

## **General Terms and Conditions of Sale and Delivery for OE Germany GmbH including Purchaser Information**

### **I. Definition, Scope**

1. These General Terms and Conditions of Sale and Delivery apply to the business conducted by OE Germany GmbH (hereinafter referred to as **"OE Germany"**) regarding the sale and delivery of spare parts (hereinafter referred to as **"delivery items"**).
2. These General Terms and Conditions of Sale and Delivery apply exclusively. OE Germany does not accept any terms and conditions of the contractual partner (hereinafter referred to as the **"Purchaser"**) that conflict with, are additional to, or deviate from these General Terms and Conditions of Sale and Delivery, unless OE Germany has expressly agreed to their validity in writing. These General Terms and Conditions of Sale and Delivery shall also apply if OE Germany, in the knowledge of conflicting, additional or deviating terms and conditions of the Purchaser, carries out the delivery of the items to the Purchaser without reservation.
3. These General Terms and Conditions of Sale and Delivery apply only to entrepreneurs in the exercise of their commercial or independent professional activities and to legal entities under public law.
4. Individual agreements made with the Purchaser in particular cases (including ancillary agreements, additions and amendments to these General Terms and Conditions of Sale and Delivery) shall in all cases take precedence over these General Terms and Conditions of Sale and Delivery. The content of such agreements shall be governed by a written contract or written confirmation from OE Germany. This also applies to the cancellation of the written form requirement. The contractual partners also comply with the written form requirement by sending emails, scans or faxes.
5. The General Terms and Conditions of Sale and Delivery shall also apply in their respective versions to future contracts for the sale of delivery items, without OE Germany being required to refer to them again in each individual case.
6. Rights to which OE Germany is entitled according to legal regulations or other agreements beyond these General Terms and Conditions of Sale and Delivery remain unaffected.
7. The term "Purchaser" refers to persons of any gender. The term "Purchaser" is used solely for the sake of readability.

### **II. Prohibition of Resale/Resupply to Russia, Belarus and the Territories Occupied by Russia, Contractual Penalty**

1. Due to the restrictive measures of the European Union against Russia, Belarus and the Russian-occupied territories in Ukraine (including Sevastopol and the regions of Crimea, Kherson, Donetsk, Luhansk and Zaporizhia) (hereinafter collectively referred to as the **"sanctioned territories"**), it is prohibited to sell, supply, transfer or export our products, directly or indirectly, to the sanctioned territories or for use in the sanctioned territories. Against this background, the following prohibitions apply.
2. The Purchaser is prohibited to resell or re-deliver the delivery items, directly or indirectly, to natural or legal persons, organisations or institutions in the sanctioned areas or for use in the sanctioned areas.
3. The Purchaser undertakes to resell the delivery items only to natural or legal persons, organisations or institutions that have undertaken to the purchaser not to resell or resell the delivery items, either

directly or indirectly, to natural or legal persons, organisations or institutions in the sanctioned areas or for use in the sanctioned areas and impose such an obligation on their own business partners.

4. The Purchaser undertakes to thoroughly check, before any resale or further delivery, whether his business partner intends to resell or further deliver the delivery items directly or indirectly to natural or legal persons, organisations or institutions in the sanctioned areas or for use in the sanctioned areas.
5. In the event of a breach by the Purchaser of the prohibitions and obligations contained in this section II
  - a. the Purchaser is obliged to compensate OE Germany for all damages caused thereby;
  - b. the Purchaser undertakes to indemnify OE Germany against all claims asserted against OE Germany due to the breach;
  - c. OE Germany is entitled to terminate the contractual relationship with the Purchaser without notice for good cause, whereby the Purchaser is obliged to compensate OE Germany for any damages incurred as a result;
  - d. the Purchaser undertakes to pay OE Germany a contractual penalty for each breach of the obligations set out in this section II, to be determined at its reasonable discretion and subject to review by the responsible competent court.

The obligation to pay damages and indemnity, as well as the obligation to pay a contractual penalty, shall not apply if the Purchaser is not responsible for the violation. Further claims by OE Germany remain unaffected, with any claims for damages being offset against the contractual penalty.

### **III. Conclusion of Contract (Offer, Offer Documents, Order Confirmation), Contract Language**

1. For orders outside the OE Germany online shop, the contract is concluded as follows:
  - a. OE Germany's offers are subject to change and non-binding unless OE Germany notifies the contrary in writing.
  - b. The order of the goods by the Purchaser is considered a binding offer to conclude a contract.
  - c. The contract is concluded when OE Germany confirms the order by sending a written order confirmation within 2 weeks of receiving the order, or when OE Germany executes the order, in particular by sending the ordered goods to the Purchaser.
2. For orders placed through the OE Germany online shop, the contract is concluded as follows:
  - a. The delivery items offered in the OE Germany online shop do not constitute a binding offer to conclude a contract, but merely an invitation to the Purchaser to place an order.
  - b. The ordering process in the online shop can only be initiated once the Purchaser has registered for the online shop and has been approved for the online shop by OE Germany. Registration is only possible as an entrepreneur in the exercise of his commercial or independent professional activity and for legal entities under public law or by authorized representatives of the aforementioned. The requirement mentioned in the previous sentence will be checked during registration. OE Germany is entitled to request proof of entrepreneurial status by submitting appropriate and current documents, e.g. an extract from the commercial register or business registration. The Purchaser has no right to registration and admission to the ordering process.
  - c. The Purchaser can select the delivery items shown in the online shop and place them in the "shopping cart". An order for the delivery items contained in the shopping cart is bindingly placed by the Purchaser when the Purchaser clicks on the electronic control panel (button) "order now" in the "shopping cart" area at the end of the ordering process. Before clicking on the "order now" button, the previously entered data and the contents of the shopping cart can

be changed at any time using the correction functions provided in the ordering process and the ordering process can be cancelled by leaving the online shop. By placing a binding order, the Purchaser submits an offer to OE Germany to conclude a contract.

- d. After placing his order, the Purchaser will receive a confirmation of receipt of his order. This confirmation of receipt does not constitute an acceptance of the offer, but merely serves to inform the Purchaser that the order has been received by OE Germany.
  - e. The contract is only concluded upon receipt of the order confirmation from OE Germany by the Purchaser or when OE Germany delivers the delivery items to the Purchaser. In the case of delivery of the delivery items, the contract is concluded as soon as OE Germany hands over the ordered delivery items to the Purchaser.
  - f. If delivery of the ordered items is not possible, OE Germany will refrain from issuing a declaration of acceptance. In this case, no contract is concluded. The Purchaser's order can be accepted by OE Germany within two weeks. The period for accepting the Purchaser's contract offer begins on the day after the sending of the contract offer by the Purchaser and ends on the expiry of the fifth working day following the Purchaser's sending the contract offer. If the Purchaser's offer to conclude a contract is not accepted within the aforementioned period, this shall be deemed a rejection of the offer to conclude a contract, with the result that the Purchaser is no longer bound by his declaration of intent.
  - g. The contract text will be stored in compliance with data protection regulations. The text of the contract will not be made available beyond this. If the Purchaser has set up a user account in the online shop before submitting his order, the order data will be archived on the online shop's website and can be accessed free of charge by the Purchaser via his password-protected user account by providing the corresponding login data.
3. The contract language is German.
  4. OE Germany reserves all ownership, copyright and other intellectual property rights to offer documents, drafts, drawings, calculations, catalogues, images, product illustrations and other documents. This also applies to written documents marked as "confidential". The Purchaser shall immediately return all offer documents to OE Germany upon request if they are no longer required in the ordinary course of business.
  5. Illustrations, drawings, weight, dimensions and performance specifications as well as other descriptions of the delivery items in the offer documents, drafts, drawings, calculations, catalogues, images and other documents are non-binding unless they are expressly designated as binding in writing. They do not constitute an agreement to guarantee the quality or durability of the delivered items unless they have been expressly agreed as such in writing. The purchaser's expectations regarding the delivery items or their use do not constitute an agreement or guarantee.

#### **IV. Prices, Payment Terms, Offsetting, Retention**

1. The agreed price in EURO, which is stated in the order confirmation, applies. Unless otherwise stated in the order confirmation, all prices are "FCA - free carrier (OE Germany)" according to Incoterms 2020, including packaging, but do not include transport, shipping costs, insurance, statutory taxes, customs duties, or other charges. The costs incurred in this regard, in particular the costs for transport or dispatch of the delivery items, will be invoiced separately. The statutory value added tax will be shown separately on the invoice at the statutory rate applicable on the day the invoice is issued.
2. Unless other payment terms have been agreed, payments are to be made as follows: Within 30 days of the invoice date without any deductions. Payment is made by bank transfer. A payment is timely if it is received in OE Germany's account within the payment period and OE Germany can dispose of the payment amount.

3. If the Purchaser defaults on payment, OE Germany is entitled to charge default interest at a rate of 9 % points above the respective base interest rate per annum. Further claims by OE Germany remain unaffected.
4. For deliveries to other jurisdictions, payment shall be made before delivery, in deviation from paragraph 2, unless otherwise agreed in writing in advance.
5. The Purchaser may only offset undisputed counterclaims that have been acknowledged in writing by OE Germany or have been legally established.
6. The purchaser is only entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.
7. OE Germany is entitled to refuse to perform its obligations if, after conclusion of the contract, it becomes apparent that OE Germany's claim for payment is jeopardised by the Purchaser's lack of solvency. OE Germany is then entitled to set a reasonable period within which the Purchaser must, at its discretion, provide payment or security concurrently with delivery. If the Purchaser does not make payment within the deadline and does not provide security, OE Germany is entitled to withdraw from the contract in accordance with the law. Further rights of OE Germany remain unaffected.

## **V. Retention of Title**

1. The delivered items remain the property of OE Germany until full payment of the price and all claims to which OE Germany is entitled from the business relationship with the Purchaser. The Purchaser is obliged to treat the delivery items subject to retention of title with care for the duration of the retention of title. In particular, the Purchaser is obliged to insure the delivered items at his own expense against fire, water and theft damage to their replacement value. The Purchaser must provide proof of insurance upon request from OE Germany. The Purchaser hereby assigns to OE Germany all claims for compensation arising from this insurance. OE Germany hereby accepts the assignment. If the assignment is not permissible, the Purchaser hereby instructs the insurer to make any payments only to OE Germany. Further claims by OE Germany remain unaffected.
2. The Purchaser is only permitted to sell the delivery items subject to retention of title within the scope of ordinary business operations. Furthermore, the Purchaser is not entitled to pledge the delivery items subject to retention of title, to assign them as security or to make any other dispositions that could endanger the ownership of OE Germany. In the event of seizures or other interventions by third parties, the Purchaser must notify OE Germany immediately in writing and provide all necessary information, inform the third party of OE Germany's ownership rights and cooperate in the measures taken by OE Germany to protect the delivery items subject to retention of title. If the third party is unable to reimburse OE Germany for the judicial and extrajudicial costs incurred in enforcing OE Germany's property rights, the Purchaser shall be obliged to compensate OE Germany for the resulting loss, unless the Purchaser is not responsible for the breach of duty.
3. The Purchaser hereby assigns to OE Germany the claims arising from the resale of the delivery items, including all ancillary rights, regardless of whether the delivery items subject to retention of title are resold without or after processing. OE Germany hereby accepts this. If an assignment is not permissible, the Purchaser hereby instructs the third-party debtor to make any payments only to OE Germany. The Purchaser is revocably authorized to collect the claims assigned to OE Germany in trust for OE Germany in its own name. The collected amounts must be transferred to OE Germany immediately. OE Germany may revoke the Purchaser's authorization to collect and the Purchaser's authorization to resell for good cause, in particular if the Purchaser fails to properly meet its payment obligations to OE Germany, defaults on payment, ceases payments or if the Purchaser applies for the opening of insolvency proceedings or a similar procedure for debt settlement against the Purchaser's assets or if a justified application by a third party for the opening of insolvency proceedings or a similar procedure for debt settlement against the Purchaser's assets is rejected due

to insufficient assets. In the event of a global assignment by the Purchaser, the claims assigned to OE Germany are expressly excluded.

4. At OE Germany's request, the Purchaser is obliged to inform the third-party debtor immediately of the assignment and to provide OE Germany with the information and documents necessary for collection.
5. In the event of breach of contract, in particular in the event of default of payment by the Purchaser, OE Germany shall be entitled, without prejudice to its other rights, to withdraw from the contract after expiry of a reasonable grace period set by OE Germany. The Purchaser must immediately grant OE Germany or its agents access to the delivery items subject to retention of title and hand them over. After appropriate timely notification, OE Germany may otherwise utilize the delivery items subject to retention of title to satisfy its outstanding claims against the Purchaser.
6. Any processing or transformation of the delivery items subject to retention of title by the Purchaser shall always be carried out for OE Germany. The Purchaser's expectant right to the delivery items subject to retention of title shall continue to apply to the processed or transformed item. If the delivery items are processed or transformed with other items not belonging to OE Germany, OE Germany shall acquire co-ownership of the new item in proportion to the value of the delivery items to the other processed or transformed items at the time of processing or transformation. The same applies if the delivery items are combined or mixed with other items not belonging to OE Germany in such a way that OE Germany loses its full ownership. The Purchaser shall store the new items for OE Germany. For the item resulting from processing, transformation, combination or mixing, the same provisions apply as for the delivery items subject to retention of title.
7. At the request of the Purchaser, OE Germany is obliged to release the securities to which it is entitled to the extent that the realisable value of the securities, taking into account customary bank valuation discounts, exceeds the claims of OE Germany arising from the business relationship with the Purchaser by more than 10%. The valuation shall be based on the invoice value of the goods subject to retention of title and the nominal value of receivables. The selection of the items to be released is the responsibility of OE Germany.
8. For deliveries to other legal systems in which this retention of title provision does not have the same security effect as in the Federal Republic of Germany, the Purchaser hereby grants OE Germany a corresponding security right. If further measures are required for this purpose, the Purchaser will do everything possible to grant OE Germany such a security right without delay. The Purchaser shall cooperate in all measures that are necessary and conducive to the effectiveness and enforceability of such security rights.

## **VI. Deliveries, Delivery Time**

1. OE Germany is entitled to make deliveries in parts and invoice accordingly, unless partial delivery is unreasonable for the Purchaser, taking into account the interests of OE Germany.
2. Deliveries are made FCA Incoterms 2020 (OE Germany), unless otherwise agreed in writing. This also applies if the delivery is made in parts.
3. The agreement of delivery times (delivery periods and dates) must be in writing. Delivery periods and dates are non-binding unless they are previously designated as binding in writing by OE Germany.
4. The delivery period begins upon conclusion of the contract, but not before the complete provision of all documents, approvals and releases to be obtained by the Purchaser, the clarification of all technical questions and the receipt of an agreed down payment or, in the case of a foreign transaction, after receipt of full payment. In the case of a delivery date, the delivery date shall be postponed appropriately if the purchaser does not provide the documents and approvals required by him in a timely manner, does not grant releases in a timely manner, does not fully clarify all technical questions in a timely manner or OE Germany does not receive the agreed down payment

or, in the case of a foreign transaction, the entire payment completely. Compliance with the delivery time requires the timely and proper fulfilment of the Purchaser's other obligations.

5. Compliance with the delivery time is subject to proper, in particular timely, self-supply by OE Germany, unless OE Germany is responsible for the reason for the improper self-supply, in particular because OE Germany has not concluded a congruent hedging transaction. In the event of improper self-supply, OE Germany is entitled to withdraw from the contract. OE Germany will inform the Purchaser immediately if OE Germany exercises its right of withdrawal and will refund any advance payments made by the Purchaser.
6. In the event of a delay in delivery, the Purchaser shall be entitled to withdraw from the contract after the expiration of a reasonable grace period granted to OE Germany after the occurrence of the delay in delivery.
7. If the Purchaser defaults on acceptance or fails to cooperate, OE Germany shall be entitled to demand compensation for any resulting damages, unless the Purchaser is not responsible for the non-acceptance of the delivery items or the failure to cooperate, as well as compensation for any additional expenses (e.g. storage costs). For this, OE Germany will charge a flat-rate compensation of 0.5% of the net invoice value per calendar week or part thereof. The proof of higher damages and other statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) of OE Germany remain unaffected; however, the lump sum shall be offset against further monetary claims. The Purchaser is entitled to prove that OE Germany has suffered no damage at all or only significantly lower damage than the flat rate described above. In this case, OE Germany is entitled to give priority to other orders from third parties and to extend the delivery time accordingly.

## **VII. Transfer of Risk, Transport and Disposable Packaging**

1. Unless otherwise stated in the order confirmation, the risk of accidental loss and accidental deterioration of the delivery items shall pass to the Purchaser according to "FCA - free carrier (OE Germany)" in accordance with Incoterms 2020. This also applies to deliveries in parts.
2. Transport and other disposable packaging in accordance with the applicable packaging regulations becomes the property of the Purchaser and will not be taken back by OE Germany. The Purchaser is obligated to dispose of the packaging at his own expense.

## **VIII. Purchaser's Claims for Defects**

1. The Purchaser's rights in the event of defects require that he inspects the delivery items upon delivery, including, where reasonable, by means of a trial use, and notifies OE Germany of any obvious defects in writing without delay, at the latest two weeks after delivery of the delivery items. Hidden defects must be reported to OE Germany in writing immediately after their discovery. The Purchaser must describe the defects in writing when notifying OE Germany. Furthermore, the Purchaser must comply with the specifications, instructions and conditions in the technical information, assembly, operating and maintenance manuals and other documents for the individual delivery items when assembling, connecting, installing, commissioning, operating and maintaining the delivery items, in particular by properly carrying out and verifying maintenance and by using recommended components. Claims for defects resulting from the breach of this obligation are excluded.
2. In the event of defects in the delivery items, OE Germany shall be entitled, at its own discretion, to subsequent performance by remedying the defect or by delivering a defect-free delivery item. In the event of subsequent improvement, OE Germany is obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs. Replaced parts become the property of OE Germany and must be returned to OE Germany.

3. If OE Germany is not willing or able to provide subsequent performance, the purchaser may, at its discretion and in accordance with the law, withdraw from the contract or reduce the delivery price, without prejudice to any claims for damages or reimbursement of expenses. The same applies if the subsequent performance fails, is unreasonable for the Purchaser or is delayed beyond reasonable periods for reasons for which OE Germany is responsible.
4. The Purchaser shall not be entitled to claims for material defects if the defect is due to a violation of operating, maintenance or installation instructions, unsuitable or improper processing or use, excessive strain (e.g. due to modifications to increase performance), incorrect or negligent handling or natural wear and tear, as well as improper interventions in the delivery item by the Purchaser or third parties.
5. OE Germany does not provide any guarantees, in particular no guarantees regarding quality or durability, unless otherwise agreed in writing in individual cases.
6. The purchaser's claims for defects shall expire after 12 months, unless a purchase of consumer goods takes place at the end of the supply chain (the end customer is a consumer). If the defective delivery items have been used for a building in accordance with their usual purpose and have caused its defectiveness or if the defect is in a building, the limitation period shall be five years. The limitation period of one year also applies to claims arising from tort based on a defect in the delivered items. The limitation period begins with the delivery of the delivery items. The limitation period of one year does not apply to the unlimited liability of OE Germany for damages resulting from the breach of a guarantee or from injury to life, body or health, for intent and gross negligence and for product defects or to the extent that OE Germany has assumed a procurement risk.
7. If it emerges that no defect exists or that the defect is due to a circumstance that does not oblige OE Germany to assume liability for defects, the Purchaser will reimburse OE Germany for all costs incurred as a result, unless the Purchaser is not responsible for the unjustified assertion of claims for defects. Further claims by OE Germany remain unaffected.

#### **IX. Liability of OE Germany**

1. OE Germany is liable without limitation for damages resulting from the breach of a guarantee or from injury to life, body or health. The same applies to intent and gross negligence or to the extent that OE Germany has assumed a procurement risk. OE Germany shall only be liable for slight negligence if essential obligations are violated which arise from the nature of the contract and which are of particular importance for achieving the purpose of the contract. In the event of breach of such obligations, delay, or impossibility, OE Germany's liability is limited to such damages that can typically be expected to arise within the scope of this contract. Mandatory statutory liability for product defects remains unaffected.
2. To the extent that the liability of OE Germany is excluded or limited, this also applies to the personal liability of the employees, workers, staff, representatives and vicarious agents of OE Germany.

#### **X. Product Liability**

1. The Purchaser shall not modify the delivery items, in particular, he shall not modify or remove any existing warnings about the dangers of improper use of the delivery items. In the event of a breach of this obligation, the Purchaser shall indemnify OE Germany internally against product liability claims by third parties, unless the Purchaser is not responsible for the modification of the delivery items.
2. If OE Germany is forced to recall or issue a product warning due to a product defect in the delivered items, the Purchaser will use its best efforts to cooperate in the measures that OE Germany considers necessary and appropriate and will support OE Germany in this process, in particular in determining the necessary customer data. The Purchaser is obliged to bear the costs of the product recall or



warning, unless he is not responsible for the product defect according to product liability law principles. Further claims by OE Germany remain unaffected.

3. The Purchaser shall immediately inform OE Germany in writing of any risks arising from the use of the delivery items and of any possible product defects.

#### **XI. Force Majeure**

1. If OE Germany is prevented from fulfilling its contractual obligations, in particular from delivering the delivery items, due to force majeure, OE Germany shall be released from its obligation to perform for the duration of the hindrance and a reasonable start-up period, without being obliged to pay any damages to the Purchaser. The same applies if the fulfilment of OE Germany's obligations is made unreasonably difficult or temporarily impossible due to unforeseeable circumstances for which OE Germany is not responsible, in particular due to industrial action, a pandemic, official measures, energy shortages, a cyber attack, delivery obstacles at a supplier or significant operational disruptions. This also applies if these circumstances occur with a subcontractor. To the extent that OE Germany is released from its delivery obligation, OE Germany will refund any advance payments made by the Purchaser.
2. OE Germany is entitled to withdraw from the contract after expiry of a reasonable period of time if such an obstacle lasts for more than four months and OE Germany is no longer interested in fulfilling the contract as a result of the obstacle. At the request of the Purchaser, OE Germany will declare after expiry of the deadline whether it will exercise its right of withdrawal or deliver the delivery items within a reasonable period of time.

#### **XII. Confidentiality**

1. The parties are obliged to keep secret all business secrets of the other party that become accessible to them for a period of five years from delivery, to protect them by suitable and appropriate measures and, unless necessary for the business relationship, not to record them, to pass them on to third parties, to use or exploit them. In particular, the parties shall ensure that the business secrets of the other party are only made accessible to such employees and other staff and only to the extent necessary for the business relationship. Items containing trade secrets are also subject to the obligation of confidentiality. In particular, the receiving party is prohibited from obtaining the trade secrets contained therein through reverse engineering of a delivery item or other item. Trade secrets are all information that is designated as confidential or secret or is otherwise recognizable as a trade secret, in particular technical information (e.g. drawings, product and development descriptions, methods, procedures, formulas, techniques and inventions) and commercial information (e.g. price and financial data and sources of supply).
2. The obligation of confidentiality shall not apply if the business secrets of the receiving party were demonstrably already known prior to the commencement of the contractual relationship, or were generally known or accessible prior to the commencement of the contractual relationship, or become generally known or accessible through no fault of the receiving party. The burden of proof shall be borne by the receiving party.
3. The parties shall ensure, through suitable contractual agreements with their employees, other staff and third parties to whom the other party's business secrets become accessible pursuant to paragraph 1 above, that they too are obliged to maintain corresponding confidentiality for a period of five years from delivery.

#### **XIII. Place of Performance, Place of Jurisdiction, Applicable Law, Severability Clause**

1. Unless expressly agreed otherwise, the registered office of OE Germany shall be the place of performance for all services provided by the Purchaser and by OE Germany.



2. If the Purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction shall be the court responsible for the registered office of OE Germany. However, OE Germany is entitled to sue the Purchaser at its general place of jurisdiction or at any other permissible place of jurisdiction.
3. German law applies exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG – “Vienna Sales Convention”) of 11 April 1980.
4. Should any provision of these General Terms and Conditions of Sale and Delivery be or become invalid or unenforceable in whole or in part, or should there be a gap in these General Terms and Conditions of Sale and Delivery, the validity of the remainder of the contract shall not be affected. In place of the invalid or unenforceable provision, the valid or enforceable provision that most closely reflects the purpose of the invalid or unenforceable provision shall be deemed agreed. In the event of a gap, the provision that corresponds to what would have been agreed upon in accordance with the purpose of these General Terms and Conditions of Sale and Delivery, had the contracting parties considered the matter from the outset, shall be deemed agreed.