

# General Terms and Conditions of Purchase

TRIMET Automotive Sömmerda GmbH & Co. KG

These General Terms and Conditions of Purchase are drafted in the English and German language. The English version is only a convenience translation of the German version. In case of any discrepancy between the English and the German version, the German version shall prevail.

## 1. Offer and conclusion of contract

1.1. These Terms and Conditions of Purchase shall apply exclusively for our orders and the preceding contract negotiations. In no event shall other terms and conditions of the Supplier apply, even where such have not been expressly objected to in individual cases. Furthermore, the current version of our supplier policy shall be binding with regard to the fulfilment of the contractual duties that come into effect with the acceptance of our orders.

1.2. All offers submitted must be non-binding for us. The Supplier shall adhere to our request/tender in terms of quantity, properties and model in its offers and, in the event of deviations, must make explicit reference to this. The costs for offers, drafts, models, sketches, samples and similar shall be borne by the Supplier. Where the costs are borne by us, ownership shall be transferred to us upon payment; moreover, we shall be granted the unrestricted right to use these documents in any manner whatsoever, to edit and to alter them.

1.3 Any and all supply agreements (order and acceptance), call-offs, changes, amendments and other declarations must be made in writing.

1.4 We expect order confirmations to be fully compliant with our order and to be submitted no later than two weeks from the date of the order. Any contents of the order confirmation that deviate from our order shall not be effective unless expressly approved by us in writing.

1.5 Should the Supplier fail to accept the order within two weeks from the date of the order, the Purchaser shall be entitled to cancel the order. Call-offs shall become binding where the Supplier fails to object to such within two weeks of receipt.

## 2. Prices

The agreed prices are fixed prices and do not include VAT. They include remuneration for all deliveries and services with which the Supplier has been commissioned (also transport costs, insurance, customs duties and packaging) and are understood as “delivered to our premises” (Incoterms 2010 DAP or DDP).

## 3. Delivery item

3.1. Our order shall be decisive for the content, type and scope of the delivery or service.

3.2. The drawings, descriptions, etc., associated with the order shall be binding for the Supplier; it shall, however, inspect such for potential discrepancies and notify us immediately in writing of any errors discovered or suspected. The Supplier shall also remain solely responsible for all and any drawings, plans and calculations prepared by it where such are approved by us.

3.3. Where no further requirements have been stipulated in the order, the delivery items shall be delivered in the customary commercially-available quality and in compliance with any DIN, VDE, VDI or equivalent standards that may exist. The delivery items shall in all cases be manufactured and equipped in such a manner that they meet the statutory regulations, particularly in terms of technical work equipment, hazardous agents, accident prevention, emission protection and protection in the workplace, that are valid at the place of fulfilment on the date of delivery.

#### **4. Provided materials**

4.1. The Supplier shall be liable to us for the loss or damage of provided materials or items and shall inform us immediately of any legal or actual impairment to such items.

4.2. Materials and substances provided by us are handled and processed on our behalf and shall remain our property in all stages of handling and processing. Where said materials and substances are processed together with other items that do not belong to us, we shall acquire ownership of the new item in the proportion of the value of our order to the value of all other items used in the manufacture and the expense incurred by the Supplier for the processing of such. In this respect, the Supplier holds the items for us free of charge. The same shall apply should we lose ownership as a result of combining or mixing.

#### **5. Documents/manufacturing equipment/confidentiality**

5.1. The Supplier may use all work documents (e.g. drawings, samples, models, etc.) and data provided to the Supplier or produced by it according to our precise specifications solely for the purpose of processing the offer and carrying out the delivery. It shall hold these in safekeeping with the utmost diligence and protect them from third-party access. Said documents and data, including all copies and duplications, must be handed over to us without undue delay and without being requested to do so once our request has been processed or delivery has been made.

5.2. The Supplier may not use the documents and data for other purposes, nor may it duplicate them or make them accessible to third parties. Insofar as it is necessary to hand over drawings or other documents belonging to third parties or to disclose business secrets to third parties within the context of executing the order, the Supplier shall be responsible for ensuring that the third party complies with the aforementioned regulations.

5.3. Manufacturing equipment (e.g. models, samples, moulds, tools, etc.) provided to us by the Supplier, or produced by it according to our specifications, may not be sold, pledged or divulged in any other manner to third parties, nor may it be used for the benefit of third parties in any manner whatsoever, without our prior consent. The same shall apply for the items manufactured using this manufacturing equipment. Such items may only be delivered to us where we have not given our express consent for the items to be used otherwise. Once our order has been executed, all manufacturing equipment that has been provided by us or has been produced for our account shall be returned to us without any request to do so. Items that we have developed or further developed in cooperation with the Supplier may be delivered to us only.

#### **6. In-production inspection/final inspection**

6.1. During production and prior to delivery, we shall reserve the right to inspect the quality of the material used, the accuracy of measurements and quantities, and any other quality of the manufactured parts, as well as compliance with all other specifications of our order, on both the Supplier's premises and those of its upstream suppliers. The material costs of in-production inspections and final inspections shall be borne by the Supplier.

6.2. Neither the in-production inspections nor the final inspection shall release the Supplier from its fulfilment and warranty obligations.

## **7. Delivery dates and delivery periods**

7.1. Delivery dates and delivery periods shall be binding. The date on which the goods are received by the Purchaser shall be decisive for determining adherence to the delivery date or delivery period. Where "delivery to our premises" has not been agreed, the Supplier shall make the goods available taking into account the customary amount of time required for loading and shipping.

7.2. Where it becomes apparent that delivery will not be made on time, the Supplier shall notify us immediately in writing of the reason for the delay and the estimated length of said delay. Irrespective of this, failure to meet the agreed delivery/completion deadline shall trigger the statutory consequences of default, in particular the obligation to compensate the damage caused by the delay. In the event that the Supplier fails to meet the agreed delivery/completion deadline for reasons for which it is responsible, it shall pledge to pay the Purchaser per working day (Monday to Saturday) for each day of default a minimum compensation of 0.25 % of the order value, however no more than 5 % of the order value in total.

7.3. We shall not be obligated to accept partial deliveries, excess deliveries or short deliveries that have not been agreed. With regards to the number of items, sizes and weights, the figures determined by us during incoming goods inspection or on official scales shall be decisive.

7.4. Advance deliveries shall only be permitted on the condition that invoicing occurs on the contractually agreed delivery/completion date and that the scope of the advance delivery is only 1/3 of the monthly volume to which it is bound by contract.

7.5. The Supplier shall take full responsibility for procurement of the upstream supply of goods and services necessary for the deliveries, even in the absence of any fault on its part (full assumption of the procurement risk).

7.6. Where the Supplier repeatedly fails to deliver on the agreed dates, we may refuse the further fulfilment of the contract without any prior setting of a deadline and demand compensation for non-fulfilment or withdraw from the contract.

## **8. Packaging/shipping/acceptance**

8.1. Where no specific agreements have been made, the Supplier shall ensure that the delivery item is sufficiently packaged in keeping with customary requirements.

8.2. Where a separate fee has been expressly agreed for packaging, we shall reserve the right to return valuable packaging material used for shipping to the address of the Supplier with return debit of the full rental costs or 2/3 of the value of the packaging material.

8.3. Shipment must be made to the place of acceptance specified by us, where the risk for the goods shall also be transferred to us. We shall bear the full or partial costs of freight only in specifically agreed cases. In these cases, the goods shall be transported using the method that is most cost effective for us and at the most reasonable freight rates.

8.4. Shipment must be in strict compliance with our respective shipping instructions. Each shipment must include a properly filled out delivery note.

8.5. We may refuse to accept the delivery item where an event of force majeure or other circumstances that are beyond our control, including labour disputes, render it impossible or unreasonable for us to do so. In such a case, the Supplier shall place the delivery item in storage at its own expense and risk.

## **9. Invoicing and payment**

9.1. Invoices shall be issued and sent in duplicate separately for each order and shall state our order number and the order date.

9.2. Payment shall be made upon full receipt of defect-free goods and presentation of the invoice, either within 14 days with a 3% discount or within 60 days, unless agreed otherwise. Delays caused by incorrect or incomplete invoicing shall have no adverse affect on the discount period.

9.3. In the event of faulty delivery, the Purchaser shall be entitled to withhold payment proportionate to its value until such time as the order has been duly executed.

## **10. Assignment and set-off**

10.1. The Supplier shall not be entitled to assign its claims against us to third parties either in part or in full without our written consent.

10.2. The Supplier shall not be authorised to offset any counterclaims, unless these counterclaims are undisputed by us and due for payment or have been established with legally binding effect.

10.3. The Supplier may not refuse or withhold payment on grounds of counterclaims from previous business transactions or from other transactions in an ongoing business relationship.

10.4. However, we shall be entitled to declare a set-off against claims asserted by our Supplier at any time, even where the claims that we intend to offset are under dispute or have not yet been established with legally binding effect.

## **11. Liability for defects**

11.1. The Supplier shall be liable for ensuring that third-party rights, in particular patents or other industrial property rights, are not violated by the delivery or use of the delivered item. This shall not apply insofar as the Supplier has manufactured the delivered goods from drawings, models or equivalent descriptions or instructions provided by us and is not aware or, in connection with the products manufactured by it, cannot be aware that industrial property rights have been breached as a result.

11.2. The Purchaser shall inform the Supplier immediately in writing of any deficiencies in the delivery as soon as such have been detected in the course of proper business procedure. In this respect, the Supplier shall waive objection to a belated notification of deficiencies.

11.3. The Purchaser shall be entitled to assert the statutory claims for defects against the Supplier. The Supplier shall be liable to the Purchaser to the statutory extent. In the event of imminent danger or in particularly urgent cases, the Purchaser shall be entitled to remedy the defects itself at the expense of the Supplier.

11.4. The period of limitation for the claims for defects shall be 3 years from delivery of the goods.

11.5. Where faulty delivery is made twice within the scope of applicability of the same contract, we shall be entitled to terminate the contract without due notice.

11.6. In the event of faulty deliveries, claims asserted by the Purchaser under the German Product Liability Act, and on grounds of tort and negotiorum gestio, shall remain unaffected. Quality and durability warranties must be expressly designated in detail as such in writing.

## **12. Liability on the part of the Supplier**

12.1. Where claims for compensation are asserted by third parties against the Purchaser on grounds of a product defect for which the Supplier is responsible, the Supplier shall indemnify the Purchaser against all such claims upon first request, including the necessary costs of defending itself against these claims, where the reason for these claims lies within the sphere of control and organization of the Supplier and where the Purchaser is not guilty of any wilful or grossly negligent breach of duty.

12.2. If, due to a claim, the Purchaser is required to take measures to prevent damage (e.g. a product recall), or is affected by such measures, the Supplier shall be obligated to reimburse the Purchaser for all expenses incurred by or in connection with damage prevention measures. The Purchaser shall inform the Supplier of the content and scope of such measures, insofar as it is in a position to do so and if time allows, and request a statement in response from the Supplier. Any further statutory claims on the part of the Purchaser shall remain unaffected hereby.

12.3. The Purchaser shall reserve the right to request that the Supplier take out and maintain product liability insurance with coverage per case of personal injury/material damage that is

appropriate for the subject matter of the contract. Any further statutory claims on the part of the Purchaser shall remain unaffected.

12.4. Where claims are asserted against the Purchaser by third parties due to the fact that the delivery made by the Supplier is in breach of a statutory industrial property right of the third party, the Supplier shall be obligated to indemnify the Purchaser against such claims upon first request, and to reimburse the latter for all necessary costs relating to the claims asserted by said third parties and for defending itself against these claims. The Purchaser shall not be entitled to acknowledge the third-party claims and/or to enter into any agreements with the third party with regards to these claims without the written consent of the Supplier. The time limitation for these rights to indemnification shall be 3 years, calculated from the date on which the Purchaser gained knowledge of the claims asserted against it the third party.

12.5. The Supplier shall be liable for claims arising from the breach of industrial property rights and applications for intellectual property rights (IPR), of which at least one of the IPR family has been published either in the Supplier's home country, by the European Patent Office or in one of the states of the Federal Republic of Germany, France, Great Britain, Austria or the US. It shall indemnify the Purchaser and its customers against all claims arising from the use of such IPR.

12.6. At the request of the Purchaser, the Supplier shall advise of the use of published and unpublished own and licenced IPR and IPR applications in respect of the delivery item.

### **13. Place of jurisdiction / place of fulfilment / final provisions**

13.1. Place of fulfilment and exclusive place of jurisdiction for deliveries and payments (including legal action against dishonoured cheques) and all disputes arising between the Parties on the basis of the contracts concluded by them shall be Sömmerda (the company's registered place of business), provided the Supplier is a merchant within the meaning of the German Commercial Code (HGB). We shall, however, also be entitled to bring action against the Supplier at its place of jurisdiction.

13.2. The relationships between the contracting parties shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of German International Private Law and the United Nations Convention on Contracts for the International Sale of Goods, even where the Supplier's registered place of business is abroad.

13.3. Should a provision of these Terms and Conditions of Purchase be or become ineffective or unenforceable, this shall not affect the validity of the remaining provisions of these Terms and Conditions of Purchase. The contracting parties shall be obligated to replace the ineffective provision with a regulation that comes as close as possible to the economic intent of the ineffective provision.