

GENERAL BUSINESS TERMS
of Spitzer Silo-Fahrzeugwerke GmbH, Brühlweg 10, 74834 Elztal-Dallau
(hereinafter: "Spitzer")
Status August 2016

I. General information, contractual offer and conclusion

1. These General Business Terms shall apply exclusively to all current and future business relations between Spitzer and the customer. Other, deviating, opposing, supplementary or negating General Business Terms of the Customer are hereby explicitly objected to. They shall only apply to the extent that Spitzer has explicitly approved these as per individual contract. By no later than with the acceptance of the goods or service by the Customer shall the General Business Terms in the respective applicable version be accepted.
2. Spitzer shall reserve all copyrights and property rights to all invoices, cost estimates, construction drawings and other documents. They may not be handed over to third parties either for inspection or permanently. They are to be returned immediately at the request of Spitzer. There is no right of retention of the customer to the invoices, cost estimates, construction drawings or other documents and it is explicitly excluded. Technical systems, material or parts which are made available to Spitzer by the customer for processing or use are to be fitted with a written instruction at the request of Spitzer. All offers or other details, in particular details about prices and delivery times are without obligation, this in particular relates to measurement, weight or other performance data insofar as not otherwise agreed.
3. Spitzer reserves the right to the interim sale as well as the acceptance of the order by the supplier.
4. The right is also reserved to changes to the design if they are due to technical further developments and are necessary or the function of the object of contract is not substantially changed hereby.
5. The customer is bound to its order until the receipt of the confirmation of order by Spitzer, no longer, however, than two months.
6. The contract between Spitzer and the customer is concluded if the acceptance of the order was confirmed in writing. The written order confirmation is decisive for all contractual obligations of Spitzer. Oral declarations or declarations by telephone are non-binding in any case.
7. Spitzer shall obtain the consent of the customer in case of a change to the scope of the necessary work (production, repair, maintenance or conversion work), something else shall only apply if the ensuing additional costs towards the offer amount only increase slightly. If the customer does not grant its consent, then all costs for the restoration of the original condition including the working hours and material costs are to be reimbursed to Spitzer.
8. Collateral agreements or all changes to the contract require the written form in order to be valid. This shall also apply to the revocation of this written form clause. In case of deliveries overseas the customer has to ensure compliance with all provisions under customs and export law. The customer has to inform Spitzer immediately in writing and after request about all circumstances which relate to the granting of permits under customs and export law. If this results in delays Spitzer is to be reimbursed all thus ensuing costs. The time of delivery shall be postponed in these cases until the submission of all necessary customs and export permits. There are no claims of the customer owing to these delays.
9. ***The customer is solely responsible for the compliance with all export, import and authorization provisions and insofar as necessary for the procurement of technical authorizations or operating permits, etc. with regard to the object of contract in all countries outside of Germany. By coordination with the customer Spitzer is willing to provide assistance with the procurement of the necessary documents, authorizations, permits, etc., which are necessary for the granting of permits or the compliance with the export, import and authorization provisions. Spitzer shall make all documents concerning the objects of contract available in this respect; the costs incurred hereby shall be for the account of the customer.***

In the event that permits, authorizations, etc. are not granted, which refer to the usability of the object of contract

outside of Germany and are necessary for this, it shall not represent any defect to the object of contract.

Cancellation and contestation for these reasons are excluded for the customer. Insofar as export permits or similar are not granted or pre-requisites for granted permits subsequently cease to apply without this being the responsibility of Spitzer or if regulations under foreign trade law or sanctions imposed against the customer become known Spitzer can cancel or terminate the contract irrespective of the further regulations agreed in these General Business Terms. If the delivery deadline is delayed for these reasons then the customer is not entitled to any claims, claims for damages are excluded.

II. Cancellation of the contract

1. Spitzer reserves the right to cancel the contract if
 - a) circumstances become known which allow the conclusion that the customer will not satisfy or not in time its contractual obligations. This in particular relates to payment obligations as a result of threatened insolvency, national or international sanctions against the customer, the late submission of all customs and export permits.
 - b) if the satisfaction of the contract is not possible for Spitzer through non-delivery on the part of third parties,
 - c) force majeure or interferences to operation at Spitzer or third parties, prevent or substantially delay or make more expensive to the satisfaction by Spitzer.
 - d) non-contractual financial burdens which are not to be borne by the customer prevent the satisfaction, make it substantially more expensive (5 % of the net contractual price) or make it more difficult in any other manner.

III. Prices, terms of payment, offsetting, security

1. All prices are deemed ex delivery plant plus the respective applicable value added tax upon delivery. All prices are deemed without cash discount or other discounts. Surcharges and secondary payments for transport, shipment, transfer, transport and packaging costs, loading, freight costs and customs duties shall be, if not otherwise agreed, to the account of the customer. The prices shall be deemed as firmly agreed with envisaged delivery within three months from the order, otherwise the delivery prices valid on the day of delivery shall apply. The prices are calculated based on the material prices and wage costs applicable at the time of the confirmation of order. In case of a change in this respect between the confirmation of order and the agreed time of delivery Spitzer is entitled after the expiry of four weeks after the confirmation of order to adjust the prices accordingly and prove these to the Customer upon request. If this results in a price increase which significantly exceeds the increase in the general costs of living the customer can cancel the contract. The cancellation is without effect if Spitzer immediately undertakes to carry out the contract at the originally agreed prices. Without an explicit written agreement otherwise the payment has to be made free of charge immediately and without deduction at Spitzer. Other than cash means of payment will in any case only be accepted as conditional payment.
2. The payment can only be made to third parties with discharging effect with the submission of a written power of attorney for debt collection. Insofar as instalment payments were agreed between Spitzer and the customer and the customer is in default with an instalment by more than ten days the total residual amount will be due and payable immediately without this requiring a further payment reminder or the setting of a deadline. Bill of exchange interest, expenses, etc. are to be paid separately and immediately in cash. In case a term of payment is exceeded, no matter whether instalment payments have been agreed or not, Spitzer can charge interest in the amount of 10 % above the respective base lending rate p. a. without this requiring a further placement in default. Spitzer reserves the right to assert further damages and to cancel the contract.
3. Spitzer is in any case entitled to request provision of collateral from the customer at its choice with the confirmation of order. If the customer does not satisfy its obligation to provide collateral

within 14 days Spitzer can cancel the contract **according to these General Business Terms**.

4. The customer can only offset undisputed claims or claims which have been declared final and binding against claims of Spitzer. There are no rights of retention insofar as the customer is not a consumer. Spitzer can offset with and against claims which belong to a company of the Spitzer Group. The collateral means which are to be provided by the customer shall be liable for all claims of the company group Spitzer. The customer has to ensure this when providing the collateral.
5. If Spitzer gains knowledge after confirmation of the order that the creditworthiness of the customer is, or becomes questionable in the amount of the order, Spitzer is at its choice entitled to sell the collateral, to request advance payments or cash payments even if another mode of payment was agreed in the individual contract. The right to cancellation of Spitzer remains unaffected hereby.

IV. Delivery

1. All dates and delivery deadlines stated by Spitzer are principally non-binding. Another regulation shall only apply if certain dates were explicitly agreed as binding in the order confirmation. A liability of Spitzer is excluded for delays by each form of force majeure, strike or losses of delivery of previous suppliers. Components suppliers or other third parties are no vicarious agents of Spitzer, for the conduct of which Spitzer shall not be liable with regard to the timely nature of the delivery.
2. For the event of the agreement of a fixed date and the exceeding of a deadline by more than six weeks the customer has to grant Spitzer a final deadline of at least four weeks.
3. Insofar as this final deadline passes unsuccessfully the customer can cancel the contract by written declaration to Spitzer. In this case claims for damages against Spitzer owing to non-satisfaction are excluded. The obligation for service of Spitzer is based in all cases of force majeure, in particular in the case of war, strike, lock-out, official measures and other events, shortage of operating fuels, interruptions to operation for technical reasons, for which Spitzer is not responsible. The right remains reserved to the correct and timely self-delivery of Spitzer. Spitzer will inform the customer about the non-availability of the object of delivery immediately. In all of the afore-mentioned cases Spitzer is entitled to postpone the time of the provision of the services, however by a maximum of five months. In case of a longer or permanent interference to service Spitzer is entitled to cancel the contract. In this case the customer is not obliged to provide its contractual service. Any payments which may have been made will be granted back immediately. The customer is not entitled to claims for damages in addition to this.

V. Acceptance, passing of risk and shipment

1. The customer undertakes within a deadline of one week from notification of provision by Spitzer to inspect the object of contract at the agreed place of acceptance. If the customer does not satisfy this obligation the risk shall pass to the customer after expiry of this deadline.
2. The risk of the accidental loss or the accidental deterioration shall pass to the customer irrespective of Sub-clause V. 1.) with the acceptance or the hand over to the customer. It is deemed equivalent to this if the customer is in default of acceptance.
3. This shall also apply if Spitzer as an exception and owing to a separate agreement has to bear the costs for the shipment of the object of contract.
4. The object of contract shall always and exclusively be shipped at the risk and costs of the customer, who is obliged to bear all costs incurred in this respect (customs duties, insurances, etc.). With the hand over to all third parties the risk shall pass to the customer irrespective of the type of shipment.
5. If no type of shipment has been agreed Spitzer can choose this at its liberty and under the exclusion of all liability for the best and most reasonable type of shipment.
6. If the customer does not accept the object of contract after notification of provision or if it is in default of payment or if collateral requested by Spitzer are not provided longer than 14 days Spitzer can set a final deadline of a further 14 days and insofar as these pass unsuccessfully cancel the contract **and** request damages owing to non-satisfaction. The right is reserved to assert further damages. In the event of damages owing to non-satisfaction Spitzer can assert the actually suffered damages or request flat rate compensation in the amount of 15 % of the

gross contract value. The customer remains at liberty to prove lower damages.

7. In the case of late acceptance Spitzer can request standing costs in the amount of € 40.00 per day. The standing costs are limited in total to 5 % of the gross contract price.
8. ***In the event that Spitzer keeps the object of contract in safekeeping after the payment of the purchase price and at the explicit request of the customer on a business site of Spitzer in this case the risk of the accidental loss or the accidental deterioration to the object of contract shall nevertheless pass to the customer as of the agreed acceptance date. A free safekeeping requires an explicit and written agreement.***

VI. Reservation of title

1. The object of contract shall remain the property of Spitzer until the satisfaction of all claims to which it is entitled against the customer from the business relationship.
2. In the event of the sale of the object of contract by the customer it hereby assigns its claims against its buyer from the resale with all secondary rights to Spitzer as a precautionary measure without this requiring further special declarations. Spitzer hereby now already accepts this assignment. The assignment shall apply including possible balance claims, **also towards a possible legal successor of the customer**. However, the assignment shall only apply in the amount which corresponds with the price of the object of contract invoiced by Spitzer. The share of the claim assigned to Spitzer is to be satisfied with precedence. Until further notice the Customer is authorized to collect the claim assigned to Spitzer according to Sub-clause VI. 2.). The customer will forward payments made on the assigned claims up to the amount of the secured claim to Spitzer immediately. In case of justified interests, in particular in case of default of payment, suspension of payment, application for opening of insolvency proceedings, opening of insolvency proceedings, objection against bill of exchange or substantiating indication for an over-indebtedness or threatened insolvency of the customer Spitzer is entitled to revoke the collection authorization of the customer. In addition, Spitzer can disclose the assignment as collateral, sell the assigned claims as well as request the disclosure of the assignment as collateral by the customer towards the buyers after a prior warning by adhering to a reasonable deadline.
3. In case of substantiation of a justified interest the customer has to provide Spitzer the information which is necessary in order to assert its rights against the buyers and to hand over the necessary documents.
4. The customer is prohibited from a pledge or assignment as collateral during the existence of the reservation of title. The customer has to inform Spitzer immediately in case of attachments, seizure or other disposals or interventions of third parties. The resale of the object of contract is only permitted for resellers in the ordinary course of business and only under the conditions that the payment of the counter-value of the object of contract is made to Spitzer. The customer also has to agree with the buyer that the buyer only acquires the ownership with this payment.
5. Insofar as the realisable value of all collateral rights, to which Spitzer is entitled, exceed the amount of all secured claims by more than 10 % Spitzer shall release a corresponding part of the collateral rights at the request of the customer. It is presumed that the pre-requisites of the afore-mentioned have been satisfied if the estimated value of the collateral to which Spitzer is entitled achieves or exceeds 150 % of the value of the secured claims. Spitzer is entitled to the choice among various collateral rights with the release.
6. In case of breaches of duty of the customer, in particular in case of default of payment, Spitzer is also entitled without the setting of a deadline to request that the object of delivery is handed over and – if necessary after the setting of a deadline – to cancel the contract; the customer is obliged to hand the object over. The request for hand over of the object of contract alone does not represent any cancellation declaration of Spitzer unless this is explicitly declared.
7. All costs for taking the object of contract, which is subject to the reservation of title, back and selling it shall be borne by the customer. The amount of the costs is at least 15 % of the sales proceeds incl. value added tax. The customer remains at liberty to prove lower costs. The proceeds shall be set off against the customer after deduction of all costs (capital, interest,

- commission and costs of all kinds, repair costs, costs for spare parts or costs for operating supplies to which the company group Spitzer is entitled against the customer as well as other claims associated with the contract, also costs for legal prosecution).
8. If a repair is the object of the contract, then all installed parts shall remain the property of Spitzer until the compensation of all claims which can already be determined at the time of the delivery. In the event of § 947 Par. 2 BGB [Civil Code] the customer hereby now already assigns as a precautionary measure a co-ownership share to the object of contract, which exists according to the ratio of the value of the repair work to the value of the object of repair at the time of the connection, to Spitzer.
 9. If the repair order is based upon an insured event the customer hereby now already assigns all claims against the insurance company to Spitzer as a precautionary measure. Spitzer hereby now already accepts this assignment. The customer is entitled to assert the claims from the insured event in its own name and at its own account unless Spitzer declares towards the customer that it will carry out the settlement itself.
 10. The obligation of the customer to bear all risks, liability, taxes, duties and other burdens and expenses relating to the vehicle, also insofar as they stem from the operation of the vehicle, shall not be affected by the reservation of title and the assignment of collateral. The hand over shall be replaced by the fact that Spitzer hands over the vehicle to the customer for use. Insofar as the vehicle is no (longer) in the possession of the customer it hereby now already assigns its claims for hand over to Spitzer.
 11. For the duration of the reservation of title the customer is obliged to keep the goods in a proper condition and to have necessary repairs and services carried out in authorized Spitzer workshops or recognised specialist workshops. In addition, it is obliged to conclude sufficient fully comprehensive insurance against damage, destruction, etc. at its costs, it is to be taken into consideration hereby and reported to the insurance company that the object of insurance is subject to the reservation of title and to instruct the insurance to only make payment to Spitzer in the event of a benefit case up to the amount of the claims to which Spitzer is entitled. The customer has to provide proof of sufficient insurance within the afore-mentioned meaning to Spitzer immediately. If the customer fails to have such insurance Spitzer is entitled to take out such insurance at the costs of the customer at its own choice. For the event that the customer does not satisfy its payment and insurance obligations as well as its duties from the reservation of title it shall suspend possible payments or if an insolvency or settlement application is filed over its assets or such proceedings are opened, the residual debt shall be due and payable immediately, also insofar as further payment times were agreed by bill of exchange etc. If the payment of the total residual debt is not made the right of use of the customer to the goods shall lapse immediately. The customer hereby now already irrevocably authorizes Spitzer to take possession of the object of contract and to remove this from the scope of control of the customer. The customer is not entitled to claims for compensation, no matter for what legal grounds owing to this procurement of possession. Spitzer is entitled to sell the goods, irrespective of the further payment obligations of the customer. In this case Spitzer shall commission an officially recognised assessor with the determination of the value and credit the determined value minus the costs for the procurement of possession as well as a further 10 % of the estimated value.
2. All costs for unjustified reports of defects are to be reimbursed to Spitzer by the customer.
 3. Insofar as there is a defect and it was reported in time Spitzer can at its choice remedy the defect or make a new delivery. Spitzer is exclusively entitled to the option. The assertion of warranty claims must always be made by the customer in writing. Spitzer is to be granted a reasonable deadline for the subsequent satisfaction. If the object of contract is to be subsequently improved, then a failure of the subsequent improvement shall only be determined after the unsuccessful third attempt. If the subsequent satisfaction finally fails, then the customer is entitled to reduce the price or to cancel the contract. The statutory cases of the dispensability of setting a deadline shall also remain unaffected as the application of §§ 478, 479 BGB [Civil Code]. In the event of the subsequent improvement the customer, if it concerns a merchant, has to bear the costs for the transport or the shipment. Deviations in the shade of colour as well as changes to the scope of delivery, **these in particular include change in construction and form**, are not harmful insofar as the changes or deviations are deemed reasonable by taking into consideration the mutual interests.
 4. The customer is not entitled to claims for damages within the framework of the warranty – also after failed subsequent satisfaction and cancellation of the contract.
 5. If the customer asserts claims for damages, then the object of contract can remain at the customer at the choice of Spitzer. For this case the damages are limited to the difference between the purchase price and value of the faulty object. For the event of the subsequent improvement by repair all replaced parts shall become the property of Spitzer.
 6. A right to cancellation of the customer is excluded insofar as the reported defect is only insignificant within the meaning of § 439 BGB.
 7. Faulty assembly instructions do not entitle either to cancellation or to subsequent satisfaction of the object of contract, but merely to request delivery of faultless assembly instructions.
 8. Warranty claims of the customer are excluded insofar as the object of contract is used by the customer in an unsuitable or improper manner, in particular if the regulations concerning use, axle load or other regulations of the road traffic authorization regulations or accident prevention are not complied with, faulty assembly or putting into operation by the customer or third parties, natural wear and tear, faulty or negligent handling, improper service unsuitable operating equipment, chemical, electro-chemical or electrical influences.
 9. An improper subsequent improvement, processing, etc. by the customer or third parties shall lead to the lapse of all warranty claims. The same shall apply to changes to the object of contract without consent or approval of Spitzer. Merely the warranty assured by the manufacturer of these parts or vehicles for installed parts and co-delivered motor vehicles and if applicable guarantee under the exclusion of all further liability of Spitzer shall be forwarded to the customer.
 10. If the use of the object of delivery leads to the infringement of industrial property rights and copyrights in the domestic country Spitzer shall procure for the customer the right to the further use and bear the costs incurred hereby. Spitzer is however entitled at its choice instead to modify the object of delivery to the extent that industrial property rights or copyrights are no longer infringed. If this is not possible within a reasonable deadline or only at financially unreasonable conditions both contractual parties are entitled to cancel the contract. Further claims, in particular claims for damages, do not exist. Spitzer shall however indemnify the customer from undisputed claims of the holders of rights or claims which have been declared final and binding. The afore-mentioned claims and obligations shall only exist if the customer informs about the asserted infringements of rights immediately, within a deadline of one week, and provides comprehensive support with the defence of the claims and enables the modification measures. The afore-mentioned obligations and claims shall further only exist if Spitzer reserves the right to all defence measures including the out-of-court regulation and the asserted claims or defects of title are not due to an instruction of the customer and the infringement of rights was not caused by the fact that the customer autonomously changes the object of contract or used it in an unlawful manner.
 11. The expenses which are necessary for the purpose of the subsequent satisfaction shall be borne by the customer insofar as they are not increased by the fact that the work is taken to another location than the customer's branch unless the transport

VII. Condition

Only the confirmation of order of Spitzer shall be deemed as binding as an agreement on the condition of the object of contract. Public advertising, targeting or other advertising statements of Spitzer or third parties do not represent any binding details of condition. Claims of the customer shall not exist in case of deviations which are customary for the trade. Guarantees are principally not assumed by Spitzer unless such has been explicitly agreed.

VIII. Reports of defects/warranty

1. If the customer does not satisfy its obligation from V. 1.), or not in time or not properly, the customer is excluded with warranty claims. The report of defects is to be filed in writing towards Spitzer **within one week**. The same exclusion deadline shall apply with hidden defects and begin at the time of the determination.

to the location corresponds with their use as intended. The application of § 478 BGB remains unaffected.

12. If the object of contract is a used object claims and rights owing to the defects to the object of contract – no matter for what legal grounds – will be excluded. This exclusion shall apply to all claims for damages against Spitzer which are associated with the defect – irrespective of the legal basis of the claim. Insofar as claims for damages of all kinds exist against Spitzer which are not associated with a defect these will be excluded.
13. The exclusion applies with the following condition:
It shall generally not apply in the event of wilful intent or with malicious non-disclosure of a defect or insofar as Spitzer has assumed a guarantee for the condition of the object of delivery.
14. Not affected by the exclusion of liability is further a liability of Spitzer in case of injury to life, the body or the health.
15. For the event that a third party is liable to assume responsibility in a damaging event (coverage by an insurance) Spitzer shall only be liable for thus associated disadvantages such as for example higher insurance premiums. The liability is also limited in this respect to gross negligence and wilful intent.
16. In the event of the damages owing to default of Spitzer this is limited to a maximum of 5 % of the contractual value. The claim for damages instead of a performance is limited to a maximum of 25 % of the contractual value. The contractual value is determined according to the purchase price of the object of contract or of the agreed wage for the work.
17. Claims according to the Product Liability Act shall remain unaffected by the afore-mentioned regulations.
18. Claims for damages of Spitzer against the customer amount to 15 % of the agreed contractual value within the afore-mentioned meaning. In addition, Spitzer remains at liberty to prove higher, the customer lower, damages. The claim for damages of the customer for the breach of essential contractual duties is however limited to the typical, foreseeable damages for the contract if there is not at the same time another of the exceptional cases listed herein.
19. ***The vehicles of Spitzer are designed for the use in the country/territory which is known to Spitzer. Should the vehicle be envisaged for the use in other countries/territories, such vehicles may require a modified type of construction. The customer must therefore coordinate the use in other countries/territories in time in advance with Spitzer. Otherwise Spitzer cannot offer the customer any warranty for a smooth use of the vehicles. Should the vehicles be used in other countries/territories without coordination with Spitzer, all warranty for this is excluded.***

IX. Statute-of-limitations

The statute-of-limitations for claims of the customer owing to defects of the object of contract – regardless of the legal grounds – and claims associated herewith (claims for damages) shall be 12 months. If the object of contract is a used object, the statute-of-limitations is 6 months.

X. Resale

If the customer is entitled to resale irrespective of the reservation of title, then the customer undertakes to only resell this by enclosing the respective control and operating instructions in the necessary national language and corresponding initial instructions in the aspects of the use of the Spitzer silo vehicles which are relevant to safety. The customer undertakes to also impose this responsibility upon its contractual partners as per contract. The customer irrevocably indemnifies Spitzer from possible claims for damages of third parties from product and/or producer liability.

XI. Manufacturer's reference

Spitzer is entitled to affix a reference to the manufacturer/company sign to the object of contract at its choice, albeit as company sign for welding or as a sticker in the respective customary sizes which will be notified upon request. Insofar as this is not requested by the customer this is to be reported in writing towards Spitzer by no later than one week after receipt of the confirmation of order.

XII. Final provisions

1. The place of performance for all reciprocal obligations from the contractual relationships is the registered seat of the respective Spitzer plant which is to make the delivery.
2. The place of jurisdiction for all disputes from the entire business relationship with the customer is 74821 Mosbach/Baden. Spitzer is at liberty irrespective of the amount in dispute to bring the matter before the County Court or Regional Court as first instance.
3. German law shall apply exclusively to all legal relationships between the customer. The UN Convention on the International Sale of Goods is explicitly excluded.
4. Should one or several provisions of these General Business Terms be or become invalid this shall have no effect on the validity of the remaining regulations. The parties undertake to replace the invalid regulation by such a regulation which shall as far as possible correspond with the invalid regulation from an actual and financial point of view.

Spitzer is entitled to process and to store the data about the contractual partner contained in connection with the business relationships within the meaning of the Federal Data Protection Act insofar as this is useful within the framework of the execution of the contract.