

# General terms and conditions of sale, delivery and payment

as of 1 May 2017



## – Preamble –

These general terms and conditions of sale, delivery and payment are used by the following companies in the GEDORE Group:

**GEDORE Torque Limited**

**LOSOMAT UK Limited**

### 1. Scope of application

1.1 Our quotations, services, supplies and deliveries of goods are performed solely on the basis of these general terms and conditions ("Terms"); we do not accept and shall not be bound by any contradictory terms or terms unless we have explicitly consented in writing.

1.2 These terms apply to customers purchasing our products and/or services in the course of business.

### 2. Quotations and conclusion of contract

2.1 Any quotations we provide shall not bind us in any way.

2.2 A binding agreement for us to provide you with products and/or services shall only come into existence on (i) you raising an order; and (ii) us providing written order confirmation of our acceptance of such order.

2.3 Unless a longer period is specified in the order, we are entitled to accept any offer from you within one (1) week after its receipt by us.

2.4 We reserve title to and intellectual property rights in all illustrations, drawings, calculations and other documents created by us provided to you (whether pursuant to these Terms or otherwise). You must obtain our explicit written consent before disclosing any documents or information we provide to you to third parties. You must, at our request, return such documents to us and destroy any copies that may have been made if they are no longer needed in the course of ordinary business or if negotiations do not result in the conclusion of a contract.

### 3. Custom-made products

3.1 You are liable for the accuracy and completeness of any documents or information provided by you to us (including, but not limited to, specifications, drawings, samples, models or similar). We shall be under no obligation to verify such documents or information.

3.2 You shall on demand indemnify us and hold us harmless against all losses, liabilities, costs, claims, demands and proceedings (including any direct, indirect or consequential liabilities, loss of revenue and profit, loss of reputation, loss of business and all interest, penalties and legal and other professional costs and expenses) awarded against, paid by, suffered or incurred by us arising out of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's intellectual property rights or other rights arising out of our use of any specifications, drawings, samples, models or other information provided by you to us.

3.3 If you request custom-made products, we reserve the right to deliver an excess or short delivery of up to 10% of the order quantity.

### 4. Prices

4.1 Unless otherwise specified in our order confirmation, our prices are EXW (pursuant to Incoterms 2010 or the current version) from the relevant Gedore plant. You shall collect completed goods promptly. We shall not make deliveries to third parties unless we explicitly agree in writing.

4.2 All prices are net prices. Costs for dispatch, transport and packaging as well as any installation services are excluded and are subject to an additional charge as per our price list.

4.3 Value added tax is not included in our prices; it shall be added separately at the statutory rate in force on the day of billing and paid by you in accordance with clause 5.

4.4 We reserve the right to make a reasonable adjustment to our prices if:

4.4.1 three months or more pass between the issuing of our order confirmation and delivery or the last partial delivery of your order; and

4.4.2 cost increases beyond our control arise (in particular in relation to material costs, price increases for raw materials and auxiliary materials, wages and salaries, freight or public duties).

4.5 If we make an adjustment to our prices pursuant to clause 4.4, we will provide details of any such adjustment to you on request.

4.6 We reserve the right to impose a minimum order quantity or value.

### 5. Conditions of payment and default

5.1 We only accept bills of exchange and cheques pending full discharge of the debt. All costs of discounting and collection of bills of exchange and cheques shall be borne by you.

5.2 All amounts due under these Terms from you to us shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax required by law).

5.3 If your financial standing is (or becomes) of a level such that we reasonably believe that you may not be able to pay the purchase price in accordance with these Terms we may, without liability to you, suspend production/our services until you pay an appropriate sum on account.

### 6. Passing of risk, shipping

6.1 Unless otherwise specified in the order confirmation, delivery is agreed EXW (pursuant to Incoterms 2010 or the current version). The place of performance and place of delivery is the relevant Gedore plant.

6.2 If consignment has been agreed, risk in the goods shall pass to you upon handover of such goods to the forwarding agent, the freight carrier or the person or establishment specified to perform consignment, unless agreed otherwise.

6.3 If we agree to bear transportation costs, we shall only pay standard transportation costs and shall be free to select the means of transport (unless otherwise agreed). If you require any non-standard transportation methods (e.g. express delivery), any additional costs shall be borne by you.

6.4 We shall only insure against damages in transit at your prior written request and at your cost.

6.5 We are entitled (acting reasonably) to make partial deliveries.

6.6 If delivery is delayed due to your (or your agent's) act or omission, we may:

6.6.1 claim compensation for any resulting damages, liabilities or costs; and

6.6.2 store the products at your risk and charge you for such storage.

### 7. Delivery time

7.1 Unless explicitly agreed otherwise, delivery dates and times are estimates only.

7.2 Where we have agreed a specific delivery date with you, we shall not be liable for any delay with such delivery where the delay occurs due to industrial action, a lack of energy or raw materials,

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- transportation issues, fire, flood, machinery damage or any disruptions to operations beyond our reasonable control
- 8. Material defects**
- 8.1 We warrant that on delivery and for a period of 12 months from the date of delivery ("**warranty period**"), the goods shall:
- 8.1.1 conform in all material respects with their specification;
- 8.1.2 be free from material defects in design, material and workmanship;
- 8.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 8.1.4 be fit for any purpose held out by us.
- 8.2 Subject to clause 8.3, if:
- 8.2.1 you give us notice in writing during the warranty period (within a reasonable time of discovery) that some or all of the goods do not comply with the warranty set out in clause 8.1;
- 8.2.2 we are given a reasonable opportunity of examining such goods; and
- 8.2.3 you (if asked to do so by us) returns such goods to us at our cost,
- we shall, at our option, repair or replace the defective goods, or refund the price of the defective goods in full.
- 8.3 We shall not be liable for the goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:
- 8.3.1 you make any further use of such goods after giving notice in accordance with clause 8.2;
- 8.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, assembly, installation, use and maintenance of the goods or (if there are none) good trade practice regarding the same;
- 8.3.3 the defect arises as a result of us following any drawing, design or specification supplied by you;
- 8.3.4 you (or your agent) alter or repair such goods without our written consent;
- 8.3.5 we provide you with an initial sample and you do not notify us of any defects which could have been identified through a careful inspection;
- 8.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence or misuse, or abnormal storage or working conditions; or
- 8.3.7 the goods differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Except as provided in this clause 8, we shall have no liability to you in respect of the goods' failure to comply with the warranty set out in clause 8.1.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these Terms.
- 8.6 This clause 8 shall apply to any repaired or replacement goods supplied by us for any remaining warranty period and any period for which the goods were not usable in accordance with their specification.
- 9. Liability/Limitation of liability**
- 9.1 Nothing in these Terms shall limit or exclude our liability for:
- 9.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or sub-contractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 we shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or revenue, loss of profit, loss of anticipated savings, additional operational and administrative costs and expenses, the cost of procuring replacement goods or services or any indirect or consequential loss or damage arising under or in connection with these Terms; and
- 9.2.2 our total liability to you in respect of all other losses arising under or in connection with these Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the goods purchased by you in the year in which the particular loss occurred.
- 10. Extended retention of title**
- 10.1 Title to the goods shall not pass to you until the earlier of:
- 10.1.1 us receiving payment in full (in cash or cleared funds) for:
- (a) the relevant goods;
- (b) any other goods that we have supplied to you; and
- (c) any other monies you owe us; and
- 10.1.2 you resell the goods, in which case title to the goods shall pass to you at the time specified in clause 10.3.
- 10.2 Until title to the goods has passed to you, you shall:
- 10.2.1 store the goods separately from all other goods held by you so that they remain readily identifiable as our property;
- 10.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
- 10.2.3 maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 10.2.4 notify us immediately if you become subject to any of the events listed in clause 11.2; and
- 10.2.5 give us such information relating to the goods as we may require from time to time.
- 10.3 Subject to clause 10.4, you may resell or use the goods in the ordinary course of business (but not otherwise) before we receive payment for the goods. However, if you resell the goods before that time:
- 10.3.1 you do so as principal and not as our agent; and
- 10.3.2 title to the goods shall pass from us to you immediately before the time at which resale by you occurs and your payment for such goods shall become immediately payable to us.
- 10.4 If before title to the goods passes to you, you become subject to any of the events listed in clause 11.2, then, without limiting any other right or remedy we may have:
- 10.4.1 your right to resell the goods or use them in the ordinary course of its business ceases immediately; and
- 10.4.2 we may at any time:
- (a) require you to deliver up all goods in your possession which have not been resold,

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or irrevocably incorporated into another product; and

- (b) if you fail to do so promptly, enter any of your premises (or any third party's premises) where the goods are stored in order to recover them.

## 11. Termination and suspension

11.1 If you become subject to any of the events listed in clause 11.2, we may terminate any contract with you with immediate effect by giving written notice to you.

11.2 For the purposes of clause 11.1, the relevant events are:

11.2.1 you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply;

11.2.2 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enters into any compromise or arrangement with your creditors;

11.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for a solvent amalgamation of you with one or more other companies or the solvent reconstruction of you;

11.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;

11.2.5 (being a company) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;

11.2.6 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;

11.2.7 (being an individual) you are the subject of a bankruptcy petition or order;

11.2.8 a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part your assets and such attachment or process is not discharged within 14 days;

11.2.9 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.6 (inclusive);

11.2.10 you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;

11.2.11 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under a contract has been placed in jeopardy; and

11.2.12 (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are

incapable of managing your own affairs or become a patient under any mental health legislation.

11.3 Without limiting any other rights or remedies, we may suspend provision of goods and/or services under these Terms or any other contract between you and us if you become subject to any of the events listed in clause 11.2.1 to clause 11.2.12, or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under these Terms or any other contract on the due date for payment.

11.4 On termination of a contract governed by these Terms for any reason you shall immediately pay to us all of your outstanding unpaid invoices and interest.

11.5 Termination of a contract governed by these Terms, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

## 12. Entire agreement

12.1 These Terms (including any purchase order and order confirmation pursuant to clause 2.2, excluding always any contradictory terms provided by you) constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to a contract governed by these Terms.

12.2 Each party acknowledges that, in entering into these Terms, it has not relied on, and shall have no remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in a contract governed by these Terms.

## 13. Variation and waiver

13.1 Any variation of these Terms shall be in writing and signed by duly authorised representatives of the parties.

13.2 Any waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

13.3 No failure to exercise or delay in exercising any right or remedy provided under these Terms or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

13.4 No single or partial exercise of any right or remedy under these Terms shall prevent or restrict the further exercise of that or any other right or remedy.

## 14. Assignment and sub-contractors

14.1 We may assign our rights under these Terms without your consent.

14.2 We shall be entitled to sub-contract all or any of our obligations under these Terms without your consent, provided that we remain liable for the performance of our sub-contractors.

## 15. Severability clause

15.1 If any provision of these Terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 16. Third party rights

No person other than a party to a contract governed by these Terms shall have any rights to enforce any term of these Terms.

## 17. Governing law and jurisdiction

17.1 These Terms (and any contract of which they form part) and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

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17.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms (and any contract of which they form part) or their subject matter or formation (including non-contractual disputes or claims).

## **GEDORE Torque Limited**

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## **Losomat UK Limited**

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