenants that its use of any Products furnished hereunder will comply with all applicable laws and regulations, and with any applicable Product specifications and documentations.
- 11 CONFIDENTIALITY:**
- 11.1 "**Confidential Information**" means: (a) trade secret and proprietary and confidential information of Seller which is disclosed by Seller to Buyer and all analyses, compilations, studies, Prototypes or other documents or materials

- prepared by Buyer which may incorporate such information; and (b) the existence of a business relationship between Buyer and Seller and all information associated with such relationship.
- 11.2 Buyer will keep Confidential Information in confidence and will not:
- 11.2.1 use it other than for the sole benefit of Seller;
- 11.2.2 disclose it or make it available to any third party except those employees of Buyer who: (i) reasonably require access to such information for the benefit of the relationship between Buyer and Seller; and (ii) have been informed of the confidential nature of the Confidential Information.
- 11.3 The confidentiality obligation pursuant to Section 11.2 shall not apply to such information which
- (i) has already been known to Buyer at the time of its receipt; or
- (ii) was public knowledge at the time of its receipt by Buyer or subsequent thereto becomes public knowledge through no fault of Buyer; or
- (iii) was received by Buyer from a third party that is legally entitled to disclose such information to others; or
- (iv) has to be disclosed to public authorities due to official regulations, provided that Buyer promptly informs Seller of such disclosure and uses its best efforts to limit the disclosure to the minimum necessary; or
- (v) has been independently developed by Buyer.
- 11.4 BUYER may only publish, use or disclose Seller's name or identity (including, without limitation, in any advertisement, news release or patent application) with the prior written approval of Seller's authorized representative.
- 12 SELLER'S INTELLECTUAL PROPERTY:**
- 12.1 For the purposes of these Conditions of Sale, a party's "**Intellectual Property**" means the rights a party may have in and to all know-how, information relating to secret processes and manufacturing techniques, inventions, patents and applications for patents, trade marks, trade names, licences, copyrights, designs and drawings, design rights and applications for registered designs, plans, brochures, technical publications, computer data and other technical matters and all other rights by whatever name called affording equivalent or similar protection in respect of the Products or arising out of work done in connection with a Contract between Seller and Buyer and all Products developed as a result thereof or other proprietary information of any kind related to any Product.
- 12.2 Without limiting in any way the extent of Seller's Intellectual Property, Buyer acknowledges and agrees that the Intellectual Property in relation to the following as relevant to the Seller's manufacture of any Product, is the sole and exclusive property of Seller:
- 12.2.1 plans, drawings and specifications submitted by Seller to Buyer or prepared by Seller for Buyer's requirements;
- 12.2.2 details of any raw material or its supplier;
- 12.2.3 the mix of raw materials used; any pressing, moulding or firing/sintering method used; and any other process used by Seller.
- 13 TOOLS:** Unless otherwise agreed in writing, patterns, jigs, tools and fixtures manufactured by Seller for carrying out Buyer's orders will be the property of Seller notwithstanding any charge made by Seller for their manufacture. Where Seller at Buyer's request uses Buyer's patterns, jigs, tools or fixtures, replacement of or alterations or repairs, due to normal wear and tear or to their condition being in Seller's opinion unsuitable for production of satisfactory Products, will be paid for by Buyer. If for two consecutive years no order is received from Buyer for Products to be manufactured from a tool either supplied by Buyer or for which Buyer has paid full cost to Seller, Seller will - after having given Buyer reasonable respite to collect such tool to no avail - be entitled to make such use of the said tool as Seller decides and Seller will be entitled to dispose of the said tool without incurring any liability to Buyer.
- 14 FORCE MAJEURE:**
- 14.1 Notwithstanding any other provision in these Conditions of Sale, Seller will have no liability to Buyer, nor will it be in breach of any provision of any Contract, for any failure or delay in performance due to:
- 14.1.1 strikes, lockouts, concerted acts of workmen or other industrial disturbances, fires, explosions, floods or other natural catastrophes, civil disturbance or riots, armed conflict whether declared or undeclared, terrorist acts, curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, engineering;
- 14.1.2 the Buyer's default (whether by an act or omission);
- 14.1.3 adverse future government action;
- 14.1.4 accidents, acts of God, sufferance of or voluntary compliance with acts of government and government regulations;
- 14.1.5 embargoes; or
- 14.1.6 any other cause that is unforeseeable, unavoidable and outside the control and sphere of influence of Seller and for which Seller does not bear responsibility.
- 15 DISPUTE RESOLUTION – CHOICE OF LAW AND VENUE:**
- 15.1 These Conditions of Sale and any Contract will be governed by and construed according to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.2 The parties submit any and all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the Courts of Frankfurt/Main.
- 16 WAIVER:** No waiver of any provision, term or condition by Seller will be valid unless made in writing, and no such waiver will constitute a precedent or waiver of the same or any other term or condition on any future occasion.
- 17 MISCELLANEOUS:**
- 17.1 Except as otherwise expressly provided in a written document signed by both parties, these Conditions of Sale constitute the entire agreement between the parties and all prior agreements and communications between the parties are hereby merged into these Conditions of Sale.
- 17.2 All notices required under these Conditions of Sale will be in writing and served by commercially reasonable means.
- 17.3 In case any provision of these Conditions of Sale and/or the Contract should be or become unenforceable under the applicable law, that provision will be severed and the remaining provisions will remain in effect.