

**TERMS AND CONDITIONS FOR DELIVERY AND PAYMENT  
OF THE COMPANY GRAMMER AG AND AFFILIATED COMPANIES ACCORDING TO § 15 AKTG ("GRAMMER")**

**1 Scope**

The following Terms and Conditions apply exclusively; conflicting or deviating terms and conditions of the Customer are only accepted by GRAMMER provided that these are terms and conditions that correspond to the recommendations of The German Association of the Automotive Industry e.V. ("VDA") to terms and conditions for business purposes, as far as they depend to the purchase of production material and spare parts which are destined for the automobile ("VDA Conditions"). The VDA Conditions precede GRAMMER'S Terms and Conditions.

Other deviating terms and conditions shall not apply unless GRAMMER expressly agrees to their application in writing. The GRAMMER Terms and Conditions shall apply even if delivery is made unconditionally in the knowledge of conflicting conditions of the Customer that deviate from the GRAMMER Terms and Conditions.

**2 Offer, Conclusion of the Contract**

2.1 Unless not explicitly stated otherwise in the quotation GRAMMER'S quotations are in general offers without commitment.

2.2 Any delivery contract as well as any changes, ancillary agreements and other agreements become binding only upon confirmation by GRAMMER.

**3 Prices, Payments, Set-off**

3.1 Prices are, unless otherwise agreed in writing, based on FCA (according to INCOTERMS in its latest version). Value-added tax is not included in the price and will be invoiced in the applicable legally due amount.

3.2 Payments must be made within 30 days from the date of the invoice net to one of GRAMMER'S bank accounts unless otherwise expressly agreed in writing. Payment terms shall only be deemed met, if the amount payable is available to GRAMMER on the due date. By exceeding the payment terms mentioned above or otherwise agreed in writing the Customer shall be in default with immediate effect.

3.3 If, after conclusion of the contract, the amounts due to GRAMMER turn out to be jeopardized by the Customer's inability to pay or to perform and if GRAMMER is obligated to perform in advance (particularly delivery), GRAMMER shall be entitled to refuse its performance and grant, in its sole discretion, a reasonable period to the Customer in which the Customer shall effect payment against GRAMMER'S delivery or provide security reciprocally and simultaneously against performance. If the Customer fails to meet this period without result, GRAMMER shall have the right to withdraw from the unaccomplished part of the contract and claim damages.

3.4 Set-off and/or debit notes by the Customer are excluded, unless the claims are (i) legally established, (ii) have reached a stage permitting final judgment or (iii) remained unchallenged. This also applies for the withholding of payments because of counterclaims and/or right of retention.

3.5 Price changes by GRAMMER are permitted if more than three (3) months lie between the date of conclusion of the contract and the agreed delivery date. GRAMMER shall be entitled to raise the price by a reasonable amount according to the increases in costs, if wages, material costs or market cost prices go up more than 5 % after this period of time but before completion of the delivery.

**4 Delivery, Passing of Risk**

4.1 Delivery is FCA (according to the INCOTERMS in its latest version) from a location designated by GRAMMER. The method of packaging and the packaging material will be determined in GRAMMER'S sole discretion.

4.2 GRAMMER shall be entitled to reasonable part-deliveries.

4.3 Changes in design or shape attributable to legislative requirements will be subject to reservation during the delivery time. If these changes alter the agreed character of the manufactured goods, GRAMMER will immediately notify this to the Customer.

4.4 The risk passes to the Customer according to the agreed INCOTERM, otherwise upon delivery of the products to be delivered to the forwarder, freight carrier or any person otherwise specified for carrying out the shipment.

4.5 If the shipment is delayed due to circumstances for which the Customer is responsible, or the CUSTOMER does not accept the performance offered by GRAMMER the risk shall pass to the Customer as of receipt of the notification of readiness for shipment unless a period of time has been specified according to the calendar for the performance that GRAMMER is to undertake.

**5 Terms, Deadlines, Default**

5.1 The agreed delivery periods and call-off deadlines are only kept upon the Customer's timely submission of documents, approvals and authorizations requested from the Customer and his compliance with the agreed terms of payment and other contractual obligations. If these prerequisites are not met in time, the terms and deadlines shall be extended appropriately, on condition that GRAMMER is not culpably responsible for the delay.

- 5.2 Unforeseen und unavoidable events in the production or other obstacles such as acts of god, labour disputes or other disruptions in GRAMMERS business or in the business of GRAMMER suppliers as well as delayed delivery by GRAMMER suppliers shall entitle GRAMMER to extend the delivery period by a period of time equal to the duration of such force majeure event. GRAMMER will inform the Customer of the start and the end of such circumstances without undue delay.
- 5.3 If GRAMMER is in default with a delivery, the Customer shall within the scope of the applicable statutory provisions have the right to withdraw from the contract upon the expiration of a reasonably additional respite of performance extended to GRAMMER insofar as GRAMMER has not shipped the delivery or parts thereof within this additional respite. In this case, the Customer shall have the right to withdraw from the contract with respect to the outstanding part-delivery. In case of part-deliveries, the Customer may withdraw from the entire contract only if due to the default he cannot make intended use of the part-delivery. The Customer may rescind the contract only if GRAMMER is culpably responsible for the delay of the delivery.
- 5.4 Claims for damages due to default are excluded unless GRAMMER has caused them by intent or gross negligence. In case of minor negligence, liability shall be limited to foreseeable, typically occurring damages.
- 5.5 In case of call-off agreements entered into before an agreement upon manufacturing and acceptance deadlines was reached, GRAMMER shall be entitled to request a binding determination of deadlines if three months have passed since the intake of the order without the Customer having notified any deadlines to GRAMMER. If the Customer fails to comply with this request within a reasonable period commencing with receipt of the corresponding written request, GRAMMER shall be entitled under the threat to refuse performance to set a reasonable additional period for determining the deadlines and upon its unsuccessful expiry to rescind the unaccomplished part of the contract and to claim damages and expenses incurred. The same applies if the Customer does not or not in the full amount call off the delivery quantities agreed upon in call-off agreements.

## **6 Retention of Title**

- 6.1 GRAMMER retains its title to delivered items (reserved goods) until all of GRAMMERS current claims arising out of business dealings between GRAMMER and the Customer as well as future claims, insofar as they are related to the delivered items, have been fulfilled. In cases of current accounts the retained property is deemed to be collateral for the claim to be balanced of the account.
- 6.2 If the Customer combines delivered items with other goods to form a unit and if the other goods are considered as the main constituent, the Customer shall be committed to assign partial ownership to GRAMMER to the extent the main unit belongs to the Customer. Provided the Customer sells the delivered items according to the terms of the contract, the Customer herewith assigns to GRAMMER all claims against the third-party purchaser including any ancillary rights until GRAMMER demands are completely settled.
- 6.3 At the request of GRAMMER and if there is a valid reason, the Customer shall inform the third-party purchaser about the assignment and shall provide GRAMMER with all necessary information and documents to assert the rights.
- 6.4 GRAMMER shall release the securities to which GRAMMER is entitled upon request to the extent their value exceeds the claims to be secured by more than 15 %.

## **7 Tools**

GRAMMER retains title with respect to tools manufactured by GRAMMER until they are fully paid.

## **8 Complaints**

The Customer shall subject delivered items to an incoming goods inspection and shall report complaints immediately in writing and in detail. Incidentally, § 377 German Commercial Code (HGB) shall remain unaffected.

## **9 Warranties / Liability**

- 9.1 The statutory rights of the Customer pursuant to § 437 German Civil Code (BGB) apply subject to the following conditions:
- 9.2 In case of defects, GRAMMER will, in its reasonable discretion, choose to cure the defects or deliver goods without defects (hereinafter collectively referred to as "Supplementary Specific Performance"). The Customer shall put the defective goods exempt from charges at GRAMMERS disposal. Supplementary Specific Performance costs shall only be borne by GRAMMER as the Supplementary Specific Performance is performed by GRAMMER, or these costs are mutually agreed in writing. Expenses of the Customer, in connection with a Supplementary Specific Performance, particularly assembly and reassembling costs, costs at Customers sole discretion and reworking costs accomplished by a third party, shall in no event be borne by GRAMMER without a prior, reasonable respite to conduct Supplementary Specific Performance. The same applies concerning the assertion of a lump sum. Costs and expenses, if any, relating to Supplementary Specific Performance and assembly and reassembling costs of the Customer have to be in an appropriate relationship to the piece price of the delivered item and shall in no event exceed 110% of the value of the relevant delivered item. In case of a petit defect the reimbursement of assembly and reassembly costs are excluded.

- A petit defect shall be an aesthetical defect or a defect which does not or only marginally affect the functionality of the delivered item.
- 9.3 The Customer shall grant to GRAMMER a reasonable period of time and reasonable opportunity to conduct Supplementary Specific Performance, which Supplementary Specific Performance will be performed by GRAMMER's sole discretion. The Customer has the right to perform Supplementary Specific Performance itself or to cause a third party to perform such Supplementary Specific Performance and, in each case demand reimbursement of the proven costs and expenses associated therewith according to the limitation of paragraph 9.2, only (i) in case of emergency relating to operational security, (ii) to avoid disproportional high damage (iii) after two (2) unsuccessful attempts of Supplementary Specific Performance, or (iv) when GRAMMER is in default with respect to the Supplementary Specific Performance. Expenses of the Customer are not indemnifiable. The Customer must notify GRAMMER without undue delay of an occurrence of any of the events described in (i) and (ii).
- 9.4 Any claims of the Customer shall be excluded inasmuch as the damage is caused by the non-observance, attributable to the Customer, of operating, service and installation instructions, to unsuitable or inappropriate use, to incorrect or careless treatment, normal wear and tear or incorrect modification or repair of the delivered item. For the avoidance of doubt, the Customer has the burden of proof that the aforementioned was adhered to. Any Customer claims regarding defects or damages shall further be excluded in cases such claims arise out of a part purchased by GRAMMER by a sub-supplier designated by the Customers.
- 9.5 The additional statutory rights of the Customer apply subject to the following otherwise the liability of GRAMMER including its executives, employees and vicarious agents is excluded:
- (1) With exception of a liability according to the Product Liability Act and wilful or negligent injuries to life, body and health, GRAMMER is only liable for acts or omissions caused by a wilful, gross negligent, fraudulent withholding of information about defects or warranties for the properties of delivered items or a negligent breach of significant contractual duties.
  - (2) In case of a breach of significant contractual duties due to simple negligence or gross negligence by individuals other than executives a liability shall be limited to damages reasonably foreseeable for the relevant type of contract.
- 9.6 The Customer bears the burden of proof that all requirements are met for the claims alleging GRAMMER's breach of duty to be valid as asserted by the Customer. This burden of proof applies also to GRAMMER's wilful misconduct or negligence.
- 9.7 Warranty claims are subject to a limitation period of twenty-four (24) months beginning with the first vehicle registration, at the latest, however thirty (30) months after delivery to the Customer. A restart of the limitation period shall only be given in case of a replacement of the defective part. In case of GRAMMER's rework of the defective part a restart of the limitation period is not connected herewith, excluded therefrom are warranty claims provably relating to the rework done by GRAMMER.
- 9.8 The aforementioned limitation period shall apply subject to the following:  
The limitation periods shall generally not apply in the case of intention and of fraudulent concealment of a defect. They shall also not apply to claims for damages for injury to life, body or health and for claims under the German Product Liability Act. In these cases, the statutory limitation periods shall apply.
- 9.9 Any goodwill Supplementary Specific Performance done by GRAMMER is always carried out without an approval of any statutory duties. A restart of the given limitation period is not connected herewith.
- 10. Liability for Infringements of Property Rights**  
If the Customer prescribes to GRAMMER how to manufacture the goods to be delivered by providing GRAMMER with specific details, documents and drawings, the Customer shall be responsible for ensuring that by fulfilling its contractual obligations GRAMMER does not infringe third parties' rights, such as patents, utility models as well as other property and copyrights. The Customer undertakes to hold GRAMMER harmless and indemnify GRAMMER for all claims third parties may assert in relation to such infringements.
- 11. Guarantee/ Procurement Risk**  
The assumption of guarantees and procurement risks requires, in order to be validly assumed by GRAMMER, (i) a specific assumption of risk (ii) expressly designated as such (iii) written form. The Customer agrees that statements in GRAMMER catalogues, printed material, brochures and other general information in no event and at no time constitutes a warranty or the assumption of the procurement risk.
- 12. Entry Certificate**
- 12.1 In case of a EU intra-Community supply of goods the Customer as recipient of goods delivered by GRAMMER from Germany is according to German statutory tax provisions (§§ 17a, 17b und 17 c UStDV und des UStAE) obliged to provide GRAMMER an Entry Certificate. Such Entry Certificate must be automatically provided by the Customer by

- entitled persons to GRAMMER without a separate request upon receipt of goods but at least every month according to the latest version of the UStDV und des UStAE, in particular in terms of language, form and content.
- 12.2. If the Customer does not or incompletely comply to its obligations stated in 12.1 GRAMMER shall be entitled to refuse its performance of delivery and grant, in its sole discretion, a reasonable period to the Customer in which the Customer shall provide security in the amount of the sales tax amount concerned or provide proper Entry Certificates reciprocally and simultaneously against delivery by GRAMMER. If the Customer fails to meet this period without result, GRAMMER shall have the right to withdraw from the unaccomplished part of the contract and claim damages. Further, the Customer shall hold GRAMMER free and harmless from any claims related to the non-compliance in terms of the Entry Certificate, in particular but not limited to sales tax disadvantages, interest, expenses, damages and reasonable attorney fees.

**13. Place of Performance, Jurisdiction, Applicable Law**

- 13.1 The courts of Amberg/OPf. shall have exclusive jurisdiction, if the Customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch "HGB") or a public legal entity. However, GRAMMER shall be entitled to file proceedings against the Customer in his general jurisdiction and to file a temporary restraining order at any court having jurisdiction.
- 13.2 The law of the Federal Republic of Germany shall be applicable in addition to the provisions of the contract. Applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.
- 13.3 If a specific provision of these Terms and Conditions is or becomes invalid, the remaining provisions shall remain valid.
- 13.4 Any amendments and additions as well as ancillary agreements must be made in writing. Amendments in any other form than in writing, particularly Fax or E-Mail are explicitly not valid.
- 13.5 For the purpose of executing this Agreement or any amendment or supplement thereof, facsimile signatures, PDF image signatures or electronic signatures rendered via an electronic signature service (e.g. DocuSign, AdobeSign) shall be treated as original signatures if in accordance with the applicable law and any such document shall be deemed to be in writing.