

## **GENERAL TERMS AND CONDITIONS OF PURCHASE 2006**

### **I. General Provisions/ Order**

These General Terms and Conditions shall apply for this order and all future orders. Any terms and conditions of the supplier deviating from these Terms and Conditions shall only apply insofar as they shall agree with our Terms and Conditions, or we shall expressly agree to them in writing. This shall also apply if the supplier's terms and conditions are supposed to take precedence.

Any collateral agreements and changes shall require the written form. This shall also apply for a waiver of the written form requirement.

Acceptance of an order shall be immediately confirmed in writing. We may cancel the order if we do not receive the order confirmation immediately. Should the order confirmation deviate from the order we shall only be contractually bound if we agree to such deviation in writing. Any acceptance of goods or services or payment thereof shall not constitute consent.

We shall not refund and/or reimburse any costs and expenses of any kind arising from the supplier in making his offer, in particular with regard to preparation, customer service, travel etc.

We may also demand changes to the contract after conclusion thereof insofar as this shall not constitute an undue hardship for the supplier. In case of changes to the contract the effect on the parties shall be duly considered, in particular with regard to increased or reduced costs and delivery dates.

When ordering materials for which a DIN safety data sheet exists, the supplier shall send us this sheet without prior request.

The supplier shall not be entitled to subcontract the entire order or significant parts thereof to third parties without our prior written approval. Should we grant approval, the supplier shall remain responsible for the performance of the contract.

### **II. Prices/ Payment**

The prices listed in our order shall be fixed prices. They shall be considered irrevocably agreed until complete fulfilment and/or expiry of the contract unless we shall benefit from price reductions. Should the prices of the supplier be reduced in accordance with his general price lists between the placement of the order and expiry of the payment term, then the price reductions shall also apply for us. The supplier shall be obligated to notify us of any price reductions and to provide evidence of the amount of reduction in case of a dispute.

The price shall be considered remuneration of the supplier for all costs, expenses, encumbrances, obligations, and conditions of any kind. It shall account for all circumstances and specifics of the order and include all costs for insurance, packaging, loading, chocking and securing on the transport vehicle, transport, customs clearance as well as unloading and handling at the agreed delivery address.

Any price increases due to changes in specifications shall be communicated to us immediately and shall require our written approval prior to delivery of the goods or implementation.

Price increases shall only be possible if our written approval has been obtained no later than ten days before taking effect.

Failing an agreement to the contrary, we shall pay within 14 days of complete receipt of the goods or services and upon receipt of the invoice at a discount of 3%, and within 60 days net. Payment shall not constitute any recognition on our part that the goods and services were delivered as contractually agreed.

We shall have the right to set-off and right of retention to the extent permitted by law, which shall also apply for claims by and/or against companies affiliated with us. The supplier shall only have a right to set-off and right of retention if his counterclaims shall have been conclusively determined or if these shall be recognised by us. Any assignment of receivables shall require our prior written approval. The supplier shall bear any additional costs arising therefrom.

### **III. Delivery Time**

The goods must have arrived at the designated delivery address by the specified day. This shall apply accordingly for the provision of other services. On-time delivery shall also require handing over all papers and documents in German required by statute or regulations as well as those documents agreed with us, such as permits, test certificates, original inspection reports in accordance with the German Automotive Industry Association, certificates of

conformity, long-term supplier's declarations, operating and maintenance manuals, lists of spare parts, user guides etc..

The supplier shall immediately notify us in writing of any possible delays in delivery. Any acceptance of late deliveries on our part shall not constitute a waiver of claims for damages.

The supplier may only appeal to the absence of necessary documents, data, provisions etc. to be delivered by us if he shall have requested these in writing and if he has not received these within an appropriate period.

In case of early delivery, we reserve the right to return the goods at the supplier's expense. Should the goods not be returned in case of early delivery, we shall store the goods at the expense and risk of the supplier until the delivery date. In case of early delivery, we reserve the right not to pay until the agreed payment due date.

In case of delay in delivery we shall be entitled to demand compensation at a flat rate of 1% per week of delay or part thereof, however, no more than 10% of the value of the goods and services affected by the delay; any further legitimate claims (withdrawal and compensation for damages instead of performance) shall remain unaffected. The supplier shall be entitled to prove that no damages or significantly lower damages were incurred.

Force majeure, strike, or any other circumstances beyond the control of the supplier, making it impossible for him to fulfil the contract in whole or part within the agreed delivery time, shall entitle us to withdraw from the contract in whole or part or to postpone performance thereof to a later date. This shall not give rise to any claims on the part of the supplier against us.

### **IV. Delivery/ Shipping**

In case of an agreement on separate assumption of costs, any packaging shall be charged at cost. Any parcels and postal matter shall be sent postage paid.

Any delivery and shipment to the receiving point designated by us shall be made at the risk and expense of the supplier, that is free place of delivery, DDU Incoterms 2000. The supplier shall ensure compliance with all statutory requirements, in particular labelling requirements.

If prices have been agreed ex works or ex supplier's distribution warehouse, or if we shall be freight payer, the goods shall be transported at the respective lowest cost, or the respective routine order shall be followed. Any prepaid postage shall be added to the freight charges.

We shall generally be informed of all transport costs in advance, so that we may arrange for pick-up of the goods ourselves, if necessary.

Insofar as we shall be the payer of freight, the carrier shall be informed that we are acting as customer exempted from forwarding insurance as defined under Clause 39 of the German Freight Forwarders' Standard Terms and Conditions (ADSp) and therefore shall not accept any charges for cartage insurance or forwarders' liability insurance (RVS/SVS).

Any excess, partial or early deliveries shall require our prior approval. The supplier shall bear any additional costs arising therefrom. We reserve the right to accept any excess or short delivery. All delivered goods shall become our property upon payment. The supplier warrants that the delivered goods are not subject to any reservation of title or any other third-party right in the delivered goods.

### **V. Defects/ Liability**

After prior appointment, we reserve the right to carry out contract-related inspections at the supplier's place of business during his regular business hours. This shall not limit the supplier's liability for defects.

The supplier undertakes to provide his goods and services free of material defects and defect of title, and in particular always in accordance with the relevant provisions and standards under the Environmental Protection Act and in accordance with the state-of-the-art.

The supplier warrants that all quality assurance specifications have been met. He warrants that the materials used are appropriate, that the construction or models and design have been carried out properly, that the goods function flawlessly and meet the agreed performance specifications under the agreed conditions. He also warrants compliance with all technical data, specifications and quality standards specified in our drawings and/or in our delivery specifications. Upon request the supplier shall be obligated to provide proof thereof without additional charge.

Upon notice of defect the supplier shall eliminate the defects including defects in documentation. This shall be done at our discretion through repair at no cost to us or through replacement delivery to the place of performance or place of delivery. The supplier shall bear the costs and the risk for returning the defective goods.

Should the supplier fail to eliminate the defects within an appropriate period set by us, then we shall be entitled to withdraw from the contract in whole or part without paying compensation, to reduce the price and/or claim damages. The same shall apply if the supplier declares he is unable to eliminate the defects within an appropriate time or if the assets of the supplier become subject of (preliminary) insolvency proceedings.

In case of claims by third parties that the deliveries are made in violation of German or foreign third-party industrial property rights, the supplier shall hereby release us from such claims insofar as he shall be responsible for the defect of title. In this case he shall compensate us for any damages, including any claims for damages by customers.

Should the supplier face insolvency or be insolvent, we shall be entitled to retain appropriate securities for the duration of the relevant warranty periods. We shall also be entitled to eliminate the defects ourselves in case of impending danger or particular urgency.

The supplier shall be liable to us for any fault, in particular for any form of negligence of his representatives and vicarious agents.

Should claims be made against us in connection with the goods or on the basis of product liability law, the supplier shall hereby release us from such claims insofar as he shall be directly liable. The same shall apply if claims are made against us due to subsequent changes to the supplier's advertising messages or product descriptions. Other rights of recourse shall remain unaffected.

The supplier shall bear all costs in connection with a product recall for which he shall be responsible (in particular selection costs). The supplier shall maintain sufficient liability insurance coverage. The supplier shall take out an appropriate amount of insurance coverage against all risks arising from product liability, including the risk of product recall, until expiry of the respective warranty. The supplier shall provide proof of the respective insurance upon request.

The personnel of the supplier shall be subject to our applicable work rules during their activities on our premises. The supplier shall observe our applicable control regulations and shall be solely responsible for his personnel. The supplier shall be fully liable for this and shall take over all costs incurred due to non-compliance with these regulations.

The above claims shall become statute-barred 36 months after notice of defect has been given. All other legal claims shall remain unaffected.

#### **VI. Retention of Title**

All materials and tools made available by us shall remain our property, with the provision that we shall be considered manufacturer and holder of industrial property rights and shall also acquire co-title in the goods manufactured through processing and use of these materials and tools in direct proportion of the value of our goods (purchase price plus VAT) to the value of the other processed goods at the time of processing.

The materials and tools shall be specially labelled and stored and managed for us separately and shall be insured against damage by fire, water and theft. Their use shall only be permitted in the performance of the contract. The supplier shall pay compensation in case of depreciation or loss.

In the absence of a separate agreement, any pallets and other means of transport made available by us shall remain our property and shall be returned upon request. We reserve the right to claim damages should these items not be returned.

#### **VII. Confidentiality/Industrial Property Rights**

Any orders, technical and business documents, data, samples, tools, construction plans and other information received from us shall be kept strictly confidential. They are subject to our exclusive property and intellectual property rights and shall not be made available to third parties without our express written approval. Any third parties shall be informed of our property and intellectual property rights and shall be subjected to this confidentiality obligation in writing.

All documents handed over shall be exclusively used for the production of the order. The supplier shall only be permitted to

make copies of the documents handed over or to store information upon our prior written approval.

All documents, including copies, shall be returned to us without request after processing of the order and all stored data shall be erased.

The supplier shall not be permitted to refer to the existing business connection, in particular for advertising purposes, without our prior written approval.

In case of a culpable violation of the above provisions we reserve the right to claim damages and in particular the right to file for injunctive relief.

Insofar as the supplier shall process personal data within the scope of his contractual duties, the supplier undertakes to inform his employees in writing of the data protection provisions under the Federal Data Protection Act (BDSG).

In our factories and on our premises the supplier shall be obligated to supervise the employees and other third parties he shall use (hereinafter personnel) and shall ensure that they observe all statutory, official and company regulations and instructions issued for such businesses, in particular with respect to occupational health and safety and due declaration of the personnel used by him. He shall also ensure that the provisions of the "Convention on the Rights of the Child" dated November 20, 1989 – prohibiting work by children under the age of 15 – are observed. These provisions are binding and a material part of the contract.

#### **VIII. Final Provisions**

Should one or more provisions be or become invalid, void or show gaps, this shall not affect the validity of all other provisions. In this case the parties shall replace the invalid or void provision and/or fill the gap with such valid provision that as closely as possible reflects the economic purpose intended with the invalid or void provision.

Place of performance shall be the delivery address designated by us. These Terms and Conditions are subject to German law. Exclusive place of jurisdiction shall be our registered place of business. We shall also be entitled to bring action against the supplier at his registered place of business.