

- Translation (only German text is authentic) –

The German Association of the Automotive Industry (VDA) recommends to its members the following terms and conditions for business purposes, as far as they depend as bulk purchasers on the supply of different products

Non-binding recommendation of the VDA of 5-12-2002

General Terms and Conditions for the purchase of production material and spare parts which are destined for the automobile

I. Determining Conditions

The legal relationship between supplier and purchaser shall be determined by the following conditions and any additional terms agreed between the contracting parties, if any. Changes and amendments to these conditions have to be made in writing. Any other general terms and conditions shall not be applicable, even if they were not rejected explicitly in any individual case.

II. Orders

1. Supply contracts (order and acceptance of such order) and delivery releases as well as any changes and amendments thereof have to be made in writing. Delivery releases may also be issued by tele-communication.
2. In case the supplier does not accept the order within three weeks of its receipt, the purchaser shall have the right to revoke such order. Any delivery release shall become binding if the supplier does not reject such material release within two weeks of its receipt.
3. To the extent it is reasonably acceptable to the supplier, the purchaser may demand changes to be made to the goods relating to design and process. In this case the consequences, especially with respect to additional costs or reduction of costs, as well as with respect to delivery dates, are to be resolved in an appropriate and mutually agreeable manner.

III. Payment

1. Payment is to be made ...In case of premature shipments, payment will be made according to the agreed delivery date.
2. Payment shall be made by bank transfer or by check.
3. In case of defective deliveries, the purchaser shall be entitled to withhold payment pro rata to the value until the defective goods have been replaced.

4. Without previous written consent of the purchaser, which shall not be unreasonably withheld, the supplier shall not be entitled to assign his receivables to third parties or to have such receivables collected by third parties. In the event of an extended retention of title, agreement to resale is assumed to have been given.

Even if the supplier assigns his receivable against the purchaser contrary to the first sentence of paragraph 4 to a third party without the consent of the purchaser, the assignment remains valid. Regardless of the assignment the purchaser may choose whether payment is made to the supplier or the third party.

IV. Notification of Deficiencies

The purchaser shall notify the supplier in writing about any deficiencies of a shipment as soon as such deficiencies have been discovered in the course of an orderly business practice. In case the purchaser complies with the afore-stated condition the supplier hereby waives his right to reject delayed notification of deficiency.

V. Confidentiality

1. The contracting parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are public.
2. Drawings, models, patterns, samples and similar objects shall not be made available or otherwise be made accessible to unauthorized third parties. Reproduction of such objects is permitted only according to business requirements or in compliance with the laws on copyright.
3. Subsuppliers shall be made to commit themselves accordingly.

4. Each contracting party may use the established business relationship for advertising purposes only after having obtained previous written consent from the other party.

VI. Delivery dates and time limits

Agreed delivery dates and time limits are binding. Compliance with such dates or time limits shall be determined by the day of arrival of the goods to be supplied at the purchaser. Unless "ex works" has been agreed, the supplier shall make the goods available in time taking into consideration the time usually necessary for loading and shipment.

VII. Delay

1. The supplier shall be committed to compensate the purchaser for all damages caused by delay. There shall be no right of recovery for loss of profit and damages resulting from interruption of business.

2. In case of minor negligence damages shall be limited to additional freight costs and additional assembly costs or to the additional costs resulting from purchases from alternative sources in the event the supplier fails to meet an extended term or if the purchaser's interest in the delivery has become frustrated.

VIII. Force majeure

In case of Act of God, labour disputes, civil commotion, governmental or official actions and other non-foreseeable, inescapable and serious events the contracting parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable in case the contracting party concerned is already in default. The contracting parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

IX. Quality and Documentation

1. Concerning his deliveries the supplier shall comply with the acknowledged standards of engineering, the safety regulations and the agreed technical data. Changes to the goods to be delivered are subject to the previous written consent of the purchaser.

Concerning the first sample inspection, reference is made to the VDA-publication "Sicherung der Qualität von Lieferungen - Lieferantenauswahl/Produktionsprozeß - und Produktfreigabe/Qualitätsleistung in der Serie", Frankfurt am Main 1998. Notwithstanding the afore-stated the supplier shall permanently control the quality of the goods delivered. The contracting parties shall inform each other of the possibilities of improving the quality of the goods to be delivered.

2. In the event the kind and extent of testing, as well as the instruments and testing methods, are not agreed between the supplier and the purchaser, the purchaser shall, if the supplier so desires, agree to discuss the testing with the supplier pursuant to his Know-how, experiences and possibilities in order to find out the requisite state of testing techniques in the case being considered. In addition, the purchaser shall, upon request, inform the supplier about the applicable safety regulations.

3. Concerning the parts especially marked in the technical documentation or designated by separate agreement, for instance with "D", the supplier is, moreover, required to keep

special records as to when, in what manner and by whom the supplied goods have been tested with regard to the characteristics required to be recorded and which results were achieved by the quality tests so required. The test records have to be kept for ten years and have to be presented to the purchaser in case of need. The supplier is required to obligate any sub-suppliers to the same extent if legally possible. As a manual, reference is made to the VDA publication "Nachweisführung - Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen", Frankfurt am Main 1998.

4. In the event any authorities responsible for vehicle safety, emissions standards and the like, demand inspection of the manufacturing process and disclosure of the test records of the purchaser, to scrutinize certain requirements, the supplier shall, upon request of the purchaser, concede to such authorities the rights which they have with regard to the purchaser and provide them with the support which may reasonably be expected.

X. Warranty

1. If defective goods are delivered the purchaser is entitled, according to the relevant legal requirements and the following clauses unless otherwise agreed upon, to claim the following:

a) Before start of production (processing or fitting) the supplier shall first be given the opportunity by the purchaser to sort out as well as rework or replace them unless this cannot reasonably be expected from the purchaser. In case the supplier is unable to accomplish the afore-stated or in case he does not conform with it without undue delay, the purchaser is entitled to rescind the contract to this extent and return the goods at the supplier's risk. In urgent cases he may, after consultation with the supplier, accomplish the rework himself or have it done by a third party. Any costs resulting therefrom shall be borne by the supplier. In the case the same goods are repeatedly supplied in a defective condition, the purchaser shall be entitled to rescind the contract also with respect to the goods not yet supplied if, upon written notification, the supplier has again delivered defective goods.

b) In the event the defect is discovered only after start of production and the purchaser has observed article IV (notification of deficiencies), then he is entitled

- according to § 439 para. 1, 3 and 4 BGB to claim after-fulfillment and indemnification for cost of transport (without towing cost) as well as cost of dismantling and installation (cost of labour; cost of material only if agreed upon), which are required for the after-fulfillment, or
- to reduce the sales price.

c) If in addition to the delivery of defective parts the supplier has violated culpably further contractual obligations (e.g. obligations of information, consultation, or examination), the purchaser can claim indemnification according to article XI for the consequential harm caused by the defect. This consequential harm caused by a defect is determined by the damages which the purchaser suffered from the delivery of defective goods at other objects of legal protection.

Further claims regarding expenses and damages because of delivery of defective goods on the basis of § 437 BGB or directly on the basis of the rules named therein may only be claimed by the purchaser, if this has been agreed by contract. Regarding new agreements article XV para.1 is to be observed.

2. At his request the parts to be replaced shall be made available immediately to the supplier at his cost.
3. The warranty expires at the end of 24 months after the first vehicle registration or the installation of the replacement part, at the latest, however, 30 months after delivery to the purchaser. The legal rules of expiry of warranty apply to parts for commercial vehicles unless the parties have agreed otherwise.
4. A warranty claim does not arise if the defect is attributable to the non-observance of operation, service or installation instructions, inappropriate or unsuitable use, incorrect or careless treatment, normal wear and tear as well as to engagements to the good supplied made by purchaser or a third party.
5. If defective goods are delivered claims of the purchaser on the basis of the Product Liability Act, and the civil law of torts and acting without mandate shall remain unaffected by this article X. Guarantees regarding quality and durability have to be designated expressly and individually in writing.

XI. Liability

Insofar as these conditions do not provide for other liability clauses, the supplier shall be liable for damage directly or indirectly caused to the purchaser as a result of defective supply, violation of official safety regulations or for any other legal reason, attributable to the supplier only according to the following.

1. A liability for compensation does, in general, only exist in case the supplier was at fault when causing the damage.
2. In case the purchaser is liable under law, without any fault on his part, which liability cannot be excluded with regard to third party claimants, then the supplier shall hold the purchaser free and harmless of any claim to the extent he would himself be liable directly. Compensation between purchaser and supplier shall be settled by applying the principles of § 254 BGB correspondingly. This shall also apply in case the supplier is held liable directly.
3. Any liability shall be excluded to the extent the purchaser has on his part effectively excluded any liability in relation to his customer. In doing so the purchaser shall attempt to stipulate limitations of liability on behalf of the supplier to the extent legally possible.
4. Any claims of the purchaser shall be excluded inasmuch as the damage is caused by the non-observance, attributable to the purchaser, of operating, service and installation instructions, to unsuitable or inappropriate use, to incorrect or careless treatment, normal wear and tear or incorrect repair.
5. As far as he is legally bound the supplier shall be liable for compensation with regard to actions which the purchaser undertakes to avoid any damage (for instance recall actions).
6. If the purchaser intends to assert a claim against the supplier according to the afore-stated provisions, he shall forthwith consult the supplier and shall comprehensively inform him. He shall give the supplier the opportunity to investigate the damage occurred. The contracting parties shall agree upon the steps to be taken, especially in the case of negotiations for a settlement.
7. The rules stated in article VII paragraph 1 shall be applicable accordingly if the supplier has no or no sufficient insurance coverage.

XII. Industrial Property Rights

1. The Supplier shall be liable for any claim which, by the use of goods according to the terms of the contract, result from the infringement of industrial property rights, either granted or applied for (industrial property rights), if at least one of such industrial property rights of the same industrial property rights family being published either in the supplier's mother country, by the European Patent Office or in either the Federal Republic of Germany, France, Great Britain, Austria or the United States of America.
2. The supplier shall hold the purchaser and his purchaser's customers free and harmless of all liabilities resulting from making use of such industrial property rights.
3. The afore-stated shall not apply inasmuch as the supplier has manufactured the goods to be delivered according to drawings, models or similar other descriptions or statements provided by the purchaser and if, at the same time, the supplier does not know or, in connection with the products developed by him, was unable to know that industrial property rights were infringed.
4. To the extent the supplier is not liable pursuant to paragraph 3 above, the purchaser shall hold him free and harmless of all claims brought by third parties.
5. The contracting parties commit themselves to inform each other on all risks of violation or alleged violations and to give each other the opportunity to jointly oppose such claims.
6. At the request of the purchaser the supplier shall inform the purchaser about the use of any published or unpublished industrial property rights which are owned by him or licensed to him relating to the goods to be delivered.
7. The principles contained in article VII paragraph 1 concerning restriction of liability shall be applicable accordingly.

XIII. Use of production devices and confidential information made available by the purchaser

Models, matrixes, patterns, samples, tools and other manufacturing devices as well as confidential information provided to the supplier by the purchaser or paid for by him in full, may be used for supplies to third parties only after having obtained the previous written consent of the purchaser.

XIV. Retention of Title

The supplier retains ownership of all goods supplied by him until it has been paid for in full; in this regard all shipments shall be considered as part of one continuous supply transaction. In case of continuous invoicing the retained ownership shall be deemed to secure the balance of the supplier's accounts receivable.

If the purchaser combines the goods delivered with other goods to form a unit and if the other goods are being considered the main constituent, then the purchaser shall be committed to assign partial ownership to the supplier to the extent the main unit belongs to him. In case the purchaser resells the goods delivered according to the terms of the contract, he herewith assigns to the supplier all claims against his customer including any ancillary rights until all of the supplier's demands are completely settled.

If there is a valid reason the purchaser, at the request of the supplier, shall inform the third-party-purchaser about the assignment and he shall provide the supplier with all information and documents necessary to assert his rights.

The supplier shall release the securities held by him to the

extent their value exceeds 20 % of the claim to be secured.

XV. General Provisions

1. The amount of damages to be paid by the supplier according to articles VII, X, XI, and XII shall be determined by having, adequately in favour of the supplier, due regard to the economic situation of the supplier, nature, scope, and duration of the business relationship, possible causative or responsible contributions by the purchaser according to § 254 BGB, and a particularly disadvantageous situation of installation of the part supplied.

Especially damages, cost and expenditures which shall be paid by the supplier have to be in an appropriate relationship to the value of his part being delivered.

2. In the event one of the contracting parties ceases payment, or insolvency or non-judicial settlement proceedings are applied for, then the other party shall be entitled to rescind the contract with respect to the part not yet fulfilled.

3. Should one of the provisions of these conditions or of any additional stipulations agreed upon be or become invalid then the validity of the remaining part of these conditions shall not be affected thereby. The contracting parties are committed to replace the invalid provision by another – with respect to the commercial effect - equivalent provision, in so far as this is possible.

4. If the parties have not agreed otherwise the laws of the Federal Republic of Germany shall exclusively apply. The application of the Convention of the United Nations of 11.4.1980 on Contracts International Sale of Goods is hereby excluded.

5. Place of performance shall be the legal domicile of the purchaser. Concerning the shipments the parties may agree otherwise.

6. The court at the place where the plaintiff is domiciled, or any other competent court, shall have jurisdiction over these conditions.