

## 1. General

- 1.1. Orders are placed exclusively on the basis of these Terms and Conditions, except deviating agreements are confirmed in writing in special cases. Other conditions do not become conditions of the contract, even if they are not expressly refused.
- 1.2. If the delivery is accepted without express contradiction, it cannot be derived by no means that WALDASCHAFF AUTOMOTIVE GMBH (in the following referred to as WA) has accepted the delivery conditions of the contractor (in the following referred to as contractor).
- 1.3. These General Terms and Conditions will also apply for all future contract conditions with the contractor.

## 2. Quotes, orders

- 2.1. If the supplier submits a quote based on the request for quotation of WA, he exactly has to adhere to the RFQ of WA and expressly point out any deviation.
- 2.2. Reimbursements for visits or the preparation of quotes, projects, etc. are not granted, if not otherwise expressly agreed or if there is no legal title to them.
- 2.3. Delivery contracts (order and acceptance) and call-offs as well as amendments and supplements require the written form. Call-offs may also be made by remote data transmission.
- 2.4. If the contractor does not accept the order within two weeks after receipt, WA is entitled to cancellation. Call-offs are binding at the latest when the contractor does not refuse them within two weeks after receipt.
- 2.5. Services for which a written order does not exist do not commit WA in any way and are not paid by WA, even if such services have been rendered on request of the personnel of WA.
- 2.6. The contractor is committed to point out any possible deficiencies already on submission of the quote, especially regarding the compliance with the state of science and the state-of-the-art, with provisions of the environmental protection or the technical fitness for the purpose or the feasibility.
- 2.7. WA may request changes at the delivery item even after conclusion of the contract as far as reasonable for the contractor. The effects of such contract modifications, especially additional costs or reduced costs and the delivery dates have to be taken into consideration appropriately in case of any amendments of the contract.
- 2.8. Deviations compared to the order and changes shall only apply if the contractor points them out and if WA has confirmed them in writing.

## 3. Manufacturing equipment, manufacturing documents

- 3.1. Models, test equipment, tools, special plants, moulds, samples, drafts, plans, projects, drawings and other manufacturing equipment or documents which are made available to the contractor or which are prepared and manufactured by WA remain property of WA and may not be used by the contractor for any other purpose than the performance of the order, nor may they be reproduced or made accessible to third parties.
- 3.2. If the above mentioned manufacturing equipment or manufacturing documents are produced by the contractor or acquired from third parties by the contractor on behalf of WA and if the contractor receives a reimbursement from WA, the property is transferred to WA on full payment. If the contractor keeps on holding the manufacturing equipment or the manufacturing documents, WA lends them to the contractor.
- 3.3. The manufacturing documents which are property of WA have to be returned to WA without request after termination of the order at the latest.
- 3.4. The contractor alone is responsible to check the usability of manufacturing documents and manufacturing equipment made available by WA. The same shall apply for items which are surrendered to the contractor for commissioned treatment.
- 3.5. The contractor is liable for damages, deterioration, destruction or loss of manufacturing equipment or manufacturing documents according to the legal provisions.
- 3.6. The contractor has to clearly identify all manufacturing equipment and documents which are property of WA as such.
- 3.7. The contractor has to make available free-of-charge drawings and possible general layout drawings for plants, systems, machine parts and tools which are subject to wear and which have not been produced in series. WA herewith has the right to use these documents itself or by third parties for the production of spare parts, for changes at the items supplied or for similar purposes.

## 4. Secrecy

- 4.1. The contractor undertakes to consider as secrecy and treat confidentially all obvious commercial or technical details which become known by WA. Sub-suppliers have to be committed correspondingly. The above provision does not apply for commercial and technical details which are generally accessible or which have become generally accessible or which have been communicated to the contractor by third party parties authorised to do so without any obligation of confidential treatment or which have been known to the contractor already before the date of receipt, as can be proved.
- 4.2. This confidentiality obligation shall prevail even after termination of the delivery relation.
- 4.3. The use of RFQ's or orders of WA and other correspondence for advertising purposes is not permitted without written approval.

## 5. Property rights and copyrights

- 5.1. The contractor indemnifies and holds WA and customers of WA harmless against any claims of third parties arising from possible violations of protection rights and he bears all costs which accrue to WA in this regard.
- 5.2. In case of violations of the protection rights, the contractor first has the right to dispute about the existence, the scope and the area of application of the protection right as well as about the amount of an appropriate royalty.
- 5.3. If a dispute before court results in this regard, WA is entitled to enter the legal action on the side of the contractor. If the contractor loses the action without WA being responsible, he has to indemnify WA the costs of the legal action.
- 5.4. If the contractor does not have a dispute or if his efforts for a dispute fail, WA is entitled to obtain the approval for the use of the corresponding delivery item and the services from the beneficiary at the expense of the contractor. This right is limited to the redemption of the purchase price and the compensation of the damage caused by the lack of title.
- 5.5. If the drawings, samples and other documents prepared by the contractor according to the specification of WA are subject to protection rights, the contractor assigns to WA the exclusive right of use which is not limited in scope and time.

## 6. Quality and documentation

- 6.1. The contractor has to observe the technical specification, the generally recognised codes of practice, the EU machine directives and the safety regulations. The same shall apply for quality assurance regulations/regulations which are separately concluded with WA. If type and scope of inspection and the inspection mean and methods have not been agreed between the contractor and WA, WA is ready within the scope of findings, experiences and possibilities to discuss inspection with the contractor to determine the respectively necessary state of inspection technique, if requested by the contractor. Furthermore, WA will inform the contractor on request about the safety regulations to be applied. Specifications of technical data and inspection regulations do not release the contractor from his obligation to supply a defect-free delivery item in conformity with function and contract.
- 6.2. Furthermore, the contractor has to set out in special records when, in which way and by whom the delivery items have been inspected with respect to the features which have to be documented and which results the required quality tests have for vehicle parts which are especially identified in the technical documents or by separate agreement, e.g. with the letter "D". The inspection documents have to be kept for ten years and presented to WA on request. Sub-suppliers have to be committed by the contractor in the scope of the legal possibilities to the same extent. It is pointed out to the VDA paper "Nachweisführung – Leitfaden zur

Dokumentation und Archivierung von Qualitätsforderungen" (Quality evidence - Guidelines for documenting and archiving quality requirements), Frankfurt am Main 1998 as reference.

- 6.3. The contractor has to verify quality permanently and inform WA about possibilities of quality improvements, where applicable.
- 6.4. Type and scope of the quality inspection have to be agreed between the contract parties. It is a requirement that the contractor adheres to production-specific inspection methods which are customary in the industry.

## 7. Prices

- 7.1. The agreed prices are net fixed prices and exclude additional claims from price reservations of the contractor – except the legal VAT. Costs, taxes, customs duties and other charges – except the VAT – which shall come into effect after order placement shall be at the expense of the contractor.
- 7.2. If price reservations are agreed in writing contrary to 7.1, the contractor communicates the price changes immediately in writing for approval. In this case, WA and the contractor agree that WA is entitled to a right of withdrawal from contract in case of price changes.
- 7.3. If no prices are stipulated in the order, WA reserves a review and approval – even if contract performance has already started. The agreement on the place of fulfilment is not affected by pricing.
- 7.4. At any rate, the price risk is only transferred to WA after acceptance of the goods at the point of unloading at the place of destination.

## 8. Delivery dates, delay in delivery, force majeure

- 8.1. The agreed delivery dates and deadlines are binding. Decisive for the observance of the delivery dates or the delivery term is the receipt of the goods at the address of dispatch mentioned by WA or a successful acceptance in time. Force majeure and labour disputes release the contract partners from their obligations to perform for the duration of the interruption and in the scope of their effect. The contract partners are obliged to submit the necessary information and adapt their obligation to the changed conditions in good faith, as far as reasonable. WA is partially or completely exempt from the obligation to accept the ordered delivery/services and insofar entitled to cancel the contract if the delivery/services cannot be used anymore due to the delay caused by force majeure or the labour dispute also taking into consideration the economic aspects.
- 8.2. If the contractor becomes aware that an agreed date cannot be kept anymore independently from the reasons for the delay, the contractor has to communicate it immediately in writing indicating the reasons for it and the probable duration of the delay. If the contractor fails to provide notice in time, he may not refer to an obstacle.
- 8.3. The contractor may only refer to a lack of necessary documents to be provided by WA if the documents have been reminded in writing and have not been received within an appropriate period of time.
- 8.4. If delivery takes place earlier than agreed, WA reserves the right to return the goods at the expense of the contractor. If the goods are not returned despite an early delivery, they are stored by WA until the date of delivery at the expense and risk of the contractor. Furthermore, WA reserves the right to execute payment only on the agreed payment dates even in case of an early delivery.
- 8.5. Partial deliveries are only accepted after express consent. In case of agreed partial deliveries, the remaining quantity has to be indicated.
- 8.6. The contractor undertakes to report to WA any event which is connected with additional freight charges for the contractor.
- 8.7. The contractor is committed to replace all direct and indirect damages caused by delay.
- 8.8. If the agreed delivery date cannot be kept for reasons for which the contractor is responsible, the contractor is obliged to provide compensation for the damage caused by the delay. WA is entitled to withdraw from contract if a respite expires without success and to assert additional expenses for possible covering purchases.

## 9. Shipping instructions

- 9.1. If not otherwise agreed in writing, delivery takes place free specified dispatch address, including packaging, transport and customs formalities and customs clearance. In case of purchases, which are completed expressly and as an exception to the delivering factory or dispatch station, all allowances and carriage which accrue until transfer to the main carrier are at the expense of contractor. WA shall only bear the pure freight charges.
- 9.2. The dispatch takes place at the risk of the contractor. The risk of any deterioration including the accidental destruction remains with the contractor until delivery at the specified dispatch address. The obligation to take back the packaging complies with the legal provisions. The goods have to be packed so that any transport damages are avoided. If the packaging is invoiced based on special agreements, it has to be credited to the full invoice amount in case of a return on the basis carriage paid.
- 9.3. A delivery note has to be enclosed to every consignment including the following details: order number of WA, item of the order, exact description of the good, dimension, ring number, gross/net weight, material/IT number, possible delivering works. Furthermore, necessary factory certificates have to be enclosed to the consignment. WA reserves the right to refuse acceptance of consignments with incomplete delivery documents and to send them back at the expense of the contractor. If the order is subcontracted, the contractor is responsible for the observance of these dispatch regulations by the subcontractor. The subcontractor has to indicate his principal on all documents.

## 10. Invoicing and payment

- 10.1. Invoices have to be submitted separately and in proper form in duplicate indicating the order number, the item, the material description and the IT number. The invoice copies have to be clearly marked as such. Improperly submitted invoices are immediately returned to the contractor by WA and are only deemed to be received if they are correct.
- 10.2. If the weights and quantities indicated in the invoice deviate from the findings made by WA or at the place of receipt, the latter findings are decisive.
- 10.3. If not otherwise agreed, the payment method can be chosen between:
  - a) on 25th of the month following delivery, net
  - b) with deduction of 3 % discount within 14 days after receipt of invoice or goods. WA pays by the correspondingly chosen payment means.
- 10.4. WA is entitled to set off due claims to be paid by the contractor to which an affiliate company of WA is entitled. The same shall apply if the payment dates of the reciprocal claims are different.
- 10.5. Payments by WA are not a waiver of the assertion of claims arising from faulty performance.
- 10.6. In case of a faulty delivery, WA is entitled to retain payment pro-rata until provision of the proper performance.
- 10.7. In case of down payments, the contractor has to provide an appropriate security, for example a guarantee, on request.
- 10.8. The contractor is not entitled without the previous written approval of WA which may not be unreasonably withheld to assign his claims against it or have them collected by third parties. In case of extended reservations of ownership, the approval is deemed to be given. If the contractor assigns his claims against WA to a third party contrary to phrase Terms and Conditions \_2010.doc 8 from 13.1 without having obtained the approval, the assignment is effective nevertheless. However, WA may perform for the contractor or the third party at its discretion with releasing effect.

## 11. Due contract performance, recourse

- 11.1. The agreed specification is part of the order and may only be changed with the agreement of both parts. Any binding description of the scope of supply or a drawing is also deemed to be a specification. Deviations from the specification are always

- considered to be material violations of obligations, except WA is able to bring the product in a specification-conform condition only requiring a very insignificant effort for this purpose.
- 11.2. The contractor undertakes to use environmentally friendly products and procedures for his deliveries/services and also for subcontracted supplies and ancillary services of third parties in the framework of the economic and technical possibilities. The contractor is responsible for the environmental compatibility of the products and packaging materials supplied as well as for all consequential damages which occur due to violation of his legal duties of disposal. The contractor will issue a certificate of quality for the goods supplied.
- 11.3. On the basis of the regulation (EC) no. 1907/2006 (REACH regulation), the contractor has to communicate to WA the registration number for all substances for which a duty to registration exists independently from the fact whether they are delivered as substances or as part of preparations. If the contractor does not communicate a registration number, this means that the delivery does not include a substance which is subject to registration. A delivery which contains a substance which is subject to registration without communication of the registration number is deemed to be faulty for the purpose of § 434 BGB (German civil code).
- 11.4. WA will communicate to the contractor any obvious deficiency at the delivery/service immediately in writing once it has been detected based on the conditions of the proper course of business, however, within 10 working days after receipt of the delivery at WA at the latest.
- 11.5. WA is committed to check incoming goods for transport damages within 10 working days after receipt. A duty for an incoming goods inspection according to § 377 HGB (German commercial code) does not exist for WA.
- 11.6. Characteristics which WA may expect due to public statements of the seller, the company, the manufacturer (§ 4 clause 1 and 2 of the product liability act) or his assistant especially in advertisements or in the identification of certain characteristics are part of the agreed condition of an item or work, except they are in conflict with agreed characteristics. This shall not apply if the contract party did not know the statement and did not have to know it or that it was corrected with the same value at the moment of contract conclusion or if it could not influence the purchase decision.
- 11.7. WA principally has the right to choose the type of supplementary performance also in case of a contract for work and labour, except the contract partner is entitled to refuse the supplementary performance or WA decides a supplementary performance right which is unreasonable for the contractor.
- 11.8. In case of a defect at the product supplied or the work carried out, WA may remedy the defect itself after expiry of an appropriate period for supplementary performance without success and request compensation of the necessary expenses if the contractor does not have the right to refuse the supplementary performance. In this regard, the legal regulation for the self-remedy in case of contracts for work and labour (§ 637 BGB) shall apply correspondingly for purchase contracts. Without prejudice of the legal regulation, WA may remedy the defect itself at the expense of the contractor in urgent cases for which the contractor is responsible, especially to defend an acute danger of significant damages if it is not possible anymore due to special urgency to inform the contractor about the defect or the impending damage and to grant him even only a short period of time for his own remedy.
- 11.9. If no deviating agreement has been concluded, the limitation for rights based on warranty claims amounts to 36 months after transfer of risk.
- 11.10. The contractor has to have in place a quality assurance appropriate for type and scope and corresponding to the latest state-of-the-art and prove it to WA on request. The contractor will conclude a corresponding quality assurance agreement with WA as far as this is necessary at the discretion of WA.
- 11.11. The contractor shall take out an insurance against all risks arising from product liability, including the risk of call back to an appropriate amount and submit the insurance policy for inspection to WA on request.
- 11.12. Rights of recourse of WA against the contractor for claims due to material defects according to §§ 478, 479 BGB are not affected. WA may assert them even if the end customer is not a consumer but entrepreneur.
- 12. Guarantee**
- 12.1. The contractor guarantees and assures that all deliveries/services meet the latest state-of-the-art, the relevant legal provisions and regulations and guidelines and directives of authorities, accident prevention and insurance associations and trade associations. If in individual cases deviations from these regulations are necessary, the contractor has to obtain a written approval for this purpose. The guarantee obligation of the contractor is not limited by this approval of WA.
- 12.2. The contractor guarantees and assures that all deliveries are free from protection rights of third parties and especially that patents, licenses or other protection rights of third parties within Germany are not violated by the delivery and use of the delivery item. As far as the contractor knows that his products shall be sold and marketed by WA also in certain foreign countries, the above regulations also applies for these countries.
- 13. Spare part supply**
- 13.1. The contractor undertakes to supply to WA all spare parts for the period of the average life of the product supplied.
- 13.2. The price for a spare part may not be higher than the price for a corresponding part on the free market.
- 13.3. If the spare part production was ceased after expiry of the time indicated in clause 8.1, the contractor undertakes to issue to WA design documents / drawings against a reasonable consideration and to use these documents for the manufacture of spare parts which are exclusively determined for the own use. WA undertakes not to make these documents accessible to third parties.
- 14. Heavy metal prohibition**
- 14.1. The contractor undertakes to deliver only products to WA which meet the EU directive 2000/53/EC of 18.09.2000 taking into consideration the decision of the European Commission of 27.06.2002 (2002/525/EC).
- 14.2. If the contractor delivers products in which substances are processed which are subject to the above EU directive, the contractor undertakes to expressly point out these substances to WA.
- 15. REACH regulation**
- 15.1. The contractor undertakes to WA to meet his obligations according to the provisions of the regulations (EC) no. 1907/2006 for the registration, evaluation, authorisation and restriction of chemical substances. The contractor especially undertakes to make available to WA a safety data sheet corresponding to the provisions of the regulation (EC) no. 1907/2006 together with the delivery.
- 15.2. Furthermore, the contractor undertake to WA to communicate the information necessary according to art. 32 of this regulation without being requested.
- 16. Duties to information, right to information**
- 16.1. If the contractor is concerned regarding the design requested by WA, the contractor has to inform WA immediately in writing.
- 16.2. If the contractor offers a product which WA has already purchased from him, he has to point out any modifications without being asked for regardless of any other duties to information if the specification has changed compared to products that were delivered under the same description beforehand.
- 16.3. On the basis of § 4, par. 1 of the equipment and product safety act, the contractor has to communicate all information to WA which are of importance for an assessment of the hazard for safety and health for users of the product or third parties. In this case, the following has to be particularly taken into consideration:
- The characteristics of the product, including composition, packaging, instructions for its assembly, installation, maintenance and duration of use;
  - its effects on other products, as far as a use with other products is to be expected;
  - its presentation, appearance in trade, identification, warning instructions, instructions for use and operating instructions and information for its disposal as well as all other product related details or information;
  - the group of users which are exposed to more important hazards when using the product than others.
- 16.4. The contractor undertakes to expressly point out if he delivers a substance which is not registered contrary to the obligation according to art. 6 of the regulation (EC) no. 1907/2006. The same shall apply if he delivers a preparation in which one or more substances are contained which are not registered contrary to the obligation according to art. 6 of the regulation (EC) no. 1907/2006. If the contractor delivers one or several Terms and Conditions\_2010.doc 12 from 13 substances included in annex XIV of the regulation (EC) no. 1907/2006 or a preparation, in which such a substance/such substances are included, he shall communicate expressly in writing to WA the reasons for the purpose of art. 56 of the regulation (EC) no. 1907/2006 which permit that the substance is put into circulation.
- 16.5. If the contractor advises against the use of a substance, he has to do so in writing and by highlighting it.
- 16.6. If WA is obliged to prepare a substance safety report on the basis of art. 37 of the regulation (EC) no. 1907/2006 and therefore needs information regarding the delivered substances from the contractor, the contractor is obliged to provide the requested information within a period of 30 days after receipt of a corresponding note.
- 17. Place of fulfilment and jurisdiction**
- 17.1. If not otherwise expressly agreed, the place of fulfilment for the delivery obligation is the requested address of dispatch or the point of use, for all other obligations of both parties it is Aschaffenburg.
- 17.2. Place of jurisdiction is Aschaffenburg. However, WA may also sue the contractor at his general place of jurisdiction.
- 18. Insolvency**
- 18.1. If the contractor ceases payments or if insolvency proceedings on the assets of the contractor are filed, WA is entitled to cancel the contract completely or partially. If the contract is cancelled for a contract violation for which the contractor is responsible, the services and work carried out until that date are settled at contract prices as far as they can and could be used by WA in accordance with the intended purpose of use. The damage caused to WA is taken into consideration for invoicing.
- 18.2. If a significant change of the legal form, the management, the participations or the financial situation occur at the contractor which may impair the results significantly which WA can expect from the performance of the contract, WA is entitled to cancel its order without any costs accruing to WA.
- 18.3. If the participations in the contractor change, the purchaser is entitled to negotiate the continuation of the order with WA.
- 19. Partial nullity, applicable law**
- 19.1. If individual provisions or parts of provisions of these Terms and Conditions are ineffective or unenforceable or if they are declared ineffective or partially ineffective by decision of a court or an authority, the effectiveness or enforceability of the remaining provisions is not affected. The ineffective or unenforceable provision shall be replaced by an effective and enforceable provision which meets the economic intents of the parties to the greatest possible extent.
- 19.2. The German law shall apply. The application of United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 is excluded.
- 19.3. The contract language is German. As far as the contract partner uses another language besides German, the German wording has preference. Place of jurisdiction is Aschaffenburg.
- 20. Miscellaneous**
- 20.1. An offset or an assertion of the right of retention by the contractor is not permitted.
- 20.2. The contractor is not entitled to subcontract the order or significant parts of the order to third parties without the previous written approval of WA.
- 20.3. As far as agreed, settlement between WA and the contractor takes place by way of credit procedure. Information for this purpose is available from WA.
- 20.4. Personal data which result in connection with the contract relation are saved for the purpose of data processing (§ 26 Bundesdatenschutzgesetz (German Data Protection Act)).