

Purchasing Terms & Conditions 09/2019 fischer automotive systems GmbH & Co. KG

I. Definitive conditions

These Purchasing Terms and Conditions shall apply exclusively to all orders placed by fischer automotive systems GmbH & Co. KG - hereinafter referred to as the "Ordering Party" -. They shall also apply exclusively to companies within the meaning of Section 310 German Civil Code (BGB). Any deviating Terms and Conditions stipulated by the Supplier shall apply only to the extent that we expressly recognise their validity in writing. Neither our lack of response nor the acceptance of the service or goods or their respective payment shall serve as acknowledgement.

II. Orders

1. Any orders and their amendments, ancillary agreements or additions as well as other agreements or declarations made in connection with the conclusion of a contract shall only be binding if they are issued through (or confirmed by) the Ordering Party in writing. Orders can also be triggered by SAP orders, scheduling agreements, delivery schedules by remote data transmission (RDT) or by EDI, which shall also be valid without a signature.
2. The Ordering Party shall expect order confirmations within 2 days subsequent to the date of the order, otherwise the Supplier's agreement to the respective order by the Ordering Party shall be deemed approved. The Ordering Party may, however, to the extent that no order confirmation has been received by the above-stated deadline, also revoke the order at his discretion. In the case of delivery schedules within the framework of the respective automotive standards of the VDA or comparable standards, in particular by means of RDT or EDI, an order confirmation shall not be required. A new delivery schedule shall replace any previous delivery schedule in full.
3. The numbers stated in delivery schedules are essentially non-binding budget figures. A purchase obligation shall exist for the Ordering Party for finished material for a period of 4 weeks from the date of the delivery schedule, and for 8 weeks for semi-finished material.
4. A term agreement for individual projects shall not apply in principle, depending on the Ordering Party specifications. Otherwise, this must be expressly agreed in writing.
5. The Ordering Party may demand changes to the delivery item in terms of its design and execution, within the scope of reasonableness for the Supplier. Any knock-on effects, in particular with regard to any additional and reduced costs as well as the delivery dates themselves, shall be settled by mutual agreement and in an appropriate manner.

III. Prices, payment

1. Unless otherwise agreed, the agreed prices shall be fixed prices. Unless otherwise agreed, payment shall be made within 60 days with 3% trade discount or 90 days net. The period shall begin upon receipt of the contractually agreed service and a proper, verifiable invoice. Should early deliveries be accepted, however, the deadline shall begin at the earliest on the agreed delivery date.
2. The Supplier agrees to participate in a credit note procedure at the request of the Ordering Party.
3. The Supplier shall not be permitted to assign claims which he is entitled to vis-a-vis the Ordering Party or to have them collected by third parties. Should the Supplier nevertheless transfer his claim vis-a-vis the Ordering Party to a third party, the assignment shall nonetheless be effective. The Ordering Party may, however, at his discretion render an exempting effect vis-a-vis the Supplier or the third party.
4. In the event that the Supplier is prescribed by the customer of the Ordering Party and, in particular, has agreed the prices, specifications or other conditions directly with him, the following shall apply: In the event of a change in the Terms & Conditions agreed between the Supplier and the Ordering Party's respective customer, the Supplier shall notify us in writing and without delay. Any such changes shall only become binding for the Ordering Party, should the Ordering Party confirm this in writing.

IV. Notification of defects

In the event of a defective delivery, the Ordering Party shall, as soon as it is made aware of such circumstances as a result of proper business process, inform the Supplier immediately and in writing. To this extent, the Supplier shall waive its objection to the delayed notification of defects.

V. Drawings, scope of delivery, spare parts

1. Models, drawings, matrices, templates, samples, tools and other means of production or similar objects belonging to the Ordering Party shall not be left to unauthorised third parties or otherwise made accessible. The duplication of such objects belonging to the Ordering Party by the Supplier shall only be permitted within the framework of the operational requirements deemed necessary for order fulfillment, which are stipulated by the Ordering Party and apply exclusively within the context of copyright laws. Any use outside the scope of an order issued by the Ordering Party shall not be permitted.
2. Delivery by the Supplier to the Ordering Party shall be carried out in accordance with the most up-to-date parts list, in particular the part drawings or CAD data of the Ordering Party in their most recent and, respectively, valid index level, in compliance with the required specifications of the Ordering Party's customer and the order itself ("specification"). The Supplier shall also ensure that his deliveries are suitable for the use intended by the Ordering Party or the Ordering Party's customer.
3. The Supplier shall ensure that he can supply the Ordering Party with the spare parts of the respective delivery item for a period of at least 15 years after the series production of the vehicle, for which the part to be supplied by the Supplier is intended to be provided.

VI. Delivery dates and deadlines

1. Agreed dates and deadlines shall be binding. The receipt of goods by the Ordering Party shall be decisive for the observance of the delivery date or the delivery period. In the event that "Delivered Duty Paid" (DDP) has not been agreed, the Supplier must provide the goods in due time, taking into account the usual time for loading and shipping.
2. The Ordering Party shall reserve the right, in the event of a deviation from the scheduled delivery, to return the delivery at the expense of the Supplier, or to invoice the Supplier for additional costs resulting from this.

VII. Delivery delay / delivery / shipping / packaging

1. The Supplier shall be obligated vis-a-vis the Ordering Party to compensate for any damage attributable to a delay in delivery. He shall also be obligated to inform the Ordering Party immediately and in writing should circumstances occur or become apparent, from which it emerges that the agreed delivery time cannot be met by the Supplier.
2. Unless otherwise expressly agreed, delivery shall be made "Delivered Duty Paid" (DDP) of the Ordering Party. Each shipment must be accompanied by shipping documents including the delivery note, packing slip, etc., stating the information provided by the Ordering Party, such as supplier number, item number, etc. The Ordering Party shall reserve the right to return any quantity exceeding the quantity ordered at the expense of the Supplier.
3. Partial deliveries or partial services shall require the prior written consent of the Ordering Party.
4. Prior to delivery, the Supplier must carry out a comprehensive outgoing goods inspection to ensure that the goods are suitable for their intended use and that they meet the quality requirements, in particular, the 0-defect target stipulated by the Ordering Party and the Ordering Party's customer.
5. The delivery items shall be packed appropriately and in accordance with trading standards. The Ordering Party shall be entitled to prescribe the type of packaging vis-a-vis the Supplier. If reusable packaging is returned to the Supplier, the Ordering Party shall be entitled to a refund in the amount of the packaging's value.

VIII. Force majeure

Force majeure, labour disputes, riots, official measures and other unforeseeable, unavoidable and serious events shall exempt the Ordering Party from his obligation to perform for the duration of the disruption, and to the full extent of any knock-on effects. This shall also apply should these events occur at a time when the Ordering Party is already delayed in his acceptance of the delivery.

IX. Quality and documentation

1. The Supplier shall ensure his compliance with the use of state of the art science and technology, as well as any safety regulations and the agreed technical data. Amendments to the delivery item shall require the prior written approval of the Ordering Party.
- The VDA Guideline, Volume 2 "Guaranteeing the quality of deliveries" (supplier selection, quality assurance agreement, production process and production release, as well as quality performance in series production) shall be valid in its most recent version for the initial sample inspection with IMDS data released by the Ordering Party. The Ordering Party shall reserve the right to conclude a quality assurance agreement with the Supplier.

The Supplier shall be required to constantly monitor the quality of his deliveries and services. He shall be required to adhere to the 0-defect strategy and implement a quality system pursuant to industry standards IATF 16949 and DIN EN ISO 9000 et seq., as well as VDA standards or other comparable standards. In addition, the Supplier shall ensure compliance with REACH and the End-of-Life Vehicles Ordinance.

Compliance with ppm figures shall not release the Supplier from his warranty obligation.

2. By way of separate agreement or e.g. with vehicle parts marked with "D" as listed in the technical documentation, the Supplier must also record in special records as to when, in what manner and by whom the delivery items have been checked for the characteristics that necessitate documentation, and which results have materialised subsequent to the implementation of the quality tests required. The inspection documents from the initial sampling and the D-characteristics shall be retained for 15 years from the start of series delivery and made available to the Ordering Party as required; all other inspection documents shall be retained for 10 years from the date of production. The Supplier shall obligate any up-stream Suppliers to the same extent. Reference is hereby made to the VDA document entitled "Parts subject to mandatory documentation by car manufacturers and their suppliers - Documentation implementation" ("Dokumentationspflichtige Teile bei Automobilherstellern und deren Zulieferanten - Durchführung der Dokumentation") in its most recent version.

3. To the extent that the authorities or the Ordering Party's customers stipulate an inspection of the Ordering Party's production process and inspection documents, in order to ascertain that certain requirements have been met, the Supplier shall agree to grant them the same rights in his production facility and to afford them all reasonable support.

X. Warranty

1. In the event of a delivery of defective goods, the Ordering Party may demand the following:
 - (a) Before the start of production (processing or installation), the Supplier shall first have the opportunity to sort out defective items and, at the discretion of the Ordering Party, rectify the defect or offer a replacement. Should this be unreasonable for the Ordering Party, the Ordering Party shall have the right to have the defect remedied by himself, or to commission third parties at the expense of the Supplier. Unreasonableness shall, in particular, be deemed applicable if the Supplier does not immediately start repairing the defect at the request of the Ordering Party, or if trouble-free production is no longer guaranteed, or a conveyor belt stop is imminent, or damage reduction by the Ordering Party could be affected.
 - (b) Should the defect only be discovered subsequent to the start of production, the Ordering Party shall be entitled to supplementary performance and to demand the reimbursement of expenses incurred as a result of supplementary performance, including those expenses incurred by its customers, in particular transport and travel costs, labour costs or other costs including inspection, sorting, removal, installation and material costs.
2. Defective parts can only be provided by the Ordering Party to the extent that the Ordering Party's customer has provided them (or could provide them) to the Ordering Party.
3. The warranty period shall end after 60 months have elapsed since delivery to the Ordering Party.
4. The Supplier's warranty is otherwise dictated by the statutory provisions.
5. Any acceptance or approval of drawings, materials, processes and/or specifications shall not exempt the Supplier from its warranty obligation.
6. Payments made for deliveries of defective goods shall not constitute their acknowledgement.

XI. Liability

To the extent that another liability provision is not included elsewhere in these Terms and Conditions, the Supplier shall be obligated to pay compensation for damages that arise either directly or indirectly as a result of a defective delivery, any infringement of official occupational health and safety regulations or other legal regulations, which are attributable to the Supplier on legal grounds:

1. Liability to pay damages shall essentially apply if the Supplier is at fault for the damage caused by him. In the event of a breach of obligation, the Supplier must prove that he is not responsible for the breach of obligation.
2. To the extent that the Ordering Party is subject to legal proceedings stemming from product liability, the Supplier shall be obligated to indemnify the Ordering Party against such claims of third parties, if and when the damage caused is attributable to a defective delivery by the Supplier.
3. The Supplier is also obligated within the above framework to reimburse the Ordering Party for all costs and expenses, including the costs attributable to any legal proceedings or product recall actions. To the greatest extent possible and whenever reasonable, the Ordering Party shall inform the Supplier of the content and extent of any recall measures to be executed, and offer him the opportunity to issue a statement of opinion. The Supplier shall undertake to maintain a verifiable product liability and recall insurance policy that provides adequate cover against personal injury and property damage for the goods to be supplied.

XII. Property rights

1. The Supplier shall be liable for claims that result from the violation of property rights and property right applications (property rights), which in turn arise from the contractual use of the delivery items.
2. He shall indemnify the Ordering Party and his customers from all claims arising from the use of such property rights.
3. This shall not apply if the Supplier has produced the delivery items in accordance with drawings, models or other equivalent descriptions provided by the Ordering Party, and does not know (or does not need to know in connection with the products developed by him) that this activity will lead to a violation of property rights.
4. The contracting parties shall undertake without delay to ascertain the existence of any emerging risks of infringement and alleged cases of infringement, and to afford themselves the opportunity to counteract such claims by way of mutual agreement.
5. Upon request by the Ordering Party, the Supplier shall issue a notification pertaining to the use of published and unpublished proprietary and licensed intellectual property rights and industrial property rights with the delivery item.

XIII. Use of manufacturing equipment and confidential information of the Ordering Party

Models, matrices, templates, samples, tools and other means of production, as well as confidential information provided to the Supplier by the Ordering Party or paid by him in full, may only be used for deliveries to third parties with the prior written consent of the Ordering Party. Any change of use/scraping of part-specific production facilities may only take place after written consent has been issued by the Ordering Party, irrespective of the circumstances of ownership.

XIV. Supplied material

Items which are only lent to the Supplier by the Ordering Party shall remain the property of the Ordering Party. When combining, mixing and processing supplies, the Ordering Party shall be granted co-ownership of the new product in the ratio of the value of the material supplied to the value of the product as a whole. A right of retention shall not, for whatever reason, be granted to the Supplier for the items provided. Any items provided may not be made accessible to third parties, in particular, subcontractors, without the prior written consent of the Ordering Party, and may not be used for any other purposes than those agreed.

XV. General provisions

1. Should a contracting party cease payment, or if insolvency proceedings are applied to its assets, the other contracting party shall be entitled to withdraw from the contract for the part unfulfilled.
2. The law of the Federal Republic of Germany shall apply exclusively. The application of the provisions stipulated in the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall be excluded.
3. The place of fulfillment is the Ordering Party's company headquarters. A differing agreement may be reached for delivery.
4. The place of jurisdiction is Stuttgart, to the extent that the Supplier is a merchant.
5. If special supplier agreements have been made between the Ordering Party and the Supplier (quality assurance agreements, agreements on the supply of spare parts, etc.), the Supplier shall be responsible for the obligations assumed in these Supplier agreements, which shall apply in addition to these Terms & Conditions of purchase.
6. These Terms & Conditions of purchase shall apply from 25 September 2019.

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