

## § 1 General information – scope

- (1) These General Terms and Conditions of Sale and Delivery ("GTC") apply to all offers and services provided by RSP GmbH & Co. KG ("us", "we"). The GTC apply in particular to contracts for the sale and delivery of new and used movable goods ("goods") by us. This applies irrespective of whether we purchase the goods from suppliers or manufacture or process these ourselves or adapt these to the needs of the customer. With regard to warranty rights, the General Terms and Conditions of Warranty shall apply.
- (2) The GTC apply exclusively to entrepreneurs within the meaning of Section 310 Para. 1 German Civil Code [*Bürgerliches Gesetzbuch - BGB*] in conjunction with Section 14 BGB, legal entities under public law or special funds under public law.
- (3) By concluding the first contract in which these GTC are included, the customer acknowledges at the same time their validity for all future contracts that it concludes with us (also verbally or by email). For the sale and delivery of movable goods, the GTC in their respective version shall apply as a framework agreement, unless explicitly otherwise agreed in writing by the contractual partners. The current version of the GTC is available for download on the RSP GmbH website ([www.rsp-germany.com](http://www.rsp-germany.com)) and will be sent to the customer upon request.
- (4) These GTC apply exclusively to the business relationship between us and the customer. Any deviating, conflicting or additional Business Terms and Conditions of the customer shall not become part of the contract. This also applies if we perform the service for the customer without reservation in the knowledge of their Business Terms and Conditions.
- (5) Our employees are not authorised to amend the content of the GTC (in writing or verbally). This requires written confirmation from the management of the acting company. The written confirmation shall only be effective if it has been signed by the authorised representatives listed in the current entry in the commercial register. The customer has to verify the validity of the power of representation.
- (6) References to the validity of statutory regulations are exclusively for the purpose of clarification. Even without such clarification, the statutory regulations shall therefore apply unless they are amended or explicitly excluded in the contract or in these GTC.
- (7) All contracts concluded with the customer are subject to the law of the Federal Republic of Germany. International sales law on movable objects (UN Sales Convention; CISG, Vienna Sales Convention) is excluded, unless explicitly otherwise agreed in writing.

## § 2 Offer; acceptance period; quality; scope of services; guarantee; used and new goods; procurement risk; ownership of offer documents

- (1) Our offers are subject to change; they merely represent an invitation to the customer to submit a binding offer. An order or commission from the customer represents a binding offer to us. The customer bears the sole risk of use for types of use or places of use of the goods and/or the risk of whether the goods are suitable for the purpose intended by the customer.
- (2) We may accept the offer of the customer within 4 weeks of the offer being made (acceptance period). A contract is only concluded when we declare our acceptance in writing or by

providing the service or delivering the goods to the customer. Silence in response to an offer made by the customer does not constitute acceptance. Insofar as we accept the offer made by the customer and confirm this in writing (by email is sufficient), the customer is obligated to recheck the details of the scope of services without delay. If the customer does not object to the order confirmation, the information contained in the order confirmation regarding the quality or condition of the goods shall be deemed to have been approved.

- (3) Unless otherwise specified in Para. (4), a written statement from us is required as proof of the content of an agreement relating to the quality or condition or scope of services of the goods. The same applies to any guarantee we provide that relates to the quality or durability of the goods. Information contained in brochures, advertisements and other offer documents or on the Internet, as well as illustrations or drawings of the goods, are only approximate descriptions and are not always accurate in every point. They are only binding if we explicitly designate these as binding. Otherwise, the quality of the goods owed shall be determined solely by the information in the contract.
- (4) We explicitly reserve the right to make changes to the design, choice of materials, specifications and construction even after sending an order confirmation, provided that these changes do not contradict the specifications of the customer, do not infringe any legitimate interests of the customer and do not jeopardise the purpose of the contract. The customer shall agree to any further proposed changes made by us, provided insofar as these are deemed reasonable for the customer.
- (5) Unless explicitly agreed in the contract, we shall not be subject to any procurement obligation. We therefore do not assume any procurement risk. This shall also apply if only goods of a certain type are owed. Proof of our assumption of a procurement risk requires a written declaration, to which the provision in § 1 Para. (5) applies accordingly.
- (6) Documents such as cost estimates, service descriptions, samples or other documentation such as drawings and plans, with the exception of purely advertising material, remain our property and may not be made accessible to third parties. Insofar as no contract is concluded, they must be returned to us without delay.

## § 3 Prices; price adjustments; handling costs for returned goods; customer payments; SEPA direct debit procedure; default of payment

- (1) Unless otherwise agreed, the final price to be paid by the customer shall be calculated on the basis of our net prices valid at the time of conclusion of the contract plus value added tax at the applicable statutory rate. Unless otherwise agreed, all prices are ex works. Delivery is made carriage forward, excluding postage, insurance, packaging, customs and transport costs. This also applies to subsequent deliveries requested by the customer. Special packaging (e.g. crates) with accompanying consignment note remain our property and must be returned. If the packaging is not returned within 14 days, the packaging material will be invoiced at cost price.
- (2) The customer shall pay the statutory value added tax decisive at the time of delivery in addition to the price. For deliveries within the European Union (EU), the customer must provide their value added tax identification number in good time before the date set in the contract as proof of their ex-

emption from value added tax. If this information is not provided in good time and in full, we reserve the right to charge the applicable value added tax. For deliveries outside the EU, we are entitled to charge the statutory value added tax insofar as the customer does not provide proof of export within one month of the respective shipment.

- (3) We issue invoices on the expected date of acceptance or partial performance or, if a call-off by the customer has been agreed, on the date of readiness for delivery.
- (4) Unless otherwise agreed, the purchase price (net) is due for payment without deduction upon notification of readiness for delivery of the delivery item.
- (5) A cash discount deduction is not permitted unless the contractual parties agree otherwise in writing.
- (6) For any custom-made products or orders exceeding EUR 30,000.00 net, in particular for all complete deliveries of suction dredgers or other machines, we are authorised to issue the customer with a partial invoice for a reasonable advance payment prior to execution. This shall amount to 30% of the order value, unless a different value has been contractually agreed for the order. This partial invoice shall be due for payment by the customer upon receipt of the invoice. We are authorised to make execution dependent on receipt of the advance payment. The paid partial invoice will be taken into account when the final invoice is issued. Instead of the advance payment, we are authorised to demand other payment security from the customer, such as a guarantee from an internationally recognised credit institution or a German credit insurer. Insofar as the goods are to be delivered before the customer has fulfilled their payment obligations under the contract according to Para. (4), the amount of the payment guarantee shall be determined by the full amount of the contractually agreed price.
- (7) The legal consequences of default of payment by the customer shall be determined according to the statutory provisions of the BGB, unless these terms and conditions contain deviating provisions. If the customer defaults on payment, we shall be entitled to demand payment of all outstanding amounts after a grace period of one week has expired without result.
- (8) If, after conclusion of the contract, it becomes apparent that the payment claim is at risk due to the inability of the customer to pay, we shall be entitled to the rights set out in Section 321 BGB (Defence of uncertainty). We shall then also be entitled to demand payment of all claims from the current business relationship with the customer that have not become statute-barred. This uncertainty clause extends to all other outstanding deliveries and services from the business relationship with the customer.
- (9) Notwithstanding Section 195 BGB, our claims for payment shall become statute-barred after 5 years. Section 199 BGB shall apply with regard to the commencement of the statute of limitations.
- (10) Payments made by the customer shall always be offset pursuant to Section 366 Para. 2 BGB. This shall also apply if the customer makes a different repayment arrangement.
- (11) Unless otherwise agreed in the contract, we shall be entitled to effect the collection of payments owed by the customer from the account of the customer by direct debit upon the due date. The collection shall be made by means of the SEPA core direct debit procedure. For this purpose, the customer is obliged to issue us with a written SEPA direct

debit mandate or a written direct debit authorisation as a SEPA direct debit mandate at our request and to provide us with the necessary information.

- (12) We shall ensure that the customer has a reasonable period of time (at least 5 workdays) between the agreed due date or (if no specific due date has been agreed) the receipt of the invoice and the collection of the amount owed to audit the claim asserted and to ensure that there are sufficient funds in the account. Further requirements (e.g. regarding the notification of due payments provided for in the SEPA direct debit procedure) remain unaffected.
- (13) If the customer is in default of payment of a claim in whole or in part, we shall be entitled to (1) terminate any existing financing or deferral agreement without notice and declare all claims arising therefrom immediately due and payable; (2) withhold services from contracts that have not yet been fulfilled; (3) assert the rights arising from the reservation of title (§ 6) and (4) rescind the contract pursuant to § 8.
- (14) If the customer is in default of payment, we are entitled to default interest of 12% of the outstanding amount. We remain entitled to assert further legal claims. The customer is free to prove that we have incurred no damage or only significantly less damage.
- (15) Against the background of the dynamic development of, among other things, energy and raw material prices during the manufacturing period of goods and other services, the following applies. Our offer is based on a price calculation for the goods to be delivered and other services, which is determined in particular from the manufacturing cost and other cost components plus a profit margin.
  - a. The manufacturing cost includes the costs specified in Section 255 Para. 2 HGB, i.e. all expenses incurred through the consumption of goods and the use of services for the manufacture of the contractual object, its extension or for a significant improvement beyond its original condition. This includes the cost of materials, production costs and special production costs, as well as reasonable portions of material overheads, production overheads and depreciation of fixed assets, insofar as this is caused by production, and reasonable portions of general administrative costs and reasonable expenses for social facilities of the business, for voluntary social benefits and for company pension schemes, insofar as these are attributable to the period of manufacture ("manufacturing cost").
  - b. "Other cost components" include, in particular, energy and prices of raw materials (especially oil, electricity, gas and steel) and transport costs (especially oil and cargo).

We shall be entitled, at our reasonable discretion, to take into account any increases or decreases in manufacturing cost and/or other cost components (including for purchased parts) for the goods covered by the contract which occur after the conclusion of the contract but before or during the production of the goods, even after the conclusion of the contract, and to pass these on to the buyer in the invoice. This does not apply to increases or decreases in cost components that we have already taken into account in the prices at the time of conclusion of the contract. However, we are only authorised to adjust the prices vis-à-vis the buyer if there has been a change in the manufacturing cost and/or other cost components for the contractual goods on our part. In doing so, we always offset the cost components of the manufacturing cost against each other and, in the

event of an increase in individual cost components, also take into account any reduction in other cost components (and vice versa). The provisions of this paragraph 15 shall apply *mutatis mutandis* to purchased parts/accessories that are purchased by us and whose prices change accordingly after conclusion of the contract.

- (16) The prices are based on the cost basis given at the time of submitting the offer (excluding value added tax). We reserve the right to adjust prices in the event of significant changes to this basis up to the time of receipt of the order confirmation. A change of at least 5% is considered significant. In such cases, the customer has the right of rescission, which must be exercised within two weeks of receipt of the order confirmation. Changes in the value added tax rate authorise both parties to adjust prices accordingly. We also reserve the right to change our prices accordingly if, between the conclusion of the contract and delivery, there is a deadline of more than 4 months and if cost reductions or cost increases occur, in particular due to collective agreements, changes in material and raw material prices or other market price changes by third parties involved. We shall notify the customer of the price change and, upon request, provide evidence of the price adjustment factors and their specific increase. If a price increase is 20% or more above the agreed price, the customer has the right to rescind the contract. This right must be exercised without delay after we have notified the customer of the price increase in writing (at least by email). In the event of rescission, the statutory regulations shall apply. If we take into account special requests or change requests from the customer, these changes shall be agreed in writing. The additional costs incurred shall be invoiced to the customer.
- (17) Unless otherwise agreed below, the customer may return goods to us and/or exchange these without a warranty claim being made. We are not obligated to accept returns if the value of the goods is less than EUR 100.00 net of the current list price, or if the goods are special items that were custom-made for the customer, or if the goods have expired (technically). All other goods may be returned and/or exchanged by the customer at their own expense within a deadline of two months after dispatch from us to the customer (date of the delivery note). In the event of an incorrect delivery on our part, i.e. we deliver goods other than those contractually owed, we shall bear the costs of the return shipment. We are entitled to inspect the returned/exchanged goods at the expense of the customer. Furthermore, we are entitled to charge a restocking fee of 20% of the net sales price, with a minimum of EUR 50.00 and a maximum of EUR 500.00, for return deliveries. This restocking fee and the costs of inspection shall be deducted from the amount to be refunded to the customer.

**§ 4 Delivery time; delay in performance; right of rescission of the customer; unavailability of the service; premature performance; partial performance, force majeure**

- (1) When concluding the contract, we shall specify a delivery date or delivery period based on the production schedule at the time of conclusion of the contract. Delivery dates or delivery periods may be binding or non-binding. Delivery periods shall commence at the earliest upon conclusion of the contract and, if the cooperation of the customer is required, upon complete fulfilment thereof, unless otherwise specified below. The actual delivery date or delivery period may differ from the specified date, in particular if coordination with the customer is required regarding technical details of the goods, if any provisions by the customer and third parties or other cooperation on the part of the customer are required. In addition, the customer must fulfil all obligations

incumbent upon them (in particular, necessary confirmations and approvals, provision of documents, vehicles or parts; advance payments) properly and in a timely manner. If these conditions are not met, the actual delivery date or the start of the delivery period shall be postponed by at least the duration of the delay. Fixed-date transactions are not agreed.

- (2) Changes to the goods to be supplied initiated by the customer after conclusion of the contract shall also result in a postponement of the delivery date/extension of the delivery period for the duration of the delay.
- (3) Delays in the fulfilment or non-fulfilment of obligations under these terms and conditions, both on our part and on the part of the customer, shall not be deemed to be our responsibility if and to the extent that they are attributable to events or occurrences beyond the control of a party or for which the party is not responsible or which have arisen through no fault of the party, and insofar as such events or occurrences can be proven to have a decisive influence on the completion or delivery of the delivery item, such as, in particular, circumstances caused by natural events, measures taken by a government authority, fire, flooding, explosions, natural disasters, war, labour disputes (including lockouts and strikes), epidemics or pandemics or diseases, which in particular result in measures such as quarantine and other containment measures, or official, court orders or decrees or official warnings, traffic and operational disruptions, material or energy shortages, or operational disruptions occurring at our premises or those of our suppliers, which temporarily prevent us, through no fault of our own, from delivering the purchased item on the agreed delivery date or within the agreed deadline (force majeure). In any case, the event must be external, unrelated to the business and thus beyond the control of the contractual parties, and this event must also be unavoidable due to its unpredictability, even with the application of extremely reasonable care. The existence of force majeure shall lead to the temporary suspension of mutual contractual obligations, provided that one party invokes this. During the period of such delay in performance or non-performance, the other party shall be notified without delay in writing of this delay (including a description of the reason for the event or circumstance, an estimate of the duration of the delay, and a statement regarding the remedial measures that will be taken to resume performance and any interim allocation plans for the delivery of goods during the period of delay). The due date for performance shall be postponed by the duration of the disruption from the time the impediment to performance ceases. If such disruptions lead to a delay in performance of more than four months, the customer or we may withdraw from the contract. Other rights of rescission remain unaffected. The customer undertakes to declare within a reasonable deadline, at our request, whether it will exercise its right of rescission. Claims for damages and reimbursement of expenses by the customer due to a delay in performance or non-performance shall be governed by § 9.
- (4) The goods or services agreed in the contract may also be subject to export and import restrictions. Approval requirements may apply or restrictions may apply at the destination of the goods. We apply all relevant provisions of export and import law, in particular the export and import regulations of the Federal Republic of Germany and the EU. The conclusion of the contract is therefore subject to the proviso (suspensive condition) that there are no obstacles to the conclusion and fulfilment of the contract due to national or international export and import regulations, in particular no export or import bans, embargoes or other trade restrictions.

If the conclusion or fulfilment of the contract (in particular the export of the goods) requires a licence according to the relevant export and import law, our contractual declaration is also subject to the proviso (suspensive condition) that the licence is granted. The customer must indicate any export or import restrictions and provide all information known to them regarding the existence of such restrictions or corresponding sanctions. This obligation also applies prior to and upon conclusion of the contract. In particular, the customer shall inform us of the documents required for import clearance. All documents and information available to the respective contractual partner shall be made available for this purpose, including documents that are necessary for obtaining the required authorisations or for other reasons for the export, transfer and import of the goods (in particular an end-use declaration by the customer). If the granting of a permit is delayed, we shall inform the customer without delay of the delay and (if known) its expected duration. The same applies if the audit of any export or import restrictions is delayed. The due date of our performance or any performance deadlines or delivery dates agreed in the contract shall be postponed according to the duration of the delay. In particular, we shall not be in default due to delays in performance or delivery resulting from export or import restrictions or their audit. Claims for damages against us are excluded in this respect. If the contract ultimately becomes ineffective due to national or international export and import regulations and therefore cannot be fulfilled by us, we shall refund any consideration already received from the customer without delay. In this case, the customer shall have no further claims against us, in particular for performance, damages or reimbursement of expenses. In all other respects, the provisions of § 9 shall continue to apply to claims for damages and reimbursement of expenses by the customer due to a delay in performance or non-performance.

- (5) If, in addition to the delivery date or a delivery period, a handover date is agreed, the handover date shall be postponed by the period by which the delivery date is postponed or delayed.
- (6) If a non-binding delivery date or a non-binding delivery period is culpably exceeded, the customer may request us in writing to deliver within a reasonable period of time, stating that they will refuse to accept the purchased item after the expiry of the period. We shall be in default upon receipt of the request.
- (7) If we are culpably in default with the performance of the service owed by us, this shall only authorise the customer to rescind the contract if it has previously set us a reasonable grace period for performance without success and has pointed out the legal consequences of the intended rescission. In all other respects, § 4 Para. (1) shall apply. Claims for damages and reimbursement of expenses by the customer due to a delay in performance or non-performance shall be governed by § 9.
- (8) If the service owed by us is not available, we shall be entitled to withdraw from the contract if the unavailability is not only temporary and we are not responsible for it. Unavailability shall be deemed to exist in particular if we are not supplied or not supplied correctly by our supplier from a congruent covering transaction which we have concluded for the purpose of fulfilling our obligation to perform. The same applies if the service owed cannot be provided from our stock or can no longer be provided. We are obligated to inform the customer without delay of the unavailability of the service and to refund any consideration already received

from the customer without delay. Further claims by the customer are excluded in this case, to the extent permitted by law.

- (9) We are entitled to early performance and to partial performance. We are entitled to invoice early performance and partial performance immediately.
- (10) If only a handover date is agreed, the provisions of the preceding paragraphs shall apply accordingly.

**§ 5 Acceptance; sale by delivery; transport costs; delay in acceptance by the customer; non-acceptance; compensation; model year change and model series change**

- (1) The goods shall be accepted at the respective production site in Saalfeld/Saale or Camburg (place of performance) at our discretion, unless otherwise agreed in the contract. If the customer wishes the goods to be delivered to another location (sale by delivery), they shall bear the costs of shipment. This also includes customs duties, taxes, fees and other public charges. Upon acceptance, the risk of performance and price shall pass to the customer, unless otherwise agreed in the contract.
- (2) Unless otherwise agreed, we shall determine the carrier and the type of shipment in the case of mail order purchases. We shall not be liable for the selection and supervision of the carrier. Nor are we obliged to choose the cheapest or fastest shipping method. We shall only take out transport insurance on the instructions of the customer. A written statement from the customer is required as proof of such instructions. The costs of transport insurance shall be borne by the customer.
- (3) In the case of mail order purchases, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delivery delays shall pass to the customer upon transfer of the goods to the carrier. This shall also apply if partial deliveries are made or if we arrange for transport or have assumed the costs of transport. In the event of damage, we shall assign the claims against the insurance company and/or carrier to the customer. Any further claims against us are excluded.
- (4) If the customer defaults on acceptance or if our performance is delayed for reasons for which the customer is responsible, we may demand compensation for the damage incurred by us (e.g. storage and transport costs). In particular, we shall be entitled to store the goods ourselves and to charge a flat rate of EUR 100.00 for machines or a flat rate of EUR 4.50 per calendar day for other goods from the agreed delivery date or (if no delivery date has been agreed) from the notification of the availability of the goods until their acceptance. The flat rate is payable plus statutory value added tax. The flat rate and the value added tax payable on it may not exceed a maximum total of 5% of the gross purchase price for the goods. The customer reserves the right to prove that we have incurred no damage or only significantly less damage as a result of the storage. We remain entitled to assert further claims and to prove higher damages in connection with the storage of the goods; however, the flat rate shall be offset against this.
- (5) If the customer does not fulfil their obligation to accept delivery, we shall be entitled to compensation according to the statutory regulation. Within the scope of compensation, we shall in particular be compensated for the depreciation of a machine which, irrespective of actual use, occurs at the end of each calendar year (annual jump) or as



a result of a change in the model series (model series change) or within the model series, insofar as this causes us damage. Our claim under Para. (4) remains unaffected. For the calculation of the lump sum pursuant to Para. (4) sentence 2, the acceptance by the customer shall in this case be replaced by the delivery or handover of the machine within the scope of other utilisation by us. However, we shall be entitled, after setting and fruitless expiry of a reasonable deadline, to dispose of the delivery item elsewhere and to supply the customer with a reasonably extended deadline.

#### § 6 Extended reservation of title in our favour

- (1) We retain ownership of the goods until the purchase price has been paid in full. Ownership of the goods shall only pass to the customer once all claims existing at the time of conclusion of the contract and all future claims arising from the business relationship with the customer have been paid. In addition, all claims from subsequent transactions relating to the goods (e.g. remuneration for spare parts deliveries or repairs relating to the goods) must also be paid in full.
- (2) As soon as all claims secured by the (extended) reservation of title have been paid in full, ownership of the goods shall pass to the customer; the reservation of title shall not be revived for claims arising thereafter. During the period of reservation of title, the customer is obliged to treat the goods ("reserved goods") with care and to maintain these. The customer shall have the maintenance and inspection work required by the specifications of the manufacturer and any necessary repairs carried out at their own expense. We or a company recognised by us or the manufacturer shall be commissioned to carry out this work.
- (3) The customer is obligated to take out and maintain, at their own expense, machinery insurance for the goods subject to retention of title, which includes, in particular, fire and theft risk and the risk of damage through liability insurance and comprehensive insurance. Upon request, the customer shall provide us with proof of the conclusion and maintenance of these insurance policies at any time. The customer hereby assigns to us all claims to which they are currently or will in future be entitled against the insurance company or other third parties in respect of the goods subject to retention of title; we accept the assignment. In case of doubt, the assignee shall be the company within our group of companies with which the customer has concluded their contract.
- (4) The customer is only entitled to sell, pledge, transfer ownership by way of security or otherwise dispose of the goods subject to retention of title with our prior consent. Any rental of the goods subject to retention of title also requires our prior consent, which may also be granted in general. The same applies to the export of the goods subject to retention of title or their use outside the Federal Republic of Germany. Written confirmation from us is required as proof of consent (§ 1 Para. (5) applies accordingly).
- (5) The customer must provide us with information about the current location of the goods subject to retention of title upon request. Any change of ownership or location of the goods subject to retention of title must be reported to us without delay and without request. The same applies to any change in the business address of the customer.
- (6) In the event of attachments or other access by third parties to the goods subject to retention of title, the customer must inform the third party of our ownership and notify us without

delay. Insofar as the third party is unable to reimburse us for the judicial and extra-judicial costs of a successful lawsuit (e.g. a third-party objection lawsuit pursuant to Section 771 German Code of Civil Procedure [*Zivilprozessordnung - ZPO*]), the customer shall reimburse us for these costs.

- (7) In the event that the customer processes, transforms, combines with other items, or sells the goods subject to retention of title, the following provisions shall apply in addition:
  - a. If a new item is produced by processing or transforming the goods subject to retention of title, this shall be done on our behalf as the manufacturer. We shall acquire co-ownership of the new item in proportion to the value of the reserved goods to the value of the new item.
  - b. If the reserved goods are inseparably combined with other movable items not belonging to us to form a new item, we shall acquire co-ownership of the new item in proportion to the value of the reserved goods to the value of the other items. If the goods subject to retention of title are combined with an item belonging to the customer and the item belonging to the customer is to be regarded as the main item, the customer hereby transfers co-ownership of the new item to us in the aforementioned ratio.
  - c. The customer shall hold the ownership or co-ownership of the new item arising according to the aforementioned provisions in safekeeping for us. The customer is obliged to provide us with all information necessary to pursue our property rights.
  - d. The legal relationships that existed with regard to the goods subject to retention of title shall continue to apply to the new item. This applies in particular to the expectant right of the customer. For the new item, the provisions of this § 6 shall apply mutatis mutandis.
  - e. The customer hereby assigns to us as security any claims arising from the resale of the goods subject to retention of title or the new item in the amount of the value of the goods subject to retention of title; we accept the assignment (§ 6 Para. (3) sentence 4 applies accordingly). This applies irrespective of whether the resale takes place with or (in breach of contract) without our consent. The customer is obligated to provide us, upon request, with all information necessary for us to assert the assigned claims.
  - f. In the event that the customer combines the goods subject to retention of title with a piece of real estate, the customer hereby assigns to us as security all claims against third parties arising from the combination in the amount of the value of the goods subject to retention of title; we accept the assignment. § 6 Para. (7) e) Sentence 3 applies accordingly.
- (8) If the realisable value of the securities to which we are entitled exceeds our secured claims against the customer by more than 10%, we shall be obliged, at the request of the customer, to release securities of a corresponding amount at our discretion. However, this shall only apply insofar as the securities are divisible.
- (9) If our customer acts in breach of contract, we shall be entitled, in accordance with the statutory regulations, to withdraw from the contract and demand the return of the goods subject to reservation of title. This shall apply in particular if the customer fails to pay due and secured claims despite

the setting of a reasonable deadline or if the customer breaches its obligations under this § 6 despite the setting of a deadline or a warning. A deadline or warning is not required if this is dispensable according to the statutory regulations.

- (10) We may also demand the return of the goods subject to retention of title without rescission, provided that we would be authorised to rescind the contract according to the law or the contract. In this case, we will purchase the goods subject to retention of title from the customer at the estimated value of an expert after giving prior notice. The appraisal costs shall be borne by the customer. We shall be entitled to demand a flat rate of 15% of the net purchase price; however, the customer reserves the right to prove that we have incurred no or only significantly lower appraisal costs. The purchase price shall be offset against our outstanding claims against the customer. We shall be entitled to issue the customer with a corresponding credit note.

#### **§ 7 Further rights of rescission and rights of termination on the part of the customer; restrictions**

- (1) In the event of a breach of obligations that does not consist of the delivery of defective goods, the customer may only withdraw from or terminate the contract if we are responsible for the breach of obligations. The customer's free (statutory) right of termination is excluded.
- (2) The customer shall have no right to rescind the contract for economic reasons that lie within its sphere of risk. In particular, the customer shall not be entitled to rescind or terminate the contract because its financial circumstances have deteriorated or its order situation or the possible uses and applications of the goods have changed.
- (3) Otherwise, the legal requirements and legal consequences of the customer's rights of rescission and rights of termination remain unaffected, unless explicitly provided otherwise in the contract or in these GTC.
- (4) If the contract is not performed for reasons for which the customer is responsible or at the instigation of the customer, we shall be entitled to compensation according to the statutory regulations.

#### **§ 8 Our right of rescission; claim for compensation for use and damages**

- (1) We are authorised to rescind the contract according to the statutory provisions. This applies in particular if the customer is in default of payment of a claim against us in whole or in part or if, despite a deadline being set or a warning being issued, the customer breaches significant provisions of the contract or the GTC.
- (2) We are authorised to rescind the contract if we have not yet rendered the service owed and it becomes apparent after conclusion of the contract that our claim for payment is at risk due to the inability of the customer to pay. This is particularly the case if the customer has made a statutory declaration (before or after conclusion of the contract) or if enforcement proceedings have been initiated against them. In this case, rescission is only permissible if we have unsuccessfully set the customer a reasonable deadline to effect payment in return for our performance or to provide security for this. The setting of a deadline is not required if this would also be dispensable as a condition for rescission under the law.

- (3) We are authorised to rescind the contract if the customer suspends payments or their financial circumstances deteriorate significantly. The same applies if an application for the opening of insolvency proceedings against the assets of the customer is filed or rejected, or if the insolvency proceedings are discontinued for lack of assets.

- (4) In the event of rescission of the contract, we shall be entitled to compensation for use if the customer has received the goods. The amount of compensation for use shall correspond to the amount of the usual rent that the customer would have had to pay if they had rented the goods or a comparable item for the period until their return to us. However, if we have financed the purchase price, the compensation for use shall be at least equal to the sum of all down payments and purchase price or financing instalments that were owed to us under the terms of the purchase or financing agreement up to the time the goods were returned to us. The customer reserves the right to prove that we have incurred no damage or only significantly less damage.

- (5) We reserve the right to assert further claims for damages or compensation for use. However, payments made by the customer pursuant to § 7 Para. (4) shall be offset against further claims for compensation for use.

#### **§ 9 Claims for damages and reimbursement of expenses by the customer**

- (1) Our liability for damages and reimbursement of expenses shall be governed by this § 9. This applies both to our contract liability and to our liability arising from tort or other legal grounds.
- (2) For damages resulting from an intentional or grossly negligent breach of obligations on our part, on the part of our legal representatives or vicarious agents, we shall be liable according to the statutory provisions.
- (3) We shall only be liable for damages resulting from a negligent breach of obligations on our part, on the part of our legal representatives or vicarious agents if:
- significant contractual obligations are breached, but limited in amount to the damages foreseeable at the time of conclusion of the contract and typical for the contract. These are obligations whose fulfilment is significant for the proper execution of the contract and on whose compliance the customer regularly relies and may rely. Obligations arising from the nature of the contract and whose breach jeopardises the achievement of the purpose of the contract are also significant.
  - Obligations to respect the rights, legal interests and interests of the customer are breached and the customer can no longer be expected to accept our performance.
- (4) Otherwise, our liability for simple negligence is excluded. If we are liable on the merits pursuant to § 9 Para. (3), our liability is limited to the amount of the foreseeable damage typical for this type of contract. If the customer is an entrepreneur, this limitation of liability also applies to cases in which we are liable pursuant to § 9 Para. (2) for breaches of obligations by simple vicarious agents (who are not our legal representatives or executive employees). Compensation for consequential damages, such as lost profits, is excluded in each case. Claims for damages in lieu of performance are excluded in cases of slight negligence.

- (5) If we are liable (even without fault), liability is also limited to the foreseeable damage typical for this type of contract. § 9 Para. (4) sentences 3 and 4 also apply in this case.
- (6) The above exclusions and limitations of liability in § 9 Para. (3) to (5) do not apply to the following damages and claims:
  - a. Damages resulting from injury to life, limb or health;
  - b. Claims by the customer under the German Product Liability Act;
  - c. Claims due to fraudulently concealed defects or arising from a quality guarantee assumed by us;
  - d. All other cases in which the statutory liability rules are mandatory.
- (7) If, while we are in default, delivery becomes impossible by chance, we shall be liable with the liability limitations agreed above. We shall not be liable if the damage would have occurred even if delivery had been made on time.
- (8) The regulations in this § 9 also apply to any personal liability of our organs, representatives and vicarious agents.
- (9) Claims based on data protection law are not covered by this liability regulation.

**§ 10 Set-off; rights to refuse performance and rights of retention; prohibition of assignment**

- (1) The customer may only offset our claims with undisputed or legally established claims. The customer may only assert rights to refuse performance or rights of retention on the basis of undisputed or legally established claims. This also applies to the commercial right of retention pursuant to Sections 369 to 372 HGB.
- (2) Otherwise, rights of retention may only be asserted if our claim and the counterclaim of the customer are based on the same contractual relationship.
- (3) In the cases specified in § 10 Para. (1) and (2), the customer's right to offset our claim for remuneration for a defective or incomplete service with justified counterclaims for the costs of rectifying defects or completing the service to which they are entitled, or to assert the defence of non-performance of the contract for this reason, remains unaffected. However, the customer may only retain a proportionate part of the remuneration, taking into account the defect or incompleteness.
- (4) Assignment of claims against us is only possible with our consent. Written proof of consent is required (§ 1 Para. (5) applies accordingly). In particular, the assignment of the customer's claim for delivery or performance without our consent is excluded.
- (5) The customer undertakes not to assign the claims arising from the purchase contract and not to resell the vehicle within 4 (four) months of receipt of the vehicle, unless this sale is not carried out for commercial purposes. If the customer sells the goods within the blocking period or otherwise disposes of them, the buyer shall pay us an additional amount of a further 5% of the price (additional payment) within 10 business days from the date on which the revenue from the sale or disposal is received by the customer (or a member of the customer's group). This paragraph shall not apply if the customer is an authorised dealer of ours.

**§ 11 Leasing entry**

- (1) If we agree to a leasing company's entry into a lease as requested by the customer, the customer undertakes to audit the delivery item for defects and to complete all necessary declarations for acceptance and transfer without delay, at the latest within 3 days and in accordance with the lessor's requirements.
- (2) In the event of justified rescission by the lessor for reasons for which the customer is responsible, the original contract between the customer and us shall come back into force. Otherwise, the customer and the lessor shall be jointly and severally liable for the purchase price claim.

**§ 12 Special and additional provisions for maintenance, service and repair services**

- (1) The scope of the aforementioned conditions in §§ 1 to 11 also extends in principle to maintenance, service and repair work ("services"), unless otherwise specified in the maintenance, service or repair contract or separately below.
- (2) Upon completion of the services and after notification of completion by us, acceptance shall take place without delay. A report shall be drawn up on the acceptance, including proof of performance, and signed by both contractual parties. If the customer does not meet the agreed acceptance date, the service shall be deemed to have been accepted.
- (3) We accept no warranty or liability for culpable behaviour on the part of persons provided by the customer. Such persons are vicarious agents of the customer.
- (4) In the event of assembly errors for which we are responsible, the customer shall be entitled to free rectification. Any further claims for damages are excluded pursuant to the provisions of § 9.
- (5) If binding deadlines are set for services, these shall only commence once the customer has fulfilled all obligations to cooperate. In the event of culpable breaches of deadlines by us, the customer shall set a reasonable grace period in writing. After expiry of this period and the setting of a new deadline, the customer may withdraw from the contract. Claims for compensation for damage caused by delay are excluded, unless they are based on intent or gross negligence. Subsequent change requests from the customer shall be carried out at the expense of the customer within the scope of what is possible and reasonable. They shall extend the deadlines according to their effects.
- (6) Additional expenses beyond the scope of the order placed, in particular for modified services and other unforeseeable complications that are the responsibility of the customer, shall be remunerated separately according to expenditure.
- (7) After acceptance, the invoice for the services is due for payment. We have a right of retention on the respective contractual object, in particular on the suction dredger itself, until the full invoice amount has been paid.
- (8) Claims for defects for services within the meaning of § 12 shall become statute-barred six months after acceptance.

**§ 13 Written form; severability clause; choice of law; place of jurisdiction**

- (1) A written agreement is required to prove the content of amendments, additions or subsidiary agreements to the contract. The same applies to proof of an agreement that deviates from sentence 1.
- (2) Should individual provisions of the contract or the GTC be or become invalid or unworkable in full or in part, this shall have no effect on the validity of the remaining provisions. The parties shall replace the invalid or unworkable provision with an agreement that shall as far as possible correspond to the economic and legal intent of the provision in a legally permissible manner. The same applies if a loophole requiring supplementation should become apparent.
- (3) The legal relationship between the customer and us shall be governed by the law of the Federal Republic of Germany. The application of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG), is excluded.
- (4) The national and international place of jurisdiction for all disputes arising from and in connection with the contract is Saalfeld/Saale, provided that the customer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law. This place of jurisdiction is exclusive for legal actions. We are also authorised to sue the customer at their general place of jurisdiction.