

# General Terms and Conditions for the international Supply of Vehicle Transmissions, Steering Assemblies, Axles and Component Parts (effective from 04/2004)

## 1. General Provisions

1.1 The following provisions shall apply to all present and future offers, orders, agreements, deliveries, and other services exclusively unless amended or excluded with the express written consent of the Supplier; such amendment or exclusion shall expressly cite the section number of these provisions that are to be amended or excluded. No other subsidiary agreement shall be binding unless made in writing.

1.2 Unless expressly accepted in writing by the Supplier, differing conditions on the part of the Customer are not binding on the Supplier even if they are made a condition of the order and the Supplier does not expressly restate his/her rejection.

1.3 If a declaration is to be submitted in writing under these conditions or under an agreement formed on the basis of these conditions, this declaration must be signed in the hand of the issuer who is authorized to duly represent the respective party to the agreement in the form of either a signature or a mark certified by a notary, or it must be recorded by a notary and sent to the other party either as an original or by fax. Electronic form or text form cannot be substituted for the written form described in Clause 1.

1.4 If one party fails to comply with one or more provisions of these conditions or with the agreement formed on the basis of these conditions, and if the other party does not draw any conclusions from this, this cannot be taken as the basis for a waiver of the obligation to comply with these provisions even in the event that such failure is repeated.

1.5 If any provision of these conditions or the further agreements formed is or becomes invalid, this shall have no effect on the validity of the remainder of the agreement. However, this shall not apply if abiding by the agreement in this case would represent an unreasonable hardship for either party. The parties shall replace the invalid provision with a provision that most closely resembles the invalid provision in terms of its economic effects.

1.6 If unforeseen events or circumstances significantly alter the commercial importance or the content of the deliveries or services or have a significant effect on the Supplier's work, or in the event that performance subsequently becomes impossible, the agreement shall be adapted accordingly. If this is unreasonable in commercial terms, the Supplier shall have the right to terminate the agreement or the relevant portions thereof.

If the Supplier wishes to terminate the agreement, he must inform the Customer immediately upon realization of the extent of consequences of the event even if an extension of the delivery period was initially agreed upon. In the event of termination of the agreement, the Supplier has the right to remuneration for the deliveries and services already provided. Claims for damages on the part of the Customer due to such termination of the agreement are excluded.

## 2. Offer and Scope of Delivery

2.1 The Supplier's offers are always subject to confirmation.

2.2 The Customer's orders shall be binding on the Supplier only after the latter has confirmed them in writing.

Offers that do not include an acceptance period are not binding.

2.3 Only the Supplier's written confirmation of the order shall be considered authoritative for the scope of the delivery. The Supplier shall have the right to make changes that result in improvements provided that they do not increase the price.

2.4 The information contained in printed matter (such as price lists, brochures, and catalogs), in cost estimates, on electronic media, or on the Supplier's Internet pages and documents related to his offer such as illustrations, descriptions, drawings, dimension and weight information, other technical data as well as referenced DIN, VDE, or other corporate or inter-company standards and samples are only approximately authoritative unless they are expressly identified as binding.

2.5 The Supplier retains the right to supply excess or shorted weights and deliveries within the limits of standard business practices. These weights and deliveries shall not serve as grounds for complaints by the Customer.

2.6 The Supplier retains rights of ownership and copyright to cost estimates, drawings, plans and other documents and information of a tangible or intangible nature, including those in electronic form; they may not be made available to third parties without the prior written consent of the Supplier.

2.7 Information required of the Customer.

2.7.1 The Customer accepts full responsibility for the information required of him and for documents such as drawings, models, theories, samples, or the like that he is required to provide.

2.7.2 The Customer must inform the Supplier of the regulations and standards that relate to the performance of the deliveries and services, operational matters, and illness and accident prevention no later than the point of order. The Customer shall make the above-referenced regulations and standards available to the Supplier upon request.

2.7.3 Unless otherwise agreed, the deliveries and services shall comply with the regulations and standards in effect at the Customer's legal domicile; the Customer shall have previously notified the Supplier of said deliveries and services in accordance with No. 2.7.2. Additional or different protective equipment shall be supplied with the delivery insofar as this is expressly agreed.

## 3. Price and Payment Conditions

3.1 All prices are understood to be cited in Euros unless otherwise agreed. They apply to delivery EXW, exclusive of packaging, without any discounts.

The Customer shall be responsible for all incidental costs such as freight and insurance as well as export, transit, import, and other permits. The Customer is also responsible for paying any type of taxes, fiscal charges, fees, customs duties, and the like that are levied in connection with the agreement or for reimbursing the Supplier for them upon presentation of the relevant documentation.

3.2 Unless otherwise agreed, payments must be made in cash, with no discount and free of remittance charges, within 30 calendar days of the invoice date.

3.3 The payment obligation shall be deemed fulfilled as soon as and insofar as Euros are made freely available to the Supplier at his domicile.

3.4 The Supplier shall have the right to offset all of his outstanding receivables against the Customer with all of the Customer's outstanding receivables against the Supplier.

3.5 In addition, the Supplier can offset all of his outstanding receivables against those of the Customer's affiliates.

3.6 Partial deliveries shall be invoiced immediately.

3.7 Bills of exchange and checks are accepted only by way of provisional performance. They shall not be deemed payment until they are cashed. Discount charges and bill-of-exchange charges are the responsibility of the Customer and must be paid by him immediately. The Supplier expressly reserves the right to decline bills of exchange. The Supplier is not liable for timely submission, protestation, notification, and return of bills of exchange in the event that they are not cashed.

3.8 In the event of non-compliance with the agreed-upon payment deadlines, the Supplier can demand – without the necessity of a special warning and while still reserving the right to assert additional rights – late-payment interest starting with the

date on which the payment was due; this interest is to be based on the customary interest rates at the Customer's domicile but will be at least 8% more than the current prime rate of the European Central Bank.

3.9 The Customer shall have the right to withhold payments or offset them with counterclaims only insofar as his counterclaims are uncontested or have been determined to have legal force.

3.10 Delays in payment or endangment of the Supplier's receivables due to deterioration of the Customer's creditworthiness shall entitle the Supplier to demand immediate payment of or security for all of his existing receivables arising from the business relationship, independent of the term of any bills of exchange. In such cases, the Supplier has the right to require payment in advance or security for any outstanding deliveries.

## 4. Delivery Times

4.1 Delivery times and deadlines shall only be binding by express written agreement.

4.2 The Supplier's compliance with the delivery time is contingent upon the resolution of all commercial and technical questions between the parties and upon the Customer's fulfillment of all obligations incumbent upon him such as obtaining the required certifications or approvals from government agencies or rendering an advance payment or other payments. If this is not the case, the delivery time shall be extended accordingly. This shall not apply insofar as the Supplier is responsible for the delay.

4.3 The Supplier shall be deemed to be in compliance with the delivery time if, by the time the delivery time expires, the deliverables have left the Supplier's plant or been reported as being ready for shipping. In cases requiring an acceptance inspection, the date of the acceptance inspection – or alternatively the report of readiness for acceptance – is definitive, except in the event that acceptance is withheld with justification.

4.4 The delivery deadline shall be reasonably postponed in the event of actions connected with labor disputes, including but not limited to strikes and lockouts, and in the event of unforeseen obstacles that are not the fault of the Supplier – such as instances of force majeure, actions of government agencies, delays in the manufacture of supplied parts not due to fault, interruptions in operations, failure of suppliers to deliver services – insofar as such obstacles can be shown to have a significant effect on the manufacture or delivery of the deliverables. This shall also apply if the circumstances occur with respect to subcontractors. The Supplier is not liable for circumstances of this nature even if they occur during a delay that is already in progress.

The Supplier shall notify the Customer of the beginning and end of such circumstances as soon as possible.

4.5 In the event of subsequent requests for changes by the Customer, the Supplier may suspend delivery until such time as the requests for changes have been reviewed with respect to their feasibility and effects, particularly in terms of the cost and deadline situation. The changes shall only be binding when expressly confirmed in writing by the Supplier. The Supplier can extend the delivery period by a reasonable degree in order to implement the changes.

4.6 If the Supplier falls behind schedule and the Customer can be shown to have suffered a loss as a result of the delay, the Customer shall have the right to demand a lump-sum payment as compensation for damages. This compensation shall be 0.5% for each full week of delay not to exceed 5% in total of the value of that portion of the total deliverables that cannot be used in a timely manner or in accordance with the agreement as a result of the delay. The first two weeks of the delay shall not give rise to any claim for delayed-delivery compensation.

After the maximum delayed-delivery compensation has been reached, the Customer must set a reasonable secondary deadline for the Supplier in writing. If this secondary deadline is not met for reasons for which the Supplier is responsible, then the Customer shall have the right to refuse acceptance of the delayed portion of the delivery. If partial acceptance is unreasonable for the Customer in commercial terms, he shall have the right to withdraw from the agreement and to demand restitution of payments already made in exchange for the return of deliveries already made.

4.7 If shipping or acceptance of the deliverables is delayed for reasons for which the Customer is responsible, he will be invoiced for the costs incurred due to the delay, beginning one month after notification of readiness for shipment or acceptance.

4.8 If a specific deadline has been agreed upon instead of a delivery period, this shall be equivalent to the last day of a delivery period. Nos. 4.2 to 4.6 shall apply accordingly.

4.9 Apart from those claims expressly cited in No. 4, the Customer shall have no additional claims against the Supplier due to delays in deliveries or services except as expressly stated in No. 8 of these conditions.

## 5. Shipping and Transfer of Risk

5.1 Risk is transferred to the Customer when the deliverables are dispatched from the plant (EXW), even in the event of partial deliveries or if, as an exception, the Supplier has undertaken to provide other services such as freight-paid delivery, installation, or assembly. If an acceptance inspection is required, the risk is deemed to be transferred upon the acceptance inspection. This inspection must take place by the acceptance deadline without delay or alternatively after the Supplier has reported that the deliverables are ready for acceptance. The Customer cannot refuse acceptance if the deliverables contain an insignificant defect.

5.2 The interpretation of the applied delivery clauses is governed by the Incoterms in the version that is in effect on the date of order confirmation.

5.3 Packaging and shipping shall be undertaken in accordance with the Supplier's best judgment but with no further liability on the part of the Supplier.

5.4 At the Customer's request and expense, the shipment will be insured against all insurable risks.

5.5 If shipping or acceptance is delayed or does not take place as a result of circumstances that are not attributable to the Supplier, then risk shall be transferred to the Customer as of the date on which the deliverables are reported to be ready for shipping or acceptance. The Supplier agrees to obtain all insurance policies requested by the Customer at the Customer's expense. The Supplier shall have the right, upon expiration of a reasonable period without resolution, to dispose of the deliverables elsewhere and to deliver to the Customer within a reasonably extended period.

5.6 In the event of any discrepancies arising from shipping, the Supplier shall be notified in writing immediately upon receipt of the goods.

5.7 Partial shipments shall be permitted to the extent that they are acceptable to the Customer.

## 6. Reservation of Title

6.1 The Supplier reserves title to all goods/deliverables he delivers until payment in full is made – or in the case of payment by check or bill of exchange, until the instrument is cashed – for all of his receivables against the Customer arising from the business relationship (reserved goods); all deliveries are deemed to be a germane delivery transaction. In the case of an open account, the reserved title shall be deemed security for the Supplier's balance of receivables.

6.2 The Customer agrees to participate in measures that serve to protect the Supplier's title to the reserved goods. In particular, upon formation of the agreement, the Customer authorizes the Supplier to record or to enter a priority notice of the reservation of title – at the Customer's expense – in public registers, books, or the like in accordance with the relevant state laws and to undertake all relevant formalities.

6.3 During the period of reservation of title, the Customer shall maintain the delivered goods and insure them against theft, breakage, fire, water, and all other risks at his own expense for the benefit of the Supplier. In addition, the Customer shall take all actions necessary in order to ensure that the Supplier's claim to title is neither compromised nor revoked.

6.4 The Customer may not pledge the reserved goods nor assign them as security. The Customer must notify the Supplier immediately in the event of pledging or seizure or other disposal of the goods by a third party. The Customer is only authorized to resell or otherwise use the reserved goods within the scope of proper, ordinary course of business.

6.5 In the event that the Customer sells the delivered goods in accordance with the provisions, he will then transfer the receivables against the buyer or third parties that arise from the sale to the Supplier, together with all ancillary rights, until the Supplier's receivables are discharged in full. The Customer is authorized to collect these receivables even after assignment until such time as this provision is revoked.

6.6 For good cause – such as delay in payment, interruption of payment, or significant deterioration of the Customer's asset situation – the Supplier shall have the right to revoke the collection authorization, and the Customer shall be required, at the Supplier's request, to notify third-party buyers of the assignment and provide the Supplier with the information and documents required for purposes of asserting his rights.

6.7 In the event of a breach of contract by the Customer, delay in payment, unauthorized disposal of the reserved goods, significant deterioration of the Customer's asset situation, protests against bills of exchange or checks, a request by the Customer himself or by a third party for the initiation of insolvency proceedings with respect to the Customer's assets, or refusal to initiate such a proceeding due to insufficiency of assets, the Supplier has the right to prohibit the processing, use, or sale of the reserved goods. In such cases, the Supplier is further authorized to take possession of the reserved goods and to enter the Customer's business premises for this purpose to demand relevant information and to inspect the Customer's books to the extent necessary.

6.8 The demand for return of the reserved goods shall constitute withdrawal from the agreement but taking back or seizure of the reserved goods shall not.

6.9 At the Customer's request, the Supplier shall release the security he holds insofar as its value exceeds that of the receivables to be secured by more than 20% in total.

6.10 If the Customer or a third party requests the initiation of an insolvency proceeding with respect to the Customer's assets, or if an insolvency proceeding against the Customer is initiated by a court, or if the initiation of such a proceeding is rejected due to insufficiency of assets, the Supplier shall have the right to withdraw from the agreement and demand that the reserved goods be returned immediately.

#### **7. Claims for Defects**

The Supplier makes the following guarantee for material and legal defects in the delivery, excluding further claims, subject to the provisions of No. 8:

##### **7.1 Defects as to quality**

7.1.1 All of the parts that prove to be defective due to a circumstance arising prior to the transfer of risk are to be repaired or replaced with parts that are free of defects, at the Supplier's discretion, free of charge (repair or subsequent/replacement delivery; hereinafter collectively: "remedy").

7.1.2 The Supplier shall immediately be notified in writing if such defects are identified.

7.1.3 Parts found to be defective are to be returned to the Supplier only if the latter so requests. The Customer shall pay the costs of returning any parts found to be defective.

7.1.4 The Supplier can demand the surrender and transfer of ownership of replaced parts.

7.1.5 In the event of complaints about defects, payments by the buyer can be retained only to the extent that it is reasonable in relation to the material defects that occurred. The Customer may retain payments only if there is no doubt as to the justification of a complaint about defects. If a complaint about defects is unjustified, the Supplier shall have the right to request reimbursement from the Customer for any expenses incurred as a result of the unjustified complaint.

7.1.6 After reaching an understanding with the Supplier, the Customer must give the Supplier the time and opportunity required to undertake all work that the Supplier deems necessary to effect a remedy; otherwise the Supplier is released from liability for the consequences thereof. Only in urgent cases in which industrial safety is at risk or for purposes of preventing disproportionate harm – in which instances the Supplier is to be notified immediately – shall the Customer have the right to eliminate the defects himself, or cause this to be done by third parties, and to demand reimbursement of the required expenditures from the Supplier.

7.1.7 Of the direct costs incurred as a result of the remedy, the Supplier shall – if the complaint proves to be justified – pay the costs of the replacement part, including shipping.

If the Customer demands reimbursement of the costs he incurred or for which he reimbursed his customers as provided by law, the reimbursement to be paid by the Supplier shall be determined as follows:

a) Reimbursement shall only be paid for the costs of disassembly and assembly of the defective deliverables as necessary for purposes of the remedy and only to the extent that such costs would be incurred for a remedy at the Supplier's factory.

b) Liability for compensation is excluded insofar as the Customer himself has effectively limited liability to his own customer. The Customer shall seek to provide for limitations of liability for the benefit of the Supplier as well to the extent permitted by law.

7.1.8 With respect to the defective portion of the deliveries and services, the Customer has the right to withdraw from the agreement if the Supplier has been given a reasonable period of time in which to remedy a material defect and has permitted this to expire without effecting a remedy. If there is only an insignificant defect, the Customer shall only have the right to reduction of the agreed-upon price. The right to reduction of the agreed-upon price is otherwise excluded. If acceptance of a portion of the deliveries and services is unacceptable to the Customer in commercial terms, the Customer shall have the right to withdraw from the agreement as a whole.

7.1.9 Further claims shall be determined as provided in No. 8.2.

7.1.10 No guarantee shall be made in cases including but not limited to the following: Unsuitable or improper use, defective assembly or operation by the Customer or a third party, normal wear and tear, defective or negligent handling, improper maintenance, unsuitable equipment, particular outside influences not provided for in the contract – except insofar as the Supplier is responsible for those influences.

7.1.11 Indemnity commitments by the Supplier, particularly guarantees of quality and durability contained in documents such as delivery specifications, tender documents, requirements specifications, descriptions of services, performance specifications, etc.

are expressly excluded subject to the provision contained in 1.1, even if they are identified as such.

7.1.12 If the Customer or a third party undertakes an improper remedy, the Supplier shall accept no liability for the consequences thereof. The same applies in the event of alterations to the deliverables that are undertaken without the consent of the Supplier.

7.1.13 With respect to the functioning and operational characteristics of the deliverables, the results obtained on the Supplier's test bench shall be definitive. The Supplier shall accept no liability for failures due to the installation conditions or improper operation and maintenance.

7.1.14 Under no circumstances shall a remedy in any form whatsoever constitute acknowledgment of a claim by the Customer.

##### **7.2 Deficiencies in title**

7.2.1 If the use of the deliverables results in the infringement of commercial property rights or copyrights of third parties in the Federal Republic of Germany that existed at the time of transfer of title, the Supplier shall, at his own expense, obtain for the Customer the right to continue to use the deliverables or shall modify the deliverables in a manner acceptable to the Customer such that the infringement of property rights is eliminated.

If it is not possible to do so under conditions that are reasonable in commercial terms or within a reasonable period of time, the Customer shall have the right to withdraw from the agreement. The Supplier shall also have the right to withdraw from the agreement under the conditions cited.

In addition, the Supplier shall also release the Customer from claims on the part of the relevant owner of property rights insofar as such claims are uncontested or have been declared to be legal.

7.2.2 Subject to the provisions contained in No. 8.2, the Supplier's obligations cited in No. 7.2.1 are final with respect to infringements of property rights or copyrights. They shall only exist if

a) the Customer notifies the Supplier immediately in the event that any infringement of property rights or copyrights is asserted,

b) the Customer assists the Supplier to a reasonable extent in defending the claims asserted or facilitates the Supplier's implementation of modification measures as provided in 7.2.1,

c) the Supplier retains the right to undertake all defensive measures including out-of-court settlements,

d) the legal defect is not the result of an instruction given by the Customer, and

e) the infringement of rights was not caused by the Customer's alteration of the deliverables on his own initiative or in a manner not permitted by the agreement.

7.3 All claims arising from defects shall become statute-barred after twelve months. The period of validity shall begin when the deliveries are dispatched from the factory or upon acceptance inspection of the deliveries and services, if such acceptance inspection has been agreed on, or upon completion of assembly if the assembly was also undertaken by the Supplier. If shipping, an acceptance inspection, or an assembly are delayed for reasons for which the Supplier is not responsible, the guarantee period shall end no later than 18 months after notification of readiness for shipping.

#### **8. Liability**

8.1 If the deliverables cannot be used as provided by the agreement due to fault on the part of the Supplier as a result of omitted or defective implementation of offers or advice given before or after formation of the agreement or due to the violation of other ancillary obligations under the agreement – including but not limited to instructions for operation and maintenance of the deliverables – the provisions of Nos. 7 and 8.2 shall apply accordingly, to the exclusion of further claims by the Customer.

8.2 The Supplier is not liable on any legal grounds whatever for losses other than losses incurred on the deliverables themselves except in the case of illegal intent or gross negligence.

8.3 All cases of breach of contract and their legal consequences and all claims of the Customer, irrespective of the legal grounds on which they are based, are provided for in their entirety in these conditions. In particular, all claims for damages, reduction, annulment of the agreement, or withdrawal from the agreement are excluded unless expressly cited herein. In no instance is the Customer entitled to claim compensation for losses other than losses incurred on the deliverables themselves; specifically excluded hereunder are interruption of production, loss of use, loss of orders, lost profits, and other indirect damages. This exclusion of liability shall not apply in cases of illegal intent or gross negligence on the part of the Supplier but shall apply in cases of illegal intent or gross negligence of auxiliary personnel. Furthermore, this exclusion of liability shall not apply if prohibited by binding law.

#### **9. Miscellaneous Provisions**

9.1 If the deliverables include software, the Customer is granted a non-exclusive right to use the software supplied including its documentation. Software is provided for use on the deliverables specified. Use of the software on more than one system is prohibited.

The Customer may reproduce, edit, or translate the software or convert it from object code to source code only to the extent permitted by law. The Customer agrees not to remove information identifying the manufacturer – particularly copyright notices – or to alter it without the prior express consent of the Supplier.

The Supplier or the software supplier retains all other rights to the software and the documentation, including copies. The granting of sublicenses is prohibited.

9.2 All claims of the Customer – irrespective of the legal grounds on which they are based – shall be statute-barred after twelve months. Notwithstanding the foregoing provision, the statutory periods of limitation are in effect to the extent that liability for losses is required by law.

#### **10. Place of Performance, Jurisdictional Venue, Applicable Law**

10.1 The place of performance for both parties is the domicile of the Supplier.

10.2 The court of competent jurisdiction at the domicile of the Supplier shall be the jurisdictional venue. However, the Supplier has the right to file suit in the jurisdiction in which the Customer maintains his headquarters.

10.3 All of the legal relationships between the Supplier and the Customer shall be governed exclusively by the substantive law of Switzerland (Zurich). Application of the UN Convention on Contracts for the International Sale of Goods (CISG; "Vienna Law on Sales") is excluded.