

## I. Binding conditions

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

2. Any additions or amendments hereto must be made in writing. Other general terms and conditions shall not apply, even if they have not been expressly contradicted in each individual case. These Purchasing 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. Delivery call-offs through the Purchaser, especially if based on framework agreements, are binding to the Supplier. Moreover, the Purchaser may withdraw the order should the Supplier not accept the order within two weeks of receipt.

3. The Purchaser may demand changes to the construction or technical design of the supplied article from the Supplier to a reasonable extent. If the basis for the pricing of a contractually agreed item changes due to the Purchaser's specifications, a new price is to be agreed, taking into account any additional costs or cost reductions. This and potential effects on delivery dates are to be amicably agreed.

4. The Purchaser's Supplier Guideline is part of the order. The Supplier is bound to its provisions, including, but not limited to, those on quality planning and quality assurance and the related tests.

5. Unless otherwise agreed, deliveries have to be made "ex works" to the delivery address or point of use stipulated by the Purchaser. The Supplier bears all costs of the "ex works" delivery, in particular the costs of packaging, insurance, transportation and customs clearance. Risk transfer does not occur until the Purchaser has accepted the delivery at its address.

## III. Payment

1. Unless otherwise agreed in the framework agreement or another existing agreement, payment shall be made with a 3% cash discount if paid within 14 days of receipt of the invoice, or net within 60 days. In the event that an early delivery has been accepted, due date and eligibility for discount are established by the originally agreed delivery date.

2. Payments are made by bank transfer or check.

3. In the event of delivery deficiencies, the Purchaser has the right to withhold the full amount of the payment until proper fulfilment of the order, unless withholding the full amount would be unreasonable in view of the insignificance of the deficiency.

4. The Supplier does not have the right to assign or transfer claims against the Purchaser to third parties or to allow third parties to collect such claims without the Purchaser's prior written consent, which may not be unreasonably withheld. In the event of an extended retention of title, consent is deemed granted. Should the Supplier assign its claims against the Purchaser to a

third party without its consent in contradiction to Sentence 1, the assignment is effective nonetheless. However, the Purchaser is free to make the payment either to the Supplier or the third party with discharging effect.

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

6. The Purchaser'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 is known 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 Supplier 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 and delivery deadlines

1. The agreed lead times and delivery deadlines are binding. The delivery dates stipulated in the Supplier's delivery call-offs from framework agreements concluded among the parties are also binding. Should the Supplier not be able to meet a deadline or lead time, he is obligated to notify the Purchaser immediately of the reason for and expected period of the delay. The Purchaser's claims to damages shall remain unaffected.

2. The date and time of the Purchaser's goods receipt determine adherence to delivery deadlines and lead times. If the agreed delivery terms are not "free house", but pick-up of the goods through the Purchaser or a third party authorised by it has been agreed, the Supplier shall make the goods available for loading and shipping in due time, considering the usual time needed.

3. The Purchaser is not obliged to accept consignments that are delivered early. If it accepts such a delivery, it reserves the right to return the goods at the Supplier's expense. If the goods are not returned, the Purchaser shall store the goods at the risk and cost of the supplier until the delivery deadline.

## VI. Delivery default

1. The Supplier shall compensate the Purchaser for any damages resulting from delivery delays. Nature and amount are governed by the applicable legal provisions. The deadlines stipulated in the delivery call-off are deemed to be calendar dates in accordance with Article 286 Para. 2 Nos. 1 and 2 of the German Civil Code and Article 286 Para. 3 of the German Civil Code. Article 286 Para. 3 of the German Civil Code applies.

2. In the event of a delivery default, the Purchaser may claim a flat fee for the damages resulting from the delivery delay. The parties agree a lump-sum compensation of 0.3% of the net value of the delayed delivery for each working day that the delivery is delayed, however, not exceeding a total of 5% of the net value of the delayed delivery. The Supplier has the right to prove that no damage or a substantially smaller damage was

incurred to the Purchaser than the agreed lump sum. In such a case, compensation is reduced accordingly.

## 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. The Supplier's deliveries shall comply with generally accepted technical standards, safety regulations and the agreed technical data. Any changes to the supplied items require the Purchaser's prior written consent. The Purchaser's Supplier Guideline applies.

Please refer to the VDA Document ("VDA-Schrift") entitled "Sicherung der Qualität von Lieferungen - Lieferantenauswahl/ Produktionsprozess - und Produktfreigabe/ Qualitätsleistung in der Serie" ("*Ensuring the Quality of Supplied Items - Supplier Selection / Production process and product release / Quality in Serial Production*") in its latest version for more information. Irrespective of this, the Supplier is obliged to constantly monitor the quality of the supplied items. 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. For items which are specifically marked in the technical documentation or a separate agreement, e.g. automotive parts marked with a "D", the Supplier is obliged, above and beyond the above, to document when, in what manner and by whom the supplied items have been tested with respect to the features requiring documentation, and which results were achieved in the required quality tests. Test documentation is to be kept for a period of twenty years and must be presented to the Purchaser upon Request. The Supplier shall oblige its suppliers in the same way as far as legally possible. Please refer to the VDA Document "Nachweisführung - Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen" ("*Verification - Guideline to Documentation and Archiving of Quality Requirements*"), Frankfurt am Main 1998, for instructions.

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 Purchaser in order to verify compliance with certain requirements, the Supplier agrees, upon request by the Purchaser, 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. The Supplier shall inspect the goods for deficiencies within the scope of its outgoing goods inspection. The parties agree that the outgoing goods inspection serves the same purposes with a view to detecting deficiencies as the incoming goods inspection according to Article



377 of the German Commercial Code (HGB). Insofar, the Supplier discharges the Purchaser of its obligations according to Article 377 of the German Commercial Code (HGB).

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 six working days of receipt. The notification period for deficiencies exposed in the course of a properly performed inspection is twelve days from receipt. For hidden defects, it is twelve working days from discovery of the defect.

## X. Warranty rights

1. The Purchaser is entitled to unabridged statutory warranty rights (according to Article 437 of the German Civil Code) in case of a delivery of deficient goods. Insofar as the deficiency has caused a definite damage to the Purchaser, the Supplier is obliged to pay direct damages according to the provisions of Article 280 Para. 1 of the German Civil Code, irrespective of the nature of the deficiency.

2. In the event that the Purchaser is forced to take back the purchased goods or a product manufactured using the purchased goods or if its contract partner has reduced the purchase price as a consequence of a deficiency, the Purchaser's warranty claims against the Supplier according to Article 437 of the German Civil Code become immediately enforceable without the need for setting the Supplier a deadline as would normally be the case.

Insofar as the Purchaser is liable for expenses incurred to its contract partner according to Article 439 Para. 2 of the German Civil Code, the Supplier is obliged to compensate the Purchaser, if the deficiency claimed by the Supplier's contract partner had already existed when the risks were transferred to the Purchaser.

3. Should a quality defect occur within 6 months of the delivery, it is assumed that such defect already existed when the risks were transferred, unless such assumption is incongruent with the nature of the material or nature of the defect.

4. The 6-month period according to Item 3 begins when the risks are transferred to the Purchaser's contract partner according to Article 478 Para. 3 of the German Civil Code.

5. The Supplier's obligations pursuant to Article 478 of the German Commercial Code are not affected by the provisions of Items 1 to 4 of this section.

6. If the same goods are repeatedly delivered with the same defect, the Purchaser has the right, upon written warning, to revoke the contract, including any outstanding deliveries.

7. Warranty claims are subject to a 60-months statute of limitations after delivery to the Purchaser. If a subsequent remedy of the deficiency has taken place, the limitation period for this begins again after such work has been performed.

8. Should the Purchaser take on further-reaching warranty obligations towards a contract partner, the Supplier, insofar as it supplies material required for the fulfilment of such contractual obligation, is also bound to the respective regulations, of which the Purchaser shall have informed it in advance in writing.

9. 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.

## XI. Liability

1. Should the Supplier breach any of its duties arising from the contractual relationship other than the delivery of deficient goods, the Supplier is entitled to the resulting claims in full. No limitations of liability or exemptions from liability in favour of the Supplier are agreed and do

not apply. To the extent that a definite damage has occurred in consequence of such breach, the Supplier is liable to compensation according to Article 280 Para. 1 of the German Civil Code, irrespective of the nature of the breach.

2. The Supplier discharges the Purchaser of any and all third-party product liability or manufacturer liability claims, if the defect that has caused such a claim is the Supplier's responsibility.

3. The Supplier discharges the Purchaser of any and all third-party claims in and outside Germany which are based on the allegation that damage was caused by a defect in a product supplied by the Supplier.

4. Discharge according to Items 2 and 3 occurs upon initial request by the Purchaser. It includes the costs incurred to the Purchaser for seeking legal advice or otherwise related to defending itself against the claims directed against it, if and to the extent that the Supplier is responsible for the defect that has caused the claim.

5. In the event that it becomes necessary for the Purchaser or its customer to launch a product recall campaign from third parties, the Supplier shall bear the costs incurred by this, if and to the extent that the Supplier is responsible for the defect that has caused the recall.

6. Article 254 of the German Civil Code applies with regard to Items 1 to 5 in the event of contributory negligence on the part of the Purchaser.

7. The Supplier undertakes to take out product liability and product recall insurance policies with adequate amounts. An insurance amount of 10 million Euros is deemed an adequate amount, without this constituting any limitation of liability. Upon request by the Purchaser, the Supplier shall immediately provide evidence of such insurance coverage.

8. Should the Purchaser take on further-reaching liability towards a contract partner, the Supplier, insofar as it supplies material required for the fulfilment of such contractual obligation, is also bound to the respective regulations, of which the Purchaser shall have informed it in advance in writing.

## XII. Intellectual property rights

1. The Supplier is 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, if at least one of the rights is part of the family of intellectual property rights published in the Supplier's home country, by the European Patent Office, in one of the States of the Federal Republic of Germany, or in France, the United Kingdom, Austria or USA.

2. The Supplier exempts the Purchaser and all its customers from any claims arising from the use of such Intellectual Property Rights.

3. The above does not apply insofar as the Supplier has manufactured the goods 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 the 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 Purchaser, the Supplier shall inform the Purchaser 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.

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

1. 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 only be used for the production of goods for delivery to third parties with the Purchaser's prior written consent. They are property of the Purchaser.

2. The Supplier must include any items that are the Purchaser's property in its business liability and fire insurance at their replacement cost.

## XIV. Retention of title

Except if otherwise provided in an individual contract between the parties, no retention of title has been agreed between the parties. The agreement of an extended or prolonged retention of title is excluded.

## XV. General provisions

1. 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.

2. 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.

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

4. The place of delivery and use stipulated by the Purchaser is the place of fulfilment. If no such address is stated, the Purchaser's seat is the place of fulfilment. For the Purchaser's payment obligations, its seat is the place of fulfilment.

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