

GENERAL TERMS AND CONDITIONS

Mosdorfer Upresa Rail S.A.U.

1. Scope:

- 1.1. All the deliveries and other services as well as offers and payments made by and to Mosdorfer Upresa Rail. (following briefly referred to as "Mosdorfer") are exclusively subject to the present General Terms and Conditions (GTC) unless the contracting parties have agreed upon something else in writing and explicitly.
- 1.2. The customer's General Terms and Conditions or other Conditions of Sale, which are, for example, stated on offers or different correspondence of the customer's, will not become part of the contract with Mosdorfer unless Mosdorfer has agreed to them in advance in writing. If written consent is given to the validity of deviating agreements in a single case in writing, the deviations will exclusively apply to this single business transaction.

2. Offers:

- 2.1. All the information Mosdorfer gives on goods and prices are noncommittal and without engagement. Only the customer's order will lead to a binding offer. The customer will be bound to the customer's order two weeks upon receipt at Mosdorfer.
- 2.2. An offer will be accepted by the customer sending a written acknowledgement of order and Mosdorfer assigning an order number. Up to that moment, Mosdorfer will not be obliged to deliver products or provide services.
- 2.3. Documentation belonging to our product information, for example drawings, dimensional data and data about the weight and performance will be regarded as being characteristics that have not been agreed specifically unless there are other written agreements.
- 2.4. If the contracting parties agree upon additional services or other changes that have an effect on existing service provision periods afterwards, these periods will lose their validity, and new periods will have to be agreed in mutual consent.
- 2.5. Mistakes and printing, computational, writing and calculation errors are not binding for Mosdorfer. They will not give the customer the right to put forward any claims.

3. Prices:

- 3.1. The prices required by Mosdorfer will be in Euro, exclusive of the turnover tax prescribed in Spain, unless there are other written agreements.
- 3.2. The prices are EX work Granollers/Spain duty unpaid, including packaging. Fees, charges, customs, transport, travelling expenses, insurance policies, delivery and shipping expenditure are not included in the price unless they are stated explicitly. These costs and expenses will be charged to the customer's account by Mosdorfer separately.
- 3.3. As for travelling expenses, the actual costs will be charged with a 3% administrative surcharge.

4. Delivery, passing of the risk:

- 4.1. Unless Mosdorfer has explicitly promised a delivery or service provision date to be binding in writing, information on the delivery or service provision date will be noncommittal.
- 4.2. If Mosdorfer can foresee that the delivery item won't be delivered within the delivery period, Mosdorfer will accordingly inform the customer immediately and in writing, communicate the reasons for this and state the probable date of delivery as far as possible.
- 4.3. Mosdorfer reserves to carry out partial deliveries.
- 4.4. If the amount of delivery is slightly lower than the agreed amount, the customer can only demand a corresponding price reduction. The amount of delivery will be deemed slightly lower if the deviations are no more than the following: deliveries of up to 5,000 pieces: deviations up to 2.5 %; deliveries between 5,001 and 10,000 pieces: up to 2 %; deliveries of more than 10,000 pieces: up to 1 %.
- 4.5. The goods will be delivered to the address stated by the customer as soon as possible. Mosdorfer will even be entitled to postpone or discontinue promised deliveries if the deliveries are made impossible or are made more difficult to an unreasonable extent by circumstances that cannot be influenced by Mosdorfer. This particularly refers to labour conflicts and any circumstances independent from the parties' will, such as fire, war or strike. This will also apply if such unforeseen obstacles and circumstances occur at subsuppliers'.
- 4.6. Unless agreed differently in writing, the risk of accidental ruin or accidental damage of the merchandise will pass to the customer upon dispatch of the merchandise or delivery at the forwarding agency or transporting company. The customer will immediately have to complain about damage in transit and/or shortage towards the transporting company.

- 4.7. As for merchandise that is to be delivered at a date other than the intended date or that cannot be delivered by the customer's default and in case of delay in acceptance, the risk of accidental ruin or accidental damage of the merchandise will already pass to the customer at the moment the merchandise is stored in our warehouse in Granollers or in a delivery store.

- 4.8. The delivery period will be deemed to be kept if Mosdorfer has shipped the merchandise on the last day of the agreed period or if the merchandise is ready for shipment.

- 4.9. If the merchandise is not delivered within the agreed period for reasons for which Mosdorfer exclusively is at fault, the customer will have to set Mosdorfer a four-week deadline for making up by registered mail:

5. Due date, payment, reservation of title, delay in payment:

- 5.1. The invoices issued by Mosdorfer will have to be paid (net) within days without deduction upon issuance of the invoice. If payment is made within 14 days upon issuance of the invoice, we will grant a 2 % discount.

- 5.2. The merchandise delivered to the customer by Mosdorfer will remain the sole property of Mosdorfer (reservation of title) up to complete fulfilment of all the claims arising from the business relationship, in particular purchasing price, interest, shipping costs and other parts of the invoice and any costs due to enforcing their collection.

- 5.3. The customer is obliged to comply with the applicable legal requirements relating to maintenance of the reservation of title. Any alienation, pledging, renting, transfer of ownership by way of security or other cession of the merchandise subject to reservation of title to third parties is prohibited. If the merchandise subject to reservation of title is pledged or claimed differently by third parties, the customer will be bound to assert Mosdorfer's title of ownership at the customer's costs and expenses by means of a demonstrable written communication within 24 hours. The reservation of title will even remain effective if the merchandise is installed or differently linked with other objects.

- 5.4. If Mosdorfer does not make an explicit written declaration to the contrary, the fact that Mosdorfer asserts the reservation of title won't be regarded as being repudiation of the contract. On the contrary: Mosdorfer will not only have the right to claim surrender of the merchandise but will also keep the rights arising from the purchasing contract, above all those relating to compensation of damage and lost profit.

- 5.5. If the customer is in default with an agreed payment, Mosdorfer can either insist on fulfilment of the contract or repudiate the contract within two weeks while granting a reasonable grace period. If Mosdorfer insists on fulfilment of the contract, Mosdorfer can:

- a) charge interest on arrears to the amount of 1 % per month;
- b) postpone fulfilment of Mosdorfer's own obligations until the outstanding payments are received;
- c) claim a reasonable prolongation of the delivery period;
- d) declare the whole purchasing price that is still open to be due.

- 5.6. The customer will also have to compensate Mosdorfer for the resulting dunning charges and handling fees.

- 5.7. Counterclaims put forward by the customer can only be offset with claims put forward by Mosdorfer if the relevant counterclaim has been recognized by Mosdorfer in writing or if there is a legally binding judgement against Mosdorfer. This will also be the case if these counterclaims originate from the same contract or its rescission.

- 5.8. Mosdorfer reserves to ask for the securities deemed necessary for good fulfilment of the contract before and after delivery of the merchandise or parts thereof if it becomes obvious after the contract has come into being but before the price has been paid completely that the customer's credit is shaken or the customer's credit worthiness is reduced. If the customer fails to meet this obligation, Mosdorfer will have the right to cancel the contract fully or partially. For this purpose, giving notice of default won't be necessary. The costs and expenses will have to be borne by the customer.

- 5.9. Any costs and expenses arising from interventions and resulting legal disputes will have to be borne by the customer.

6. Warranty:

- 6.1. The customer will have to review the merchandise for defects upon delivery and will have to notify Mosdorfer of defects of the merchandise immediately but no later than within 14 days upon delivery in writing while exactly describing the defect. Hidden defects will have to be reported once they are discovered.
- 6.2. If the customer fails to report the defect, the merchandise will be deemed approved, and the customer can no longer claim warranties or damages due to the defect itself or consecutive damage and can no longer assert an error relating to the freedom from defects.
- 6.3. Rights relating to warranty will, in all cases, have to be asserted before the court within 24 months upon delivery of the merchandise. Otherwise they will be excluded.
- 6.4. Mosdorfer has the right to review the deliveries and services complained about by the customer for the asserted defects within 14 days upon notification of defects. If the customer refuses the crosscheck, the customer will lose all the related warranty and damage claims.
- 6.5. Defective deliveries and services, which also include the fact that properties promised according to the delivery contract are missing, will be improved, newly delivered or newly provided within the warranty period free of charge at Mosdorfer's discretion. If elimination of defects cannot be achieved within a reasonable period, the customer will have the right to set a reasonable grace period. If this grace period elapses without succeeding in eliminating the defect, the customer will have the right to claim a reasonable reduction of the contract price.
- 6.6. There are no further claims due to defective delivery, above all for compensation of damage that has not occurred on the contractual item itself.
- 6.7. In all cases, the warranty period will start upon delivery of the merchandise at the customer's and amount to 24 months.
- 6.8. Defects and malfunctions for which Mosdorfer is not at fault, such as natural wear and tear, force majeure, improper handling, interventions of the customer or third parties, excessive load, unsuitable means of production or extreme ambient conditions, are excluded from warranty.
- 6.9. Disassembly, assembly, transport, packaging, travelling and sojourn costs and expenses will have to be borne by the customer. If Mosdorfer evidences that the reported defect is no event of warranty, the customer will have to reimburse expenditure upon demonstration on the basis of the hourly rates applicable at the customer's, including travelling expenses that may occur. If waiting times for which Mosdorfer is not at fault are caused while warranty work is being done, additional expenditure resulting in this respect will be charged to the customer's account.

7. Liability:

- 7.1. Unless differently agreed in writing, Mosdorfer will only be liable to the customer for occurring damage if damage has been caused by Mosdorfer by intent or gross negligence.
- 7.2. Notwithstanding the cause and legal basis of damage, Mosdorfer's liability will be limited to the amount of the price for the merchandise.
- 7.3. If Mosdorfer has produced the delivery item on the basis of the customer's engineering data, drawings or models, Mosdorfer's liability will not refer to the correctness of engineering but only to the fact production has followed the customer's data. If third parties put claims on Mosdorfer, the customer will hold Mosdorfer harmless.
- 7.4. Claims for damages can only be asserted before the court within six months after damage has come to the customer's knowledge but no later than within one year upon occurrence of (primary) damage due to the event substantiating the claim. The burden of proof for existence and the amount of damage is on the customer.

- 7.5. The customer will immediately have to inform Mosdorfer of damaging events and hand the required documentation over to Mosdorfer.
- 7.6. Claims for damages the customer may assert because of interruption, lost profit, loss of information and data or consecutive damage are excluded explicitly.
- 7.7. When using the merchandise delivered by Mosdorfer, the customer is obliged to keep all the regulations, technical rules, installation procedures, operating and service instructions existing for the protection from risks and hazards as well as all the relevant rules and only to employ authorized experts.
- 7.8. Mosdorfer's liability for damage due to faulty operation by the customer is excluded. In this respect, we would like to point out that merchandise can, in case of faulty operation, lead to damage despite of the highest quality claims. In this context, we would explicitly like to hint at product information enclosed to the merchandise, which will, in any case, have to be read and kept. If no product information is enclosed to the merchandise exceptionally, the customer will have to request this information from Mosdorfer or, if available, read this information in the homepage of Mosdorfer before commissioning.
- 7.9. As for violation of confidentiality, Mosdorfer will only be liable if Mosdorfer or employees of Mosdorfer's have acted by intent or gross negligence. Claims asserted against employees of Mosdorfer's are excluded. Mosdorfer will not be liable for work done by Mosdorfer's commissioning personnel and other persons employed in performing Mosdorfer's obligations unless this work is connected with commissioning or as far as the defects can be traced back to the customer's intervention.

8. Use of know-how:

- 8.1. All the documentation includes design and development services, know-how and ideas provided by Mosdorfer.
- 8.2. The customer may use the software handed over, the know-how, the data carriers and documentation to the intended extent himself but must not pass them on to third parties.

9. Export:

- 9.1. The customer is responsible for keeping domestic and foreign export rules.

10. Applicable law, place of jurisdiction:

- 10.1. The contractual relationships between Mosdorfer and the customer are subject to Spanish law.
- 10.2. For all the disputes directly or indirectly resulting from the contractual relationships between Mosdorfer and the customer, including the question about the valid way of establishing the contractual relationships as well as their effects, exclusive responsibility of Tribunal Mercantile of Madrid Spain.

11. Other clauses:

- 11.1. All amendments to these GTC require written form and will have to be signed by the contracting parties or legal successors in a legally valid manner. This particularly also refers to any departure from this requirement of written form.
- 11.2. If a clause of these GTC or the other agreements between the customer and Mosdorfer are or become fully or partly void, ineffective or unenforceable, the effectiveness and enforceability of all the other remaining clauses will remain unaffected by this. As far as this is legally admissible, the clause that is void, ineffective or unenforceable will have to be regarded as being replaced by the effective and enforceable clause that comes closest to the economic purpose pursued by the void, ineffective or unenforceable clause in terms of the dimension, time, place or scope. The same applies to possible gaps in the contract.