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## **BorgWarner Akasol GmbH ("BorgWarner")** **GENERAL TERMS OF SALE AND DELIVERY**

### **1. General information / Scope**

1.1 These General Terms of Sale and Delivery ("conditions") shall apply for all future contracts of BorgWarner with the customer about the provision of deliveries and services ("deliveries") by BorgWarner. All deliveries shall take place on the basis of these conditions. Contradictory conditions or conditions deviating from these conditions or supplementary conditions shall be excluded and shall apply only if and to the extent that BorgWarner has explicitly consented to them in writing. This shall apply even if BorgWarner has not explicitly objected to the validity of such contradictory or deviating conditions or has executed deliveries without reservation.

1.2 These conditions shall apply exclusively for the business transactions with companies within the meaning of § 14 BGB [German Civil Code], with legal entities under public law as well as with special funds under public law ("customer").

1.3 Within the framework of an ongoing business relationship, these conditions shall also apply for all future transactions about deliveries between BorgWarner and the customer.

1.4 BorgWarner shall reserve the right to amend conditions, which have become a part of the contract. An amendment of the conditions shall become part of the contract made between BorgWarner and the customer if

- (i) BorgWarner notifies the amendment to the customer and
- (ii) the customer does not object to an amendment in writing within two weeks from the receipt of the amendment notification, whereby BorgWarner shall point out the legal consequences of a failure to object in the amendment notification.

### **2. Conclusion of the contract**


2.1 All offers from BorgWarner shall be without engagement and non-binding unless they are explicitly marked as binding.

2.2 The conclusion of the contract shall require a written declaration from BorgWarner. The written form requirement shall be deemed fulfilled if the declaration is sent via electronic data transmission (e.g. EDI), via an SAP document, by e-mail as a PDF document or by fax. This written form requirement shall also concern post-contractually made verbal and other agreements.

2.3 Individual agreements with the customer made in individual cases (including collateral agreements, supplements and amendments) shall, in any case, take precedence over these conditions. BorgWarner's written contract or written confirmation shall be decisive for the content of such agreements.

2.4 Legal declarations and notices to be given from the customer to BorgWarner after the conclusion of the contract (e.g. setting of deadlines, reminders, declarations of withdrawal) shall only be valid if given in writing.

2.5 Orders of the customer must be free of charge for BorgWarner. BorgWarner can accept an order of the customer within two weeks from its submission. The customer shall be bound to its order until the end of this period. Silence from BorgWarner shall not justify reliance on the conclusion of the contract. If the order confirmation from BorgWarner reaches the customer late, the customer must inform this to BorgWarner immediately.

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2.6 If the content of the customer's order deviates from that of BorgWarner's offer, the customer must particularly highlight this in the order; such deviations shall become part of the contract only if BorgWarner accepts these in writing.

2.7 BorgWarner shall be entitled to change the time and place of delivery as well as the type of packaging at any time through a written notification with a notice of at least one week before the agreed delivery date.

2.8 Illustrations, cost estimates, drawings, calculations and other documents shall remain property of BorgWarner and, as long as these are copyrightable, BorgWarner shall retain the copyright to them. Before their disclosure to third parties, the customer shall require explicit prior consent from BorgWarner.

### **3. Prices and payment terms**

3.1 The agreed prices shall be binding and EXW BorgWarner, excluding packaging; this shall be charged separately. The VAT shall be charged additionally. If a price is not explicitly stated, the prices in accordance with BorgWarner's price list valid at the time of conclusion of the contract shall apply.

3.2 If there are cost changes after the conclusion of the contract due to wage agreements, price increases of upstream suppliers or fluctuations in the exchange rate, BorgWarner shall be entitled to adjust the prices accordingly. These price changes shall be informed to the customer in writing no later than four weeks before the new prices enter into force. If the customer does not object within one week from the announcement of the new prices, these shall be deemed accepted. This shall not apply if a fixed price has been agreed.

3.3 Unless otherwise agreed upon, the purchase price must be paid at the latest within 30 days from the invoice date without deduction of a discount.

3.4 In case of non-compliance with the payment terms or if BorgWarner becomes aware after the conclusion of the contract that the payment claim is endangered due to the customer's lack of capacity, BorgWarner shall be entitled to execute outstanding deliveries only against advance payment or security deposits.

3.5 Retention of payments or offsetting with claims of the customer, which are contested, not recognized and not legally ascertained by BorgWarner, shall be ruled out.


3.6 If the customer is in default with the payment, the legal compensation for default damages pursuant to § 288 BGB plus the statutory interests, § 288 para. 2 BGB, shall apply.

### **4. Execution of deliveries**

4.1 The commencement of the agreed delivery period shall require clarification of all technical and commercial questions. The delivery period shall be deemed fulfilled if, up to its expiry, the object of delivery has left BorgWarner's plant or the readiness for dispatch has been notified to the customer.

4.2 Compliance with the delivery period shall be subject to the proviso of correct and timely supply to BorgWarner; BorgWarner shall inform any potential delays as soon as possible.

4.3 If the dispatch is delayed due to circumstances to be attributed to the customer, the customer shall be charged, from the 14th day calculated from the day of notification of the readiness for dispatch, the storage costs accrued with third parties and, in case of a storage with BorgWarner, at least 1% of the invoice amount per month or the actually

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incurred costs if these can be determined.

4.4 After fruitless expiry of a granted grace period, BorgWarner shall be entitled to dispose of the object of delivery otherwise and to supply to the customer with a reasonable extension of deadline.

4.5 Compliance with the delivery period shall require fulfilment of the customer's obligation from the purchase contract.

## **5. Acceptance, transfer of risk**

5.1 The risk shall be transferred to the customer when the object of delivery is handed over to the forwarder, carrier or collector, however at the latest when the object of delivery leaves BorgWarner's plant. Upon written request of the customer, BorgWarner shall insure the cargo against breakage, transport, fire and water damage at the customer's costs.

5.2 Unless otherwise agreed upon, the customer shall be responsible for observing legal and official provisions regarding import, transport, storage and use of the objects of delivery.

5.3 If the dispatch is delayed due to circumstances that are not attributable to BorgWarner, the risk shall be transferred to the customer from the day of readiness for dispatch. Upon written request of the customer, BorgWarner must insure the object of delivery against damage. The costs shall be borne by the customer.

5.4 Unless the delivered objects have significant defects, they must be received by the customer without prejudice to the rights from no. 8 of these conditions.

5.5 Part deliveries shall be permissible as long as they are reasonable for the customer.

## **6. Retention of ownership**


6.1 BorgWarner shall reserve the ownership of the purchased objects until the receipt of all payments from the contract. In the event of non-conforming behaviour of the customer, especially in the event of default of payment, BorgWarner shall be entitled to take the purchased object back. The recall of the purchased object by BorgWarner shall constitute a withdrawal from the contract. Upon recall of the purchased object, BorgWarner shall be entitled to make use of it; the proceeds from the utilisation must be credited against the customer's liabilities – less reasonable costs of utilisation.

6.2 The customer must handle the purchased object with care; in particular, it must adequately insure these objects at own costs at reinstatement value against fire, water and theft damage. If maintenance and inspection work is required, the customer must carry out this work on time at own costs.

6.3 In case of seizures or other third-party interventions, the customer must inform BorgWarner immediately and in writing. The customer may neither pledge the purchased object nor transfer it to a third party as a security. The customer must do everything necessary to prevent seizure of the purchased object before the complete payment to BorgWarner.

6.4 BorgWarner shall release the securities assigned to it upon demand of the customer insofar as the realisable value of the securities exceeds the claim to be secured by more than 10%; BorgWarner shall be responsible to select the securities to be released.

6.5 If the purchased object is processed, mixed or connected with other objects that are not property of BorgWarner, BorgWarner shall acquire co-ownership of the new object in proportion of the value of the purchased object to the other objects at the time of processing, mixing or connection, until full receipt of the payment.

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## **7. Warranty for material defects**


7.1 Defective parts shall be subject to the following stipulations of the warranty by BorgWarner: (i) Series batteries, which show a material defect within 36 months from delivery as a result of a circumstance prior to the transfer of risk, shall be repaired or replaced by BorgWarner at its choice subject to its reasonable discretion. The customer must immediately notify the discovery of such defects in writing. Claims for defects in case of series batteries – on any legal grounds – shall become statute-barred after 36 months from delivery. Deviating from this, the statutory periods shall apply in case of claims pursuant to the product liability law as well as in case of an intentional or fraudulent behaviour. Any replaced parts shall become property of BorgWarner. (ii) Other components and accessories, which show a material defect within 12 months from delivery as a result of a circumstance prior to the transfer of risk, shall be repaired or replaced by BorgWarner at its choice subject to its reasonable discretion. The customer must immediately notify the discovery of such defects in writing. Claims for defects in case of other components and accessories – on any legal grounds – shall become statute-barred in 12 months. Deviating from this, the statutory periods shall apply in case of claims pursuant to the product liability law as well as in case of an intentional or fraudulent behaviour. A warranty extension can be agreed upon between BorgWarner and the customer in writing by way of an individual agreement. Any replaced parts shall become property of BorgWarner. (iii) The customer is aware that prototypes and samples are products that are not yet ready for series production and which are still under continuing development. BorgWarner shall therefore sell prototypes and samples without warranty and under the proviso that they shall not be used in public transport. Knowing these circumstances, the customer is still ready to purchase prototypes and samples and approvingly accepts that it shall have no warranty rights in case of samples and prototypes. It is fully aware of the legal implications and consequences of this agreement.

7.2 No warranty shall be assumed for damage occurring due to the following reasons: (i) Unsuitable or improper use (ii) Faulty assembly or commissioning by the customer or third parties (iii) In the event of faulty or negligent handling of the object of delivery, particularly in view of the given operating instructions (iv) In case of excessive stress and Page 5 from 5 Receipt 2200000804 Date 05.12.2022 (v) In case of use of unsuitable operating materials and replacement material.

7.3 The customer must give the necessary time and opportunity in agreement with BorgWarner for the execution of all repairs and replacements, which BorgWarner considers to be necessary at its reasonable discretion. Otherwise, BorgWarner shall be released from the liability for defects. Only in urgent cases concerning danger to the operating safety, about which BorgWarner must be informed immediately, or if BorgWarner has defaulted with the rectification of a defect, the customer shall have the right to rectify the defect by itself or have it rectified from a third party and demand reasonable reimbursement of the costs from BorgWarner.

7.4 Out of the direct costs resulting from the repair or replacement, BorgWarner shall bear the costs for the replacement part including shipping as well as the reasonable costs for the removal and installation, provided that the complaint is justified.

7.5 Any alterations or maintenance work carried out by the customer or third parties improperly and without prior consent from BorgWarner shall annul the liability for the resulting consequences.

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7.6 Used objects of delivery shall be sold excluding the liability for material defects. This exclusion shall not apply for claims for compensation from liability for material defects that are based on a grossly negligent or intentional violation of obligations by BorgWarner as well as in the event of an injury to life, limb and health.

7.7 Further claims of the customer, especially a claim for compensation for damages, which have not occurred to the object of delivery itself, shall exist only in cases mentioned in number 8.5 of these conditions.

7.8 Unless otherwise agreed upon, BorgWarner shall make domestic deliveries free from property rights and copyrights of third parties. Should there still be a corresponding violation of property rights, BorgWarner shall either acquire a relevant right of use from the third party or modify the object of delivery such that there is no violation of property rights any longer. If this is not possible for BorgWarner at adequate and reasonable conditions, both parties shall be entitled to withdraw from the contract.

7.9 For the rest, the regulations of this no. 7 shall apply accordingly in case of defects of title, whereby claims of the customer shall exist only if it has informed BorgWarner about any claims asserted by third parties immediately and in writing, has recognised a claimed infringing act neither directly nor indirectly, all defences are retained for BorgWarner unrestrictedly, the infringement is not based on the fact that the customer has modified the object of delivery or has used it in a non-contractual way or the defect of title is attributable to an instruction by the customer.

## **8. The customer's rights of withdrawal or reduction as well as other liability of BorgWarner**

8.1 The customer can withdraw from the contract if the service provision becomes impossible for BorgWarner as a whole and definitively. The customer can also withdraw from the contract if, in case of an order of similar items, the execution of a part of the delivery becomes impossible in terms of the quantity and the customer has a legitimate interest in rejecting a part delivery. If this is not the case, the customer can reduce the consideration accordingly.

8.2 If there is a delay in delivery within the meaning of no. 4 of these conditions, if the customer grants BorgWarner a reasonable grace period twice and the grace period is not complied with, the customer shall be entitled to withdraw.


8.3 If the impossibility occurs during the default in acceptance or through a fault of the customer, it shall remain obligated to perform its side of the contract.

8.4 The customer shall also have a right of withdrawal if BorgWarner lets a reasonable grace period provided to it for the rectification of a defect within the meaning of these conditions expire fruitlessly twice. The customer's right of withdrawal shall also exist in other cases of failure of improvement or replacement by BorgWarner.

8.5 Further claims for compensation for damages of any kind, namely even such damages that have not occurred to the object of delivery, shall exist only

- (i) in case of intent,
- (ii) in case of gross negligence by senior executives or the Management Board,
- (iii) in case of injury to life, limb or health,
- (iv) in case of culpable breach of obligations, whose fulfilment facilitates proper execution of the contract in the first place and on whose fulfilment the contracting partner may regularly rely (essential contractual obligations), as long as the achievement of the purpose of the contract is endangered, with regard to the typical contractual foreseeable damage, The typical contractual foreseeable damage shall be



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limited to the simple annual turnover between the parties. In case of a doubt, this must be determined based on the conventional progress of the business relationship between the parties or based on the previous year's turnover.

(v) in cases, where liability is determined pursuant to the product liability law for defects in the object of delivery, for personal injuries or material damages to privately used objects,

(vi) in case of defects, which have been concealed fraudulently,

(vii) within the framework of a guarantee assurance. Further claims shall be excluded.

## **9. Liability for secondary obligations**

If, through BorgWarner's fault, the delivered object cannot be used by the customer according to the contract due to omitted or faulty execution of suggestions and advices given before or after the conclusion of the contract as well as other secondary contractual obligations, especially the instructions for operation and maintenance of the object of delivery, the regulations mentioned in numbers 7 and 8 of these conditions shall apply under exclusion of further claims of the customer.

## **10. Recycling**

BorgWarner would like to point out explicitly that the customer must know and must comply with the regulations of the Battery Law (BattG), in the respectively valid version, or in European countries, the national regulations based on the EU Directive 2006/66. No service based on these general terms of sale of BorgWarner is procured such that BorgWarner has to follow the BattG. The customer shall herewith assure both – the knowledge and compliance with the BattG or in European countries, the national regulations based on the EU Directive 2006/66 – even through corresponding work organisation. BorgWarner shall therefore be liable neither in case of violations of the BattG nor for the compliance with the BattG, if recycling services from third parties are mediated pursuant to the BattG on behalf and upon demand of the customer. At most, this shall be an agency service from BorgWarner, without BorgWarner being responsible for the compliance with the BattG or, in European countries, the national regulations based on the EU Directive 2006/66, nor for the recycling services, their scope and their provision by the third party. BorgWarner shall not provide legal advice on the BattG or, in European countries, on the national regulations based on the EU Directive 2006/66.

## **11. Confidentiality**


11.1 The customer must observe secrecy about all the information, especially know-how and trade secrets, which it obtains from BorgWarner, its affiliated companies or representatives vis-à-vis third parties, as long as the information

(i) is not or does not become generally known without the customer violating these confidentiality obligations,

(ii) was already lawfully known to the customer verifiably before its receipt and without a confidentiality obligation,

(iii) is provided to the customer by third parties lawfully and without a confidentiality obligation or

(iv) as long as BorgWarner has given its prior written consent to a disclosure of the information. The confidentiality obligation shall apply regardless of how the respective information was made accessible, be it verbally, in writing or in any other way. The confidentiality obligation shall also apply for designs, drawings, descriptions,

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specifications, electronic media, software and corresponding documentation, samples and prototypes.

11.2 Confidential information within the meaning of number 11.1 may be used, reproduced and exploited by the customer only in connection with and for the purposes of the contract made with BorgWarner and may be made accessible only to such persons in the business operations of the customer, who must necessarily be involved in its use for the purposes of the deliveries to BorgWarner and who are obligated for confidentiality in a manner comparable to these regulations. The customer must take all necessary measures to ensure that confidential information is not made accessible to third parties without explicit prior written consent of BorgWarner. Upon demand of BorgWarner, all the information originating from BorgWarner must be immediately and completely returned to BorgWarner or destroyed as long as this is technically possible.

11.3 The confidentiality obligation according to this number 11 shall apply for a period of five (5) years after the termination of the contract regardless of the reason for the termination.

## **12. Force majeure**

Events of force majeure shall entitle BorgWarner to postpone the fulfilment of its obligations by the duration of the obstruction due to force majeure and a reasonable start-up time. Events of force majeure shall be the equivalent of all unavoidable events that are not attributable to BorgWarner, especially monetary, trade and other sovereign measures, strikes, lockouts, significant disruptions of operations (e.g. fire, machine breakdown, raw material or energy shortage) as well as obstruction of traffic routes – in each case for not only a short duration, which considerably impede the fulfilment of obligations by BorgWarner or make the same impossible. If events of force majeure or events equivalent to them last for more than three months, BorgWarner and the customer shall be entitled to withdraw from the contract. BorgWarner shall inform the customer about the occurrence and end of such events as soon as possible.

## **13. Miscellaneous**

13.1 Should one or several regulations of these conditions or parts thereof be or become ineffective, this shall not affect the other regulations or their components.

13.2 As long as these conditions

(i) stipulate a written form requirement, the text form (letter, fax, e-mail, etc.) shall be sufficient for the adherence to the written form;


(ii) refer to "days", these shall be calendar days.

13.3 The Incoterms in the version that is valid at the time of conclusion of the contract shall apply for the interpretation of trade clauses.

13.4 Modifications to the contract must be in writing for them to be effective.

13.5 The contractual relationship between BorgWarner and the customer shall be governed exclusively by the law of the Federal Republic of Germany under exclusion of the CISG (United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980).

13.6 Legal domicile for all disputes arising from or in connection with the contractual relationship between BorgWarner and the customer shall be the headquarters of BorgWarner. BorgWarner shall also be entitled to sue the customer before the court that is competent for the customer's headquarters or before another competent court. The

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above regulations shall not apply if an exclusive legal domicile is stipulated according to the law.