



I. Binding conditions

1. The legal relationship that forms the basis for all deliveries of goods and services by Metallwerk Biebighäuser GmbH (Supplier) to a company (Purchaser) is governed by these conditions as well as any other agreements existing between the parties. Insofar as Metallwerk Biebighäuser GmbH is the recipient of any goods or services, Biebighäuser Metallwerk GmbH's Purchasing Conditions shall apply.

2. Any additions or amendments hereto must be made in writing. Other general terms and conditions of the Purchaser shall not apply, even if they have not been expressly contradicted in each individual case, insofar as they are in conflict with these Sales and Delivery Conditions. This includes, but is not limited to, the Purchaser's quotations, its general terms and conditions, its delivery and payment terms, contractual terms or other sets of clauses of the Purchaser, any letters of intent or other correspondence made in connection with the conclusion of a contract, unless otherwise agreed in writing. These Sales and Delivery Conditions apply to all future deliveries of goods and services by the Supplier to the Purchaser, even if they are not expressly agreed upon again. They only apply to companies as defined in Article 14 of the German Civil Code (BGB). The obligations according to Article 312e Para.1 Sentence 1 to 3 of the German Civil Code are excluded.

II. Order

1. Orders and order acceptances based on supply and framework agreements or delivery call-offs as well as any amendments or additions thereto must be made in writing. Delivery call-offs may also be made by means of data telecommunication.

2. The Supplier's offers are subject to change and non-binding. Agreements on item properties must be made in writing.

3. The Purchaser may demand changes to the construction or technical design of the supplied article from the Supplier to a reasonable extent. The effects of such change, especially regarding additional or reduced costs and effects on delivery dates are to be appropriately and amicably agreed.

3. Unless otherwise agreed, deliveries are made to the delivery address or point of use stipulated or to be stipulated by the Purchaser at the Purchaser's expense and risk. The risk is transferred to the Purchaser when the goods are handed over to the person or entity the transportation of the goods was assigned to. The same applies if the Supplier is in charge of arranging delivery to the Supplier.

5. If the Supplier is in charge of arranging transport and delivery of the goods, he may choose the means and route of the transport. Deviating agreements must be made in writing.

III. Prices and payments

1. All prices stated by the Supplier are subject to statutory VAT. Prices exclude the costs of packaging, shipping and insurance, which must be paid separately by the Purchaser unless the Supplier expressly confirms in writing that it will bear them.

2. Payment shall be made, unless otherwise agreed in the framework agreement or in any other agreement, net within 30 days of receipt of the invoice. This also applies in the event that an early delivery has been accepted. The Supplier may demand payment against delivery at any time without needing to state any reasons.

3. Payment is executed by bank transfer or cheque. Cheques shall only be accepted on account of performance.

4. In the event of delivery deficiencies, the Purchaser has the right to withhold the corresponding part of the payment until proper fulfilment of the order.

5. The supplier has the right to assign claims against the Supplier to a third party or allow a third party to collect such claims without prior written consent from the Purchaser.

6. The Purchaser may only offset such counter claims that are valid, concern a counter-claim that is ready to be decided, are undisputed by the Supplier, or to the offsetting of which the Supplier has expressly agreed in writing. The Purchaser's withholding rights are also limited to the cases mentioned in Sentence 1.

7. The Supplier's offsetting and withholding rights are not subject to any limitations. Statutory provisions apply.

IV. Confidentiality

1. The contract parties agree to treat any commercial or technical information that is not an obvious fact and which becomes available to them through the business relationship as a trade secret.

Drawings, models, templates, samples and similar objects may not be handed over or otherwise made available to unauthorised third parties. Reproduction of such items is only permissible to the extent required for business operations and as permitted by copyright law. These obligations shall remain in place even after the relationship with the Purchaser has ended. The Supplier shall oblige its sub-suppliers accordingly.

2. The contract parties may only advertise by mentioning the business relationship with the other party's prior written approval.

V. Lead times, delivery deadlines, modalities

1. The agreed lead times and delivery deadlines are only binding if confirmed by the Supplier in writing.

Confirmed delivery dates are subject to correct, complete and timely deliveries from our suppliers. In case the seller's supplier fails to make a delivery, both Parties have the right to revoke the respective part of the contract. In the cases described in Sentences 1 and 2, the Supplier's liability (Section XI) is only excluded if the deficient, delayed or not effected delivery by its supplier was caused by a culpable breach of its obligations through the Supplier.

3. In the absence of a different written agreement, the moment at which the goods are made available for shipping (if the Supplier is in charge of arranging transport) or pick-up (if the Purchaser is in charge of arranging transport) and of the corresponding notification to the Purchaser determine adherence to the delivery deadline.

4. Goods that are delivered early must be accepted by the Purchaser. No provision for the return of the shipment at the expense of the Supplier has been agreed and thus requires an express written agreement between the parties. Should the Purchaser store the goods until the agreed delivery date, the Purchaser shall bear the charges incurred by this. Storage is at the Purchaser's risk.

5. Partial deliveries are permissible unless they would lead to an unreasonable disadvantage for the Purchaser.

VI. Delivery default

1. The Supplier shall compensate the Purchaser for any damages resulting from delivery delays. This does not apply for any lost profits or damages from the interruption of operation.

2. In cases of minor negligence, compensation for damages is limited to additional freight costs, retrofitting costs and additional costs incurred for the purchase of replacement goods if a respite period for rework has passed without effect or if interest in the delivery is lost.

VII. Force Majeure

The parties shall not be obliged to fulfil their obligations under this agreement in the event of force majeure, labour disputes, unrest, government measures and other unforeseeable, unavoidable and grave events for the duration of the event and to the extent of its effects. This applies even if such event occurs at a moment in which the respective party is already in default. The contract parties undertake, as far as can be reasonably expected, to provide the other party with the required information immediately and, acting in good faith, to adapt their respective obligations to the changed circumstances.

VIII. Quality and documentation

1. Changes to the supplied items do not require the Purchaser's prior written consent if such changes have been requested by the Purchaser or are useful in terms of the current state of the art. The contract partners shall inform each other of any opportunity to improve quality.

2. If the nature and scope of testing, test tools and methods have not been firmly agreed between the Supplier and the Purchaser, the Purchaser agrees to discuss the tests with the Supplier, applying its best knowledge, experience and opportunities, in order to ascertain the required standard of test engineering. Moreover, the Purchaser shall inform the Supplier of the applicable safety regulations upon request.

3. The Supplier shall keep test documentation on record for a period of ten years.

4. To the extent that the authorities in charge of the safety of motor vehicles, regulations on exhaust emissions etc. request insight into the production processes and test documentation of the Supplier in order to verify compliance with certain requirements, the Purchaser agrees, upon request by the Supplier, to grant such authorities the same access to its premises as it would the Purchaser and to provide every reasonable support.

IX. Deficiency reports and notification periods

1. Article 377 of the German Commercial Code and the resulting obligations concerning the inspection of incoming goods resulting through the Purchaser apply between the parties without limitation. The Supplier's inspection of outgoing goods does not substitute the incoming goods inspection through the Purchaser, to which Article 377 of the German Commercial Code obliges the latter.

2. The Purchaser shall notify the Supplier of any transport-related deficiencies or discrepancies in the paperwork and any other deficiencies, insofar as they are evident, within two working days of delivery of the goods to its site. The notification period for deficiencies exposed in the course of a properly executed inspection is seven days from delivery of the goods to the Purchaser. For hidden defects, it is seven working days from discovery of the defect by the Purchaser or from becoming known to such persons that are deemed as its representatives according to the applicable legal regulations.

3. The goods supplied by the Supplier are determined as free of defects its product feature values range within the generally accepted manufacturing-related tolerance levels. The supplied goods are free of defects if they concur with the goods of which the Purchaser has received and approved a sample.

X. Warranty rights

1. In the event of a delivery of deficient goods, the Purchaser may claim its legal warranty rights, provided the applicable legal provisions and the following conditions are fulfilled and provided no other agreement has been made:



2. The place of execution for claims resulting from warranty rights is the Supplier's principal office.

3. Initially, the Purchaser's warranty rights are limited to the right of subsequent performance. Should subsequent performance fail, the Purchaser has the right to reduce the purchase price or withdraw from the contract at its discretion. Legal provisions entitling the Purchaser to a right to reduce the purchase price or withdraw from the contract for other reasons remain unaffected.

4. In terms of subsequent performance, the Supplier may choose, as it reasonably sees fit, between rework or subsequent delivery. Rework and subsequent deliveries are always performed as a gesture of goodwill and do not constitute a legal obligation.

5. To the extent that the Purchaser is entitled to choose between rework and subsequent delivery, its claim to subsequent performance is limited to the selected type of subsequent performance until this proves unfeasible or the Supplier refuses to deliver the selected type of subsequent performance. The Purchaser's right to make other claims it is legally entitled to when subsequent performance fails (reduction of purchase price, withdrawal, payment of damages) remains unaffected.

6. In the event that the Supplier culpably breaches obligations that go beyond the major obligations (e.g. the duty to inform, advise or inspect), the Purchaser may claim compensation for the consequential damage resulting from the defect as well as reimbursement of the compensation paid by the Purchaser to its customer according to the provisions of Section XI. Consequential damage is defined as damage suffered by the Purchaser concerning other legally protected interests than the goods themselves, including, but not limited to, financial losses.

7. To the extent that the Purchaser raises claims for damages due to a deficiency, the regulations in Section XI apply additionally to the provisions of this Section.

8. The provisions of Article 478 of the German Civil Code on recourse of the entrepreneur remain unaffected by the provisions of Item 1 to the extent that the laws on purchase contracts apply.

9. No claims arise from defects which are a consequence of disregarding the operating, maintenance or installation instructions, inappropriate or improper use, wrong or negligent handling and normal wear and tear or of an interference with the supplied item by the Purchaser or a third party.

10. Concerning the Purchaser's warranty rights, the legal statutes of limitation apply, providing that its warranty rights

- expire after four years, if the purchased item is part of a building or of an object that has been used in a building in accordance with its normal use and has caused a defect to it,

- otherwise expire after twelve months.

6. In the case of delivery deficiencies, other claims the Purchaser may be entitled to, including, but not limited to claims arising from product liability laws, tort, or agency of necessity, remain unaffected by this Section X. Guarantees regarding the properties or durability of items must be expressly agreed and determined as such in writing.

XI. Liability

1. Any liability of the Supplier to pay damages is subject to the Supplier having culpably caused the damage or the damage being attributable to it. The statute of limitation according to Article 438 of the German Civil Code generally also applies for the settlement of damages which the Purchaser suffers as a consequence of the defect with regard to a different legally protected interest (e.g. ownership, body etc.) of the Purchaser or a third party, to the extent that this is generally governed by Article 438 of the German Civil Code. Section X.5

(including, but not limited to statutes of limitation, beginning of the statutory limitation period) applies correspondingly. The following Items of this Section set forth the limitations of liability for reason and regarding the amount.

2. The Supplier is liable without limitation for personal damage culpably caused by it. For the rest, the Supplier is only liable for damages if the Supplier itself, its legal representatives or persons it has assigned the fulfilment of its duties to violate its duties in a wilful or grossly negligent manner. In the event of a breach of duty through slight negligence by the Supplier itself or any of the aforementioned parties, the Supplier is only liable for damages if the breach constitutes a breach of a principal duty of the agreement. A principal duty in the sense of the aforementioned is a duty without the fulfilment of which the proper execution of the contract is not possible and upon the fulfilment of which the contract partner constantly relies and may rely upon. In an event of slight negligence, liability, if any, is limited to an amount that is typical for the contract.

3. If the Purchaser is subject to a third-party strict liability claim under a law that cannot be excluded, the Supplier will only accept responsibility vis-à-vis the Purchaser to the extent it is legally obliged to do so under the applicable legal regulations and giving due consideration of these Sales Conditions.

The settlement of damages between the Supplier and the Purchaser is governed by the principles of Article 254 of the German Civil Code as applicable. The same applies for any direct claims against the Supplier.

4. Liability for damages is excluded to the extent that the Purchaser has effectively limited its liability towards its customer. In doing so, the Purchaser will use its best endeavour to limit its liability as far as legally permissible also to the benefit of the Supplier.

5. Claims by the Purchaser are excluded to the extent that damage can be attributed to the fact that the Purchaser has disregarded operating, maintenance or installation instructions, inappropriate or improper use, wrong or negligent handling, normal wear and tear or faulty repairs.

6. The Supplier is liable for measures the Purchaser needs to take in order to prevent damages (e.g. recall campaign) to the extent prescribed by law.

7. The Purchaser shall immediately inform and consult the Supplier in detail should it intend to make claims against it according to the aforementioned regulations. The Supplier shall be given opportunity to investigate the damage event. The contract parties shall agree on any measures that are to be taken, including, but not limited to, before entering litigation.

8. The principles laid out in Section VI are to be applied correspondingly if or to the extent that the Supplier has is not covered by insurance or coverage is insufficient.

9. The limitations of and exemptions from liability according to Items 1 to 8 of this Section apply equally to the Supplier's legal representatives, its managing and non-managing staff and other agents as well as its subcontractors.

XII. Intellectual property rights

1. The Supplier is only liable for any claims arising from the violation of intellectual property rights or applications for intellectual property rights (Intellectual Property Rights) resulting from the contractual use of the supplied goods to the extent prescribed by law and considering of the liability provisions set forth in these Sales Conditions (Section XI).

2. In particular, the Supplier does not exempt the Purchaser and its customers from claims arising from the use of such Intellectual Property Rights unless it is liable according to Item 1.

3. The Supplier also expressly excludes liability if the supplied goods have been manufactured by it according to drawings, models or equivalent descriptions or specifications provided to it by the Purchaser, and does not know or does not need to know, in connection with the products developed by the Supplier itself, whether they infringe on any Intellectual Property Right.

4. The contract partners undertake to inform each other immediately of any risk or alleged case of infringement or violation of rights and to afford each other the opportunity to jointly counteract such claims.

5. Upon request by the Supplier, the Purchaser shall inform the Supplier of the use of any published or unpublished own or licensed Intellectual Property Rights or applications for Intellectual Property Rights pertaining to the supplied goods.

6. To the extent that the Supplier is liable according to Items 1 to 5 and unless expressly agreed otherwise in writing, the Supplier is only liable for the violation of Intellectual Property Rights protected in Germany.

XIII. Penalties, lump-sum compensation

Irrespective of the nature of the damage (deficiency claim, compensation in place of or in addition to delivery, product liability etc.), the Purchaser shall provide a specific computation of the damage suffered by it. A lump-sum payment of damages is excluded and penalties are not agreed between the parties. Lump-sum compensation payments and penalties can only be agreed in individual contracts and must be agreed in writing.

XIV. Use of production resources and confidential information owned by the Purchaser

Any models, templates, moulds, samples, tools and other production resources as well as any confidential information provided to the Supplier by the Purchaser or paid for in full by the Purchaser may be used for the production of goods for delivery to third parties without the Purchaser's prior written consent. Property rights to such items are determined by the applicable legal regulations.

XV. Retention of title

1. All deliveries to the Purchaser by the Supplier are subject to retention of title, the details of which are stated hereunder. This also applies to all future deliveries, even if the Supplier does not expressly make notice of this.

2. The supplied goods remain property of the Supplier until all payment obligations resulting from the business relationship including ancillary costs (discount charges, refinancing or reverse bill of exchange costs, interest etc.) have been fulfilled, even if the goods were ordered for resale or the Purchaser has been granted a payment term (Goods Subject to Retention of Title). Goods subject to retention of title may only be sold on by way of a proper business transaction.

3. By processing such goods, the purchaser does not obtain ownership of the fully or partially manufactured items; processing is performed free of charge and solely for the benefit of the Supplier. Should the retention of title nonetheless expire for any reason, the Supplier and the Purchaser already agree that ownership of the goods is transferred to the Supplier at the moment of processing and the Supplier accepts this transfer of ownership. The Purchaser remains custodian of the goods at no charge.

When processing goods it is not the legal owner of, the Supplier obtains partial ownership of the newly manufactured goods. The extent of ownership is based on the ratio of the invoice value of the goods supplied by us and the invoice value of the other goods.



4. The Purchaser hereby transfers claims resulting from a contract on the resale of Goods Subject to Retention of Title (normally exceeding the purchase price), including VAT, to the Supplier to the extent that its goods have been processed. The Supplier accepts this transfer of rights. If the Purchaser receives a payment to its bank account for such a claim, the Purchaser hereby transfers its claim against the Bank to the Supplier, who hereby accepts this transfer.

Should the processed product, apart from the Goods Subject to Retention of Title, contain only such products that are either owned by the Purchaser or subject to what is called an ordinary retention of title, the Purchaser transfers the claim to the full sales price to the Supplier. In other cases, i.e. when claims have been assigned to several suppliers in advance, the Supplier is entitled to a fractional amount corresponding to the ratio of the invoice amount for the Goods Subject to Retention of Title and the invoice amount for the other processed goods.

5. The Supplier undertakes, upon request by the Purchaser, to release the collateral held by it at the Supplier's discretion, according to the following conditions, provided that the marketable value of the collateral exceeds the hedged claims by more than ten percent.

6. The Purchaser undertakes to handle the ordered goods with care until it has obtained full legal ownership. This includes, but is not limited to, taking out adequate insurance for the value of the goods as new against theft or damage by fire, breaking or water at its own cost. The Supplier has the right to take out such insurance at the cost of the Purchaser. In the event that maintenance and inspection work needs to be carried out, the Supplier must carry out such work at its own cost in due time. Until legal ownership is transferred, the Purchaser must inform the Supplier immediately in writing in the event that the supplied goods are pledged or otherwise subject to third party intervention.

7. As long as the goods are subject to retention of title, the Purchaser is not entitled to pledge or transfer the goods as collateral.

6. The place of jurisdiction for any court proceedings is the seat of the Supplier, if the Purchaser is a merchant as defined by the German Commercial Code, a corporate body under public law or a special fund under public law. The Supplier has the right, at its own discretion, to assert any claim against the Purchaser at the Purchaser's place of general jurisdiction.

XVI. General Provisions

1. When determining the amount of damages the Supplier is liable for according to Sections VI, X, XI and XII, the economic situation of the Supplier, the nature, scope and duration of the business relationship, potential contributory negligence on the part of the Purchaser according to Article 254 of the German Civil Code and a particularly complex installation of the supplied part must be duly considered in favour of the Supplier. In particular, replacements that are to be provided and costs and expenses that are to be borne by the Supplier must be commensurate to the value of the supplied parts.

2. Should a contract partner withhold payment or should bankruptcy be filed over its estate or should out-of-court insolvency proceedings be opened against it, the other party has the right to revoke the outstanding part of the contract.

3. Should any provision of these Conditions or of any other agreement between the parties be or become ineffective, the effectiveness of the contract as a whole remains unaffected. The contract partners undertake to replace the ineffective provision with one that comes as close as possible to its economic intent.

4. The laws of the Federal Republic of Germany apply exclusively. The United Nations treaty on Contracts for the International Sale of Goods dated 11th April 1980 is excluded.

5. The place of delivery is determined by the applicable legal regulations. Different agreements may only be made in individual contracts and must be made in writing.