

### **§ 1 Scope of application**

These Terms and Conditions of Delivery and Payment shall apply to the manufacture and delivery of series-produced vehicle parts, of tools for the series production of such parts, to the machining of vehicle parts supplied by the customer, to research and development services, to design services, to the manufacture and delivery of prototypes, prototype parts and prototype tools, to other test items and equipment as well as to trials and tests (all hereinafter also referred to as „Goods“).

### **§ 2 Conclusion of contract**

(1) Our deliveries and services referred to in § 1 to any person other than a consumer in terms of § 13 German Civil Code [BGB] shall be made exclusively on the basis of these Terms and Conditions of Delivery and Payment. The customer's conditions of purchase and other conditions are hereby objected to. The customer's terms and conditions shall not apply even if we do not expressly object to them after they have been submitted.

(2) Our offers are subject to change.

(3) Any order of the customer shall, unless otherwise agreed, only be deemed accepted if expressly declared by us. After formation of the contract any change order of the purchaser shall, correspondingly, require our confirmation.

(4) Our declarations directed at the conclusion, amendment or termination of contracts must be made in writing.

(5) Commercial letters of confirmation transmitted in electronic form shall only be legally binding on us if the mutual electronic form of transmission has been agreed for the business relationship and the transmission has been made to the address expressly designated for the receipt of such declarations.

### **§ 3 Terms of payment**

(1) Our remuneration claims are due for payment thirty days from the date of the invoice at the latest.

(2) If it is agreed that the goods are to be released for shipment by our customer within a certain period after our notification of readiness for shipment (call-off), we shall be entitled to invoice the goods from the time of readiness for shipment. The rights under § 3 subsection 5 shall remain reserved.

(3) Payment shall be made without discount in such a way that we can dispose of the amount on the due date. The customer may only offset undisputed or legally established claims; it shall only be entitled to rights of retention insofar as they are based on the same contractual relationship.

(4) In the event of overdue payments, interest shall be charged at a rate of nine percent above the respective base interest rate.

(5) Insofar as our claim for payment is at risk as a result of subsequently occurring circumstances which result in a significant deterioration of our assets, we shall be entitled to call it due - irrespective of the term of bills of exchange accepted on account of payment.

(6) In the cases of subsection 5, as well as of § 6 subsection 8, we may revoke the collection authorization (§ 6 subsection 7) and demand advance payments for outstanding deliveries.

(7) The customer may avert the legal consequences referred to in subsection 5 and in § 6 subsection 8 by providing security in the amount of our endangered payment claim. If the customer fails to make an advance payment or provides adequate securities within a reasonable period of time in the cases of subsection 5 or § 6 subsection 8, we shall be entitled to withdraw from the Contract to the exclusion of any claims for compensation by the customer.

(8) The statutory provisions on default of payment shall remain unaffected.

(9) In the event of default of payment due to a recognizable deterioration of the customer's assets, we shall also be entitled to withdraw from the Contract without having to set a corresponding deadline.

(10) In the event of a significant change in the cost of raw materials, primary materials, energy, transport services or environmental protection or the introduction of new or a significant increase in existing public levies or charges with a similar effect, whether under civil or public law, which in their entirety or individually leads to a significant increase in our manufacturing costs compared with the costs on which the conclusion of the individual supply contract was based, we shall be entitled to unilaterally increase the price, irrespective of the individual prices; this shall not apply if a binding or non-binding delivery date was agreed within the first three months after conclusion of the individual supply contract; furthermore, this shall not apply if the change in costs was reasonably foreseeable. In the case of framework or call-off agreements with a price agreement, the above provisions shall apply accordingly with the proviso that the three-month period shall commence upon conclusion of the framework or call-off agreement. The price increase shall be limited to the actual change in costs.

### **§ 4 Securities**

(1) We shall be entitled to customary security for our claims in terms of type and scope, even if such security is conditional or limited in time. Our failure or omission to enforce our claim for securitization, regardless of whether in individual cases or temporarily, or to exhaust the maximum possible amount, shall under no circumstances constitute a waiver of any right to such security.

(2) When the purchaser fails to provide a demanded security or fails to prolongate a rendered security which is about to elapse, although having been requested to do so, we shall be entitled to exercise a right of retention and a right to deny access to stock withdrawals pertaining to any deliveries and services which have not been performed yet. After unsuccessful expiration of a deadline, we shall, be entitled to withdraw from the contract concerning any goods and services that have not been performed yet, whereas the purchaser shall forfeit any claims for compensation.

(3) Whenever we process or finish an item that has been supplied or made available to us by the purchaser, or whenever we render services in relation to such item or we use the item as an auxiliary means of performing our goods or services, a contract-based lien on such item shall be granted by the purchaser in our favour to support the securing of any payment claims for the processing or finishing as well as for any additional services. Any rights resulting from statutory liens shall not be affected thereby

#### **§ 5 Retention of title**

(1) All goods manufactured and processed by us shall remain our property (reserved goods) until all claims, in particular also the respective balance claims, to which we are entitled within the scope of the business relationship, have been satisfied. This shall also apply to future and conditional claims, e.g. from reverse bills of exchange. We shall be entitled to a lien on the goods handed over to us by the customer for the purpose of processing in order to secure all claims; in addition, the following subsections 5 to 7, as well as 9 and 10 shall apply accordingly to these goods.

(2) Treatment and processing of the reserved goods shall be carried out for us as manufacturer within the meaning of § 950 of the German Civil Code, without any obligation on our part. The treated and processed goods shall be deemed to be reserved goods within the meaning of subsection 1.

(3) In the event of processing, combining and mixing of the reserved goods with other goods by the customer, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If our ownership lapses as a result of combining, mixing or processing, the customer shall already now transfer to us the ownership or expectant rights to which it is entitled in the new stock or item to the extent of the invoice value of the reserved goods, in the case of processing in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used, and shall store them for us free of charge. Our co-ownership rights shall be deemed to be reserved goods within the meaning of subsection 1.

(4) The customer may resell the reserved goods only in the ordinary course of business under its normal terms and conditions of business and as long as it is not in default, provided that it reserves title and the claims from the resale are transferred to us in accordance with subsections 5 and 6. It shall not be entitled to dispose of the reserved goods in any other way. The use of the reserved goods for the performance of contracts for work and services shall also be deemed to be a resale within the meaning of § 6.

(5) The customer's claims arising from the resale of the reserved goods are hereby assigned to us. They shall serve as security to the same extent as the reserved goods within the meaning of subsection 1.

(6) If the reserved goods are resold by the customer together with other goods, the claim from the resale shall be assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In the event of the resale of goods in which we have co-ownership shares pursuant to subsection 3, a part of the claim corresponding to our co-ownership share shall be assigned to us.

(7) The customer shall be entitled to collect claims from the resale, unless we revoke the collection authorization in the cases specified in § 3 subsection 5 and § 6 subsection 8. At our request, it shall be obliged to inform its buyers immediately of the assignment to us - unless this is done by us - and to provide us with the information and documents required for collection.

The customer shall not be entitled to assign the claim under any circumstances.

(8) If the customer is in default of payment and if this indicates a risk to the realizability of a not insignificant part of our claim, we shall be entitled to prohibit the further processing of the delivered goods, to retrieve the goods and, if necessary, to

enter the customer's premises for this purpose. The retrieval shall not constitute a withdrawal from the Contract.

(9) The customer must notify us immediately of any lien or other encumbrance by third parties.

(10) If the value of the existing securities exceeds the secured claims by more than ten percent in total, we shall be obliged to release securities of our choice at the customer's request.

#### **B. Execution of the delivery**

##### **§ 6 Delivery periods, delivery dates**

(1) Delivery periods shall commence on the date of our order confirmation, but not before complete clarification of all details of the order; the same shall apply to delivery dates.

All delivery periods and dates are subject to unforeseeable production disruptions and timely self-delivery of required primary materials and, in the case of additional purchases or outsourcing, subject to the ability to deliver and timely self-delivery.

(2) If the customer does not fulfill contractual obligations – including cooperative or ancillary obligations, such as the handover of plans, drawings, component specifications or vehicle parts to be processed, the opening of a letter of credit, the provision of domestic or foreign certificates, the making of an advance payment or similar - in a timely manner, we shall be entitled to reasonably postpone our delivery periods and dates in accordance with the requirements of our production process - without prejudice to our rights arising from default on the part of the customer

(3) The date of dispatch ex works shall be decisive for compliance with the delivery periods and dates.

(4) In cases of *Force Majeure*, the contractual obligations of both parties shall be suspended and the dates and deadlines for the performance of contractual obligations shall be postponed accordingly. *Force Majeure* shall include any material event or incident which cannot be prevented even if the utmost care is exercised and which results in a party being unable to fulfill its contractual obligations or only being able to do so at unreasonably expense. *Force Majeure* shall include, without being limited to: natural disaster, earthquake, volcanic eruption, severe thunderstorm, lightning, flood, unusually heavy snowfall, hurricane-force storm, fire, explosion, release of radiation or toxins, war, terrorism, threat of attack, cybercrime, riot or civil commotion, embargo or governmental, judicial or other sovereign action regardless of its legitimacy, epidemic or plague, currency collapse, inflation, labor disputes in our own or in third-party plants, substantial limitations to transportation, substantial mechanical failure, or any other event of similar severity. Any event of *Force Majeure* shall be notified to the other party without undue delay. At the earliest after a six week period of a *Force Majeure* event, either of the parties may withdraw from that part of the Contract which has been affected by *Force Majeure*, without being liable for a compensation for that withdrawal. The obligation to pay for goods or services that have already been performed shall not be affected by *Force Majeure*. Any rights of the purchaser to withdraw under B. II. 7 shall not be affected thereby.

(5) In the event of non-compliance with delivery periods, the customer shall only be entitled to the rights under §§ 281, 323 of the German Civil Code if we are in default and the customer has

set us a reasonable deadline for delivery which - in this respect in deviation from §§ 281, 323 of the German Civil Code - is connected with the declaration that it refuses acceptance of the service after the expiry of the deadline; after the unsuccessful expiry of the deadline, the claim to fulfilment shall be excluded.

(6) In the event of delay, we shall be liable in accordance with the liability provisions in Section C, however, our liability with regard to the damage caused by the delay shall be limited to 30 % of the value of the goods with regard to which we are in default.

Without prejudice to its statutory duty to mitigate damages, the customer shall in particular be obliged to notify us in writing without delay of any impending damage caused by delay. Furthermore, the customer shall, if necessary, make efforts to purchase cover from third parties if this can avoid greater damage. We reserve the right to suggest to the customer covering purchase options.

#### **§ 7 Dimensions, weight, quality**

Deviations in dimensions, weight and quality are permissible within the framework of applicable DIN standards or current practice.

#### **§ 8 Commissioning of third parties**

We shall be entitled to make use of suitable and competent third parties for the manufacture of the goods. In this case we shall oblige the third party to maintain secrecy.

#### **§ 9 Delivery, shipping, packaging and transfer of risk**

(1) Unless otherwise stipulated in an individual contract, we shall deliver ex our works. If shipment has been agreed, we shall hand over the goods to a suitable carrier of our choice for transport.

(2) If the collection or loading or transport of the goods is delayed for a reason for which the customer is responsible, we shall be entitled to store the goods at the customer's expense and risk at our reasonable discretion, to take all measures deemed suitable for the preservation of the goods and to invoice the goods as delivered.

The same shall apply if goods notified as ready for dispatch are not called within four days. The statutory provisions on default of acceptance shall remain unaffected.

(3) Standard vehicle parts and processed vehicle parts shall be provided or shipped in load carriers to be provided by the customer on loan in advance free of charge and in perfect condition without further packaging and without protective coating. The goods loaded in this way may not be exposed to the weather and are intended for immediate use; for longer-term storage, the goods require additional suitable packaging.

(4) Unless transport packaging has been agreed, we shall provide tools for the manufacture of series parts unpackaged and without anti-corrosion treatment for collection or dispatch. These tools are intended for immediate use at the customer's premises; any packaging and anti-corrosion treatment required for storage or interim storage or further shipment shall require express agreement.

(5) In the event of transport damage, the customer shall immediately arrange for a statement of facts to be made with the competent authorities.

(6) The risk shall pass to the customer when the goods are handed over to the carrier or freight forwarder, but no later than when the goods leave the factory or the warehouse; the statutory provisions on default of acceptance shall remain unaffected.

#### **§ 10 Rights Arising from Defects**

(1) The contractual quality of our goods and their freedom from defects shall be determined exclusively in accordance with the express agreements on the quality and quantity of the goods ordered or on the processing to be carried out at the time of the transfer of risk (§ 434 (2) item 1 of the German Civil Code). Liability for a specific purpose or a specific suitability shall only be assumed to the extent that this has been expressly agreed; otherwise, the risk of suitability and use shall be borne exclusively by the customer. We shall not assume any liability for the suitability for the use assumed under the Contract as stipulated in § 434 (2) item 2 of the German Civil Code or for the objective requirements stipulated in § 434 (3) of the German Civil Code. This shall also apply if we have knowledge of the intended use of the goods or do not object to the suitability of the goods or services for a particular use. We shall not be liable for deterioration or destruction or improper handling of the goods after transfer of risk.

In case the purchaser intends to use our goods for safety-relevant items or elements, the necessary due diligence requirements and the subject, the number, and the range of safety inspections to be carried out by us must expressly be agreed in the contract. This shall not relieve the purchaser from his sole responsibility for any fitness for purpose or use.

(2) Contents of the agreed specification and any expressly agreed purpose of use shall not constitute a guarantee; the assumption of a guarantee shall require a written agreement.

(3) The customer shall inspect the goods received immediately upon receipt. Claims for defects shall only exist if defects are reported immediately in writing. Hidden material defects must be reported immediately after their discovery.

After the performance of an agreed acceptance, the notification of defects that could have been detected during this acceptance shall be excluded.

(4) In the event of complaints, the customer shall immediately give us the opportunity to inspect the goods complained about; upon request, the goods complained about or a sample thereof shall be made available to us at our expense. In the event of unjustified complaints, we reserve the right to charge the customer freight and handling costs as well as the costs of inspection at normal commercial prices.

(5) In the case of goods which have been sold or processed as declassified material (e.g. so-called II-a material), the customer shall not be entitled to any claims for material defects with regard to the specified defects and those which the customer must normally expect.

(6) In the event of a material defect, we shall, at our discretion - taking into account the interests of the customer -, provide subsequent performance either by replacement delivery or by rectification.

If the subsequent performance by us is not successfully carried out within a reasonable period of time, the customer may set us a reasonable deadline for subsequent performance, after the fruitless expiry of which it may, in accordance with the statutory

provisions, either reduce the purchase price or compensation for work or withdraw from the Contract or, in the case of work performance, carry out self-performance; compensation for damages on any legal grounds may only be claimed in accordance with the provisions of Section C if the statutory requirements are met.

(7) If, in the case of series-produced finished parts of a large quantity (100 or more), the material defect is limited to individual pieces and if the remaining defect-free part of the quantity of goods can be used by the customer without any significant restrictions and if this is also reasonable for the customer, we may compensate the claim for subsequent performance by an appropriate price reduction in accordance with the principles of reduction; in this case, we shall be entitled, at our discretion, to the return of the defective quantity of goods or to a credit note for the scrap value.

(8) In the event of a defect of title, we shall be entitled to subsequent performance by remedying the defect of title within a reasonable period of time, which shall generally be at least two weeks from receipt of the notice of defect. Otherwise, § 11 (6) sentence 2 shall apply accordingly.

(9) The period of limitation for claims due to material defects of manufactured, delivered or processed movable objects shall be three years, irrespective of §§ 478, 479 of the German Civil Code and unless otherwise expressly agreed between the parties, in the case of an object that has been used for a building in accordance with its customary manner of use and has caused its defectiveness.

(10) The period of limitation for claims due to material defects of other manufactured, delivered or processed movable objects shall be one year, without prejudice to §§ 478, 479 of the German Civil Code and unless otherwise expressly agreed between the parties.

11) The customer's right of recourse against us pursuant to § 478 of the German Civil Code shall be limited to the statutory scope of the warranty claims asserted against the customer by third parties and shall require that the customer - to the extent relevant - has complied with its obligation to notify us of defects pursuant to § 377 of the German Commercial Code or otherwise has complied with its contractual obligation to inspect and notify us of defects. The customer shall be obliged to ward off such claims - insofar as this is possible.

(12) We shall neither be liable for any reclamation fees nor for any lump sum damages nor for any penalties whatsoever.

(13) Insofar as the United Nations Convention of 11 April 1980 as to the International Sale of Goods (UN Sales Law) applies, such shall do so subject to the condition that any claims for damages or expenses against us due to defects in the purchased goods or for any other failure to perform shall only apply in case of any fault by our legal representatives or agents and only in terms of the limits set out in the following provisions of C. The aforesaid limitations shall not apply to personal injury, damage to privately-used property or for cases where a liability is mandatory as per the law.

## **C. General limitations of liability**

### **§ 11 Limitations of liability**

(1) Our liability for damages or expenses regardless of the legal basis shall be limited or excluded in accordance with the provisions of C.

(2) We shall be liable only in case of willful acts or gross negligence of our legal representatives or agents or in case of a culpable and substantial breach of a contractual duty.

(3) In case of a culpable and substantial breach of a contractual duty we shall be liable – except in case of a willful act or gross negligence of our legal representatives or agents – only for typical, foreseeable damage.

(4) Any liability for loss of production and loss of profit shall be excluded in all cases.

(5) Our liability, regardless of the legal basis, shall be limited to the total contract value – in case of call-offs or individual orders based on a framework agreement limited to the contract value of the relevant call-off or individual order – insofar as no higher insurance coverage or rights to higher levels of compensation exist in relation to any third party outside of the group. In the event that the total contract value or the call-off or individual contract value without statutory turnover tax [Umsatzsteuer] is less than € 50,000, the amount of € 50,000 shall apply as the maximum level of liability insofar as no higher insurance coverage or rights to higher levels of compensation exist in relation to any third party outside of the group.

(6) The limitations and exclusions of liability contained in these Supply and Payment Conditions shall not apply in case of willful acts or in case of personal injury, damage to privately-used property or in cases where applicable mandatory law requires such liability.

## **D. Other provisions**

### **§ 12 Proof of export**

If a customer resident outside the Federal Republic of Germany or its agent collects goods and transports or ships them abroad, the customer must provide us with evidence of this by handing over documents that meet the requirements of the value-added tax law of the Federal Republic of Germany. If this proof is not provided within thirty days after delivery of the goods, the customer shall pay the value-added tax from the invoice amount in accordance with the value-added tax rate applicable for deliveries within the Federal Republic of Germany.

### **§ 13 Data Protection**

(1) The parties undertake to comply with the applicable data protection provisions, in particular the EU General Data Protection Regulations, and the German Federal Data Protection Act [Bundesdatenschutzgesetz].

(2) We point out that any data in connection with the contractual relationship and the processing of the contract shall be processed and stored for the purpose of the execution of the contract.

(3) We reserve the right to make available by electronic means to insurance companies as well as institutions for protecting suppliers' credit and any credit rating agencies any data on the contractual and payment processing and any other information suitable for determining the credit-worthiness in relation to the contractual relationship.

**§ 14 Applicable law**

The law of the Federal Republic of Germany including the „Convention of the United Nations of 11 April 1980 as to the International Sale of Goods“ shall exclusively apply to any legal relationship between the contractual parties.

**§ 15 Place of performance and jurisdiction**

The place of performance and jurisdiction for both parties to the Contract shall be Osnabrück. We are also entitled to choose the general place of jurisdiction of the customer.