

# MotoRad GmbH

## GENERAL TERMS & CONDITIONS OF SALE

Updated as of September \_\_, 2017

### 1. Definitions

1. The following capitalised terms shall have the meanings ascribed to them below:
  - 1.1. "**General Terms**" shall mean these General Terms and Conditions of Sale as may be updated from time-to-time.
  - 1.2. "**Offer**" shall mean the formal offer that the Seller issued to the Purchaser for sale of Products and that is referred to in the PO.
  - 1.3. "**PO**" shall mean a purchase order issued to the Seller by the Purchaser for the purchase of Products.
  - 1.4. "**Products**" shall mean products of the Seller that are subject to a PO issued to the Seller by the Purchaser.
  - 1.5. "**Purchase Price**" shall mean the aggregate price payable for all Products ordered under a PO as provided for in the applicable Offer.
  - 1.6. "**Purchaser**" shall mean the individual or entity that issues the Seller with a PO for Products.
  - 1.7. "**Seller**" shall mean MotoRad GmbH.
2. **Applicability.** These General Terms shall be automatically incorporated in all Offers and POs. Upon the Seller's formal acceptance of a PO in accordance with Section 3 below, the PO, the relevant Offer and these General Terms shall form a contract of sale between the Seller and the Purchaser pursuant to which the Seller shall sell and deliver the Products to the Purchaser and the Purchaser shall pay for the Products (the "**Sale Contract**"). Where any terms of the Offer conflict with these General Terms, the terms of the Offer shall prevail. No part of the PO that conflicts with these General Terms or the Offer shall be incorporated into a Sale Contract, nor shall any additional terms contained on the PO or any other document issued by the Purchaser or any other party be incorporated into a Sale Contract and all such conflicting and additional terms are expressly rejected. The Seller's acceptance of a PO that contains any such conflicting or additional terms shall not be understood to be an acceptance of such terms under any circumstances and by issuing POs for Products to the Seller, the Purchaser hereby acknowledges and agrees that such terms are not incorporated into the Sale Contract.
3. **Issuance and Acceptance of POs.**
  - 3.1. POs must be sent to the Seller, either via email or fax using the contact details provided in the relevant Offer (the "**Seller Contact Details**"). POs must refer to the specific Offer to which they relate and must contain on their face the Products ordered, quantities, prices payable as quoted in the Offer, required delivery dates, which must be consistent with any lead times set out in the Offer and email or fax details for Seller to communicate to the Purchaser the acceptance or otherwise of the PO ("**Purchaser Contact Details**").
  - 3.2. The Seller shall indicate acceptance of POs or request changes to the PO before acceptance by written notice to the Purchaser Contact Details. The Seller is under no obligations to accept any PO and the Seller shall not be deemed to have accepted a PO until it has indicated its acceptance as aforesaid. Until such time, the PO is not binding on the Seller and the Purchaser may withdraw the PO by written notification to the Seller Contact Details.

#### 4. Delivery

- 4.1. If a Sale Contract requires the Purchaser to pay the full Purchase Price or part of the Purchase Price in advance of delivery of the Products or that payment is to be made by letter of credit, then until such time as the Seller receives the required payment in its bank account or the letter of credit meeting the terms contained in Section 6.2 below has been confirmed to the Seller by the confirming bank ("**Payment Conditions**"), the Seller shall not be obligated to make delivery. Any delay in fulfillment of all Payment Conditions shall cause a commensurate delay in any delivery dates contained in the Sale Contract. If the Purchaser does not fulfill the Payment Conditions within 30 days of acceptance of the PO, then the Seller shall be entitled to terminate (*ontbinden*) the Sale Contract by written notice to the Purchaser.
- 4.2. Unless specifically stated otherwise in the Offer, delivery of the Products shall be ex works, Seller's facilities in Erfstadt Germany under Incoterms 2010. The Seller shall notify the Purchaser when the Products are ready for collection and the Purchaser shall arrange for collection of the Products within the next 20 days. If the Products remain uncollected after 60 days, then the Seller may terminate (*ontbinden*) the Sale Contract by written notice to the Purchaser and the Purchaser fails to collect the Products in another 5 business days. Following any such termination, the Purchaser shall be liable to the Seller for the total storage costs and all other costs reasonably incurred by the Seller arising from the Purchaser's failure to complete the Sale Contract ("**Damages**"). If the Purchaser had made any payments in advance, then the Seller shall return the payment to the Purchaser less all Damages. If no such payments were received in advance, the Purchaser shall still be liable to the Seller for the Damages.
- 4.3. Products shall be packaged for normal commercial transportation throughout Europe. If packaging must meet any other requirements, then the Purchaser must inform the Seller of this prior to or as soon as possible following the issue of the PO and additional costs shall apply.

#### 5. Acceptance and Rejection

- 5.1. The Purchaser shall have 30 days following delivery to ensure that the Products and quantities match the PO requirements and to notify the Seller in writing if there are any discrepancies. Where no such notice is delivered within the 30 days, the Purchaser shall be deemed to have accepted the Products, whether or not they conform to the PO.
- 5.2. The Seller shall make good any non-conformances reported to it as soon as reasonably possible following receipt of notice thereof from the Purchaser and, where the non-conformance is that the Products do not match what was ordered, following the receipt by the Seller of non-conforming Products. The Seller shall refund the Purchaser for reasonable costs of returning non-conforming items to the Seller's facilities, provided that such costs are first approved in writing by the Seller. There shall be no retroactive approval and costs incurred prior to approval of the Seller shall not be reimbursable.
- 5.3. Unless otherwise agreed in writing, the Seller is not liable for damages and losses to Products during transportation and the Seller's sole responsibility in such circumstances shall be to provide the Purchaser with any reasonable assistance that it may require in connection with the Purchaser making claims under its insurance policies. If a delivery term is included in a Sale Contract that imposes responsibility on the Seller for damages and losses sustained in transport, then this shall only be to purchase appropriate insurance on commercially reasonable terms, determined at its sole discretion, and to the extent the Seller has purchased such insurance, the Seller's responsibility for any such damage shall be limited to paying over to the Purchaser any amounts it receives from the insurance in connection with the losses.

#### 6. Price and Payment Terms

- 6.1. The prices and payment terms are as quoted in the applicable Offer and if not in the

Offer, then in the Seller's then effective price list. Prices are quoted net of Value Added Tax and any customs and duties, all of which shall be added to the invoice where applicable. Price list prices may be updated at any time by the Seller and will be effective in connection with POs issued after the date of change. Prices quoted in an Offer that is intended to cover multiple POs over a period of time are subject to change in cases of increases in the cost of raw materials, labor and other applicable costs. Price changes shall be effective when notified in writing to the Seller and shall apply to all POs issued 30 days after the date of the notice.

- 6.2. If the Sale Contract calls for payment by letter of credit, then the Purchaser shall cause the issuance in favour of the Seller of an irrevocable letter of credit issued by a first-class bank in Europe and confirmed by a first class bank in Germany. The form of the letter of credit must be acceptable to the Seller and the Seller should therefore be presented with the proposed form of letter of credit before or at the latest, with the issuance of the PO under Section 3 above. Costs of issuing the letter of credit shall be for the sole account of the Purchaser. Payment shall only be considered as made once the Seller has received the funds from the issuing or confirming bank into its own bank account. If the Seller experiences difficulties with receiving payment under the letter or credit that is not related to failure to deliver the Products according to the terms of the Sale Contract, then the Seller may request that the Purchaser make the payment promptly in immediately available funds in euros by wire transfer and the Seller shall cancel the letter of credit.
- 6.3. Where the Sale Contract provides for payment to be made following delivery, then payment shall be made within 30 days of the date of the relevant tax invoice.
- 6.4. All payments made by other than letter of credit shall be made by wiring the required amount in readily available funds in euros to the Seller's bank account, the details of which is contained in the relevant Order or shall otherwise be obtained directly from the Seller. Any attempt to make payments by other means is automatically rejected unless prior agreed to in writing by the Seller.
- 6.5. The Seller shall be entitled to charge interest on any payments that are overdue as further set out in article 6:119a of the Dutch Civil Code. Once payable, the interest shall accrue for all days in which the payment is in delay.

## **7. Retention of Title.**

- 7.1. Title to the Products shall pass to the Purchaser upon the Seller's full receipt of payment under Section 6 above. The Seller hereby grants to the Purchaser the right to sell the Products before title passes to the Purchaser, whether as stand-alone items, or bundled with or incorporated into other items, provided however that all proceeds of such sales (the "**Proceeds**") shall belong solely to the Purchaser until title to the Products passes in accordance with this Section 7. The Seller shall be entitled to obtain liens against the Purchaser's bank accounts in respect of the Proceeds, but only once interest becomes payable on overdue amounts in accordance with Section 6.5 above. The Purchaser shall also be responsible for fully reimbursing the Seller against all costs and expenses incurred by the Seller in seeking the lien including attorneys' fees and court costs.
- 7.2. The Purchaser shall be fully liable for any and all losses and damages to the Products while in the Purchaser's custody or control and before title passes to the Purchaser.

## **8. Warranty**

- 8.1. The Seller represents solely to the Purchaser that all Products are free of defects in material and workmanship and that subject to the provisions stated in Section 8.2 below, the Seller shall repair or replace, as it shall determine at its sole discretion, any Product that does not conform to this warranty, provided that the Purchaser notifies the Seller in writing of the defect within 10 days of the defect arising, providing the Seller

with details of the defect and its discovery and if the Seller requires, the Purchaser shall also ship the defective Product to the Seller for inspection. Costs of shipment will be at the sole expense of the Purchaser unless the Seller confirms that the Product is defective and only if the costs were first prior approved by the Seller.

8.2. The Seller's obligations under the warranty (*garantie*) provided in Section 8.1 above shall expire and no longer apply if:

8.2.1. the defect occurs more than 12 months following delivery of the Product;

8.2.2. the Seller finds evidence that the Product was not used for its intended purpose, abused or otherwise was not used in accordance with applicable instructions of the Seller;

8.2.3. the Seller finds evidence that persons other than personnel of the Seller attempted to repair the Product; or

8.2.4. the Seller finds evidence that the Product has been damaged in an accident of any kind.

8.3. In addition to the above, the Seller warrants (*garandeert*) that the Products meet with all health and safety requirements under the laws of Germany specifically and the laws of the European Union (EU) as applicable to all member states, but the Seller makes no representation and warranty regarding Product compliance with the laws, regulations and rules of individual member states in so far as they deviate from or add to the laws of the EU or with the laws of any non-EU country. Subject to Section 9 below, the Seller shall indemnify (*vrijwaren*) the Purchaser and keep it harmless from the costs incurred as a direct result of the Products' non-compliance with German or EU law. However, the Purchaser is solely and exclusively responsible for ensuring that the Products comply with all applicable laws not covered under the warranty in this Section 8.3.

9. **LIMITATION OF LIABILITY.** EXCEPT AS PROVIDED FOR IN SECTION 8 ABOVE, NO WARRANTIES ARE IMPLIED INTO THESE GENERAL TERMS, ANY OFFER, PO OR SALE CONTRACT AND ALL OTHER WARRANTIES OF ANY KIND AND NATURE ARE HEREBY EXPRESSLY EXCLUDED. SECTION 8.1 PROVIDES THE SELLER'S SOLE LIABILITY FOR DEFECTS IN ANY OF THE PRODUCTS. TO THE EXTENT THAT MOTOR VEHICLES AND OTHER END-SYSTEMS THAT INCORPORATE THE PRODUCTS SHOULD INCLUDE WARNINGS AND FAIL-SAFE SYSTEMS TO DETECT DEFECTIVE PRODUCTS INSTALLED IN THEM AND TO PREVENT ANY DAMAGE CAUSED THEREBY, IT IS AGREED AND ACKNOWLEDGED THAT DAMAGE TO PROPERTY, INJURY OR DEATH TO ANY PERSON CANNOT BE CONSIDERED TO BE A DIRECT CAUSE OF A DEFECTIVE PRODUCT AND THEREFORE THE SELLERS SHALL NOT BE LIABLE FOR ANY SUCH DAMAGE TO PROPERTY, INJURY OR DEATH TO ANY PERSON. IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY DAMAGES INDIRECTLY ARISING FROM A BREACH OF A SALE CONTRACT OR THAT COULD NOT OTHERWISE BE REASONABLY FORESEEN AS ARISING FROM ANY SUCH BREACH. IN NO EVENT SHALL THE SELLER'S LIABILITY BE GREATER THAN THE PURCHASE PRICE INCLUDED IN THE RELEVANT SALE CONTRACT. TO THE EXTENT THAT ANY PART OF THIS SECTION 9 IS UNENFORCEABLE BY REASON OF ANY APPLICABLE LAW, RULE OR REGULATION, THE EFFECT OF SUCH PART SHALL BE LIMITED AS MUCH AS IS REQUIRED SO THAT IT IS ENFORCEABLE.

10. **Confidentiality.** The Seller and Purchaser each agree to keep all information of a confidential nature that they receive from the other as strictly confidential and they shall not use the information or disclose it to any other party except as is consistent with the specific reasons for its disclosure to them. No such information shall be disclosed to third parties without the express prior written permission of the disclosing party and only once the

intended recipient has entered into a suitable non-disclosure agreement with the disclosing party. To avoid doubt, all information contained in Offers and the related or same information in POs is the confidential information of the Seller. This Section 10 shall survive any termination of relevant Sales Contracts to the maximum extent enforceable by law.

## 11. General Provisions

- 11.1. **Governing Law and Jurisdiction.** These General Terms and the Sale Contract are governed by the laws of Germany, if the Purchaser is based in Germany and in all other cases, the Netherlands, in each case without reference to the applicable conflicts of laws principles. Any dispute relating to an Offer, PO or Sale Contract shall be finally determined by the solely and exclusively by the appropriate courts of Dusseldorf, Germany where German law governs and Amsterdam, the Netherlands, where Dutch law governs provided however, that to obtain liens in accordance with 7.1 or to obtain injunctions or other equitable relief when the same may be appropriate, the Seller may elect to have these General Terms and the Sale Contract governed by the laws of another country with the questions regarding the imposition of liens or awarding of injunctions and other equitable relief determined by the sole and exclusive courts of that other country.
- 11.2. **Sole Agreement.** Each Sale Contract is the sole agreement between the parties relating to the sale and supply of the Products ordered thereunder. To the extent any prior or contemporaneous agreements relating to the same subject matter exist between the Parties, they are replaced in full by the Sale Contract.
- 11.3. **Amendments.** No Sale Contract may be amended unless the amendment is in writing and signed by both of the Parties. The Seller may amend any Offer at any time prior to receipt of the PO that refers to the Offer by sending written notice thereof to the Purchaser. The Seller may amend these General Terms at any time by publishing updated terms on its website. The amended General Terms shall apply to all POs issued after the date of the revised General Terms, so repeat Purchasers are encouraged to review the General Terms before issuance of each PO.
- 11.4. **Waivers.** No waiver of any rights shall be effective unless made in writing and signed by the party intending to waive its rights.
- 11.5. **Notifications.** Any notices to be delivered in connection with Sales Contracts shall be delivered to the Seller – to the Seller Contact Details and to the Purchaser – to the Purchaser Contact Details.
- 11.6. **Force Majeure.** Neither party shall be liable for any delay or non-performance of any of its obligations that are caused by force majeure events as referred to in article 6:75 of the Dutch Civil Code, such as strikes, work stoppages, accidents, acts of war or terrorism, earthquakes and other acts of God. In the event that any such force majeure event delays the Seller from delivering Products, the applicable delivery schedule shall be adjusted for the period of time in which the force majeure event remains effective.
- 11.7. **Severance.** If any court of competent jurisdiction holds that any part of a Sale Contract is invalid or unenforceable, then that part will be deemed removed therefrom and the remaining parts of the Sale Contract shall remain in full force and effect and treated as if such invalid part had never been included. Where possible, the removed part shall be replaced with a new part that as closely as possible reflects the original intention of the parties without itself being invalid.