

**§ 1 Scope, contract conclusion**

- 1.1 The following General Terms and Conditions of Purchase shall apply to all business relationships with our business partners and suppliers (hereinafter called "Supplier"), insofar as these are entrepreneurs, legal entities under public law and special funds under public law.
- 1.2 We will purchase only in accordance with the Terms and Conditions of Purchase below. By performing the order, the Supplier acknowledges these Terms and Conditions of Purchase, including for subsequent deliveries, even where its own conditions of business are different. General terms and conditions of the Supplier which deviate from or supplement these General Terms and Conditions of Purchase shall not be binding for us, even if we do not expressly object to them or if the Supplier declares that it intends to supply only under its own general terms and conditions or where the latter are attached to its declaration of acceptance, delivery note, order confirmation or other document. This shall also apply in the event that we accept deliveries or services from the Supplier without reservation, in the knowledge that the Supplier's terms and conditions conflict with or deviate from these Terms and Conditions of Purchase. In particular, the fact that we are silent with respect to order confirmations with deviating or supplementary content may not be deemed agreement, including for future contracts. The delivery or service of the Supplier shall be considered as irrefutable agreement to these Terms and Conditions of Purchase, irrespective of the content of the order confirmation.
- 1.3 If the Supplier creates a quotation on the basis of our Request for Quotation (RfQ), the Supplier shall conform strictly to the RfQ and, expressly notify us about any deviations.
- 1.4 For call-offs under existing contracts, confirmation of order by the Supplier is not required. A call-off shall be deemed accepted if the Supplier fails to object to it in writing within 3 working days.
- 1.5 Only orders placed in writing shall be legally binding. Orders placed verbally or by telephone shall require subsequent written confirmation to be valid. The same shall apply to collateral agreements and amendments to the Contract which the parties have agreed on orally. Deliveries or services implemented without written order will not be accepted. Orders, call-offs or their amendments and supplements may also be communicated by EDI or by machine-readable data carrier. In the event of informal conclusion of business transactions, the order shall be deemed to be the commercial letter of confirmation.
- 1.6 If we are able to demonstrate by presenting a transmission report that we have sent a declaration by fax or EDI, the Supplier shall be presumed to have received this declaration.

**§ 2 Pricing, shipment, packaging**

- 2.1 The agreed prices shall be fixed and include packaging costs. Additional claims of any kind shall be excluded. Unless agreed otherwise, the price shall be DAP purchaser's factory pursuant to INCOTERMS 2010. If no prices are indicated in the order, the Supplier's currently applicable list prices with customary deductions shall apply.
- 2.2 No payment shall be granted for visits or for the preparation of quotations, projects or similar, unless payment is expressly agreed or a relevant statutory claim exists.
- 2.3 Delivery notes, shipping documents, invoices and all correspondence shall contain order number, item number and batch number. Quotations shall provide the RfQ number.
- 2.4 We only accept the quantities or number of units ordered. Deliveries deviating from the ordered quantities shall be permitted upon prior written agreement only.

- 2.5 The goods shall be packaged in such a way that loss, general damage, injury to persons and damage to equipment and corrosion are prevented. Packaging materials shall be used only to the extent required to achieve such purposes. Environmentally-friendly packaging materials shall be used exclusively. In addition, the logistics and packaging requirements of the purchaser's factory shall apply.

**§ 3 Invoicing, payment**

- 3.1 Invoices shall be sent to us separately on shipping the goods. Each invoice shall indicate order number, order date and VAT identification number. VAT shall be shown separately in the invoice. The invoice shall be sent to the address printed on the respective order. We reserve the right to refuse payment until a proper invoice has been submitted. The actual quantities, weights or other units forming the basis of the delivery and the agreed prices shall be decisive.
- 3.2 Unless expressly agreed otherwise, payments shall be effected at our discretion either within 14 days with a 3% cash discount or within 30 days net, each calculated from receipt of a proper invoice and, where applicable, certificates according to Article 3.3, however, not before receipt of the goods. If we accept early deliveries, the payment period shall begin with the agreed delivery deadline, at the earliest.
- 3.3 To the extent that submission of certificates relating to material tests have been agreed, these shall constitute a key component of the delivery and shall be sent to us together with the delivery. However, they shall be available to us no later than 5 days from receipt of invoice.
- 3.4 In the event of a faulty delivery, we shall be entitled to withhold payment in proportion to the value until proper performance.
- 3.5 Receipt of the goods or payment of the invoice shall not constitute acknowledgement of the goods or services rendered to be in conformity with the contract.
- 3.6 The Supplier shall have a right to set-off or a right for retention of goods or services for legally established or undisputed counterclaims only.
- 3.7 The Supplier shall not be entitled to assign its existing claims against us to any third party without our prior written consent which may not be unreasonably withheld.
- 3.8 In the event of advance payments, the Supplier shall provide adequate security in the form of a bank guarantee from a recognized, major German bank.

**§ 4 Delivery dates, delay in delivery, passing of risk, force majeure**

- 4.1 The agreed delivery dates are binding. Receipt of the goods at the place of receipt or use indicated by us shall be decisive for compliance with the delivery date or period.
- 4.2 If the Supplier recognises that an agreed date cannot be met for any reason whatsoever, the Supplier shall notify us immediately in writing, stating the reasons and the expected duration of the delay.
- 4.3 If the delivery is delayed, we reserve the right to demand a contractual penalty in the amount of 0.2% of the net prices for the goods or services per working day, however, not exceeding 5% in total of the net price of the goods or service. We are entitled to demand the contractual penalty in addition to performance and as a minimum amount of any compensation owed by the Supplier under statutory provisions; the assertion of further damages shall remain unaffected. If we accept the late delivery, the contractual penalty shall be asserted with the final payment, at the latest.
- 4.4 The Supplier may invoke the lack of documents to be supplied by us only if the Supplier has issued a written

- reminder requesting the documents, but has not received the documents within a reasonable period of time.
- 4.5 If delivery is made earlier than agreed (early delivery), we reserve the right to return the delivery at the Supplier's expense. If we accept the early delivery, we will store the goods on our premises at the Supplier's expense and risk until the agreed delivery deadline.
- 4.6 Partial deliveries will only be accepted upon explicit agreement. Partial deliveries shall be accompanied by an itemization of the remaining goods to be delivered.
- 4.7 Risks shall pass - even where shipping has been agreed - only upon handover of the delivery to us at the place of receipt or use indicated by us. Where a delivery has been agreed, including installation/assembly/servicing, risks shall pass following proper performance of such installation/assembly/servicing. If acceptance is prescribed by law or agreed, the acceptance date shall be determined by mutual agreement. The result of acceptance shall be recorded in a joint acceptance report. The passage of risks shall not take place prior to our confirmation of successful acceptance in the acceptance report. Acceptance may not be effected in any other manner. Payment of the invoiced amount shall not constitute acceptance.
- 4.8 Any delays in or the failure of the delivery within the scope of this Contract as the result of a force majeure event without any fault or negligence on the part of the affected party shall be considered excused, for so long as the event lasts. This shall require that the affected party notifies the other party in writing as soon as possible after the event, however, no later than 3 days after its occurrence, of any delays including the expected duration of the delays. Force majeure events include, without limitation, natural disasters, such as fire, flood, earthquake, hurricane or other extreme natural events, civil unrest, war, sabotage, terror attack and other, similar, unforeseeable and unavoidable events. During the delay or failure of delivery on the part of the Supplier and for an appropriate period after this, we shall be entitled to purchase replacement goods from other available sources, whereby the quantities ordered shall be reduced by the amount of the goods thus replaced. If the Supplier is unable to prove that a delay will not exceed 30 days or if the delay lasts for more than 30 days, we may withdraw from the Contract as regards the non-performed part without any liability towards the Supplier.
- § 5 Retention of title; Provision of materials and equipment**
- 5.1 We do not accept any retention going beyond the simple retention of title. Irrespective of the retention of title, we shall be entitled to use, further process and sell the contractual products and to connect and combine them with other goods.
- 5.2 Insofar as we provide parts to the Supplier, we retain title hereto. Any processing or remodeling by the Supplier shall be effected on our behalf. Insofar as the goods subject to retention of title are processed with other objects that do not belong to us, we shall acquire co-ownership of the new item proportionate to the value of our parts relative to the other processed objects at the time of processing.
- 5.3 Where the object provided by us is inseparably combined with objects that do not belong to us, we shall acquire co-ownership of the new item proportionate to the value of the object provided by us (purchase price plus VAT) relative to the other combined objects at the time of combination. Where the combination is effected in such a way that the Supplier's item is the main constituent of the new object, it shall be deemed agreed that the Supplier will transfer proportionate joint title to us; the Supplier shall hold the sole ownership or co-ownership on our behalf.
- 5.4 The Supplier undertakes to use equipment provided by us exclusively for the performance of our orders. The Supplier shall label our equipment as such, storing and managing it separately.
- 5.5 For the equipment provided and the objects manufactured as a result, the Supplier shall assume liability for any accidental damage, loss, theft, destruction or reject.
- § 6 Liability for defects**
- 6.1 Unless stipulated otherwise below, the statutory warranty provisions shall apply.
- 6.2 The Supplier shall warrant delivery of defect-free goods in accordance with the applicable statutory provisions. This shall include, in particular, the suitability of the goods for their intended use in accordance with Supply Contract, the RfQ documentation and resulting from the other, particular circumstances. A breach of the Quality Assurance Agreement shall in any case constitute a deviation from the contractually owed quality.
- 6.3 The Supplier undertakes to inspect the goods ordered thoroughly prior to delivery. We will inspect incoming goods only with regard to visible damage and deviations in terms of identity and quantity. If we discover any defects, we will notify the Supplier thereof without undue delay, usually within 5 working days from detection. We reserve the right to carry out a more detailed incoming goods inspection. In all other respects, we will give notice of any defects or nonconformities as soon as these are detected in the ordinary course of business. In this respect, the Supplier waives the objection of delayed notification of defects.
- 6.4 We shall also be entitled to choose the type of subsequent performance in the case of a contract for work and services. This shall not apply if the Supplier has a right to refuse subsequent performance or if we have chosen a type of subsequent performance that would be unreasonable for the Supplier to have to accept.
- 6.5 In the event of a defect in the delivered product or the work performed and after a reasonable period of time set for subsequent performance has expired without result, we may remedy the defect ourselves or have it remedied by a third party and require reimbursement of the expenses we incur as a result, unless the Supplier justifiably refuses subsequent performance. In this respect, the legal provision on self-remedy in the case of a contract for works and services shall apply accordingly for the purchase agreement. Notwithstanding the statutory provisions, in exceptional cases, e.g. due to special urgency, for operational reasons (in particular for reasons related to the timing and sequence of production), risks to operational health and safety or the imminent occurrence of disproportionately high damages, we may remedy the defect ourselves or have it remedied by a third party, at the Supplier's expense, even without specifying a period for subsequent performance. We will notify the Supplier of such circumstances without undue delay, if possible in advance.
- 6.6 In the event of subsequent performance, the Supplier shall be obliged to bear all necessary expenses to remedy the defect or deliver a replacement. If the defect should occur only once the product has arrived at the premises of our customers, transport costs to our customers shall also be included in such necessary expenses. If the defect should occur after the product has been incorporated into other goods, the necessary expenses shall also include the costs for removing the defective products and installing the products repaired or replaced by the Supplier.
- 6.7 Without prejudice to our further rights, the Supplier shall in case of justified complaints reimburse us and, where applicable, our customers for the additional expenses in-

curred in connection with investigation and handling of the complaint, unless the Supplier is not responsible for the complaint.

- 6.8 Unless otherwise agreed, the limitation period for contractual claims based on defects shall be 36 months from the passage of risks. If longer statutory periods apply in our customer's country or in the country of first registration of the vehicle, the warranty will end at the earliest upon expiry of the statutory periods.
- 6.9 For claims due to defects of title, the limitation period shall be 36 months from the passage of risks, whereby the statutory limitation period for claims by third-parties for the restitution of property in rem shall remain unaffected. In deviation from the above, claims for defects of title shall not become time-barred under any circumstances, as long as the third party can still assert the right against us - in particular in the absence of time barring.
- 6.10 The statutory limitation periods for non-contractual claims for damages shall remain unaffected by the provisions in Articles 6.8 and 6.9.
- 6.11 If a quality assurance system exists or is to be set up for the goods at the Supplier's premises, the Supplier grants us and, at the request of authorities or our customers and their representatives, said authorities, customers or customer representatives the right to verify the existence and effectiveness of the quality assurance system at any time, including by inspecting the production process and the test documents. The Supplier shall ensure that appropriate checks can also be carried out at the premises of subcontractors. The Supplier's liability will not be limited thereby.

#### **§ 7 Product liability; environmental protection**

- 7.1 If any product liability claim is asserted against us by any third party, the Supplier shall indemnify and hold us harmless for and against such third-party claims, in the same manner the Supplier would be liable to such third parties itself.
- 7.2 In particular, the Supplier shall, within the scope of its indemnification obligation, refund all expenses resulting from or in connection with third-party claims, including product recalls to be implemented by us. To the extent possible and reasonable, we will inform the Supplier of the content and scope of recall measures and give the Supplier the opportunity to give an opinion.
- 7.3 The Supplier undertakes to use environmentally-friendly products and processes in accordance with state-of-the-art technology for its services or deliveries, including deliveries and additional services provided by third parties. The Supplier shall be liable for the environmental sustainability of the products and packaging materials supplied as well as for all consequential damages resulting from the violation of its statutory disposal obligations. Upon our request, the Supplier shall issue a certificate of inspection for the goods delivered.

#### **§ 8 Subcontractors; performance of works on factory premises**

- 8.1 Without our prior written consent, the Supplier shall not be entitled to have third parties (e.g. subcontractors) carry out the performance for which the Supplier is responsible. The Supplier shall bear the risk of procurement for its deliveries.
- 8.2 Any persons carrying out works on factory premises in performance of the Contract shall comply with the work regulations, the provisions for entering and leaving the facility as well as all other safety regulations. Notwithstanding the respective applicable statutory provisions on the liability of vicarious agents [Erfüllungsgehilfen] and other assistants, the Supplier, insofar as its employees, representatives, subcontractors or other representatives (here-

inafter, "Representatives") are located on our premises, shall be liable for all acts and omissions of its Representatives within and in the vicinity of our premises and undertakes to indemnify and hold us harmless for and against all liabilities for material damage or personal injury or death (including court and legal costs), which can be attributed to acts and omissions on the part of the Representatives, irrespective of whether these occurred in performance of the Contract or not. The indemnification obligations regulated in this clause shall not apply to the extent that the claims may be attributed to our negligence or intent.

#### **§ 9 Changes**

- 9.1 The Supplier shall be required to notify us in writing without undue delay upon becoming aware of any forthcoming or intended modifications in connection with the goods delivered to us or announcements of discontinuations of products if such modification and/or the announcement of discontinuation may be relevant to us.
- 9.2 Modifications of goods and/or announcements of discontinuations of products shall require our advance written agreement. We may make our agreement contingent on objective conditions, such as approval of a sample.

#### **§ 10 Compliance with laws; proprietary rights**

- 10.1 The Supplier guarantees and warrants that all deliveries and services correspond to state-of-the-art technology comply with the applicable legal provisions and the regulations and provisions of authorities, professional and trade associations (in particular, including the REACH Regulation, the RoHS Directive and the Dodd Frank Act).
- 10.2 The Supplier guarantees and warrants that all deliveries are free from third-party proprietary rights and, in particular, that through the supply and use, processing or resale of the products, no third-party intellectual property rights, in particular, no trademark, patent, utility model, registered design or copyrights are infringed. If the Supplier culpably breaches such obligation, the Supplier shall indemnify us and our customers upon first request for any third-party claims arising from such actual or alleged infringements of proprietary rights and shall bear any and all costs and expenses incurred by us in this connection.
- 10.3 Article 10.2 shall not apply if the delivery item has been produced according to our drawings and/or models and if the Supplier was neither aware nor could have been aware that third-party proprietary rights would thereby be infringed.
- 10.4 The Parties shall notify each other without undue delay of any risks of infringements and of alleged infringements that become known and shall, to the extent reasonable, jointly take action against infringement claims.

#### **§ 11 Rights to work results**

- 11.1 The Supplier shall grant us a worldwide, non-exclusive and irrevocable license to manufacture, repair and sell the contractual products. The license fee shall be included in the purchase price for the contractual products supplied. The license shall include the right to award sublicenses.
- 11.2 The Supplier shall transfer to us the right to all inventions and proprietary rights, which are effected within the scope of the contractual relationship by the Supplier/or the Suppliers' vicarious agents. With respect to inventions by vicarious agents, the Supplier shall ensure that it will be able to transfer the right in accordance with the preceding clause.
- 11.3 Upon conclusion of this Contract, we may require transfer of all models (e.g. designs, templates) and documentation, which the Supplier creates or uses for the purposes of the performance. The above shall become our property once the order has been placed. We shall be entitled, without

special permission, to use such models and documents in case of failure of the Supplier, to achieve the contractual result and to procure accessory equipment, for maintenance and repair, for subsequent changes and for the manufacture of spare and replacement parts by us or by third-party companies. If necessary, the Supplier shall also provide other information required to achieve the purpose of the contract.

#### **§ 12 Spare part supply**

The Supplier undertakes to supply us with all spare parts during the period of average service life of the product delivered, at least, however, for 15 years after the end of series delivery, if the product is for motor vehicle use. Sub-contractors shall be bound by the Supplier to fulfil the same obligations.

#### **§ 13 Insurance**

The Supplier shall ensure it has an appropriate amount of insurance against all risks arising from product liability including the risk of a recall action and shall maintain the insurance protection throughout the entire contractual term. Proof of insurance cover shall be submitted unprompted.

#### **§ 14 Extraordinary right of withdrawal and termination**

If a petition in insolvency is filed against the Supplier's assets, we shall be entitled to withdraw from all existing contracts with regard to any parts not yet performed or to terminate such contracts with immediate effect.

#### **§ 15 Non-disclosure**

- 15.1 The Supplier shall be obliged to treat as confidential all information provided by us (in particular all technical and business information, such as drawings, samples and specifications) and to use it only for the performance of the Contract. Any disclosure of such information to third parties shall require our express agreement; employees and other vicarious agents shall be exempt from the above requirement, insofar as they require the information to perform the Contract and are subject to a corresponding non-disclosure obligation.
- 15.2 The confidentiality obligation shall not apply to information where the Supplier is able to prove that it is or has become generally known; was already known to the Supplier at the time of disclosure; the Supplier had obtained such information from a third party without infringement of any confidentiality obligation or it shall be disclosed under statutory or regulatory provisions.
- 15.3 The confidentiality obligation shall survive termination of the Contract for a period of 5 years.
- 15.4 The Supplier may use its business relationship with us for promotional purposes with our prior written consent only.
- 15.5 We reserve all rights to drawings, goods, etc. made according to our specifications and to the processes developed by us.

#### **§ 16 Choice of law, place of jurisdiction**

- 16.1 The laws of the Federal Republic of Germany shall apply exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.2 The language of the Contract shall be German. To the extent that the contractual partners avail of another language, the German wording shall take precedence.
- 16.3 The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship (except in the case of application of clause 16.4) is our registered office. In all cases, however, we will also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these Terms and Conditions of Purchase or an individual agreement that takes precedence over the former or at the Supplier's general place of jurisdiction. Statutory provi-

sions that take precedence over the above, in particular regarding exclusive jurisdictions, shall remain unaffected.

- 16.4 In the event that a third party brings to court a claim against us or one of our affiliated companies for damages for personal injury or property damage resulting from a product defect ("Product Liability") or because of an infringement of Intellectual Property Rights, we may at our discretion, conduct at such court of venue the proceedings necessary to enforce indemnification from Supplier or seek recourse against Supplier. In such a case the applicable laws of the place of jurisdiction shall exclusively govern the rights and obligations of the parties involved.

#### **§ 17 Final provisions**

- 17.1 Where an individual provision of these Terms and Conditions of Purchase and additional agreements concluded is or becomes ineffective, the validity of the remaining provisions of the Contract shall be unaffected thereby. The Contracting Parties undertake to replace the ineffective provision with a provision that comes as closest to the economic purpose of the original provision.
- 17.2 Any amendments to these Terms and Conditions of Purchase or other collateral agreements shall be made in writing to be effective. This shall also apply to any amendment of this written form requirement.