

General Purchasing Terms and Conditions for automotive parts

Version: Juli 2009

English

1. Scope/Ordering

- 1.1 Our Purchasing Terms and Conditions shall apply to all services and supplies unless otherwise stipulated in writing, and to the exclusion of any other terms and conditions of the Supplier. We shall not recognize any conditions of the Supplier which are contrary to or which differ from our Terms and Conditions unless we have expressly consented to such. Our Purchasing Terms and Conditions shall also apply if we have placed orders and/or if we accept offers, goods or services without reservation in knowledge of conflicting terms and conditions or terms and conditions of the Supplier which differ from our own.
- 1.2 Furthermore, the **KAUTEX Global Supplier Manual ("GSM")** including its Annexes and related documents as last amended at the date of the respective order shall apply. No conflicting terms or terms of the Supplier which deviate from such Manual will be accepted by us. A copy of the Manual may at any time be furnished to the Supplier upon request and is available at www.Kautex.com.
- 1.3 These purchasing terms and conditions shall apply in relation to entrepreneurs (§ 14 German Civil Code) only.
- 1.4 Any changes and amendments by the Supplier to the contract, an order or the object to be supplied shall require our written confirmation.
- 1.5 Advance oral orders shall not be binding. Only the content of our subsequent written order shall be binding. With regard to orders placed under a framework agreement the delivery schedules as per the framework agreement shall apply.
- 1.6 We are entitled to demand changes in the goods to be delivered in terms of design and model if such an obligation is imposed on us by an automotive manufacturer or if such changes are necessary to prevent damages to third parties or to ensure conformity of the goods with the recognized rules of technology or regulations and laws, and the Supplier shall observe such changes provided that these changes are reasonable. The effects of any such change, in particular with regard to additional or lower costs and delivery dates shall be appropriately arranged by mutual reasonable agreement, if need be, taking into account our and the Supplier's reasonable interests, including new arrangements between the automotive manufacturer and ourselves, new technical developments, laws and regulations, as the case may be. The same shall apply *mutatis mutandis* to any services of the Supplier.
- 1.7 Our Purchasing Terms and Conditions shall apply to all future orders in the course of our business relationship.

2. Delivery dates

- 2.1 The delivery dates and delivery deadlines stated in our order or delivery schedule of a framework agreement are fixed dates ("*Fixtermine*"). The time at which the goods or services are received at the specified point of supply shall be decisive.
- 2.2 If there is a danger of delay in delivery, the Supplier shall inform us how long such delay is expected to last and about the reason for such. In the event that dates or deadlines are not met due to reasons the Supplier is responsible for, we shall be entitled to demand damages for delay. If penalties have been agreed for late delivery, we may claim such penalties until the time of our payment of the Supplier's invoice at the latest.
- 2.3 Partial deliveries received ahead of time shall only be allowed with our prior written consent and shall not be deemed to constitute performance.

3. Deliveries

- 3.1 Each delivery shall have a delivery note attached to it containing the order data.
- 3.2 Delivery shall be effected free of additional charges and at the cost and risk of the Supplier to the point of receipt as specified.

4. Prices

Prices include shipment to the point of receipt including packaging and insurance by the Supplier.

5. Payment

- 5.1 Our payments are effected subject to reservation to review the invoice, even if we do not reserve our rights in the individual case.
- 5.2 Payments shall be considered being effected at the time of our payment order.

6. Quality and documentation

- 6.1 The Supplier shall at all times comply with the then current version of the **GSM** and shall regularly monitor the Kautex website (www.kautex.com) for changes and updates. In the event of any conflict between these terms and conditions and the **GSM** these terms and conditions shall prevail.

- 6.2 The Supplier shall be responsible for its deliveries and services conforming to the agreed specifications and guaranties, if any, the recognized rules of technology, safety and other provisions, including European regulations, and the agreed-upon technical data (including DIN and EN standards). The Supplier's deliveries and services shall also comply with all laws, regulations and provisions of those countries for which the deliveries and services are ultimately destined provided the Supplier has knowledge of such countries. If the Supplier has reason to believe that the deliveries or services are destined for countries other than that of the point of receipt, the Supplier shall make appropriate inquiries with us.
- 6.3 The rules set out under VDA and QS 9000 as in force at the date of the conclusion of the contract shall apply to first samples and serial deliveries. Additional details have been set out in the **GSM**
- 6.4 The Supplier shall provide reasonable support according to our instructions in the application of processes and advance quality planning.
- 6.5 With regard to parts specially labeled in the technical documents or through special references or separate notes or in agreements, the Supplier shall furthermore keep special records of when, in what manner and by whom the objects of delivery have been checked to confirm that they show the specifications set out in the documentation and which results the required quality tests have produced. The testing documents shall be kept for 15 years and submitted to us upon request. The Supplier shall impose the same obligations upon its suppliers. The rules of VDA or QS 9000 in force at the date of the conclusion of the Agreement shall apply.
- 6.6 The Supplier agrees to permit access to its facilities, at reasonable times and upon reasonable prior notice, to us and our customers and their representatives to inspect the production process, raw materials and work in process and finished goods, machinery and tooling used to produce the goods and relevant records.
- 7. Supply guarantee**
The Supplier warrants that it will be able to supply the products or types of products and spare parts for the supplied products for a total of 15 years after discontinuation of serial production of the products and for the first 5 years at a price no greater than that charged for the last serial production deliveries. The Supplier shall give written notice to us of the termination of serial production.
- 8. Notice of defect**
- 8.1 After receiving the goods we shall check the goods within a reasonable period of time for defects which can be determined by means of visual inspection, measurement and weighing. We shall not be obligated to carry out inspections which require the removal of the packaging, separation of individual parts in a packing drum, the use of chemical or physical inspection methods, trial processing or the like, and which require measurement or trial with moulds, tools and other facilities or parts of equipment. Defects detected in this manner shall be deemed to constitute hidden defects.
- 8.2 We shall notify the Supplier without undue delay in writing about defects of delivered goods in accordance with the elements of proper business procedure as soon as they are found. Insofar, the Supplier waives any objection to late notice of defect.
- 9. Warranty**
- 9.1 In the event of defect in the object of delivery (goods) we shall be entitled to request either supplementary performance, termination of the Agreement or a reduction in the purchasing price or claim compensation or reimbursement for wasted expenditure (§ 439 German Civil Code). If the Supplier does not satisfy a warranty claim within a reasonable period, which he shall be given, we shall be entitled to remove the defects at the expense of the Supplier. In the event of termination of the Agreement, we shall be entitled, notwithstanding § 323 para. 5 of the German Civil Code and § 281 para. 1 of the German Civil Code, to terminate the Agreement including with regard to goods which are in proper condition, or to claim damages.
- 9.2 The following shall apply to the warranty periods for defects taking into account special circumstances in the automotive industry:
- 9.2.1 Subsequent performance by the Supplier shall cause the warranty period to begin anew for newly delivered and repaired parts.
- 9.2.2 The warranty period against the Supplier (limitation period for claims based on warranties) shall terminate after expiration of 36 months after delivery of the parts, unless the Supplier has knowledge of the warranty period applicable pursuant to Section 9.2.3 or of the place of destination of the vehicles referred to in Section 9.2.4. In the latter cases, Section 9.2.3, respectively 9.2.4 shall apply.
- 9.2.3 Since the delivered parts are for further use in automotive manufacturing and the car manufacturers insist on particularly long warranty periods, we are compelled to adapt the warranty period for defects against the Supplier to such periods which are imposed on us by the car manufacturer for whose production the object of delivery is ultimately destined. Therefore, the warranty period imposed on us by the car manufacturer concerned shall apply *mutatis mutandis* to our relationship with the Supplier. The Supplier shall receive a copy of the warranty rules of the respective car manufacturer prior to conclusion of the contract and at any time upon request. Furthermore, the Supplier shall have the right (except where the car manufacturer has imposed on us a confidentiality obligation) to inspect at any time the warranty terms as agreed upon between us and the respective car manufacturer.

- 9.2.4 In the event that the Supplier should, as it may be in exceptional cases, not know the warranty period applicable pursuant to Section 9.2.32 but is aware of the place of destination of the vehicles for which the parts to be supplied are destined, the following warranty period shall apply: If the place of destination is North America (Canada, U.S.A., Puerto Rico), the warranty period shall terminate upon the expiration of 60 months or, if occurring thereafter, upon a performance of 70,000 miles from the initial registration of the vehicle or installation of the spare part, but in no event later than 72 months from delivery to us of the goods to be supplied. If the place of destination is in any other region, the warranty period shall terminate upon the expiration of 36 months or, if occurring thereafter, upon a performance of 100,000 km from the initial registration of the vehicle or installation of the spare part, but in no event later than 48 months from delivery to us.
- 9.3 In case of a serial defect, i.e. a defect which occurs on more than one delivered good, the Supplier shall inform us immediately. In such case, we shall be entitled to assert our remedies under Section 9.1 to all goods possibly affected even if only part of the delivered goods are actually affected by such serial defect.
- 9.4 The statutory warranty rights shall apply to all contracts for work and services (“*Werkverträge*”). The warranty periods under Section 9.2 shall apply *mutatis mutandis*, unless the statutory warranty periods are longer than stipulated under Section 9.2. If acceptance in the sense of § 640 German Civil Code (*Abnahme*) is required by law or has been expressly stipulated between Supplier and us, the warranty period shall begin with the completion of the acceptance.
- 9.5 For contracts for services under §§ 611 et seq. German Civil Code (“*Dienstverträge*”), the limitation period for our claims shall terminate after three years after rendering the services unless the statutory warranty periods are longer, in which case the statutory limitation period shall be applicable.

10. Liability and damages

- 10.1 The Supplier’s liability shall be governed by the statutory laws. In particular, the Supplier shall be obligated to provide compensation for all direct, indirect and consequential damages, which are caused by a defect (or defective parts of a delivery) the Supplier is responsible for, violation of statutory or government regulations or contractual duties and any other reasons, the Supplier is responsible for.
- 10.2 If claims based on strict liability under statutory provisions, e.g. under product liability laws, which are mandatory with respect to third parties, are raised, the Supplier shall assume liability to the amount which the Supplier would also externally be directly liable for. The internal compensation between the Supplier and us shall be made proportionately pursuant to the respective amount of contribution. This shall also apply in the event of claims being raised directly against the Supplier.
- 10.3 We shall provide the Supplier the opportunity to investigate the incidence having caused the damage to the best of our abilities.
- 10.4 We may assert against the Supplier also such costs to ward off danger (e.g. recall actions) which we incur ourselves or which we have to bear in our relationship to third parties (e.g. automotive manufacturers) and which are caused by the Supplier.
- 10.5 The Supplier’s obligation to provide compensation shall include Supplier’s obligation to hold us free and harmless from claims of third parties.

11. Industrial Property Rights/Legal Defects

- 11.1 The Supplier warrants that industrial property rights of third parties (e.g. copyrights, patents, trademarks and other intellectual property rights) are not infringed by the object of delivery and its use in conformity with the Agreement and shall hold us free and harmless from any claims resulting from such infringements. If the place of destination of the parts to be supplied is known to the Supplier, the foregoing shall also apply with regard to the place of destination. The warranty period for such legal defects is three years from the date the legal defect has become known or ought to have become known to us but not exceeding ten years from the date of delivery of the parts.
- 11.2 The Supplier shall not be liable if the infringement of industrial property rights is caused by material we have provided or our orders.

12. Manufacturing material/Tooling

- 12.1 We shall retain title to drawings, prints, models, templates, samples, labels, films, tools, press rollers, etc. (together “*tooling*”), which we provide to the Supplier.
- 12.2 Should such tooling be made available or developed by the Supplier, the Supplier transfers title and all intellectual property rights and know how to such tooling to us if we remunerate the Supplier for the tooling.
- 12.3 The Supplier transfers all intellectual property rights and know how to us on all deliveries made by using such tooling..
- 12.4 In no instance may such tooling and deliveries or intellectual property rights or know how thereon be transferred or be made available in any other way to third parties or be used by the Supplier for any own purposes except for the performance of the agreement with us without our prior written consent. They may also only be reproduced subject to our prior written consent.
- 12.5 The Supplier shall upon our demand at any time cease using such tooling and all rights thereto and immediately deliver such tooling to us.

13. Force majeure/withdrawal

- 13.1 If we are for reasons of force majeure or due to other unforeseeable circumstances beyond our control such as disruption of operations, strike, lockout, shortage of means of transportation or governmental orders, prevented from accepting supplies and services we shall not be deemed to be in default of acceptance. If the hindering event lasts for more than two weeks, either party may withdraw from the contract with respect to the portion not yet received. Instead, we are also entitled to defer acceptance of the supply or delivery for a reasonable period, provided we give notice thereof to the Supplier immediately upon the occurrence of the circumstances preventing acceptance. Claims for damages shall be excluded in such cases.
- 13.2 If, following conclusion of the contract, circumstances become known to us giving rise to conclude that our order will not be properly performed or fulfilled, such as insolvency or a material deterioration of the Supplier's financial condition, we may require that, upon reasonable notice, the Supplier furnish reasonable security. In case of Supplier's failure to so furnish security, we are entitled to withdraw from the contract and claim damages.
- 13.3 In case of a withdrawal for which the Supplier is responsible we are entitled to return the goods at the Supplier's cost and risk or to store them with a third party for collection by the Supplier at its cost and risk.

14. Reservation of title

- 14.1 In relation to goods and parts which the Supplier delivers to Germany, we object to an expanded title reservation of the Supplier ("*Erweiterter Eigentumsvorbehalt*"), and in case of an extended title reservation of the Supplier ("*Verlängerter Eigentumsvorbehalt*") we are entitled to dispose of or make use of the parts to be supplied for their intended purpose in the ordinary course of business.
- 14.2 In relation to parts which the Supplier delivers to other countries and which are situated outside Germany, we object to any reservation of title to the extent possible under the applicable jurisdiction.

15. Set-off rights/rights of retention

- 15.1 The Supplier may only set off claims which are not subject to dispute or which have been awarded by a final judgment.
- 15.2 We shall be entitled to set off all claims including bills of exchange and checks against all claims of the Supplier against us or enterprises affiliated with us within the meaning of §§ 15 et seq. of the German Stock Corporation Act including if such claims have different due dates.

16. Confidentiality

Each party to the Agreement shall use all documents (also including samples, models and data) and knowledge which they receive in conjunction with the business relationship solely for the jointly pursued objectives and purposes and keep such confidential vis-à-vis third parties showing the same diligence which they would exhibit with regard to their own documents and knowledge if the other party to the Agreement labels such confidential or has an obvious interest in keeping such confidential. This shall also apply after the termination of the business relationship. The Supplier shall subject its own sub-suppliers accordingly.

17. Environmental protection

The Supplier shall be obligated to keep its share of disposable packaging at a minimum by using reusable packaging. The Supplier shall guarantee that the object of delivery conforms to all health and environmental regulations also in the countries in which the motor vehicles (into which the delivered parts are to be built) are delivered to – provided the Supplier has knowledge of the country of destination - and that no hazard to health or the environment emanate from the good. The Supplier is referred to the **GSM** inclusive applicable documents, which is part of the Agreement.

18. Emergency strategy

Considering the special demands of car manufacturers it has to be ensured that in case of breakdowns within the Supplier's scope of control the supply of the parts to be supplied is being maintained. The Supplier therefore agrees to maintain an emergency strategy to the extent reasonable for foreseeable disruptions in its business, especially in the areas of procurement, manufacture, production and/or transportation which may result in a restriction of deliveries of goods (specifically with regard to delivery dates and quantities) or, if such a strategy does not exist yet, to develop and introduce the same as soon as possible such that an interference with supplies is prevented or at least limited to a large extent. At our request we shall at any time be allowed to inform ourselves of such emergency strategy. The Supplier shall inform us without undue delay in the event of a disturbance or any other circumstances which could lead to an impairment of the delivery of the goods.

19. Applicable law, place of performance, legal venue and severability clause

- 19.1 The law of the Federal Republic of Germany shall apply to all legal relationships between the parties to the Agreement. The April 11, 1980 Convention of the United Nations pertaining to the International Sale of Goods shall be excluded.
- 19.2 The place of performance for supply and service shall be the respective point of receipt.
- 19.3 The place of performance for payment shall be Bonn.

- 19.4 The exclusive place of jurisdiction shall be Bonn, provided the Supplier is a merchant. However, we shall be entitled to sue the Supplier at his place of general jurisdiction.
- 19.5 The invalidity of any provisions hereof shall not affect the validity of the remaining provisions of the contract.