General Terms and Conditions for Sale

Scope

1.1. All commercial transactions with companies and legal persons (hereinafter referred to as “Buyer”) are subject to the following Terms and Conditions (hereinafter “T&Cs”) that apply to all our offers, sales, deliveries and services (hereinafter referred to as “Supplies”) unless to the extent they are explicitly varied or amended in writing.

1.2. These T&Cs apply exclusively and shall apply to the exclusion of any Buyer’s general terms and conditions in whatever form they may be provided.

1.3. In these T&Cs “Supplier” means such AB company, as accepts any order from the Buyer.

Conclusion of contracts

2.1. Except where an individual quotation states otherwise, our quotations shall, as a rule, remain valid for 30 calendar days.

2.2. A contract with us shall be deemed concluded only if the relevant quotation is expressly referenced by the Buyer in a purchase order within said deadline, otherwise upon our acceptance of the purchase order.

2.3. In each individual case, to be effective, any amendments or additions to our quotations must be confirmed by us in writing.

Delivery terms, Delay

3.1. Unless otherwise agreed in writing, the delivery term Ex-works (Incoterms latest Version) shall apply for all our deliveries.

3.2. The notified lead times are estimated and not fixed. Delivery dates are fixed, when explicitly confirmed by us. Any change of such fixed delivery date is subject to our written confirmation.

3.3. For adherence to the stipulated delivery deadline and for the transfer of risk the provision of the applicable Incoterm shall be decisive. In case of ex-works the delivery date is met and the risk shall pass to the Buyer once a notice is given that the goods are ready for shipment.

3.4. Compliance with the delivery periods shall require the on-time receipt of all documents, samples and approvals to be supplied by the Buyer as well as compliance with the agreed terms of payment and other obligations by Buyer. If these requirements are not met in time, the deadlines shall be extended accordingly.

3.5. If dispatch or shipment is delayed at the Buyer’s request and confirmed by us, by more than one month after notice of readiness for dispatch was given, the Buyer may be charged, for every month commenced, storage costs of 0,5 % of the price of the items of the supplies.

Prices

4.1. Prices shall be ex-works and exclude packaging and value added tax or any other sales tax.

4.2. Unless otherwise agreed in writing, Euro is the applicable currency.

4.3. Only those goods and services specifically agreed to be provided by the Supplier are within the agreed price, the cost of any additional goods or services shall be met by the Buyer.

4.4. The Buyer undertakes that the agreed prices and any agreed price reductions provided by us are based on the agreed purchase terms, in particular on acceptance of these T&Cs, the technical specifications, logistic and payment terms and sales volumes required to be ordered by the Buyer. In case of changes in these basic preconditions, we reserve the right to correct the prices accordingly.

Payment terms

5.1. Unless otherwise agreed, payment shall be made in full within 30 days of the date of invoice.

5.2. Payments shall be made free of any deductions to our bank account by bank transfer.

5.3. If Buyer fails to perform any of its payment obligations, we may, after having sent a notice of default to the Buyer declare that deliveries will stop until receipt of the payment for due debts, without any liability for us in respect of damages which may be caused by such delivery stop. Furthermore we may charge interest on the late payments as determined by law and/or terminate any supply agreement between Buyer and us and take back the goods subject to the reservation of ownership (Retained-title Goods within the meaning of art. 7.1 hereof) upon a term of notice of further 30 days.

5.4. The agreed payment terms are subject to the credit limit approved by us. In case the granted credit limit is exceeded and cannot be increased, in Supplier’s judgment, Supplier is entitled to suspend or delay any delivery to the Buyer until the Buyer settles its invoices to reduce the debts to the Supplier to within the granted credit limit, even if such invoices are not due in respect of the agreed payment terms. In case Buyer’s financial ratings or payment behavior does, in our opinion, require an amendment of the existing credit limit or payment term, we are entitled to demand full or partial payment in advance or other payment terms as a condition to delivery, and we may suspend, delay or cancel any credit, delivery or any of our performances.

5.5. We will inform the Buyer about the amount of granted credit limit, any changes and any case of it’s exceeding without undue delay. In such case we are not liable for any damages which may be caused by any delivery stop and delayed deliveries. Such right shall be in addition to, and not in place of, any other rights and remedies available under these T&Cs, any agreement or at law.

Adaption of contract

Where unforeseeable events including but not limited to significant market driven raw material price increases, changes in law or other force majeure events as stated in Art 10 hereof substantially change the economic viability or the contents of the Supplies or considerably affect our business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, we explicitly reserve the right to cancel the contract. We will notify the Buyer undue delay about our intends to exercise our right to cancel the contract, as soon we shall have realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Buyer.

Retention of title

7.1. We explicitly reserve the ownership of all goods delivered by us (“Retained-title Goods”) until full payment of the relevant delivery by the Buyer.

7.2. For the duration of this retention of title the Buyer will handle the Retained-title Goods with care, store these diligently so that they are identifiable as the property of the Supplier and maintain them in perfect condition at its own expense.

7.3. The Buyer is not entitled to pledge the Retained-title Goods or to use them as security. In the case of access to the Retained-title Goods by third parties, the Buyer shall point out our ownership and notify us about such access without delay. All intervention costs will be charged to the Buyer if and to the extent that they cannot be collected from such third party.

7.4. To the extent prohibited by law, the Buyer immediately assigns to us any receivables resulting from a resale of Retained-title Goods initially sold with retention of our title. These will be used to substitute the Retained-title Goods as collateral of the equivalent amount.

7.5. Until we give a notice of such revocation, the Buyer shall be authorised to collect receivables assigned to us. We shall be entitled to such revocation if the Buyer fails to meet its payment obligations under the business relationship with us in due course. If the preconditions for
exercising a revocation right are fulfilled, the Buyer shall promptly notify us of any assigned receivables with respective debtors, furnish all data required for collection of such receivables, hand over all related documentation and advise the debtors of such assignment. We explicitly reserve the right to personally advise the debtors of such assignment.

Warranty
8.1. We warrant that our delivered goods:
- conform in all material respects with the agreed specification, or where no specification is agreed or provided by us, that the goods will be,
- fit and suitable for the agreed purpose,
- are free from material defects in workmanship and material,
- are exempt from any liens, pledges, encumbrances or other similar rights of third parties.
8.2. The period of limitation for claims relating to a specific defect (warranty period) starts upon delivery of the Supplier’s goods to Buyer and expires after twenty four (24) months after first registration of the vehicle, but not later than 36 months after delivery to the Buyer.
8.3. Any use of the goods for applications relevant to safety is subject to a prior written approval by us.
8.4. In case the BUYER does not provide to us any detailed information about the intended use (application) and all circumstances which may impact the capability and usability of the Products, including environment in which the Products shall perform (Temperature, Humidity, EMC-Standards etc.) we can only warrant that the goods are fit for the ordinary use.
8.5. The Buyer shall immediately, check the delivered goods with respect to quantity, identity and transport damages. We shall be advised in writing of any defects without undue delay, and no later than within five (5) days, after they have been detected.
8.6. The goods claimed to be defective shall be returned to us for examination in their original or equivalent packaging. We shall remedy defects if the warranty claim is valid and within the warranty period. If a defect complaint is not justified, we are entitled to demand indemnification from the Buyer for the costs it has incurred.
8.7. If a defect is discovered before start of production (processing or fitting), the us shall first be given the opportunity by Buyer to replace the relevant goods unless this cannot reasonably be expected from the Buyer. To the extent permitted by law, the Buyer’s sole remedy is to rescind the contract to this extent and return the defective goods at our risk and cost for a full refund. If a defect is discovered in ordinary course of business only after the start of production and the Buyer has observed its responsibility to advise us in writing of this defect without undue delay, then, to the extent permitted by law, the Buyer’s sole remedy is the reimbursement of:
- price of the defective parts (net material costs incurred by Buyer),
- costs of transportation (without towing costs),
- costs of dismantling and installation (cost of labor, costs of material) which the Buyer can prove to have incurred to replace the defective parts.

Liability
9.1. Unless otherwise agreed between the parties or insofar as these T&Cs do not provide for other liability clause, the Supplier shall be liable for damages and losses actually incurred by the Buyer and occasioned by or arising out of any breach of the Supplier’s obligations only according to the following.
9.2. Except the cases of strict or any other mandatory liability without fault, Supplier’s liability only exists in case the Supplier is at fault when causing the damage.
9.3. Save as set out in Article 9.4, the Supplier’s liability shall be limited, to the extent permitted by law, to the typical foreseeable damage directly arising as a result of the Supplier’s breach of any of the terms of this agreement and excluding any loss of profit, loss of saving or indirect loss.
9.4. The Supplier will indemnify, defend and hold the Buyer harmless against any liability, costs, damages, losses and expenses (including court costs and legal expenses) occasioned by or arising out of any claim for death, personal injury, which results from (a) any defect in Supplier’s goods; (b) Supplier’s breach of any term hereof; (c) Supplier’s failure to comply with any applicable law, statute, regulation, ordinance or promulgation; (d) or any other fault or negligence of the Supplier.
9.5. In case of recall and service campaigns due to any non-compliance of Supplier’s goods with the applicable law and regulations or any unreasonable danger existing in the Supplier’s goods which may endanger the human body or life, the Supplier shall further be liable for compensation with regard to recall actions if and to the extent to which the recall or the service campaign (i) is required by law, (ii) is ordered by any competent authority, (iii) turns out to be a suitable, necessary and reasonable measure for the defence of any possible risk for body and/or life for people (iv) is in progress for the purpose of mitigation of such damages. Buyer shall notify and consult with Supplier in a timely manner in advance of any decisions to initiate such actions.
9.6. Compensation between the Buyer and the Supplier shall be settled by applying the principles of apportionment of culpability and negligence correspondingly. This shall also apply in case the Supplier is held liable directly.
9.7. Any Supplier’s liability does not arise if the defect is attributable to the non-observance of the operation, service or installation instruction, inappropriate or unsuitable use, incorrect or careless treatment, defective assembly or operation by the Buyer or third parties, normal wear and tear as well as the consequences of unsuitable modifications or repairs undertaken by the Buyer or third parties without approval by the Supplier.

Force Majeure
10.1. The parties shall be temporarily relieved from their contractual obligations due to Force Majeure events. Force Majeure events are events or occurrences beyond the influence and control of the non-performing party. This includes by way of example but not by way of limitation: Acts of God, measures or orders by regulatory authorities (whether valid or invalid), fires, flood, windstorms, explosions, riots, natural disasters, war, sabotage, strikes and labor disputes.
10.2. If Force Majeure event occurs, the affected party shall inform the other party without undue delay in writing of the circumstances which might lead to an event of Force Majeure as soon as such circumstances have become recognizable by it. If a Force Majeure event continues for a period in excess of three (3) months either party may terminate this agreement, on one month’s written notice to the other party, expiring no earlier than the date 3 months after the commencement of the Force Majeure event. Any such termination shall be without further liability, save in respect of any sums due for goods or services already supplied.

Intellectual Property Rights (IPR)
11.1. As far as intellectual property rights of the Supplier are concerned all such rights and know-how in the goods will remain the property of the Supplier.
11.2. Unless otherwise agreed between Supplier and Buyer, the Supplier shall be liable for any third party claim arising from the use of Supplier’s intellectual property rights which results from the infringement of intellectual property rights, either granted or applied for (Intellectual property rights), of at least one of such Intellectual property rights family being published either in the Supplier’s native country, by the European Patent Office or in either the Federal Republic of Germany, France, Great Britain, Austria or the United States of America, provided that Supplier shall not be liable to Buyer under any provision of this paragraph to the extent that any claim is based upon: (1) a use for which such supplies or part thereof was not designated by Supplier, including any use with or in products or processes not provided by Supplier; (2) an alteration of any supplies or part thereof by the Buyer or a third party and which alteration results in an alleged infringement; or (3) a situation where the Supplier has produced the products according to the drawings, specification, models or similar other descriptions provided by the Buyer...
Jurisdiction and applicable law
13.1. Unless otherwise agreed any dispute, controversy or claim arising out of or in connection with this agreement or the execution, breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration International Chamber of Commerce ("ICC"). The arbitral tribunal shall be composed of one (1) arbitrator selected by the ICC in accordance with those rules. Where the Buyer is incorporated in:
- Germany, the seat of arbitration shall be Köln, Germany. The language to be used in the arbitral proceedings shall be English and this agreement shall be governed by the substantive law of Germany; or
- A country other than Germany, the seat of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English and this agreement shall be governed by the substantive law of England.

13.2. Either party shall have the right to seek an injunction or other order or judgment in any country it deems appropriate to prevent or remedy the disclosure of its Confidential Information in breach of this agreement or to obtain payment for Supplies provided.

Miscellaneous
14.1. Waiver. The failure by either party to enforce at any time or for any period any one or more of these terms or conditions shall not be a waiver of them or of the right at any time subsequently to enforce all these terms and conditions.
14.2. Implied Terms. All warranties, conditions and other terms implied by statute, common law or business practice are, to the fullest extent permitted by law, excluded from this agreement.
14.3. Severability. If any term of this agreement is declared invalid or unenforceable by a court or other body of competent jurisdiction, such terms shall be divisible and deleted. To the extent it is declared invalid or unenforceable, the remaining terms of this agreement shall continue in full force and effect. Any invalid or unenforceable provision shall be replaced to the extent possible with a new provision which will allow the parties to this agreement to achieve the same intended result.
14.4. Modifications. No modification of any provision of these T&Cs shall be effective unless made in writing and signed by a duly authorized officer of all of the parties, save that any existing confidentiality agreement between the parties shall remain in effect, in the event of any conflict between the terms of this agreement and any existing Confidentiality Agreement, the more restrictive terms shall apply.

Confidentiality
12.1. During the term of this agreement each party (the "Disclosing Party") may disclose or make available to the other party (the "Receiving Party") confidential and/or proprietary information related to its products, technology, research plans, business affairs and/or finances related to the supplies made under this agreement (the "Confidential Information"). All Confidential information is and shall remain the property of the Disclosing Party.

12.2. Neither Party shall be obliged to maintain in confidence Confidential Information which (i) was lawfully known by the Receiving Party, free from any restriction, prior to being received from the Disclosing Party; (ii) is subsequently disclosed to the Receiving Party without restriction by a third party who, to the Receiving Party’s knowledge, has the right to disclose the Confidential Information to the Receiving Party without restriction; (iii) is or, without the fault of the Receiving Party, becomes publicly known; or (iv) is developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information.

12.3. Each Party undertakes that except as expressly permitted pursuant to this agreement it shall not, and shall ensure that its affiliates do not, disclose or permit to be disclosed to any third party, or use or permit the use for any purpose other than in performance of its obligations under this agreement, any of the other Party’s Confidential Information, save where such disclosure is required by law, in which case the Receiving Party shall (i) promptly notify the Disclosing Party to the extent permitted by law); (ii) provide to the Disclosing Party all reasonable assistance to obtain confidentiality undertakings; and (iii) only discloses the minimum amount of Confidential Information required to comply. If the Party required by law to disclose is unable to inform the Disclosing Party prior to disclosure, the Receiving Party shall (provided it is lawful to do so) make full disclosure as soon as possible after such disclosure.

12.4. All Confidential Information received by either party under this agreement shall remain the property of the Disclosing Party. Upon written demand from the Disclosing Party, the Receiving Party will return the Confidential Information and any copies of it to the Disclosing Party, or at the Disclosing Party’s request destroy all such Confidential Information and provide the Disclosing Party with written confirmation of such destruction, in either event the Receiving Party shall expunge or destroy all Confidential Information from any computer, word processor or other device containing Confidential Information and destroy all notes, analyses, memoranda containing any part of the Confidential Information. Save that the Receiving Party shall not be required to destroy, delete or modify any backup tapes or other media pursuant to automated archival processes in the ordinary course of business. The Receiving Party shall additionally be permitted to retain one copy of the Confidential Information in the possession of its legal department to ensure compliance with the terms of this agreement and applicable law. Copies of any Confidential Information archived or retained pursuant to this clause shall only be used, including at any point following the termination of this agreement, for the purposes of ensuring compliance with the terms of this agreement and applicable law.

12.5. The provisions of this Article 12 shall survive the termination of this agreement for any reason for a period of three years from the date of termination.