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 only. 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 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 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. Necessary steps taken by Continental shall be notified to the Supplier by 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 is responsible for all rules and agreements with Continental being passed on to and implemented by its subcontractors.

Claims for Defects
Notwithstanding § 442 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 may, at its own discretion, require the Supplier to compensate for the necessary costs and expenses. If any subsequent performance by the Supplier is unsuccessful, if the Supplier was at fault, or, in case of other field or service actions, the Supplier was at fault, Continental shall be entitled to allow performance with


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 perform its obligations for subsequent performance within the time period set by Continental, Continental may rectify any defect itself or have any third party do so. In either case, Continental shall require the Supplier to compensate for the necessary costs and expenses. If any subsequent performance by the Supplier is unsuccessful, if the Supplier was at fault, or, in case of other field or service actions, the Supplier was at fault, Continental shall bear all costs provided that such measures relate to a fault and/or defect in the supplied goods or any other actions of 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.

Liability
If any claim is made against Continental under German law or any other system of law, the Supplier shall be liable for any such fault or acts of omissions if such is caused to personal injury or damage to property connected with any fault 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.

In as far 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 the fault or acts of omissions of 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 for infringement of proprietary rights as well as regarding all damage, costs and expenses (including court, settlement and lawyers’ costs) in connection with such claim. This shall not apply, insofar as the Supplier can establish that it is not responsible for the infringement of proprietary rights. In case of failure of delivery it would not have been able to recognise such whilst exercising a merchant’s due diligence. The Supplier hereby waives 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 model procedure or a similar procedure established in the automobile industry for determining and billing for warranty events for any claims against Continental, the Supplier shall indemnify and hold Continental harmless against any and all claims of third parties against Continental for infringement of proprietary rights as well as regarding all damage, costs and expenses (including court, settlement and lawyers’ costs) in connection with such claim. This shall not apply, insofar as the Supplier can establish that it is not responsible for the infringement of proprietary rights, in case of failure of delivery it would not have been able to recognise such whilst exercising a merchant’s due diligence. The Supplier hereby waives 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.
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 or alleged infringement. If 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/or 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 any third party license, copyright or trademark or any components thereof unless Continental and the Supplier have agreed on specific OSS in individual cases, writing at variance to the above.

The term “OSS” 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 charged for the costs incurred by the licensor) and which is subject to a licence or other contractual regulation (“open license conditions”) which is the process, products and/or or distribution of such software and/or any other software related to it or derived from it or distributed with it (“OSS derive”) and contains at least one of the following conditions:

1. that the source code of such software and/or any derive software be made available to third parties;

2. that third parties be allowed to produce derive products of such software and/or any derive 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 agreement 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 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 Continental, 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 confident all information communicated to it in connection with the business relationship with Continental. Such information may be disclosed to a third party only if 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 only if the Supplier in satisfaction of any debt.

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 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.

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.

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