

General Terms and Conditions for SD GmbH Klaus Hirsch



I. Decisive conditions

The legal relationships between Supplier and Purchaser are based on these conditions and any other agreements. Revisions or additions must be in the written form. No other General Terms and Conditions will apply, even if not expressly contradicted in each case.

II. Order

1. Supply contracts (ordering and acceptance), delivery call-offs and any revisions and supplements must be in the written form. Delivery call-offs can also be arranged by electronic data transfer.
2. Should the Supplier fail to accept the order within three weeks, the Purchaser shall be entitled to cancellation. Delivery call-offs retain their binding nature only if they are not contradicted by the Supplier within two weeks of receipt.
3. The Purchaser may request any changes to the design and construction of the delivery object insofar as they are deemed reasonable for the Supplier. The consequences, specifically in respect of additional and reduced costs and delivery dates must be fairly agreed.

III. Payment

1. Payment is effected according to the order confirmation. If early deliveries are accepted, the due date is the agreed delivery date.
2. Payment is made bank transfer or cheque.
3. In the event of a faulty consignment, the Purchaser shall be entitled to withhold the relevant proportion of the payment until proper fulfilment.
4. The Supplier is not entitled, without the written agreement of the Purchaser, which may not be refused without good reason, to assign the amounts receivable from the Purchaser or have such collected by third parties. Agreement is deemed to have been granted when an extended retention of title has been issued.
5. If, contrary to Clause 1, the Supplier assigns the amounts due from the Purchaser to a third party, the assignment shall nonetheless remain effective. The Purchaser may, however, choose to pay either the Supplier or the third-party with exempting effect.

IV. Notification of defects

The Purchaser must indicate in writing any defects in the consignment to the Supplier immediately after being discovered in accordance with the terms of a normal business transaction. In this respect, the Supplier shall waive any objects to delayed notification.

V. Confidentiality

1. The contracting parties undertake to treat as confidential all overt commercial and technical details disclosed as a result of the business relationships.
2. Drawings, models, templates, samples and similar objects must not be forwarded or otherwise made accessible to third parties. The reproduction of such objects is permitted only insofar as is required for operational purposes and in line with copyright conditions.
3. Sub-contractors shall be obligated accordingly.
4. The contracting parties may only advertise their business relationship with prior written agreement.

VI. Delivery dates and periods

Agreed dates and periods are binding. The effective date for observation is the date on which the goods arrive with the Purchaser. If "free to works" delivery is not agreed, the Supplier must take into account the time normally required for loading and despatch.

VII. Delays in delivery

1. The Supplier is responsible for making good the consequences of delayed deliveries. This does not apply to lost

profit and damage incurred through operational interruptions.

2. In the case of ordinary negligence, compensation is limited to additional freight costs, retrofit costs or to the additional expenditure incurred to cover the fruitless outcome of extended deadlines or lack of interest in the consignment.

VIII. Force Majeure

Force Majeure, industrial disputes, unrest, government initiatives and other unforeseeable, unavoidable and serious events exempt the contracting parties from their duty to perform during the period of such interruptions and in line with the level of impact. This also applies if these events occur at a point in time in which the relevant party has fallen into a delay situation. The contracting parties are obliged to provide immediately the information that can reasonably be expected and in all good faith modify their obligations to suit the new situations.

IX. Quality and documentation

1. The Supplier must ensure that his consignments respect the recognised rules of technology, the safety instructions and the agreed technical data. Changes to the delivery object require prior written agreement from the Purchaser. The first sample test is governed by the VDA instrument "Guaranteeing consignment quality – Supplier selection/Production process – and product release/quality performance in standard production", Frankfurt am Main 1998. Nonetheless, the Supplier must verify the quality of the delivery objects. The contracting parties shall provide reciprocal information on the options for quality improvement.
2. If the nature and scope of the tests and also the test equipment and methods are not formally agreed between Supplier and Purchaser, the former shall be prepared, at the request of the latter, to explain the tests in terms of his knowledge, experience and options, in order to determine the required status of testing technology. The Purchaser shall also provide the Supplier with information on the relevant Safety Regulations if requested.
3. For the vehicle components specifically annotated in the technical documents or by special agreement, e.g. by the letter "D", the Supplier must ascertain when, how and by whom the delivery objects are to be tested for the statutory characteristics and the results the required quality tests have produced. The test documents must be stored for ten years and presented to the Purchaser on request. Prior suppliers must obligate the Supplier to the same degree in line with the legal obligations. As a guideline, the VDA Document "Furnishing evidence – Guidelines for documenting and archiving quality requirements", Frankfurt am Main 1998, should be referred to.
4. Insofar as the authorities responsible for vehicle safety, exhaust gas emissions etc. request access to production facilities and the Purchaser's test documents to verify particular requirements, the Supplier shall be willing to grant the same rights to the Purchaser on his request and provide all reasonable support.

X. Liability for defects

1. If faulty goods are supplied, the Purchaser may, provided the relevant legal conditions as well as those conditions listed below are satisfied and no other agreement is made, demand the following:
 - a) Prior to the start of production (processing or installation), the Purchaser must give the Supplier the opportunity to sort and remedy any defects or provide a replacement consignment, unless this would appear to be unfeasible for the Purchaser. If the Supplier is unable to meet such obligation or such obligation immediately, the Purchaser may withdraw from the Contract without extending deadlines and return the goods, the associated risk being borne by the Supplier. In

urgent cases and following consultation with the Supplier, the Purchaser may remedy such defects himself or have same carried out by a third party. Any resultant costs shall be borne by the Supplier. If the same goods are re-supplied in an equally sub-standard condition, the Purchaser shall be entitled, following a written caution for such a faulty consignment, to withdraw from the non-fulfilled part of the contract.

b) If the fault, despite complying with the obligation in accordance with Section IV (notification of defects) is not detected until after the start of production, the Purchaser may – in accordance with § 439, subsection 1, 3 and 4 of the BGB [German Civil Code], demand subsequent fulfilment and reimbursement of the transport costs required to perform such fulfilment (excluding towing costs) and also removal and installation costs (working costs; material costs where agreed) or

- reduce the purchase price.

c) In the event of a culpable breach of obligation over and above the supply of faulty goods (e.g. duty to declare, advise or examine), the Purchaser may demand compensation for the consequential damage and also for the consequential damage reimbursed by the Purchaser to his customer in accordance with the law and the provisions of Section XI. Consequential damage is the damage sustained by the Purchaser through the supply of faulty goods on legally protected rights other than the goods themselves.

The Purchaser is entitled to further damage and expenditure claims through the supply of faulty goods in accordance with § 437 of the BGB or directly from the regulations stated therein, only if contractually agreed. Section XV, Item 1 shall be observed for new agreements.

2. The Supplier shall be provided by the Purchaser with the components to be replaced by him on request and at his cost.

3. The period of limitation for claims arising from fault liability is 24 months from first registration of the vehicle or spare parts installation and no later than 30 months from delivery to the Purchaser. Unless otherwise agreed, components for commercial vehicles are governed by the statutory period of limitation.

4. There shall be no entitlement to claim if the fault can be attributed to breach of operating, servicing or installation regulations, unsuitable or inappropriate use, incorrect or negligent handling, normal wear and tear or manipulation of the delivery object by either the Purchaser or a third party.

5. In the event of faulty deliveries, claims of the Purchaser relating to the product liability law, non-permitted action and management without mandate shall remain unaffected by this Section X. Quality and durability guarantees must be expressly designated in writing as such.

XI. Liability

In the absence of any other liability provision at any other juncture in these conditions, the Supplier is only obliged to compensate for damage sustained by the Purchaser either directly or indirectly as a consequence of a faulty consignment, breach of official safety regulations or any other legal reasons attributable to the Supplier.

1. The duty to compensate exists only if the Supplier is affected by the responsibility of the damage caused by him.
2. If the Purchaser is sued for to non-culpable liability towards third parties against reciprocally changeable law, the Supplier's relationship with the Customer shall be such as if he were directly liable.

Similarly, the principles § 254 BGB are applicable to compensation between Purchaser and Supplier. This also applies for the case of direct claims of the Supplier.

3. The duty to compensate shall lapse insofar as the Purchaser has effectively limited his liability towards his customer. The Purchaser shall endeavour to agree liability limitations to a legally acceptable level, including those in favour of the Supplier.

4. Claims by the Purchaser are ruled out insofar as the damage is attributable to breaches of the operating, servicing and installation instructions, unsuitable or inappropriate use, incorrect or negligent handling, normal wear and tear or faulty repairs.

5. Provided legally obliged, the Supplier is responsible for initiatives to be taken by the Purchaser to prevent damage (e.g. recall campaigns).

6. The Purchaser shall consult with the Supplier and provide comprehensive information, should he wish to make any claim in accordance with the aforementioned regulations. The Supplier must be given adequate opportunity to examine the damage. The contracting parties shall agree on the measures to be taken, specifically in respect of comparison proceedings.

7. The principles cited in Section VII, Item 1 shall be applied accordingly, insofar as the Supplier has arranged no or only inadequate insurance.

XII. Copyright

1. The Supplier shall be liable for claims arising from the contractual application of the delivery objects in conjunction with the breach of copyright and copyright applications (copyright), from which at least one of the copyright families in the homeland of the Supplier is published by the European Patent Office or in either Germany, France, GB, Austria or the USA.

2. He shall indemnify the Purchaser and his customers from all claims arising from the use of such copyrights.

3. This does not apply insofar as the Supplier has manufactured the delivery object in accordance with the drawings, models or other similar descriptions or data submitted by the Purchaser and is not aware or, in connection with the products developed by him, have to be aware that a copyright infringement has occurred.

4. Insofar as the Supplier is not liable in accordance with Figure 3, the Purchaser shall indemnify him from all third party claims.

5. The contracting parties shall undertake to reciprocally inform immediately of all infringement risks of which they become aware and all alleged infringement cases and allow the opportunity to consensually respond to the associated claims.

6. The Supplier shall, at the request of the Purchaser, notify use of published and unpublished internal and licensed copyright and copyright applications pertaining to the delivery object.

7. The principles contained in Section VII, Item 1 on limitation of liability shall be applied accordingly.

XIII. Use of production equipment and confidential data of the Purchaser

Models, dies, templates, samples, tools and other production equipment, including confidential data provided to the Supplier by the Purchaser or paid for by the Supplier in full, may only be used with the prior written agreement of the Purchaser for deliveries to third parties.

XIV. Retention of title

The Supplier retains the title to all goods supplied by him until paid for in full, all deliveries are considered one single transaction in this case. In the case of an on-going account, the retained property is regarded as security for its balance claim.

If the goods are combined by the Purchaser with other objects to form one item and if this item is regarded as the main item, the Purchaser shall be obliged to transfer co-ownership to the Supplier, insofar as the main item belongs to him. If the Purchaser sells the supplied goods in accordance with the contract, he also assigns any claims arising to his customer from the sale, including all supplementary rights, to the Supplier until these claims are settled in full. For justified reason, the Purchaser shall be obliged at the request of the Supplier, to announce the assignment to the third-party customer, provide the Supplier with the information required to assert his rights and submit all the necessary documentation.

The Supplier shall release the security held insofar as its value exceeds the claims to be guaranteed by more than a total of 20%.

XV. General provisions

1. Determination of the level of damage claims to be satisfied by the Supplier in accordance with Sections VII, X, XI

and XII shall take appropriate account of the financial circumstances of the Supplier, nature, scope and length of the business relationship, any causation and/or fault contribution on the part of the Purchaser in accordance provisions of § 254 BGB and a particularly unfavourable installation situation of the supplied component to the benefit of the Supplier. Specifically, the replacement goods, costs and expenditure to be borne by the Supplier must relate to a fair proportion of the value of the supplied component.

2. Should a contracting party cease payments or if insolvency proceedings are instigated on his assets or application is made for non-judicial comparison proceedings, the other party shall be entitled to withdraw from the unfulfilled part of the contract.

3. Should any one of these conditions and the associated further agreements be or become ineffective, the validity of the contract as a whole shall not be affected. The contracting parties are obliged to replace the ineffective conditions with one that comes closest in its economic purpose.

4. Unless otherwise agreed, exclusively German Law shall apply.

Application of the United Nations Agreement of 11.4.1980 for contracts covering the international sale of goods is ruled out.

5. The place of fulfilment is the Purchaser's normal place of business. Alternative address can be agreed for delivery.

6. The place of jurisdiction is the petitioner's normal place of business or other responsible court.

Date 02/2006