



## GENERAL CONDITIONS OF SALE

### 1. General Provisions

1.1 These General Conditions of Sale apply to any and all sales, deliveries and offers of products (the "**Products**") by Spicer Gelenkwellenbau GmbH, Essen, Germany ("**Dana**") to its customers ("**Customer**"). Unless accepted in writing by Dana, conflicting general terms and conditions of the Customer are inapplicable even if Dana does not explicitly reject such conflicting terms and conditions or supplies products without reservation, despite being aware of the conflicting general terms and conditions of the Customer.

1.2 Any deviations, exceptions or additional conditions shall only be binding on Dana if agreed expressly in writing between the parties hereto. This applies also to any changes of this Clause 1.2.

### 2. Prices / Orders

2.1 Unless otherwise agreed in writing, prices are Ex Works (Incoterms 2010) Dana's supplying facility and do not include costs of packaging, insurance fees, taxes or duties, or any other charges which may be applicable to the export or import of goods. VAT shall be charged separately by Dana in the respective statutory amount on the day of issue of the invoice.

2.2 Agreed prices may be adjusted by Dana to reflect changes in volume forecasts, increases in material costs, wages and salaries or manufacturing costs, taking into account any decrease of other cost types. Upon Customer's demand, Dana shall explain to Customer the factors relevant for any price increase.

2.3 Orders shall not be binding upon Dana until they are confirmed in writing (incl. by fax or email). In the event Customer cancels any order for customized products for which Dana has manufactured work-in-process, Dana will be entitled to reimbursement of only the direct and indirect costs for such work-in-process.

### 3. Delivery

3.1 Unless otherwise agreed, delivery will be Ex-Works (Incoterms 2010), Dana's supplying facility. Products supplied shall remain Dana's property until full payment of the purchase price for such Products.

3.2 The compliance by Dana with any timelines for delivery is subject to the complete fulfillment of Customer's contractual and cooperation obligations. In particular, if for any reason Customer fails to accept delivery of any of the Products on the date fixed pursuant to Dana's notice that the Products have been delivered, or if Dana is unable to deliver the Products on the dates as contractually agreed because Customer has not provided appropriate instructions, documents, licenses or authorizations, the following shall apply: (i) risk of loss to the Products shall pass to Customer; (ii) the Products shall be deemed to have been delivered; and (iii) Dana, at its option, may store the Products until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 4. Payment

4.1 Except as otherwise agreed, payment shall be made by bank transfer within 30 days from the date of the invoice to the bank account stated in Dana's invoice. Except for charges from Dana's bank, Customer shall bear all costs and bank charges.

4.2 In case of late payments, Dana may, without further notice, (i) suspend the delivery of Products, (ii) demand default interest as per applicable law, and/or (iii) at its sole discretion, terminate any accepted orders where delivery has not yet been completed.

### 5. Products

5.1 Any information on the Products such as dimensions, models and any other technical characteristics, on the usage of the Products as well as any other data contained in brochures,

prospectuses, newsletters, advertisements, illustrations or price lists of Dana shall only be held binding to the extent agreed in writing between Dana and Customer.

5.2 FFF-Changes require the prior consent of Customer; such consent shall not be unreasonably or inadequately withheld, delayed or conditioned. If Customer does not object to a FFF-Change request within 14 days after being notified by Dana, Customer's consent to the notified change shall be deemed to be given. Dana shall not be required to notify non-FFF-Changes to Customer or obtain Customer's consent to such changes. Dana



shall have no obligation to implement changes requested by Customer. For the purpose of this clause, "FFF-Change" means any change to Form, Fit or Function of a Product.

## 6. Quality

6.1 Customer shall inspect incoming Products for obvious defects and reject all non-conforming Product(s) within 8 days after receipt of the Products at Customer's facility and without regard to whether payment has been made for such Product. If no such notice is given, the Customer's rights with regard to such obvious defects shall be precluded.

6.2 If Customer justifiably rejects Products under Clause 6.1 or if a hidden defect is detected prior to the Product or the machine/vehicle, in which it was installed, being delivered to the end customer, Customer shall notify Dana within 8 days from the discovery of the defect and Dana shall, at its discretion, either repair or replace the relevant Products free of charge to the Customer.

## 7. Warranty / Liability

7.1 Upon delivery, Products shall be free from defects in material and workmanship and comply with agreed technical specifications. The warranty period shall be (i) 12 months or 2000 operating hours (whichever occurs earlier) for Spicer® branded driveline Products, or (ii) 12 months for all other Products, starting in each case from the date of Customer's invoice to the end user or dealer, provided that the warranty period ends in any case latest 18 months after the date of Dana's invoice to Customer. In case of defects, Dana will either (i) if the repair is performed by Customer with Dana's prior written consent, reimburse Customer for costs of spare parts as per Dana's official spare parts list, including the applied discount, and within the limit of the purchase price of the Product in question, or (ii) repair the Product free of charge at its own premises or authorized service center, provided that Customer shall send the defective Product, at its own expense, to the repair location chosen by Dana in its sole discretion. The handling of warranty claims will follow Dana's Standard Warranty Conditions, as updated from time to time, which are available upon request by contacting [dana\\_oh\\_product\\_service\\_support@dana.com](mailto:dana_oh_product_service_support@dana.com). All further claims and remedies with regard to defects of Products, regardless of their nature, amount or legal basis, are hereby expressly excluded. Except as stated herein, there are no representations or warranties, express or implied, with regard to the Products.

7.2 The warranty does not cover (a) Products or components thereof not purchased directly from Dana; (b) products supplied as prior to production approval; or (c) Products that have experienced (i) maintenance and/or repairs which are not executed in accordance with Dana's official service manual available upon request by contacting [dana\\_oh\\_product\\_service\\_support@dana.com](mailto:dana_oh_product_service_support@dana.com), (ii) storage or transport conditions which are not in accordance with Dana's requirements available upon request by contacting [dana\\_oh\\_product\\_service\\_support@dana.com](mailto:dana_oh_product_service_support@dana.com), (iii) non-professional installation of the Products or of ancillaries, (iv) damage caused by normal wear and tear, (v) damage caused during reassembly or installation, (vi) operation of the Product or application which is not in accordance with agreed application requirements or agreed Product specifications and/or (vii) the use of components, lubricants or ancillary products that are not approved by Dana.

7.3 Recall. If Customer believes a recall is required by law and, in whole or in part, is caused by the Products, Customer shall give prompt written notice to Dana, keep Dana at all times fully informed and consult with Dana on the actions to be taken. Such prompt written notice is also required in the event of any

Product-related incident such as fire, accident, malfunction causing injury, or loss of control of vehicle, and shall be accompanied by all information available to Customer. Customer shall not, to the extent permitted by law, respond to inquiries of any government agency relating to the Products without prior consultation with Dana. Prior to any recall involving the Products, Dana shall have the right to perform a full investigation including but not limited to inspection and testing (including destructive testing) of the Products involved, vehicle history, scene investigation, and copies of all witness statements, reports, analysis, and tests performed by or on behalf of or in the possession of the Customer. Customer shall give Dana full support for such investigation. In the event that a recall is determined to be legally required, both parties agree to negotiate a fair and equitable reimbursement of a share of Customer's direct expenses incurred for such recall. Such allocation shall take into consideration the portion of each party's responsibility, the cost of the Products involved, the other cause(s) of the recall and the strength and the nature of the evidence concerning the defect and its cause(s). Dana shall not be liable for mark-ups or profit margins normally accruing to Customer or its customers in the provision of replacement parts, nor for costs of handling, administration, customer inducement or incentives, nor for incidental, consequential or punitive damages (including but not limited to damages caused by standstill, loss of goodwill, lost profits), whether incurred by Customer or any of its customers.

7.4 TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL UNDER ANY CIRCUMSTANCES WHATEVER BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR RESTITUTION, OR FOR BREACH OF STATUTORY DUTY OR MISREPRESENTATION, OR OTHERWISE, FOR ANY LOSS OF PROFIT, LOSS OF GOODWILL, LOSS OF BUSINESS, LOSS OF BUSINESS



OPPORTUNITY, LOSS OF ANTICIPATED SAVING, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE SUFFERED BY THE OTHER PARTY THAT ARISES UNDER OR IN CONNECTION WITH THE CONTRACTUAL RELATIONSHIP BETWEEN THE PARTIES. NOTHING HEREIN SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY, OR FOR DAMAGES RESULTING FROM INTENTIONAL BREACH OR WILLFUL MISCONDUCT.

## 8. Confidentiality and Data Protection

8.1 “**Confidential Information**” shall mean any and all information and records relating to the operation of each party’s business, including, without limitation, trade secrets, technical information, development, production, sales, marketing and pricing.

8.2 Each of the parties agrees to keep the Confidential Information of the other party or its affiliates strictly confidential and not to disclose such information to third-parties, provided that, either party may disclose such information to its employees, representatives, affiliates, suppliers and subcontractors who have a need to know such Confidential Information and further provided that the relevant party remains responsible for such third party’s compliance with the obligations hereunder. The receiving party will only use the Confidential Information of the disclosing party for the purposes of the contractual relationship, and will not use the Confidential Information of the disclosing party to exploit the Confidential Information; to reproduce, redesign, reverse engineer, or manufacture or assemble the disclosing party’s products or products similar to such products; to perform services relating to manufacture or assembly of such products or to file any intellectual property registrations.

8.3 All Confidential Information delivered or made available by a party to the other party will be and remain the sole and exclusive property of disclosing party. The disclosing party will retain title to its Confidential Information. Upon written request of the disclosing party, all such Confidential Information of the disclosing party, and any copies, summaries or embodiments thereof, will be promptly returned to the disclosing party or destroyed. Whether such Confidential Information is destroyed or returned will be decided at the disclosing party’s discretion.

8.4 Any personal data provided to or collected by Dana will be stored and processed in compliance with Dana’s Privacy Policy (<https://danaincorporated.qcs-web.com/static-files/f535db49-12f4-496a-954f-8c69b3457326>). To the extent Customer provides personal data of its employees to Dana, Customer is obliged to inform its employees about the Privacy Policy.

## 9. Tooling

9.1 Special tooling which is separately negotiated for and fully paid for by Customer as a separate item on an order shall become the property of Customer. During its use at Dana’s facility, such special tooling shall be held for the exclusive use of the Customer (except that Dana may use such special tooling for the supply of Products to the aftermarket organizations of Dana, and its affiliates) and shall be maintained in accordance with Dana’s usual practice. Customer shall bear the risk of ordinary wear and tear, or loss or damage other than such caused by Dana. At the request of the Customer and to the extent practicable, special tooling shall be identified by appropriate markings.

9.2 Prices for special tooling do not include transportation costs, storage beyond completion of the purchase order, or costs of marking or packaging. Unless Dana elects to continue to use special tooling for the aftermarket as described above, Dana will not be responsible for special tooling after completion of the purchase order and the Customer shall remove all special tooling within 30 days after such completion. If Customer fails to do so Dana may, at Customer’s expense and without any liability

towards Customer, dispose of such in a manner it deems fit. Dana shall have a lien on the special tooling to secure all outstanding obligations of Customer.

## 10. Intellectual Property

10.1 Dana warrants, to the best of its knowledge, that the Products are free of rightful claims for infringement of any patent or trademark, provided, however, that this warranty shall not apply to claims for patent infringement to the extent that any Products are (i) manufactured to the Customer’s specifications, (ii) used in combination with Products not purchased from Dana in a manner which infringes a patent covering the combination, or (iii) used in a manner not reasonably anticipated by Dana.

10.2 Dana’s obligation to indemnify Customer for any violation of Section 10.1 above is conditioned upon the Customer: (i) giving Dana prompt written notice of any infringement claim; (ii) cooperating fully with respect to the defense of such claim; and (iii) upon Dana’s request, providing Dana full control of the defense including settlement and/or litigation of such claim.

10.3 Dana shall be entitled, at its option, to obtain a license on Customer’s behalf for the Products which (allegedly) infringe an intellectual property right or to modify the Products in such a way that it do not infringe the intellectual property right, or replace the Products by similar Products which do not infringe the intellectual property right.

10.4 All data or any intellectual property transmitted by Dana to Customer or developed by Dana in connection with the supply of the Products, including any data that may be embedded in any, is and will continue to be the property of and under the control of Dana.

10.5 Customer warrants that all designs, drawings, and specifications supplied by Customer do not infringe any patent, trademark, copyright or other intellectual property of any third party.

## 11. Legal Compliance and Sustainability.

11.1 Customer agrees to comply with all applicable laws, rules and regulations relating to its business and/or the use of the Products (including, but not limited, any and all applicable trade compliance and sanctions laws, rules and regulations). In addition, Customer agrees to utilize the Products in a manner that will contribute to a sustainable utilization of natural resources and promote the welfare of all persons throughout the Products’ value chain.

11.2 Dana reserves the right to suspend performance or terminate any order concerning delivery of the Products without liability if and to the extent delivery of Products or any other contractual performance is, in the reasonable opinion of Dana, non-compliant with any laws, rules or regulations (including trade compliance and sanctions laws and regulations) applicable to Dana (or any affiliated company of Dana).

## 12. Termination

12.1 The parties’ right for termination for cause (*Beendigung aus wichtigem Grund*) remains reserved.

12.2 In the event that Customer cancels a business award or program for the supply of Products after business award but before the agreed upon end of program duration, Customer shall reimburse appropriate cancellation charges for unrecoverable investment including but not limited to capital equipment, Dana paid tooling, engineering design and test costs, and material obsolescence.



### 13. Miscellaneous

13.1 If the parties' principal places of business are located in the same country or state, these General Conditions of Sale and all contracts to which they apply will be governed by and enforced in accordance with the laws of such country or state, without recourse to the conflict of law provisions thereof. In all other cases, these General Conditions of Sale and all contracts to which they apply will be governed by and enforced in accordance with the laws of Switzerland, without recourse to the conflict of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods will in any case not apply. To the extent German law applies, the application of Sections 305 to 310 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall be excluded; a review and control of the content (*Inhaltskontrolle*) of provisions of these General Conditions of Sale shall only be conducted in accordance with Sections 138 and 242 of the German Civil Code (*Bürgerliches Gesetzbuch*).

13.2 In the event of force majeure or other hindrances which are beyond a party's reasonable control, e.g. work stoppages, strikes, lockouts, governmental bans, energy, material and transportation shortages, business disruptions, natural disasters, fire, flooding, acts of

terrorism, etc. affecting a party directly or indirectly, any resulting delay or prevention of the performance of a party's obligations hereunder shall be excused and the time for that performance shall be extended for a period reasonably necessary to overcome the effect of the force majeure event. The affected party shall communicate such hindrances to the other party in good time and state their prospective beginning and ending.

13.3 All disputes arising out of or in connection with any contract to which these General Conditions of Sale apply shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with said rules. The language of the arbitration shall be English and the place of arbitration shall be Zurich, Switzerland.

13.4 Failure to assert any of the rights hereunder shall not be deemed a waiver of such rights.

13.5 A party is not entitled to offset any claims it may have hereunder against any corresponding liabilities unless such claims are ascertained in a legally binding fashion or undisputed or acknowledged by the other party.

13.6 If these General Conditions of Sale are issued in any other language than English, the English version shall prevail in case of deviations between the different language versions.

13.7 Any partial or total invalidity of a clause contained in these General Conditions of Sale shall not lead to the invalidity of the entire clause or the entire General Conditions of Sale.

