

# General Terms and Conditions of Purchase, Wagon Automotive Nagold GmbH

Last revised July, 2011

## **§ 1 Area of applicability**

(1) Our General Terms and Conditions of Purchase are only applicable to companies, legal entities under public law and statutory fund assets. They shall apply to all orders, both current and future, unless an individual agreement to the contrary has been drawn up. The Supplier shall be deemed to have accepted these Terms and Conditions as binding upon order confirmation or order execution if he has not submitted any prior objection.

(2) Any terms and conditions proposed by the Supplier that deviate from or contradict these General Terms and Conditions of Purchase shall not be recognized by us. The aforementioned Supplier terms and conditions shall likewise not become part of the Contract even if we do not expressly contradict them following their receipt. Furthermore, the payment or receipt of quotes, deliveries or services shall not constitute an acceptance of any contradictory terms as submitted by the Supplier.

(3) These Terms and Conditions of Purchase replace all previous versions.

## **§ 2 Request for tenders, inquiry documents**

(1) All documentation provided for the preparation of tenders shall remain the property of Wagon Automotive Nagold GmbH, and must be returned in full upon request together with the tender proposal.

(2) Any retention, duplication or other usage of the tender request documents by their recipient, whether for their own use or for third parties, is strictly prohibited. The recipient recognizes these conditions by accepting the tender inquiry documents.

(3) The Bidder/Supplier shall also be liable for any costs incurred during bid preparation or in association with visits even when the bid is drawn up upon our request.

## **§ 3 Orders and completion of contracts**

(1) Orders are only valid when provided in writing and constitute an offer within the meaning of § 154 of the German Civil Code (BGB). We shall reserve the right to rescind from the contract should the Supplier not officially accept the order within 2 weeks of the order date unless contrary conditions have been agreed. Shipment of the ordered goods also constitutes order acceptance.

(2) Agreements, assurances and additional agreements made prior to signing the Contract shall in cases of doubt be valid only when confirmed by us in writing.

(3) Delivery requests may also be made via electronic data transmission.

## **§ 4 Prices**

(1) All prices stipulated in our orders are fixed, also in the case of longer-term supply contracts, and exclude subsequent claims of any kind. Price increases must be agreed upon by us in writing.

(2) Prices include freight carriage delivery to our company premises or to another unloading destination as named in the order complete with packaging. Where customer collection has been agreed, prices are free loaded onto the vehicle.

## **§ 5 Payment, settlement, assignment of claims**

(1) The original invoice plus one copy including all related documentation and data must be submitted in a reasonable manner following delivery completion. This must include part descriptions, codes and reference numbers of boxes, crates, drums etc., the quantity of invoiced articles – listed according to individual type number – gross and net weights and the order date as well as our order number and identity number. If goods from separate orders are being invoiced jointly then the quantity for each order must be listed individually. Suppliers must always quote the relevant order number in all other correspondence.

(2) Invoices shall be due for payment by the 25th of the month following delivery. Should a discount have been agreed upon by derogation from these payment terms, if the goods arrive after the invoice the payment term and discount period shall commence upon the date of goods receipt. If the goods

are delivered prior to the due date then the payment and discount period shall commence from the agreed delivery date at the soonest. Should the delivery documents and/or invoices be incorrect then the payment term shall commence after submission of the corrected invoice documents.

(3) In the event of arrears we shall pay debt interest at the rate of 2.5% above the current base interest rate, with a minimum of 4% per year.

(4) In the event that test certificates for materials have been agreed with the Supplier, these shall constitute an essential part of the delivery and must be provided to us together with the invoices. The payment term and discount period shall commence upon receipt of the agreed certification.

(5) The rights of setting off and retention are available to us according to statutory provisions. Discount deduction rights shall remain accordingly.

(6) The assignment of claims against us by the Supplier shall only be permitted with our written consent.

## **§ 6 Delivery periods and dates**

(1) The agreed dates and delivery periods are binding; this also applies to call-off orders.

(2) Delivery periods commence on the order date.

(3) Compliance with the delivery date or delivery period is determined by the arrival date of the goods on our premises or at the stipulated delivery location. If we have agreed to collect the goods then the Supplier must provide them in a timely manner, with adequate allowance for standard loading and transportation time. Should a formal acceptance be required, then the date of formal acceptance shall determine compliance.

(4) In the event that the Supplier should recognize that the agreed date cannot be respected for any reason then he must inform us immediately in writing citing the reason for the delay and its estimated duration. The assertion of default damages shall not be excluded thereby, nor shall it be through the acceptance of a delayed delivery or service.

(5) Should the Supplier default with delivery then he shall be liable for compensation to the Purchaser for any damages caused by the delay. In the event of minor negligence, liability shall be limited to additional freight costs, retrofitting costs and, following the ineffectual stipulation of a grace period or in the event that the delivery is no longer desired, additional expenditure for replacement purchases. In settling the amount of compensation, appropriate consideration should be given in good faith and in favour of the Supplier to the latter's economic circumstances, the nature, scope and duration of the business relationship as well as the value of the part(s) to be supplied.

## **§ 7 Shipping regulations**

(1) Deliveries must be executed to the destination named in the order.

(2) The Supplier must comply with Wagon's current packaging requirements, which may be either requested from us or viewed on our company premises. All delivery documents stipulated in these packaging requirements must be sent with the goods. In particular, each delivery must include a delivery note with the following information: delivery note number, wagon identity number, part description, quantity and order reference details.

(3) Partial shipments are only permissible with our prior consent; the quantity outstanding must be clearly marked on the delivery note.

(4) We reserve the right to return packaging material.

(5) In the case of ex-works or ex-supplier warehouse pricing the lowest cost method of shipping must be selected unless the Purchaser has requested a particular method of transport. The Purchaser shall take out transportation insurance for ex-works deliveries. The Supplier must issue the freight carriers with SVS/RVS prohibition. Any SVS/RVS commission charges incurred shall be paid by the Supplier.

## **§ 8 Claims**

(1) Any obligation to inspect the goods and report damage or defects shall commence once the goods have arrived at the destination named in the order complete with all corresponding documentation and delivery notes. The Supplier is obliged to inspect outgoing goods for quality control. Wagon is obliged only to notify the Supplier of visible defects and is not obliged to examine the delivered goods.

(2) Immediate shall mean a period of 10 days in accordance with § 377 HGB.

(3) Damage may be reported in any form. Compliance with the due period for notifying the Supplier of damage to the goods when reported in writing shall be determined by the date of sending notification, whereby we shall only be required to provide proof of postage.

(4) Supplier claims of the delayed notification of defects shall not be permitted.

## **§ 9 Subcontracting orders to third parties**

Subcontracting orders to third parties without our written consent is not permitted and shall entitle us to wholly or partially cancel the contract and to claim for damages.

## **§ 10 Quality and documentation**

(1) The Supplier must adhere to the generally accepted technical rules and standards, to the prevailing safety regulations and to the agreed technical data for his deliveries. Alterations to the delivery article require the prior written consent of the Purchaser. For initial sample testing, attention is drawn to the VDA publication (Association of the German Automotive Industry based in Frankfurt am Main) on safeguarding the quality of deliveries in the automotive industry, supplier rating and initial sampling. Independently of this the Supplier shall constantly monitor the quality of the items he supplies. Both contractual partners shall continuously search for ways to improve quality.

(2) In the event that the type of testing, test equipment, methods and documentation have not been agreed between ourselves and the Supplier, we are willing to advise the latter upon request on the tests within the realms of his expertise, experience and possibilities in order to ascertain the currently required status of technical testing. Moreover the Purchaser shall upon request provide information to the Supplier on currently applicable known testing methods.

(3) For vehicle parts with a special reference in the technical documentation such as those marked with a letter "D", or for which special agreements have been drawn up, the Supplier must in addition make a special record of when, how and by whom the delivery items have been tested with regards to the features for which documentation is required, and of the outcome of the required quality tests. The test documents must be kept for ten years and must be kept available for inspection by us upon request during that period. The Supplier must also obligate his own suppliers to keep and preserve the same records to the extent permissible by law.

## **§ 11 Legal rights pertaining to defects**

(1) The Supplier shall vouch that his deliveries or services as well as those of his own suppliers and subcontractors are free from deficiencies in material and defects in title upon the passage of risk within the meaning of the law and that they correspond with all prevailing official and technical regulations and norms, as well as with accident prevention regulations.

(2) A defect in title is in particular deemed to exist when the delivery or service of the Supplier infringes the rights of third parties in particular in the member states of the European Union, the USA, Canada, Mexico or Japan. This is not applicable if the Supplier has produced his delivered goods or service in accordance with technical drawings, models or other similar descriptions or data provided by us and is thus not required to know the infringement of intellectual property rights of third parties related hereto.

(3) The Supplier shall inform us upon request of the use of published and unpublished intellectual property rights and applications thereof related to the delivered item or service, whether belonging to the Supplier or under license from third parties. He shall still inform us immediately if any risks of breach or alleged cases of breach become known to him; we shall also inform the Supplier likewise.

(4) Should a defect materialize within six months of transfer of risk we shall assume that the item was faulty at the time of transfer of risk.

(5) In the event of the infringement of rights or property we shall be entitled to assert our statutory claims; we shall have the right to choose whether to replace or repair the item or service independently of the type of contract with the Supplier. The repair or replacement shall if necessary be manufactured in multi-shift production, with overtime hours or on Sundays or Public Holidays. Any expenses incurred by the production of the replacement or repair shall be covered by the Supplier. Should further defects or faults arise following the replacement or repair of the item or service then the Supplier shall be required to remedy them upon our request by means of alteration to the construction or through the use of other materials.

If the Supplier is in delay with the subsequent fulfillment or does not recognize the existence of the defect, or furthermore in cases of particular urgency or where a delay would endanger the safety of operations or otherwise, we shall be entitled to remedy the defects/damage ourselves or to have the defects/damage rectified by a third party at the Supplier's expense.

(6) Further statutory rights and legal claims on our part remain unaffected.

(7) The following limitation periods shall apply for our claims and rights relating to defects:

The limitation period for legal claims is three years commencing with the closure of the year in which the claim arose and from when we gained knowledge of the circumstances justifying the claim or would have obtained such knowledge had the Supplier not acted with gross negligence, ending at the latest 30 years after the statutory limitation period begins.

The statutory limitation periods shall apply to material or quality-related defects with the provision that the limitation period of 3 years shall be replaced by 30 months.

For repaired parts or parts delivered as a replacement the limitation period shall start anew upon completion of the repair or delivery. For parts that cannot remain in operation whilst the defect is being analyzed or remedied, the current period of limitation shall be extended by the period of interruption of operation.

(8) The limitation period for claims based on the defects shall remain suspended – also in the case of purchase orders – either until the Supplier, who in agreement with us examines the existence of a defect, notifies us of the final results of the examination or declares the defect to have been eliminated, or until further effort to remedy the defect is refused. The limitation period shall commence three months after the end of the suspension at the earliest.

(9) Should claims be made against us as a result of defects in goods or services, where the defects are caused by deliveries or services provided by the Supplier or if the cause of the claim is within the control and organization of the Supplier, then the Supplier shall reimburse us for all expenses arising from or in connection with the defects without us needing to set a new deadline. The Supplier shall also be obliged to indemnify us from any related demands or other claims made against us. The Supplier shall also refund expenditure arising from or in connection with a product or service recall made by us; we will notify the Supplier of the content and scope of the recall procedures to be performed – to the extent possible and reasonable – and allow opportunity for comment.

Should a defect in goods or services provided by the Supplier be revealed in such cases within six months of the transfer of risk for our delivery or service provision to our customer, then it shall be assumed that the Supplier's goods or services were faulty at the time of risk transfer. The limitation period for our claims against the Supplier as stipulated in this paragraph shall commence two months at the earliest after the expenditure was incurred; the suspension of limitation shall end at the latest five years after risk transfer to us from the Supplier.

Other statutory rights and claims remain unaffected.

## **§ 12 Supplier liability, quality assurance**

(1) The Supplier is liable for any degree of debt. We do not recognize any clauses regarding limited liability of the Supplier, however the Supplier's obligation to provide a replacement shall be excluded or limited to the same degree as we ourselves have excluded or limited liability towards our own Customers.

(2) The Supplier shall be obliged to operate an appropriate quality assurance system of the highest standard currently available and of a suitable scope and is required to demonstrate this to us upon demand. He shall also take out adequate insurance cover against all product liability risks including recall, and shall submit the insurance policy to us for inspection upon request.

## **§ 13 Provision of goods and production resources**

(1) All goods, models, stencils, templates, samples, tools and other manufacturing equipment which are made available to the Supplier by us or paid by us shall remain our property. The processing or conversion of such goods by the Supplier shall take place on our behalf. The use of manufacturing equipment for the provision of deliveries and services to third parties is prohibited.

(2) The Supplier must handle the goods and production equipment with due care and must provide maintenance thereof. He must insure them at replacement value against theft, fire and water damage at his own expense.

(3) The Supplier is obliged upon request to determine and notify us of the actual level of inventory of any goods or manufacturing equipment provided by us for our annual closure report once annually, or more frequently where a justifiable reason is given.

(4) If the reserved goods supplied by us are combined with or connected to other items not owned by us, we shall automatically acquire partial ownership of the new articles to the extent of the value represented by the ratio of the reserved goods to the other linked items at the time of connection. If the items are connected in such a way that the article belonging to the Supplier must be considered as the main item, it shall be agreed that the Supplier herewith assigns to us the joint ownership rights on a pro rata basis; the Supplier shall preserve the joint ownership rights on our behalf. The above regulations shall apply accordingly if the Supplier mixes or blends the goods provided by us with other items.

## **§ 14 Environmental aspects**

(1) The Supplier is obliged to make his products as efficient as possible from an ecological point of view (recyclability, reusability of packaging, freedom from hazardous substances etc.). Goods delivered must comply with the laws, regulations and directives related to the protection of the environment prevailing at the time of the delivery and/or acceptance; the above shall also apply to any third parties and their employees commissioned by the Supplier to execute the contractual obligation.

(2) Any goods that fall under the emission standard classification must be clearly marked accordingly. The Supplier must automatically include a safety data sheet with deliveries of new items and when product alterations are implemented.

### **§ 15 Securing of loads**

The Supplier shall ensure compliance both with the prevailing legal requirements on cargo securement (e.g. §§ 21 Para. 1, 23 Para. 1 StVO, § 412 HGB, § 22 BGV D 29 etc.) and with the current version of the VDI guideline 2700 ff ("Securing of loads on road vehicles") and shall also undertake to inform third parties in writing of their statutory obligations for compliance with the aforementioned cargo securement regulations and VDI guideline 2700 ff. Wagon reserves the right to reject unsuitable vehicles.

### **§ 16 Safety regulations**

The Supplier shall ensure that persons carrying out work on Wagon's property or plant installations in fulfillment of the supply contract shall comply with all safety regulations which are in effect for Wagon employees, in particular as regards access to the Wagon plant installations. Contract supervisors are to be contacted with any questions in cases of doubt.

### **§ 17 General rules, obligations, court of jurisdiction, applicable law**

- (1) If a Supplier suspends payments, insolvency proceedings are initiated against its assets or such proceedings are dismissed for lack of assets, we are entitled to rescind from the contract for the part of the contract that has not yet been fulfilled.
- (2) If one of the provisions of these Terms and Conditions or of existing additional agreements should be or become ineffective, this shall not affect the validity of the remainder of the Contract. Both contractual parties shall undertake to substitute the ineffective provision with a valid clause of equivalent material and economic effect.
- (3) Place of performance for the delivery obligation shall be the agreed address for shipment as given in the order, else it shall be Nagold for all other obligations related to this contract.
- (4) The exclusive place of jurisdiction for all claims including those relating to bills of exchange or cheques shall be Nagold for legal transactions with merchants, juristic persons under public law or for special funds under public law. Nagold shall also be the place of jurisdiction for suppliers without a general place of jurisdiction within the Federal Republic of Germany.
- (5) Legal relationships resulting from business transactions with foreign customers shall also be exclusively subject to German Law. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (6) We herewith inform contractual parties that we may store data on the Supplier pursuant to the German Data Protection Act, (§§27ff BDSG), within the scope of the intended purpose of the contractual relationship.