

**Framework Agreement  
for the purchase of production material  
No. ....**

between **GRAMMER AG**, P.O. Box 1454, D-92204 Amberg

- hereinafter referred to as „**GRAMMER**“ -

and

- hereinafter referred to as „**Supplier**“ -

- together hereinafter referred to as „**the Parties**“ -

**I. Preamble:**

This Framework Agreement governs the co-operation between the parties. As the contractual relationship is materially influenced by the requirements of GRAMMER's customer ("Customer"), the parties have decided to also apply the contractual regulations between GRAMMER and the Customer to the relationship between the parties.

**The parties thereby agree the following:**

**II. Object of the Agreement**

1. GRAMMER procures non-exclusive products/product quantities including spare parts ("Products") from the Supplier. The details regarding the products are stipulated in the product-specific regulations valid at the time ("**product-specific regulations**"). The other contractual terms and conditions including prices and terms and conditions of supply are stipulated in the **Appendices** to the present Agreement. The prices are fixed prices for the time periods indicated in Appendix 1.
2. The Supplier undertakes to supply to GRAMMER or to a company nominated by GRAMMER all the Products required by GRAMMER. Supplies / Products shall be released separately by the Logistics department at GRAMMER. Only a binding release by GRAMMER shall lead to an obligation to accept delivery.
3. Should additional products be purchased from the Supplier in future, the terms and conditions of this Agreement shall also apply to all of such products, unless expressly excluded by the Parties. All orders shall take place in accordance with this Agreement even without express reference to such Agreement.

**III. Validity and powers of attorney**

1. GRAMMER is concluding the Agreement with the Supplier in its own name and as the representative of the companies in the GRAMMER Group (also referred to as "**Group Company**"). Under the present Agreement, the other companies in the GRAMMER Group, including future companies, have the right to purchase Products from the Supplier or its companies at the specified terms and conditions. The purchase agreement shall be concluded directly between the Supplier and the Group Company, and the transfer of ownership shall also take place within this direct relationship.
2. The Supplier is concluding the Agreement with GRAMMER in its own name and as the representative of the affiliated companies in the Supplier's corporate group, including future companies (also referred to in the Agreement as "**Supplier/s**" or "**Supplier Company**"). The Supplier expressly confirms that it is authorized to represent the Supplier Company. The Supplier is jointly and severally liable for all claims which accrue to GRAMMER against a Supplier Company. The Supplier undertakes to satisfy these claims at first request if GRAMMER proves that the Supplier Company has been asked to satisfy the claims without success despite the setting of an appropriate time period.

#### **IV. Applicable terms and conditions**

The following contractual terms and conditions are an integral part of the contractual relationship between the Parties and are therefore binding on both Parties in the order given:

- a) the product-specific regulations in the relevant valid version,
- b) the present Agreement with appendices in the following order:
  - (1) Price Agreement pursuant to **Appendix 1**
  - (2) Quality Agreement pursuant to **Appendix 2**
  - (3) Logistics Agreement pursuant to **Appendix 3**
  - (4) Confidentiality Agreement pursuant to **Appendix 4**
  - (5) the German Association of the Automotive Industry (VDA) General Terms and Conditions for the purchase of production material and spare parts which are destined for the automobile pursuant to **Appendix 5**.

#### **V. Additional obligations**

1. The Supplier undertakes to take out "enhanced" product liability insurance, which also includes recall costs, with lump sum cover of EUR 5 million per claim, double in the aggregate, and to maintain this for a minimum of 10 years after expiration of the present Agreement and to provide evidence of this upon execution of the Agreement upon request. The Supplier undertakes to compensate GRAMMER for all damages which GRAMMER incurs in the event of a product liability claim arising from a product supplied by the Supplier and to indemnify GRAMMER from all claims of third parties upon such request. This also applies to corrective measures such as a recall, preventative customer service action as well as for production level claims.
2. The Supplier assumes full liability for its Products being free from the third party industrial property rights, or patent infringement(s).
3. Irrespective of the term of the Agreement, the Supplier undertakes upon request to supply GRAMMER with the required products at the terms and conditions of the present Agreement for use as spare parts ("**Spare Parts**"). This obligation runs for a period of 15 years after the end of the relevant production material and for Products for the rail sector 30 years after the end of the relevant production. The price of the Spare Parts once production has ended shall be mutually agreed in good time before the end of production. The Supplier must demonstrate that a change in

price is plausible and comprehensive and any increase may not exceed 30% of the last production price. The Supplier shall ensure that sub-suppliers are contractually bound accordingly and shall assume the procurement risk for the Spare Parts.

4. a) The warranty period agreed between the Parties corresponds to the warranty period which the Customer grants to the end user. Warranty period is at least 36 months from first registration of the vehicle. In the event that no first registration is necessary, the warranty period shall begin when the vehicle is commissioned or purchased.

b) The warranty shall be processed on the basis of the system agreed with the Customer. The deciding factor is that warranty claims can be settled as a lump-sum on the basis of standardized factors. The deciding factor for the enforcement of warranty claims of GRAMMER against the Supplier is the request of the Customer.

c) As a result of the system used for warranty processing by the Customer, returned Products can only be made available to the Supplier if and to the extent that GRAMMER receives these from the Customer. GRAMMER undertakes to send to the Supplier at the Supplier's immediate request all Products made available to GRAMMER by the Customer for appraisal. The Supplier shall bear any logistics costs incurred. If the request is not immediate, GRAMMER is entitled to scrap the Products. After appraisal by the Supplier, the warranty claims are assessed jointly, if necessary, by forming recognition quotas and jointly specifying remediation measures.

d) The Supplier shall bear all the costs which GRAMMER incurs from and in association with warranty claim arising from the Product of the Supplier, in particular, any costs, including lump sums, invoiced by the Customer as well as any additional costs incurred by GRAMMER.

## **VI. Term**

1. The Agreement replaces all earlier agreements between the Parties/replaces the framework agreement/the agreement dated ... and applies from .../signature by both Parties. The Agreement shall run for as long as GRAMMER supplies the Customer and procures Products to do so and/or is obliged to provide Spare Parts.
2. GRAMMER has the right to cancel the Agreement for the Products in question if the Customer cancels the contract between GRAMMER and the Customer. The cancellation right also applies if the Customer no longer accepts the Supplier, if the Supplier no longer supplies Products at competitive prices or does not comply with the agreed quality or logistics requirements. Part cancellation is also possible. No further rights to ordinary cancellation shall be given.
3. The above terms do not affect the right to terminate the Agreement for other, significant reasons. The above terms do not affect the right to terminate the Agreement for other, significant reasons. The conditions for termination for such reasons, e.g. because of breach of contractual obligations is the setting of an appropriate grace period.

## **VII. Other agreements**

1. GRAMMER shall effect payment by check or bank transfer for deliveries to German or European locations, including Turkey, up to the 25<sup>th</sup> day of the month following receipt of the invoice less 2% discount, for deliveries to other locations, within 60 days net.

- 2. The Supplier waives the application of its General Terms and Conditions of Business. Suppliers' Terms and Conditions printed on order confirmations, invoices, or other correspondence are invalid unless expressly agreed to by GRAMMER in writing.
- 3. The place of jurisdiction for all disputes between the Parties is Amberg/Oberpfalz **OR:** A final decision on all disputes arising from or in connection with the Agreement shall be made by a court of arbitration in accordance with the ... arbitration code .. in the relevant valid version. The place of is Amberg/Oberpfalz. The arbitration procedure shall be conducted in German language.

Amberg, date .....

GRAMMER AG

Supplier

The sign expressly confirms he/she is authorised to represent the Supplier and the companies in the Supplier's corporate group.

.....  
Name            Name

.....  
Name

**Appendix 1  
Price Agreement**

**Appendix 2  
Quality Agreement**

**1. Key Figures of Co-operation**

- The Supplier is fully responsible for his own as well as his subcontractors' and service providers' scope of supply and services. This also includes the full quality responsibility.
- Changes in the Product require prior written approval (release) by GRAMMER.
- Supplier is asked to continuously improve the core processes for the purpose of the 0-failure philosophy.
- Supplier must prepare and maintain all required documents and provide proof (e.g. FMEAs, initial sampling, process capabilities, 8-D-reports, etc.) free of charge for GRAMMER.
- GRAMMER expects a reasonable response time upon the occurrence of any errors. The Parties agree upon a period of 24 hours maximum (on weekdays) from receipt of the complaint up to the first qualified response from Supplier. An 8-D-report with an analysis of the error causes and/or the initiated corrective actions must then be sent within one calendar week after the error occurred (initially by fax or e-mail).
- The requirements according to VDA Vol. 1 apply for any characteristics identified as "D", "CC", "SC" in the product description (e.g. drawing, control plan).  
This means (among other things):
  - Identification and labelling of internal documents (e.g. test and work instruction, test reports, training certificates, detailed drawings)
  - Storage according to VDA Vol. 1: i.e. 15 years after end of production
  - Presentation and availability of the documentation in such way that it may be used in court
- Supplier shall meet the requirements of the EU-Guidelines ("Altautorrichtlinie" 2000/53/EG and 2002/525/EG) and of the implemented national laws (in Germany: Altfahrzeug-Gesetz dated 21.06.2002, BGBl. I p. 2199 ff) as well as the EU-Guideline 2002/95/EG.
- Supplier shall fill in the material data into the International Material Data System IMDS (see www.mdsystem.com) and is responsible for the correctness of the provided data.
- On demand an inspection certificate DIN EN 10204, 3.1b has to be enclosed to the deliveries.

The initial sample reports will only be released when the above mentioned requirements were considered.

**2. Quality Management System**

Supplier is obligated to establish a quality management system and to provide proof that it meets the requirements of DIN ISO EN 9001:2000. Supplier is advised to establish his quality management system and have it certified according to ISO TS 16949:2002.

If Customers request higher level management systems, these shall be defined in the chart below:

X	DIN ISO EN 9001:2000	Valid until: Established since:
	VDA 6.1	Valid until: Established since:
	QS 9000	Valid until: Established since:
		Valid until:

	ISO/TS 16949:2002	Established since:
	DIN EN ISO 14001	Valid until: Established since:

GRAMMER reserves the right to examine the effectiveness of the quality management system at any time by means of audits which shall be announced in advance.

### 3. **General**

Unless otherwise agreed between GRAMMER and Supplier, a quality figure of not more than **100 ppm** is valid. Other requirements shall be agreed on separately.

Q-Target                      max. ppm                                            year                     

If the defined target figure of the target agreements is not reached within a period of 3 months, GRAMMER is entitled to cancel the Agreement at any time.

GRAMMER reserves the right to update the supplier manual.

Furthermore, individual agreements with GRAMMER plants are effective.

### 4. **Applicable documents (as amended)**

- GRAMMER supplier manual, available at:  
<http://intern.grammer.com/q/>  
*User: lieferant*  
*password: grammer77*
- VDA publications
- Drawings and other product-specific documents of GRAMMER
- Customer specifications
- DIN EN ISO Standards
- QS 9000
- ISO / TS 16949:2002
- DIN EN ISO 14001

## **Appendix 3 Logistics Agreement**

### **1. Preamble**

This Agreement defines the flow of information and goods between the Supplier and GRAMMER.

### **2. Handling of Transportation / Incoterms**

Incoterms:                      pursuant to the Logistics Specifications, paragraph 11 (see subparagraph 15.4 of this Agreement)

Should a clause of this Agreement or its applicable documents be inconsistent with the regulations of the Incoterms, then this Agreement and its applicable documents shall take precedence over the regulations of the Incoterms.

The Supplier shall be responsible for arranging transportation of Product in the event of unscheduled special transportations requirements of short notice to ensure continued supply of material to GRAMMER. Without delay, the Supplier shall automatically inform GRAMMER of special transportation arrangements, including scheduled delivery date. Expenses incurred with such special transportation shall be apportioned, as determined by GRAMMER, to the Party responsible for the additional expenses.

### **3. Place and Times of Collection or Delivery**

The place and times of collection or delivery are expressly agreed in the Logistics Specifications, paragraph 12.

### **4. Safeguarding Deliveries**

The Supplier agrees to deliver in due time, subject to the agreed lead-time periods for making Products available and delivering to GRAMMER. In all events, the quantities and dates specified from time to time shall be adhered to regardless of statutory, religious, or public holidays and country-specific limitations. If safety stocks are necessary for meeting this requirement, the Supplier shall be solely responsible for deciding on the type, size, and scope thereof.

Supplier shall guarantee that the FIFO (first in - first out) principle of inventory control shall be used at all times.

Deliveries prior to scheduled due date as specified in releases due to Supplier plant holidays must be coordinated with the responsible GRAMMER materials planner regarding quantity and delivery date.

### **5. Response**

Every expected bottleneck in delivery that shall affect adherence to agreed deadlines or quantities shall be communicated to the appropriate managing clerk / materials planner without undue delay.

Response time in the event of a change in a requisition in the

- long term (> 3 months before the date of delivery): within 14 days
- medium term (<= 3 months > 10 days before the date of delivery): within 3 days
- short term (<= 10 days before the date of delivery): within 24 hours

### **6. Requisitioning Procedure**

The released quantities and the calendar date of delivery or collection shall be specified in the respective release. Releases shall be made as a "normal purchase order" (individual purchase order, or spot buy) or as a "release for the delivery of goods".

The method of ordering shall be defined by the GRAMMER managing clerk in coordination with the Supplier. The Supplier accepts GRAMMER's procedure for releasing the delivery of goods. Releases for the delivery of goods shall be made in accordance with VDA Standard 4905. Every new release for the delivery of goods shall supersede previous releases. The dates specified in releases shall be delivery dates to the respective GRAMMER facility, independent of the agreed Incoterms. GRAMMER reserves the right to return at the Supplier's expense excessive quantities delivered. The method of data transmission is agreed in the Logistics Specifications under paragraph 20.

### **7. Clearance Procedure**

GRAMMER shall issue a material requirements forecast for the next few weeks / months at regular intervals. A forecast for any further follow-up periods shall serve the purpose of planning production capacities. Clearances of production and materials as well as any batch sizes are specified in the Logistics Specifications under paragraphs 26 and 27. For planning purposes, where a specific part number is being made obsolete, GRAMMER shall inform Supplier in a suitable manner, at least three months prior to the obsolescence. From this date, previous agreements and contracts regarding

- lots of supplied quantity
- packaging lots according to the agreed packaging data sheets
- frequencies of delivery or pick up
- agreed minimum quantities to purchase

are no longer valid and should be discussed with the appropriate materials planner. The method of packaging, like defined in the packaging data sheets, shall remain valid.

### **8. Packaging**

The terms of packaging (type, owner) are agreed in the Logistics Specifications under paragraphs 14, 15, 16 and 17. GRAMMER reserves the right to determine the quantity of packaging to be procured.

The Supplier shall develop and define the internal and external packaging in agreement with GRAMMER pursuant to quality, technical and logistical requirements. The parts shall be packed purely sorted. This means: One part number per defined packaging unit. Modifications shall be agreed with the responsible GRAMMER logistics planner.

To meet the aforementioned requirement, it shall be necessary to define the packaging for every product. The packaging shall be defined in the packaging data sheet and shall become legally binding once signed by the Supplier and approved by Grammer. Logistical aspects, aspects relevant to quality and technical aspects relating to the flow of materials shall also be taken into account and based on the product geometry and requirements.

In the event packaging is redefined or altered, the packaging data sheet shall be completed by the Supplier and submitted to the GRAMMER purchasing department with the new quotation. In the event the packaging is approved by the GRAMMER logistics department and the quality assurance department, the packaging data sheet shall be forwarded to the GRAMMER purchasing department and returned to the Supplier with confirmation.

The Supplier shall be responsible for keeping clean transportation containers, internal packaging, and packaging accessories delivered in conformance with the Agreement. This shall also include the storage of all packaging free from debris or other forms of contamination while in the Supplier's possession, both internally or externally.

Containers and packaging materials and/or containers and packaging materials damaged by use of insoluble glue shall be charged to the Supplier, in so far as they are the property of GRAMMER.

If the defined packaging is not adhered to by the Supplier, GRAMMER shall have the right to charge the Supplier for expenses incurred in connection with the cost of repackaging.

A VDA goods tag VDA 4902 shall be affixed to every packaging unit. The product label must appear on the smallest packaging unit.

The finished status of alteration shall in principle be quoted on the goods tag and the delivery note.

In the case of an engineering change, it shall be absolutely essential to separately label the first delivery.

### **9. Handling of Empties**

Unless otherwise agreed in the Logistics Specifications, the Parties undertake to exchange pool pallets and pool containers in the ratio of 1 to 1 (empties for full pallets / containers).

Both Parties shall keep an account of all returnable containers. The balances on the account shall be reconciled once a month by the 15th of the following month. Balance variances shall be corrected and verified through the use of delivery records.

Empty containers that are "owed" shall be delivered to the creditor within one week free of charge. In the event of a failure to observe this time limit, the creditor may charge the debtor the following expenses per container and working day:

EUR skeleton container	0.15	€
EUR wooden pallet	0.05	€
KLT XXXX	0.075	€
covering hood for KLTs	0.05	€
KTP box 114888/114777	0.20	€

### **10. Emergency Concept**

The emergency concept presented by the Supplier and agreed upon with the GRAMMER logistics department in case of faulty and/or non-conforming parts is an element of this Logistics Agreement. It shall contain all measures to be taken by the Supplier to guarantee full and required supply to the GRAMMER manufacturing division.

The subject matter of the emergency concept also includes controlling the Supplier's suppliers.

### **11. Organization**

For the delivery process the Supplier shall give GRAMMER the names of permanent contact persons and their back-ups who shall be able to make decisions competently and reliably.

These contact persons must be able to be contacted at any time during production hours of GRAMMER AG or its production factories.

The production hours of GRAMMER are: Monday to Friday from 6 am to 11 pm.

Changes and special shifts shall be made known to the Supplier in writing two weeks prior to being in effect.

### **12. Notice of Changes**

Every change in the production site or the dispatch factory shall be made known without delay at the following GRAMMER departments:

- purchasing
- logistics planning
- operations planning / materials planning
- quality assurance.

### **13. Remarks**

In the event that a delivery is made in returnable packaging, the delivered quantity of containers per container type shall be quoted on the delivery note. The completeness of the accompanying documents must be guaranteed and shall be cleared and approved by the appropriate customs department, where applicable.

### **14. Default in Delivery**

Default in delivery shall commence without any warning in the event of a failure to meet the agreed delivery deadline. The Supplier is liable for all claims against GRAMMER from defaults in delivery.

### **15. Other Applicable Documents and Agreements**

The subject matter of this Logistics Agreements also includes

1. Logistics Manual

The Logistics Manual is available by Internet through the following link:

*<http://intern.grammer.com/logistik>*

*User name: logistik*

*Password: log4grammer*

2. Packaging Data Sheet per Parts Number

3. Shipping Instruction

The Shipping Instruction is available by Internet through the following link:

*<http://www.grammer.com/de/beschaffung/purchasingframe.html>*

4. Logistics Specifications

5. The Supplier's Emergency Concept

in their respective actual version.

### **16. Logistics Audit**

GRAMMER undertakes to check all agreements in the course of an audit. As a general rule, the Purchaser shall give the Supplier at least 1 week's notice prior to carrying out the audit. If agreements made are not adhered to by the Supplier, GRAMMER may carry out an audit at one day's notice. Access to the premises concerned shall be granted without restriction. It is agreed that the Supplier shall provide appropriate employee support during the audit.

## **Anlage 4 Confidentiality Agreement**

### **Preamble**

The terms „Information“ and „Confidential Information“ refer to know-how, knowledge as well as technical and/or business data and other information provided by a party to the other party within the framework of the business relationship, not depending on whether the Information is provided directly or indirectly, in particular by data transfer, provision of specimen, materials, models, equipment, technologies, manuals, drawings, samples, diagrams, data, data bases and/or data processing programs, software, tools, raw materials, prices, figures, formulas, calculations, by CD ROMs or orally, in particular also in the course of meetings of the parties and their employees, or in the context of demonstrations, attendances or presentations in whatsoever form.

In order to prevent the knowledge achieved in this respect from being misused and the involved parties from suffering any detriments the parties enter into the following

### **Non-Disclosure Agreement**

1. Supplier shall keep all Information obtained from GRAMMER or a Group Company in the course of the business relationship strictly confidential and, without written approval of GRAMMER, not allowed to duplicate them, to discuss or provide to third parties, or to disclose their content to third parties.
2. Supplier shall keep the business relationship between GRAMMER and Supplier confidential, unless GRAMMER gives written approval. Supplier is allowed to give documents to subcontractors in order to fulfil its contractual duties, provided that the subcontractor is also required and agrees to keep the Information strictly confidential.
3. The duty of confidentiality shall not be applicable to Information which can be proven is already known to the public or which becomes known to the public at a later stage without this duty being infringed
4. Supplier shall keep all Information about internal relations and operations as well as other technical and commercial Information strictly confidential
5. Supplier shall undertake to communicate to its employees and consultants the duty of confidentiality and to enforce this policy.
6. The duties of confidentiality according to this Agreement shall remain in force for at least 5 years, also beyond the termination of the business relationship.
7. Supplier undertakes to willingly and immediately return all documents of all nature containing Confidential Information after termination of the business relationship.
8. In the case of an infringement of any of the above-stated obligations the Supplier shall at GRAMMER's choice either pay for the actually caused damages or pay a contractual penalty in each case of violation of one of the assumed obligations in the amount of the accepted order value.
9. Supplier knows of the fact that an infringement of business and trade secrets forms an offence under Sections 17 and 18 UWG and may be punished by a prison term of up to five years and that a violation of business and trade secrets may also entail the obligation to pay for the damages caused according to Sec. 19 UWG.
10. For the rest the applicable German regulations on the protection of business and trade secrets shall apply.

**Anlage 5**  
**Purchasing conditions (Status 05.12.2002)**



- 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

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.

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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.