

## **Annex Production Materials**

### **1. Scope of application**

This ANNEX PRODUCTION MATERIALS governs the manufacture and supply of PRODUCTION MATERIALS in conjunction with the CONTRACTUAL TERMS.

### **2. Forecasts**

- 2.1 GRAMMER will inform the SUPPLIER in the form of a non-binding forecast (“FORECAST”) about the expected volume of SERVICES the SUPPLIER is to render.
- 2.2 Unless otherwise agreed in writing, GRAMMER will provide a FORECAST for a period of one calendar year.
- 2.3 Unless otherwise agreed in writing, GRAMMER will furnish the SUPPLIER with a new FORECAST by 31 December of each calendar year with respect to the following calendar year. In the event that GRAMMER does not provide a new FORECAST, the SUPPLIER’s obligation to render the SERVICES is not affected; the SUPPLIER is not entitled to receive a FORECAST.
- 2.4 The SUPPLIER is obliged to ensure that GRAMMER may receive the SERVICES contained in the FORECAST in the quantities and volumes set forth therein; specifically, the SUPPLIER must maintain the capacities and conditions needed for the provision of the SERVICES as well as procure and stock input materials in a timely manner and in adequate quantities. At GRAMMER’s request, the SUPPLIER is obliged to set up a consignment warehouse in order to meet GRAMMER’s short-term needs, with conditions to be agreed upon separately by the PARTIES.
- 2.5 FORECASTS do not give rise to an acceptance obligation on GRAMMER’s part with respect to the SERVICES set forth therein. The SERVICES planned in the FORECAST will be bindingly called off pursuant to the provisions of section 4 of the GENERAL PURCHASING CONDITIONS.
- 2.6 So long as GRAMMER’s ORDERS do not exceed or fall short of the quantities and volumes communicated in the FORECAST by more than 20%, the SUPPLIER is not entitled to raise an OBJECTION in deviation from section 4.1.2 of the GENERAL PURCHASING CONDITIONS.
- 2.7 If the quantities or volumes called off in GRAMMER’s ORDERS fall short of the quantities or volumes projected in the FORECAST, any and all claims on the SUPPLIER’s part for the reimbursement of resulting costs are excluded (especially investment costs, including the procurement of input materials, storage and disposal).
- 2.8 If the quantities or volumes in GRAMMER’s ORDERS fall short of the quantities or volumes projected in the FORECAST, GRAMMER is entitled to purchase the SUPPLIER’s input materials procured with a view to meeting the quantities and volumes projected in the FORECAST at

cost and ahead of any third party. The SUPPLIER will advise GRAMMER within 14 days in writing at what volume input materials are available and present GRAMMER with a written offer to purchase such input materials.

- 2.9 GRAMMER is entitled at any time to adjust the FORECAST on two weeks' notice. If such FORECAST adjustment results in an increase in the quantities or volumes of the SERVICE, the SUPPLIER must promptly transmit to GRAMMER a schedule indicating the time needed to achieve such increase in capacity as well as any resulting costs. The PARTIES will then coordinate the details and implementation of such schedule.

### **3. Prices, Pricing Agreements**

- 3.1 Unless otherwise agreed in writing, the prices are set forth in GRAMMER's ORDER.
- 3.2 The PARTIES may set prices for SERVICES that are to be provided within a certain period of time ("PRICING AGREEMENTS").
- 3.3 Unless otherwise agreed in writing, the PARTIES will enter into PRICING AGREEMENTS for a term of one calendar year.
- 3.4 Until 31 December of each calendar year, the PARTIES will enter into a new PRICING AGREEMENT for the following calendar year. If the PARTIES do not enter into a new PRICING AGREEMENT, the term and validity of the previous PRICING AGREEMENT is extended by an additional twelve months.
- 3.5 Unless otherwise agreed in writing, the prices set forth in the PRICING AGREEMENTS apply irrespective of the quantities and volumes projected in the FORECAST.
- 3.6 Prices agreed in a PRICING AGREEMENTS apply to GRAMMER's ORDERS during the term of such PRICING AGREEMENTS. The provisions of section 4.2 of the GENERAL PURCHASING CONDITIONS shall apply accordingly.

### **4. Delivery, shipment, packaging, logistics**

- 4.1 Customary and proper packaging is to be used for SERVICES. GRAMMER has the right to determine what kind of packaging the SUPPLIER must use. Insofar as reusable packaging is returned to the SUPPLIER, GRAMMER is entitled to compensation in an amount equal to the value of such packaging.
- 4.2 The SUPPLIER must comply with the provisions of **[GRAMMER GROUP LOGISTICS MANUAL]**.

### **5. Quality management, documentation, right of access**

- 5.1 Unless otherwise agreed in writing, the SUPPLIER must be certified or obtain certification according to the latest version of IATF 16949, and it must maintain such certification and

observe any resulting requirement and mandate. At GRAMMER's request, the SUPPLIER is obliged to furnish proof of its certification by submitting a certificate.

- 5.2 GRAMMER is entitled at any time to verify the SUPPLIER's SERVICE as well as compliance with the obligations under the CONTRACTUAL TERMS itself or have a third party do so. The SUPPLIER grants GRAMMER or a third party acting on GRAMMER's behalf a right of inspection, access to its places of business as well as full access to all documents, data and systems related to the implementation of executed contracts during regular business hours (but at least between 8 a.m. and 5 p.m., local time). The SUPPLIER is entitled to adopt suitable measures to safeguard its business and trade secrets and protect confidentiality; however, such measures must not interfere with the completion of the review and/or affect its outcome.
- 5.3 The SUPPLIER is obliged to comply with the provisions of the **GRAMMER SUPPLIER MANUAL**.

## 6. Warranty

- 6.1 The SERVICE is defective if it does not reflect the current state of the art with respect to science and technology (*Stand von Wissenschaft und Technik*), as well as the specifications, the agreed condition, the PROJECT ANNEXES, the intended use, the requirements as to quality, the pertinent environmental regulations, the valid DIN norms as well as applicable official provisions and guidelines and the statutory requirements in place at the manufacturing site and the location of the receiving GRAMMER plant.
- 6.2 Unless otherwise agreed in writing, the period of limitation for warranty claims based on defects with respect to
- 6.2.1 PRODUCTION MATERIALS which will be used in the AMERICAS, shall be 48 (forty-eight) months from a vehicle's initial registration or the installation of spare parts, but in any case no longer than 56 (fifty-six) months from delivery to GRAMMER;
- 6.2.2 all other PRODUCTION MATERIALS, shall be 36 (thirty-six) months from delivery to GRAMMER.
- 6.3 In the event that GRAMMER has not yet processed, used or installed PRODUCTION MATERIALS, the SUPPLIER is first given an opportunity for the elimination of materials as well as, at GRAMMER's option, the removal of defects or subsequent delivery.
- 6.4 In the event that the defect is not detected until processing, use or installation of the PRODUCTION MATERIAL has commenced, GRAMMER is entitled to demand a remedy of the defect as well as the reimbursement of damages and expenses in connection with the remedy, including those incurred by its customers, especially transport and travel costs, labor costs (e.g., the costs associated with examining and eliminating goods) as well as (de-)installation and material costs.

- 6.5 GRAMMER will return defective PRODUCTION MATERIALS to the SUPPLIER only insofar as GRAMMER receives defective PRODUCTION MATERIALS from its customers. Unless the SUPPLIER requests available defective PRODUCTION MATERIALS without undue delay, GRAMMER may scrap them. The SUPPLIER bears any and all costs in connection with a request for returning defective PRODUCTION MATERIALS, including but not limited to shipping and logistics costs incurred.

## **7. Own performance, emergency production**

- 7.1 If asserting warranty rights based on defects places an unreasonable burden on GRAMMER, it is entitled to see to the removal of defects itself or task a third party to do so at the SUPPLIER's expense ("OWN PERFORMANCE"). An unreasonable burden is present, for instance, if the SUPPLIER fails to start removing defects immediately upon GRAMMER's request, if operational safety is in jeopardy, if defect-free or trouble-free production is no longer assured, if a line stoppage is imminent or whenever asserting such right may help mitigate or avert damages or preserve GRAMMER's delivery capability in relation to its customers.
- 7.2 Using the tools belonging to GRAMMER or the customer, or those in the SUPPLIER's possession, GRAMMER has the right to see to manufacturing on the SUPPLIER's premises with a view to fulfilling the SUPPLIER's obligations ("EMERGENCY PRODUCTION"), though it does not have the right to issue directions to the SUPPLIER's staff, if
- 7.2.1 the SUPPLIER is unable to render its SERVICES in a timely manner or at the quality level owed, be it wholly or in part, even after an adequate grace period was allotted;
- 7.2.2 the SUPPLIER has filed for insolvency with respect to its assets;
- 7.2.3 insolvency proceedings have been instituted in a court of law or a petition for the institution thereof has been denied for lack of funds.

## **8. Liability for service measures and recalls**

- 8.1 In the event that GRAMMER or its customer adopts measures to avert damages due to a flawed or defective SERVICE (especially recalls and servicing measures), the SUPPLIER bears liability in relations with GRAMMER for any and all resulting expenditures, costs and damages (including costs for (external) legal support) if and to the extent that such measure is based on the SERVICE's flaw or defect or a breach of duty on the SUPPLIER's part.
- 8.2 Upon request, the SUPPLIER will assist GRAMMER with the clarification and its defense against claims.

## **9. Changes**

- 9.1 The SUPPLIER is not entitled to change and/or amend the SERVICES (“CHANGES”) without GRAMMER’s consent.
- 9.2 The SUPPLIER is obliged to propose CHANGES it deems necessary or expedient to GRAMMER.
- 9.3 At any time, the PARTIES may demand CHANGES to SERVICES pursuant to the provisions of this section (“CHANGE PROCEDURE”). A CHANGE PROCEDURE may be initiated by the SUPPLIER or GRAMMER by way of an APPLICATION FOR CHANGE or a CHANGE REQUEST, respectively.
- 9.4 Supplier’s application for change**
- 9.4.1 In the event that the SUPPLIER intends to make CHANGES to SERVICES, or if it is obliged to do so pursuant to section 9.2, the SUPPLIER must file a written application seeking GRAMMER’s consent to the intended CHANGE (“APPLICATION FOR CHANGE”).
- 9.4.2 At a minimum, the APPLICATION FOR CHANGE must contain
- a) a detailed and comprehensible comparison of the intended CHANGES to the SERVICE as agreed;
  - b) a breakdown and explanation of the advantages and disadvantages of the CHANGE as well as of the need for it;
  - c) a breakdown of the technical and commercial implications of the CHANGE, especially for the volume of SERVICES, fixed dates and deliverability, prices, weight, SERVICES already provided, liability for spare parts, LCC/RAMs, technical norms as well as statutory and official requirements, including possible approval procedures, along with other features of the SERVICE and the contractual bases of the PARTIES’ business relationship;
  - d) a breakdown and explanation of any resulting duties of assistance on GRAMMER’s part.
- 9.4.3 GRAMMER will evaluate the APPLICATION FOR CHANGE, request additional information from the SUPPLIER if needed and make a decision on whether to approve or deny it within a reasonable period of time. Upon its written approval or denial, the CHANGE PROCEDURE concludes in reference to the APPLICATION FOR CHANGE.
- 9.4.4 Should GRAMMER consent to the APPLICATION FOR CHANGE, the SUPPLIER must conduct initial sample testing.
- 9.4.5 If and to the extent that GRAMMER incurs costs due to, in connection with or as a result of the APPLICATION FOR CHANGE, including internal processing and administrative costs, the SUPPLIER must reimburse it for such costs against documentary proof.

9.4.6 The SUPPLIER bears any and all costs and expenditures incurred due to, in connection with or as a result of the APPLICATION FOR CHANGE, including its implementation.

#### **9.5 GRAMMER's change request**

9.5.1 GRAMMER will communicate intended CHANGES in writing ("CHANGE REQUEST") along with the scope of the CHANGE as well as the preferred date of its implementation.

9.5.2 The SUPPLIER will immediately, but in any case within 5 (five) calendar days,

- a) evaluate the CHANGE REQUEST and review it for completeness and implementability;
- b) provide GRAMMER with a written statement containing, at a minimum, the information pursuant to section 9.4.2;
- c) submit to GRAMMER a detailed written OFFER to implement the CHANGE on the basis of the CHANGE REQUEST ("CHANGE OFFER"); the SUPPLIER is bound by the CHANGE OFFER for a period of 6 (six) months from GRAMMER's receipt thereof.

9.5.3 The PARTIES will enter into an agreement about any and all costs and expenditures incurred due to, in connection with or as a result of the CHANGE REQUEST, including its implementation.

9.6 The CHANGE PROCEDURE in reference to the CHANGE REQUEST is completed either with the written acceptance of the CHANGE OFFER or the lapse of the six-month acceptance period pursuant to section 9.5.2 c).

9.7 GRAMMER is entitled but not obliged to accept CHANGE OFFERS. If GRAMMER accepts a CHANGE OFFER in writing, the SUPPLIER is obliged to implement the changes agreed therein.

9.8 During the CHANGE PROCEDURE, the SUPPLIER is obliged to render SERVICES in accordance with previous agreements unless GRAMMER informs the SUPPLIER in writing that the SERVICES are to be suspended or restricted for the duration of the CHANGE PROCEDURE.

### **10. Cancellations, suspensions**

10.1 GRAMMER has the right to cancel ORDERS for cause. Such cause may be, for instance, if GRAMMER's customer, for its part, has ended, canceled or terminated an order, its business or supply relationship with GRAMMER or the contractual bases thereof.

10.2 If and to the extent that the PARTIES demonstrably incur costs as a result of the cancellation of an ORDER, the PARTIES will bear their own costs unless otherwise agreed in writing. The SUPPLIER holds no further claim against GRAMMER.

10.3 If GRAMMER's customer suspends its order in relations with GRAMMER, GRAMMER will so inform the SUPPLIER.

- 10.4 In the event of such a suspension on the customer's side, the SUPPLIER is obliged
- 10.4.1 to promptly communicate to GRAMMER a list of all of GRAMMER's ORDERS already confirmed or pending confirmation by the SUPPLIER;
  - 10.4.2 to inform GRAMMER of the wholesale prices of components and raw materials at the time of suspension;
  - 10.4.3 to suspend performance on SERVICES with respect to ORDERS that have already been confirmed unless explicitly cleared by GRAMMER to proceed;
  - 10.4.4 to store SERVICES at its own risk and expense and to the exclusion of any other claims for a period of 24 (twenty-four) months from the date of the notice pursuant to section 10.4.1. Once this period has lapsed, the PARTIES will jointly determine further steps.

## **11. Discontinuation**

- 11.1 The SUPPLIER may discontinue SERVICES or SPARE-PART SERVICES ("DISCONTINUATION") only insofar as its obligations in reference to the availability of SERVICES or SPARE-PART SERVICES are not violated as a result. Whenever the SUPPLIER plans a DISCONTINUATION, it must inform GRAMMER of the intended effective date ("DISCONTINUATION DATE") with a notice period of at least 12 (twelve) months.
- 11.2 In the event of a DISCONTINUATION, the SUPPLIER undertakes to develop a corresponding SERVICE at its own risk and expense ("SUBSTITUTE SERVICE"), which meets contractually agreed requirements (especially as regards form, function and interfaces). The SUPPLIER must ensure that the SUBSTITUTE SERVICE has been fully developed and is ready for series production at least 6 (six) months prior to the DISCONTINUATION DATE.
- 11.3 Should the SUPPLIER be able to demonstrate that a SUBSTITUTE SERVICE represents an unreasonable economical or technical burden, the PARTIES will attempt to reach a mutually acceptable solution. If and for as long as such mutually acceptable solution cannot be reached, the period according to section 11.1 is suspended – i.e., the DISCONTINUATION DATE is delayed by the length of negotiations.
- 11.4 Should the SUPPLIER be able to demonstrate that the DISCONTINUATION is necessary on account of statutory provisions or official directions, the SUPPLIER is not released from the obligation to provide SUBSTITUTE SERVICES, which must then reflect such statutory provisions or official directions. In such a case, the PARTIES will negotiate in an effort to determine further steps.

## **12. Spare parts**

- 12.1 If the PARTIES agree that the SUPPLIER is to provide the SERVICES over a project-related period ("PROJECT TERM"), the SUPPLIER guarantees that it will manufacture and supply PRODUCTION MATERIALS for a period of at least 15 (fifteen) years following the expiration

of the PROJECT TERM. This also encompasses the manufacture and supply of spare parts, including any tools needed for their use and installation (“SPARE-PART SERVICES”).

- 12.2 Unless otherwise agreed in writing, SPARE-PART SERVICES must be rendered at the conditions of serial production. At the earliest, the SUPPLIER may direct a request to GRAMMER that different conditions be agreed for the provision of SPARE-PART SERVICES 24 (twenty-four) months after the expiration of the PROJECT TERM.

### **13. Insurance**

- 13.1 The SUPPLIER is obliged to maintain adequate and sufficient insurance coverage, such coverage to include product liability and recall costs and provide for an adequate coverage sum for each case of personal injury and property damage.
- 13.2 At GRAMMER’s request, the SUPPLIER must furnish proof of such insurance coverage.
- 13.3 In justified cases, GRAMMER may demand that the SUPPLIER take out specific types of insurance or obtain insurance coverage in a specific amount.