

## Purchase Conditions for Production Material and Spare Parts ("Purchase Conditions") (Germany) (English Version)

### 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.

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.

In principle, a text form document as described in terms of §126 b Civil Code (BGB) shall be valid unless any individual provision expressly requires writing.

Any agreements at variance hereto or any supplements or amendments to these Purchase Conditions shall be valid only 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 order planning, if the Supplier does not object to such within 5 work 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 turnover 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 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 turnover 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 German 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 notify 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 any premature delivery of goods or services Continental reserves the right to return such at the expense and risk of the Supplier. If there is no returning of the goods, such shall 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 delivery date 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.

### Transfer of Risk and Place of Performance

The transfer of the risk for 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 or use (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. Any 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 inspections, and shall make such 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

Notwithstanding § 442 section 1 sentence 2 Civil Code (BGB), 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.

Continental shall have the right to determine the type of any subsequent performance. The Supplier may refuse to perform the type of subsequent performance selected by Continental only if such is inequitable.

The Supplier shall bear all costs resulting from any subsequent performance including any 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 by the Supplier is unsuccessful, 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. Continental shall notify 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 warranty obligations of the Supplier shall not be affected thereby; this shall not apply to any defects attributable to measures carried out by Continental or a third party.

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 delivery to Continental, unless agreed otherwise by contract or other periods at law apply.

In case of any rectification or subsequent performance, the limitation period for defect liability in relation to the respective goods or services shall start to run again.

By receiving goods, accepting or approving any submitted drawings or delivery notes Continental is not waiving any rights to claim on the basis of defect liability or any other rights to which Continental is

entitled for breach of contractual obligations injuries by the Supplier.

Insofar as customers of Continental use a reference market 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 defects in the goods of the Supplier, such procedures shall be used for the supply relationship between the Supplier and Continental and to that extent the Supplier hereby waives any right for proof of a defect to be shown.

### Duty to Inspect and Notice of Defect

Insofar as Continental is obliged to give notice of a defect, the provisions of law (§377, §381 Commercial Code (HGB)) 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 (e.g. transportation damage, 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. Hidden defects shall include 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 German 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. In any case of liability based on fault this 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, in case of other field or service actions, 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. In this regard, the costs shall include but 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 and all claims of third parties against Continental based on an actual or alleged infringement of proprietary rights as well as regarding all damage, costs and expenses (including court, settlement and lawyers' costs) in connection with any such claim.

This shall not apply, insofar as the Supplier can establish that it 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 above paragraph shall not apply, insofar as the Supplier produced the delivery goods according to drawings, models or other details provided by

Continental and as a result such inevitably resulted in an infringement of proprietary rights and the Supplier was not aware, or would not have been aware in connection with the products developed by the Supplier, of such an infringement. The Parties shall notify each other without undue delay of any risk of infringement or alleged infringement of which a Party becomes aware and shall at no charge support each other in an appropriate manner in defending any possible claim (e.g. by way of investigations, analysis, document evaluation). Upon the request of Continental the Supplier will provide information as to the use of any published and unpublished own proprietary rights or proprietary right applications for the goods as well as those used for the goods under licence.

#### **Open Source Software**

The Supplier is responsible for ensuring that goods generally do not include any open source software ("OSS") or other shareware or freeware or any components thereof unless Continental and the Supplier have agreed on specific OSS in individual cases in writing at variance to the above.

The term "OSS" means any software which is licensed without any licence fee (i.e. any demand of licence payments for using a licence is forbidden, whereby it is permitted to charge for the costs incurred by the licensor) and which is subject to a licence or other contractual regulation ("open licence conditions") which is a condition for the processing and/or distribution of such software and/or any other software related to it or derived from it or distributed with it ("OSS derivate") and contains at least one of the following preconditions:

(1) that the source code of such software and/or any derivate software be made available to third parties; and/or

(2) that third parties be allowed to produce derivate products of such software and/or any derivate software.

The Supplier shall ensure that, if the Supplier and Continental have agreed to 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) as 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 product 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 OSS available to Continental.

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

An "affiliated company" of Continental is any company which is controlled directly 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 injunctions or orders.

The Supplier shall ensure that subcontractors are subject to corresponding duties of confidentiality.

#### **Documents, Drawings and Tools**

Any drawings and other documentation, 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 solely 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 registration of 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.

#### **Spare 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 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 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, in so far 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. If the Supplier should nevertheless assign any rights to claim moneys against Continental without Continental's agreement such assignment shall be effective. Continental is however still entitled to make payments to the Suppliers in satisfaction of any debt.

The Supplier is entitled to set off any claim only insofar 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.

The exclusive place of jurisdiction shall be Frankfurt am Main. 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 Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980.