Purchase Conditions for Production Material and Spare Parts (“Purchase Conditions”) (Czech Republic)

General, Scope and Form
Continental supplies to the automobile industry and the Supplier is aware that its products are to be used for automobile production.

Pursuant to Section 1751 of Act No. 89/2012 Coll., the Civil Code (the “Civil Code”), these Purchase Conditions cover all goods and services supplied in connection with purchase contracts and contracts for work and materials and apply exclusively to all legal relations between the Supplier and Continental. Insofar as no applicable specific or supplementary regulations are contained herein, the provisions of the general law shall apply. Individual agreements shall prevail over these Purchase Conditions.

Any other general terms and conditions shall not apply even if such are not expressly rejected in each case. Similarly, the receipt of any goods or services by Continental or payment for such shall not constitute an acceptance of any general terms and conditions of the Supplier.

Pursuant to Section 1752 para. 1 of the Civil Code, these Purchase Conditions may be amended by Continental to the extent with regard to contracts for long-term and repeating performances of the same kind. The Supplier shall be notified of such an amendment in writing or via e-mail, and in case of delays in growth, the Supplier shall be entitled to withdraw from the contract within a one-month period commencing on the day following the delivery of the amendment. The withdrawal is subject to a 14-day notice period commencing on the day following the delivery of the notice whereas in such a case the original version of these Purchase Conditions applies.

Any agreements at variance hereto or any supplements or amendments to these Purchase Conditions shall only be valid if such are made or confirmed in writing by the responsible purchasing department of Continental.

Orders and Calls for Delivery
Purchase orders shall be binding only if issued by Continental in text form. Purchase orders shall be deemed to have been accepted if the Supplier does not object to such within 2 weeks of receipt in text form and, in relation to any calls for delivery in terms of a delivery contract, the Supplier does not object to such within 5 working days of receipt in text form.

Notwithstanding the above, each step taken by the Supplier to fulfil a purchase order or call for delivery shall constitute an acceptance of the respective purchase order or call for delivery.

Prices
The agreed prices are fixed prices and include packing and freight costs but are subject to any applicable value added tax or similar tax applicable under the law.

Documentation and Evidence
The Supplier shall provide to Continental all necessary delivery and freight documentation at the time of delivery and acceptance.

The Supplier shall make all documentation available without undue delay any evidence of origin requested by Continental with all necessary details and duly signed. The same shall apply correspondingly to any tax documentation required for foreign or intra-community deliveries.

The Supplier shall inform Continental without undue delay, if a supply is, in whole or in part, subject to export restrictions under Czech or EU law or the law of any other jurisdiction.

Delivery and Delivery Dates
Agreed delivery dates are binding. If the Supplier recognizes that a delivery date cannot be kept for whatever reason, the Supplier shall inform Continental without undue delay stating the reasons for and the forecasted duration of such delay and detailing the consequences and suitable preventative measures.

Any acceptance of a delayed delivery of goods or services shall not constitute a waiver by Continental of its rights and remedies for late delivery.

In case of a failed delivery, the Supplier shall be responsible for the return of all goods or services Continental reserves the right to return such at the expense and risk of the Supplier. If there is no return transport available or the goods or services cannot be stored at the premises of Continental until the agreed delivery date at the expense and risk of the Supplier. In case of premature delivery Continental is entitled to apply the agreed rate and conditions as the basis for calculating the target date for payment.

The Supplier shall be entitled to allow performance by a third party (e.g. subcontractor) only if Continental has agreed to such in text form. If any third party performs any duty of the Supplier as subcontractor, it shall be jointly and severally liable for damage caused without any limitation. Provision of Sec. 2914 of the Civil Code on guarantee of the Supplier (culpa in eligendo) is hereby excluded.

Transfer of Risk and Place of Performance
The transfer of the risk for the goods from the Supplier to Continental shall take place in accordance with the agreed Incoterm. If no such agreement has been made, delivery shall be DDP (Incoterms 2010 International Chamber of Commerce at Paris) to the place of receipt or use set out in the Purchase Order.

The place of delivery for any supplies shall be the place of receipt (Continental address stated in the purchase order).

Quality
The Supplier warrants that the quality of the goods to be supplied to Continental shall conform on an on-going basis with the latest state of science and technology at the time of the contract or changes to the product or processes must be reported.

The Supplier shall establish and maintain a suitable, documented quality assurance system corresponding to the latest state of the art. In this regard a “zero-defect strategy” shall be binding. The Supplier shall keep records, in particular in relation to its quality assurance system and make such records available to Continental upon request. The Supplier hereby agrees to quality audits by Continental or, a party appointed by Continental, for the evaluation of the effectiveness of the Supplier’s quality assurance system and, if necessary, such shall involve a customer of Continental.

The Supplier shall be responsible for all rules and agreements with Continental being passed on to and implemented by its subcontractors.

Claims for Defects
Continental shall be entitled to claim for any defect if such defect is not known to Continental at the time of the concluding of the contract for reasons of gross negligence. Section 1917 of the Civil Code does not apply.

Continental shall have the right to determine the type of any subsequent performance pursuant to Section 1923 of the Civil Code and shall be entitled to change any time the type of subsequent performance. The Supplier may refuse to perform the type of subsequent performance selected by Continental only if such is inequitable. This shall be without prejudice to the right of compensation pursuant to Section 1925 of the Civil Code.

The Supplier shall bear all costs resulting from any subsequent performance and all costs of the disassembly or re-installation of defective parts, transport costs, as well as disposal costs and any other costs connected with the subsequent performance.

If the Supplier does not fulfil its obligations for subsequent performance within the time period set by Continental, Continental may rectify any defect itself or have such undertaken by a third party and require the Supplier to compensate for the necessary costs and expenses. If any subsequent performance is not satisfactory, if the Supplier is in delay with any subsequent performance or in any other urgent cases, no setting of a further deadline shall be necessary and Continental may undertake the necessary measures itself or through a third party at the cost and expense of the Supplier. Any claim arising from the Supplier before the undertaking of any such measures. If this is not possible, the measures may be undertaken without previous notification in urgent cases where it is necessary to prevent damage; in such cases Continental shall give notification without undue delay thereafter. The Supplier shall not be affected thereby; this shall not apply to any defects attributable to measures carried out by Continental or the Supplier.

In case of defects the warranty period shall be 36 months from the initial registration of the vehicle or spare part installation, but no more than 48 months from the date of delivery. The goods or services shall be otherwise notified by contract or other periods at law apply. In case of any rectification or subsequent performance, the limitations provided in relation to the respective goods or services shall start to run again.

By receiving goods, accepting or approving any supply or delivery or note Continental is not waiving any rights to claim on the basis of defect liability or any other rights to which Continental is entitled. In case of breach of contractual obligations injuries by the Supplier.

Insofar as customers of Continental use a reference delivery procedure or a similar procedure customary in the automobile industry for determining and billing for warranty events for any claims against Continental for defects in goods resulting from delivery, the good or service or, in case of other field or service actions, the measures may be undertaken only if such are made or confirmed in writing by the responsible purchasing department of Continental.

Duty to Inspect and Notice of Defect
Insofar as Continental is obliged to give notice of a defect, the provisions of law (§ 1922 para. 1 of the Civil Code) as to the duties of merchants to inspect and give notice of defect shall apply subject to the following:

Continental shall examine any goods including delivery documentation supplied by the Supplier upon receipt for conformity with the goods ordered, for any discrepancies as to quantity as well as any outwardly recognizable damage which is apparent deviation from delivery, incorrect delivery or a shortfall in delivery.

Any defects detected during this examination shall be notified by Continental to the Supplier without undue delay. Furthermore, the Supplier waives any right to any additional inspection at Continental; if acceptance procedures are agreed, any duty of inspection shall be excluded. Continental shall notify the Supplier in writing without undue delay of any hidden defects in a delivery as soon as such are detected in the ordinary course of business operations. However, any defects which become apparent only during processing or in the course of the intended use of the supplied goods. In this regard, the Supplier waives any right of defence based on delayed notice of defects.

Liability
If any claim is made against Continental under Czech law or any other system of law, the Supplier shall be liable for any claims of third parties related to personal injury or damage to property connected with any faulty and/or defective product supplied by the Supplier. In such case the Supplier shall, upon first demand, provide compensation to Continental and indemnify Continental against any claims of third parties insofar as the Supplier itself would be liable at law to such third party. Any liability based on fault shall only apply if the Supplier was at fault.

Insofar as a recall action is necessary in order to satisfy the requirements of law, a regulation, an order or any injunction or other official requirement or as a safety precaution to prevent personal injury or damage to property, the Supplier shall bear all costs provided that such measures relate to a fault and/or defect in the supplied goods or any other breach of duty by the Supplier and are not limited to costs of investigation, work and transport.

Continental shall notify the Supplier - insofar as such is reasonable - as to the content and scope of any actions or measures to be carried out and shall provide the Supplier with an opportunity to comment on such.
Proprietary Rights, Third Party Rights and Infringement of Third Party Rights

The Supplier shall be responsible for ensuring that the use of the goods as contractually agreed does not infringe any third party rights. The Supplier shall indemnify and hold Continental harmless against any action brought against Continental based on an actual or alleged infringement of proprietary rights as well as regarding all damage, costs and expenses (including costs of attorneys and lawyers’ costs) in connection with any such claim.

This shall not apply, insofar as the Supplier can establish that the Supplier is not responsible for the infringement of proprietary rights and at the time of delivery it would not have been able to recognise such whilst exercising a merchant’s due diligence. The Supplier shall not be liable to apply, instead of the Supplier produced the delivery goods according to drawings, models or other details provided by Continental. The Supplier shall ensure the compatibility of the various build scripts by no later than the time of delivery; made in the product documentation as well as the satisfaction of the OSS used; satisfies the licensing conditions of the agreed definition of OSS.

(1) that OSS is contained in the goods, and that derivate software be made available to third parties; (2) that the vendor code of such software and/or any derivative software be made available to third parties; and/or third parties allowed to produce derivative products of such software and/or any derivative software.

The Supplier shall ensure that, if the Supplier and Continental have such in individual cases, that OSS is contained in the goods, and that (1) the agreed OSS is the only OSS under the above definition of OSS,(2) the Supplier completely satisfies the licensing conditions of the agreed OSS; (3) where applicable, it enables Continental to satisfy all licensing conditions of the OSS used and, in particular, it makes available any necessary information; (4) the Supplier provides Continental with all texts of the licensing conditions, references made in the documentation as well as the build scripts by no later than the time of delivery; (5) the Supplier ensures the compatibility of the various OSS licences used; (6) it uses OSS under GPLv3 only after previous written approval of Continental and, (7) it makes the SPDX documentation for the respective Continental.

In case of any breach of the duties under this section the Supplier shall compensate Continental, its affiliated companies, its managing directors, members, employees, agents and subcontractors, as well as any other representatives of Continental or its affiliated companies for any resulting damage and the Supplier shall be responsible against any resulting claims including those of third parties.

An “affiliated company” of Continental is any company with which the Supplier has a direct or indirectly by a company, under common control with this company, or which controls a company; the term “control” means the possession of more than 50% voting rights of the company.

Confidentiality

The Supplier undertakes to treat as confidential all information communicated to it in connection with the business relationship with Continental. Such information may be disclosed to a third party only after prior written approval of Continental.

The above obligations shall not apply to such confidential information in relation to which the Supplier can prove that the information (1) was already generally accessible at the time of communication or became generally accessible thereafter without any fault on the part of the Supplier; (2) was already known to it before being communicated; (3) was made available to it by a third party without any duty of secrecy or non-use; whereby it is assumed that such third party did not obtain the information directly or indirectly from the Supplier; (4) was developed independently by the Supplier without any contractual breach being committed; or (5) was disclosed on the basis of the requirements of the law, or judicial or official decisions or orders.

The Supplier shall ensure and is liable for that subcontractors are subject to corresponding duties of confidentiality.

Documents, Drawings and Tools

Any documentation, specification, devices, models, tools and other means of production provided to the Supplier shall remain the property of Continental.

The abovementioned items may not, without the written agreement of Continental, be scrapped or made available to third parties - e.g. for the purpose of the manufacturing – and are to be used for the contractually agreed purposes - e.g. supply to third parties. They are to be carefully stored and insured by the Supplier at its expense for Continental during the period of the contract performance. The Supplier is responsible for the care, maintenance and partial renewal of the abovementioned items and shall bear all associated cost and expenses.

Continental reserves all rights to all data produced to its instructions (including source code), drawings, products or data of any type, as well as to any procedures and inventions developed by it. The Supplier shall make available to Continental in this regard all necessary information and documentation without undue delay, insofar as such are required by Continental for the purpose of Continental’s commercial, proprietary rights or for the protection of intellectual property rights.

Payment

Payments shall be due within 30 days of receipt of the performance or, if Continental is sent an invoice or equivalent payment statement after receipt of the performance, after the receipt of such document. Payment by Continental shall not constitute any recognition of the goods or services being contractually compliant.

Spares Parts

The Supplier shall keep in store spare parts for the goods supplied to Continental for a period of at least 15 years after supply. Subject to the prior written agreement of Continental, the Supplier may cease the production of spare parts for the goods supplied to Continental. Written notification to Continental of the intent to cease production must - subject to the above – take place at least 12 months before the actual ending of production.

Force Majeure

Force majeure, employment disputes, civil unrest, official measures or other unforeseeable, unavoidable and serious events within the meaning of § 2913 of the Civil Code shall release the Parties from the performance obligations for the period of the disruption and to the extent of the impact of such. This shall also apply if the event occurs at a time in which the respective Party is in default. The Parties shall provide any necessary information without undue delay, insofar as such is reasonable and shall adjust their duties to the changed circumstances accordingly on the basis of good faith.

Retention of Title, Assignment and Set-off

Transfer of title in the goods to Continental shall take place unconditionally and without any regard to payment of the price. However, if Continental accepts an offer of the Supplier for transfer of title subject to payment, such retention of title rights of the Supplier shall expire in any case upon payment of the purchase for the supplied goods. Any extended or enlarged retention of title is hereby excluded.

The Supplier is not entitled to assign or transfer any rights to collect moneys in relation to Continental without the prior written approval of Continental. The Supplier is entitled to set off any claim only prior as such is undisputed or confirmed by a final legally-binding judgment.

General Provisions, Jurisdiction and Applicable Law

If any provision of these Purchase Conditions is or becomes ineffective or if such should prove to contain an omission, the effectiveness of the other provisions shall not be affected thereby. The Parties shall replace any ineffective provision with a substitute regulation which most closely reflects the originally-intended commercial purpose within 14 days upon call of one party to the other.

Any and all disputes which may arise in connection with a contract between Continental and the Supplier will be settled by the Czech court that is objectively competent. The locally competent court shall be a court determined pursuant to the registered seat of Continental on the day when the action is filed. Notwithstanding the above, Continental may also commence legal proceedings against the Supplier at the place of general jurisdiction of the Supplier. In addition to the provisions of the contract, only the law of the Czech Republic shall apply with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980.