

# GENERAL TERMS AND CONDITIONS OF SALE

Valid as of: October 2022

## I. Validity

1. All deliveries, services and offers from SANY Europe GmbH (hereinafter also referred to as "SANY") are made exclusively on the basis of these General Terms and Conditions of Sale. These constitute an integral part of all contracts that SANY enters into with its contractual partners (hereinafter also referred to as "Purchaser") for the deliveries or services it offers. They also apply to all future deliveries, services or offers to the Purchaser, even if they are not separately agreed again. They only apply to entrepreneurs, legal entities under public law or special funds under public law.

2. General terms and conditions of the Purchaser do not apply to the delivery relationship, unless SANY has expressly agreed to their validity in writing. SANY's General Terms and Conditions of Sale apply even if SANY carries out the delivery to the Purchaser without reservation in the knowledge that the Purchaser's terms and conditions conflict with or deviate from SANY's General Terms and Conditions of Sale.

## II. Conclusion of Contract and Subject of Delivery

1. All offers of SANY are subject to change and non-binding, unless they are expressly designated as binding. A binding contract is only formed by a written or electronic order confirmation from SANY. Ancillary agreements or changes require written or electronic confirmation by SANY to be effective.

2. Changes to the design and form of the delivery item are reserved, provided the delivery item is not materially changed and the changes are reasonable for the Purchaser.

3. SANY reserves all rights, in particular ownership and copyright, to all documents, drawings, illustrations, specifications, samples, etc. made available to the Purchaser. The Purchaser may use these exclusively within the scope of the contractually provided purpose. They are to be treated in the strictest confidence and may not be made accessible to third parties without the prior written consent of SANY.

4. SANY is neither obligated to review any requirements of the Purchaser regarding the specifications or design of the delivery item for correctness and completeness or their suitability for the purpose pursued by the Purchaser, nor to examine any materials provided by the Purchaser for the production of the delivery item for defects.

## III. Prices and Payment

1. The prices agreed between SANY and the Purchaser apply to the contractually agreed scope of service and delivery. Any additional or special services will be charged separately. Unless the parties expressly agree otherwise, the prices are understood to be in euros EXW Bedburg (Incoterms 2020) plus packaging, transport and statutory value-added tax. Any customs duties, taxes, fees or similar charges will be charged separately to the extent they are to be borne by SANY.

2. Services commissioned by the Purchaser (e.g. assembly work, commissioning) will be charged separately by SANY on the basis of the applicable service price list plus allowances, travel costs and other expenses.

3. If the raw material prices of the goods concerned or energy, wage, transport or insurance costs change materially (i.e. by at least 10%) after SANY has submitted the offer, after the order has been confirmed

or after SANY has entered into a master agreement with a fixed price agreement, then SANY shall be entitled to a reasonable increase in prices, taking into account the legitimate interests of the Purchaser, in particular with regard to any obligations already entered into by the Purchaser to deliver the goods at a certain price.

4. Invoice amounts are to be paid no later than 14 days after the invoice date, in the case of the delivery of spare parts no later than 8 days after the invoice date, in each case in cash without any deductions to the SANY payment office, unless otherwise expressly agreed in writing. In the latter case, the timeliness of the payment is determined by the receipt of the funds by SANY.

5. The Purchaser only has the right to offset if its counterclaims have been legally established, are undisputed or have been recognised by SANY. In addition, it is only authorised to exercise a right of retention insofar as its counterclaim is due and is based on the same contractual relationship.

6. SANY is entitled to only carry out outstanding deliveries against advance payment or the provision of security if circumstances become known which are likely to significantly reduce the creditworthiness of the Purchaser and which, according to SANY's due discretion, endanger the payment of the open, due claims.

7. In the event that SANY manufactures the delivery item for the Purchaser and a payment plan has been agreed, SANY is entitled to suspend the manufacturing process until payment is made if the payment plan is not adhered to. Section IV.4 shall apply mutatis mutandis to the period of suspension of the manufacturing process.

## IV. Delivery and Delivery Period

1. The order confirmation from SANY is decisive for the delivery and assembly periods. The delivery period does not begin before the Purchaser has fulfilled its contractual obligations.

2. SANY is entitled to refuse the handover to the transport person if load securing in accordance with the relevant guidelines of the Association of German Engineers (VDI) on load safety cannot be guaranteed due to the condition of the transport vehicle made available by the transport person or if the transport vehicle does not meet road traffic requirements in SANY's due discretion. The risk of accidental loss shall pass to the Purchaser upon rejection.

3. SANY is entitled to make partial deliveries to a reasonable extent.

4. If shipment or delivery is delayed at the request of the Purchaser or for other reasons for which the Purchaser is responsible after notification of readiness for shipment, SANY may charge the Purchaser storage fees of 0.5% of the price of the delivery items for each month started, but not to exceed 5%. The contracting parties are free to prove higher or lower damages caused by the delay. If SANY proves a higher damage, the storage fee must be offset against the claim for damages.

5. The delivery is subject to the proviso of timely and proper self-delivery.

6. Events of force majeure, e.g. mobilisation, war, riot, pandemic, or similar events for which SANY is not responsible, e.g. strike or lockout, shall entitle SANY to postpone the delivery for the duration of the hindrance and a reasonable start-up time, or to withdraw from the contract in whole or in part with regard to the part that has not yet been fulfilled. This also applies if the aforementioned hindrances occur at a subcontractor or occur while SANY is in default. SANY will notify the Purchaser without undue delay if a case of force majeure occurs. The Purchaser can call on SANY to declare within six weeks whether SANY will withdraw from the contract in whole or in part for the part of the contract that has not yet been fulfilled or whether it will deliver within a

reasonable period of grace. If SANY does not issue a declaration within the period set by the Purchaser, the Purchaser can withdraw from the unfulfilled part of the contract.

7. The delivery by SANY is subject to the proviso that any necessary export permits are issued or that there are no other obstacles to the delivery due to export or transfer regulations to be observed by SANY or a supplier of SANY as exporter/transporter.

8. In the event that SANY and the Purchaser have agreed on liquidated damages and SANY is in default of delivery, the Purchaser is only entitled to withdraw if the delay exceeds the period agreed in the liquidated damages.

## Transfer of Risk and Default of Acceptance

1. Unless expressly agreed otherwise, the risk of accidental loss shall pass to the Purchaser at the latest as soon as the delivery item has been handed over to the transport person named by the Purchaser or the Purchaser is in default of acceptance.

2. If the Purchaser is in default of acceptance or violates other obligations to cooperate, SANY is entitled to deliver to the Purchaser within a reasonable extended period. Statutory claims by SANY due to default of acceptance shall remain unaffected.

## VI. Retention of Title and Consequences of Withdrawal

1. SANY shall retain ownership of the delivery item until all claims against the Purchaser under the business relationship have been settled, including claims arising in the future.

2. The Purchaser may not pledge the delivery item or assign it as security. The Purchaser is obliged to handle the delivery item with care; it is especially obligated to adequately insure it at its own expense against fire, water and theft at replacement value. In the event of attachments or other interventions by third parties, the Purchaser must inform SANY without undue delay in writing and provide all necessary explanations and inform the third party of the existing ownership structure.

3. The Purchaser is entitled to resell the delivery item in the ordinary course of business. However, it hereby assigns to SANY in advance all claims with all ancillary rights in the amount of the value of the delivery item (invoice amount including value-added tax) that accrue to it from the resale to the customer or third parties. SANY is authorised to collect these claims. The authority of the Purchaser to collect the claims itself shall remain unaffected. SANY can demand that the Purchaser notifies it of the assigned claims and debtors, provides all information required for collection, hands over the relevant documents, and informs the debtors of the assignment.

4. The processing or transformation of the delivery item by the Purchaser will always be carried out for SANY. If the delivery item is processed or inseparably integrated with other items that do not belong to SANY, SANY shall acquire co-ownership of the new item in proportion to the objective value of the delivery item to the other processed items at the time of processing or integration. If the integration is effected in such a way that the Purchaser's item is to be regarded as the main item, it is agreed that the Purchaser shall transfer proportionate co-ownership to SANY. The Purchaser shall retain sole or co-ownership on behalf of SANY. In other respects, the same provision shall apply to the item created by processing or integration as to the delivery item delivered subject to reservation.

5. As security for SANY's claims against it, the Purchaser also assigns to SANY those claims which accrue to it against a third party as a result of the integration of the delivery items with a building or property.

6. SANY is obliged to release the securities to which it is entitled at the request of the Purchaser if their realisable value, taking into account customary bank valuation discounts, exceeds the claim to be secured by more than 10%. This is to be based on the purchase prices for goods and the nominal value of receivables.

7. If SANY withdraws from the contract due to behaviour in breach of contract on the part of the Purchaser, in particular due to late payment, the Purchaser shall bear all the costs of repossessing the delivery item.

## VII. Defects, Warranty

1. The Purchaser is obliged to properly comply with its statutory obligations to examine and give notice of defects. The Purchaser must declare any notice of defects to SANY without undue delay in writing, specifying the type and scope of the defect. The Purchaser must also examine the delivered goods immediately upon arrival for transport damage and make a written note of any damage found on the bill of lading, have this complaint countersigned by the transport person and inform SANY of this in writing. SANY is entitled to inspect the allegedly defective delivery item at the Purchaser's site at its own expense or to have it inspected by a third party.

2. If there is a defect in the delivery item, SANY will, at its own discretion, remedy the defect or make a replacement delivery. If the expenses required for the purpose of supplementary performance increase because the delivery items were taken to a place of delivery other than the agreed place of delivery at the instigation of the Purchaser, the additional costs incurred as a result shall be borne by the Purchaser.

3. In case of failure, i.e. the impossibility, unreasonableness, refusal or unreasonable delay of the remedy or replacement delivery, the Purchaser may withdraw from the contract or reduce the purchase price appropriately. A remedy shall be deemed to have failed in particular after the second unsuccessful attempt, unless otherwise indicated by the nature of the item or the defect or the other circumstances. The Purchaser's right of withdrawal is excluded if the defect is only immaterial.

4. For material third-party products, e.g. the truck chassis on which the delivery items are mounted in the case of the sale of a complete vehicle, SANY's liability is limited to the assignment of the claims to which SANY is entitled against the supplier of the third-party product. If the claim against the supplier of the third-party product fails for reasons for which the Purchaser is not responsible (e.g. due to insolvency of the supplier), the Purchaser is entitled to claims for defects against SANY in accordance with the provisions of this section VII.

5. Claims for supplementary performance, price reduction or withdrawal are excluded for used goods, unless SANY has fraudulently concealed the defectiveness or has assumed a warranty for the quality of the used goods. If there are no concrete indications that the used goods could be defective, SANY is only obliged to subject the used goods to a reasonable, professional visual inspection and to check their general functionality before selling them. In this case, SANY will not conduct any further investigations.

6. The Purchaser is entitled to claims for damages solely in accordance with section VIII. of these General Terms and Conditions of Sale.

7. The warranty is void if the Purchaser processes the goods of its own accord or has it processed by a third party without the consent of SANY and this renders remedial measures impossible or unreasonably difficult. In any case, the Purchaser has to bear the additional costs of remedial measures caused by the processing. Furthermore, no

warranty or liability is accepted for damage caused due to the following reasons:

- unsuitable or improper use, use not as intended;
- defective assembly, commissioning or operation by the Purchaser or third parties, unless any assembly or operating instructions from SANY are erroneous;
- changes to the delivery item by the Purchaser or third parties;
- natural wear and tear, unless SANY expressly warrants otherwise;
- improper or negligent handling or storage;
- use of unsuitable operating resources, replacement materials;
- chemical, electrochemical, mechanical, atmospheric or electrical influences, unless they are attributable to a fault of SANY;
- faulty or incomplete documents, in particular samples or drawings, which the Purchaser has made available to SANY for the production of the delivery item or which SANY has to observe during production according to the Purchaser's specifications. SANY is under no obligation to examine the documents provided by the Purchaser for correctness and completeness;
- faulty materials provided by the Purchaser for the production of the delivery item or
- incorrect, incomplete or unsuitable stipulations by the Purchaser regarding the specifications or design of the delivery item.

8. The limitation period for warranty claims for defects is one year from the transfer of risk. For the statute of limitations for claims for damages based on defects of the delivery item, the following provision of section VIII. 7. shall apply.

9. In all other respects, the warranty is based on the separate warranty conditions agreed between the parties.

## VIII. Damages and Limitation of Liability

1. SANY's liability for damages, regardless of the legal reason (in particular due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort) is limited in accordance with this section VIII., insofar as fault is decisive in each case.

2. SANY's liability is excluded in the case of simple negligence, provided that there is no breach of material contractual obligations (obligations whose fulfilment is essential for the proper performance of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely).

3. Insofar as the breach of duty attributable to SANY is due to simple negligence and a material contractual obligation is culpably breached, the liability for damages is limited to the foreseeable damage that typically occurs in comparable cases.

4. SANY's liability for an attributable breach of duty based on intent or gross negligence, for injury to life, limb and health as well as for warranted quality features and in accordance with the provisions of the German Product Liability Act shall remain unaffected.

5. The above limitations of liability shall also apply to breaches of duty by SANY's legal representatives or vicarious agents. Insofar as the supplier's liability is excluded on the basis of the above provisions, this also applies to the personal liability of SANY's employees and vicarious agents.

6. The Purchaser will inform and consult SANY without undue delay and comprehensively if it wishes to assert a claim against SANY in accordance with the foregoing provisions. The Purchaser shall give SANY the opportunity to investigate the case of damage. The contractual partners will agree on the measures to be taken, particularly in the case of settlement negotiations.

7. In the event of injury to life, limb or health, for claims under the Product Liability Act and for claims caused by malicious behaviour, intent, gross negligence or negligent breach of material contractual obligations by the legal representatives of SANY, its executive employees or vicarious agents, the statutory limitation period applies. The limitation period for claims for damages due to defective delivery is one year from the transfer of risk. In other respects, the statute of limitations shall be one year from the end of the year in which the claim arose and the Purchaser becomes aware of the circumstances giving rise to the claim and of the identity of the obligor, or should have become aware thereof without gross negligence.

## IX. Industrial Property Rights

1. If software is included in the delivery item and nothing else has been expressly agreed in writing, SANY shall grant the Purchaser a non-exclusive right to use the software. This right to use the software relates only to the respective delivery item and may only be used with and for this. There is no right to edit or modify the software or to exploit the know-how contained therein. If the delivery item contains third-party software, their license terms shall additionally apply.

2. Unless expressly agreed otherwise, SANY only warrants that the goods in the country of delivery do not infringe any industrial property rights of third parties (hereinafter: Property Rights). If a third party raises legitimate claims against the Purchaser due to the infringement of Property Rights by products delivered by SANY and used in accordance with the contract, SANY shall be liable to the Purchaser within the period specified in section VIII.7 as follows:

a) SANY will remedy the reason for the infringement of Property Rights within a reasonable period of time. To this end, SANY will, at its own discretion, either obtain a right of use for the deliveries in question at its own expense, modify the delivery item in such a way that the Property Right is not violated, or replace it.

b) If the remediation of the infringement of Property Rights fails or if the remediation is not possible under reasonable conditions or is unreasonable for the Purchaser, the Purchaser shall be entitled to the statutory rights of withdrawal or price reduction. SANY's obligation to pay damages is governed by section VIII. of these General Terms and Conditions of Sale.

c) SANY is not liable for claims by third parties due to infringements of Property Rights insofar as these are caused by special specifications by the Purchaser, by an application not foreseeable by SANY or by the fact that the delivery item was modified by the Purchaser or an unauthorised third party or not used on the conditions of use recommended by SANY or the agreed conditions or used together with products not supplied by SANY. In general, SANY is not liable for claims by third parties due to infringements of Property Rights insofar as the Purchaser is responsible for them. If third parties assert corresponding claims against SANY, the Purchaser shall indemnify SANY accordingly.

d) The foregoing obligations of SANY only exist if the Purchaser notifies SANY in writing of the claims asserted by the third party without undue delay, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved to SANY. If the Purchaser stops using the delivery to reduce the damage or for other important reasons, it is obligated to advise the third party that this does not constitute any acknowledgement of an infringement of Property Rights.

e) Claims by the Purchaser are excluded if it is solely or predominantly responsible for the infringement of Property Rights or if the violation of Property Rights is caused by special specifications by the Purchaser, by an application that SANY could not foresee or by the fact that the

delivery was modified by the Purchaser or used together with products not supplied by SANY.

## X. Export Control

1. The Purchaser is obliged to inform the supplier in good time of all information that the latter requests and requires when examining the end destination/end application. The effectiveness of an offer, the conclusion of a contract and the fulfilment of a contract by the supplier are subject to the proviso that there are no obstacles due to applicable national or international provisions of foreign trade or customs law or embargoes (or other sanctions). Tests to be carried out by the supplier or the approval authority can override agreed deadlines and delivery times and extend them by the period of the delay. If the contract cannot be fulfilled at the time of delivery (delivery period including the above delay) due to an applicable provision mentioned above, the contract is deemed not to have been concluded with regard to the affected part. The Purchaser is not entitled to assert claims for damages if the fulfilment does not occur or only occurs late due to one of the obstacles mentioned above.

2. The Purchaser confirms that the supplier's goods and services are used exclusively for civil, non-critical end applications. Upon request, the Purchaser will issue an end-use certificate for the supplier in good time in advance, stating the end application.

3. If the Purchaser intends to continue to redeliver goods (hardware, software, technology and associated documentation, regardless of the type of provision) or services received from SANY, it is obliged to observe the export control regulations. Among other things, the Purchaser confirms that it will refrain from any transaction involving persons, organisations or institutions, etc. who are included in a sanctions list or governed or controlled – in whole or in part, directly or indirectly – by one or more listed/sanctioned persons.

4. In the event of a breach of statutory or contractual obligations, the supplier reserves the right to extraordinary termination of the contract and further legal action.

## XI. Compliance

The Purchaser warrants that it and its shareholders, managing directors, supervisory and advisory boards, employees and other representatives shall comply with statutory provisions and shall in particular take preventive action against criminal and reprehensible behaviour in every direction in the context of its business activities in connection with this contract.

## XII. Data Protection.

Data processing shall be carried out in accordance with the applicable regulations of the German Federal Data Protection Act and the European General Data Protection Regulation. SANY collects, processes and uses the Purchaser's personal data for this purpose. Further information on data processing and data protection can be found in SANY's data protection notice, which can be viewed at <https://www.sanyeurope.com/datenschutz/>.

## XIII. Final Provisions

1. If the Purchaser is a merchant or a legal entity under public law or a special fund under public law, the place of jurisdiction is Cologne. However, SANY is also entitled to sue the Purchaser at another place of jurisdiction.

2. The place of performance for all liabilities arising from the business relationship is 50181 Bedburg, Germany, unless otherwise expressly agreed in writing.

3. The laws of the Federal Republic of Germany apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.

4. If any provision of these General Terms and Conditions of Sale should be or become invalid, then the validity of the remainder of the Terms shall not be affected. The contracting parties undertake in mutual consultation to replace the invalid provision with a provision that approximates the financial result as closely as possible. This provision shall also apply to any gaps in the provisions of these General Terms and Conditions of Sale.