

# General Terms and Conditions of Purchasing and Ordering (revised as of 22 May 2018) Berg Metall GmbH

## 1. GENERAL

1.1 Any reference made herein to any Supplier, Supply Agreement or Processing Order shall be subject to the following:

- Supplier(s) shall mean any person to whom we award any order for delivery or service.
- Supply Agreement(s) shall be deemed to include any contract or agreement, i.e., any purchase agreement.  
work performance contract or contract for work or service.
- Processing Orders shall also be deemed to include transformation orders.

1.2 Unless as agreed on a single-case basis, the legal relationship between us (hereinafter referred to as the "Purchaser") and any Supplier shall be subject exclusively to the Terms and Conditions as set forth herein below. Any amendment or supplement hereto shall be made in writing. Where contradicting the terms as defined herein below, no conflicting terms and conditions of any Supplier shall become part of the contract even if the Purchaser fails to object thereto in individual cases.

1.3 The rules of the house shall apply on a supplementary basis to any activity performed by a Supplier on the factory premises and/or in the rooms of the Purchaser.

1.4 The Terms and Conditions of Purchasing and Ordering shall also apply to any future order awarded to the Supplier.

## 2. FORMATION, DURATION AND IMPLEMENTATION OF SUPPLY AGREEMENTS

2.1 Any Supply Agreement (purchase order and acceptance) and delivery call-off as well as any modification and/or supplement thereto shall be agreed in writing. Purchase orders and delivery call-offs can also be made in a text form (e.g., EDI, Web EDI).

2.2 A purchase order shall be legally effective for both contracting parties if given in writing by the Purchaser and acknowledged in writing immediately and without any restriction by the Supplier. The Purchaser shall be entitled to cancel its purchase order until acknowledged in writing by the Supplier. If a Supplier makes any delivery without a prior acknowledgment, a Supply Agreement shall be deemed brought about under the terms of the purchase order when the delivery is received by the Purchaser.

2.3 Pursuant to the statutory EC Regulations (EC) No. 2580/2001, 881/2002 and 753/2011, the Supplier shall assure not to have any business contact with any company, firm, financial institution, organization or person which is included in any EC and/or US sanction list. This shall also apply to any subsidiary company or branch of the Supplier and to any shareholding in any third party whether in Germany or abroad. Furthermore, the Supplier shall agree to immediately notify the Purchaser in writing about any positive result found during any check according to the aforementioned sanction lists. When there is any coincidence between the Purchaser and the sanction lists and after a corresponding examination, the Purchaser shall have the right to terminate all contracts and agreements with the Supplier without prior notice and discontinue the existing business relationship forthwith without enabling the latter to make any claim for compensation in damages on these grounds.

2.4 Passing any Purchaser order on to any third party shall not be admissible unless with the Purchaser's written consent and shall entitle the Purchaser to fully or partially rescind the contract and claim compensation in damages.

2.5 The Purchaser may demand any modification in the delivery item in terms of design and execution if and where such modification can reasonably be expected from them Supplier. The effects thereof, including but not limited to any additional or reduced costs, as well as the delivery dates shall be settled on a reasonable basis and by common consent by the contracting parties.

2.6 The following shall not apply unless to the purchase of raw material and finished parts by the Purchaser from the Supplier and to processing orders: Any purchase order and delivery call-off shall be based on the corresponding needs of the Purchaser's customer and can be subject to variations. For this reason, the Purchaser shall expressly reserve the right to rearrange the quantities and deadlines of the deliveries within the scope of changes in orders made by the customer. Unless as expressly agreed otherwise on an individual contract basis, the following shall apply:

- Forecast: The Purchaser shall provide the Supplier with a forecast indicating the expected quantities as needed in the next months. Such forecast shall be non-binding and be based on the forecast provided by the Purchaser's customer which is also non-binding.
- Production go-ahead: This go-ahead shall refer to a rolling period of four (4) weeks each. The quantities manufactured for such period shall be received by the Purchaser.
- Material go-ahead: Within the scope of the delivery call-offs made by the Purchaser, the Supplier shall be entitled to purchase raw material and plan

material requirements for up to two more months after the period covered by the production go-ahead. If no production go-ahead is given for this by the Purchaser, the latter shall be obligated to purchase the material already bought by the Supplier for this period within the scope of the Purchaser's delivery call-offs, or reimburse the Supplier for such expenditure if and where the Supplier cannot use the material otherwise.

- The Purchaser shall have no obligation to take delivery for any quantity in excess of the Purchaser's production go-ahead or material go-ahead. Other quantities classified as call off shall not be deemed to authorize manufacture, but shall be considered a non-binding forecast. A delivery call-off shall each be extended by one month unless it loses its validity through the presentation of a new delivery call-off.

2.7 Any contract or purchase order may be terminated without notice for good cause. The Purchaser shall also be entitled to give statutory or contractual notice to terminate while observing a reasonable notice period; this shall also apply in case of a contractual relationship limited in time.

### 3. DELIVERY, PASSAGE OF RISK

3.1 Unless as otherwise agreed in a written or text form, delivery shall be free including packaging, insurance and duty paid (DDP Incoterms 2010) to the address as determined by the Purchaser, i.e., the Supplier shall bear all costs and risks up to handover at the Purchaser's location.

3.2 When any delivery date is exceeded, the Purchaser shall be entitled to determine the mode of shipment appearing most expedient to the Purchaser. Any higher transport expenses caused thereby shall be at the Supplier's expense.

3.3 A valid delivery note must be issued for every delivery and must contain purchase order/call off no., purchase order/call-off date, article number and designation, quantity, weight (gross/tare), supplier no. and the address of the Supplier.

3.4 The Supplier shall agree to inform the Purchaser about any approval regulations for any re-export of its goods under German, European or US export and customs regulations as well as on the export and customs regulations of the country of origin of its goods in its business documents. Upon request, the Supplier shall provide the following information on the items of goods concerned in its offers, quotations, order acknowledgments and invoices:

- The export list number as per Annex AL to the German foreign trade regulations or comparable list items from pertinent export lists;
- For US goods the ECCN (Export Control Classification Number) pursuant to the US Export Administration Regulations (E-AR);
- The trade-policy origin of its goods and of the components thereof, including technology and software;
- Whether goods have been transported through the USA, or manufactured or stored in the USA, or

manufactured with the help of US-American technology;

- The statistical commodity code (HS code) of its goods and a contact person in the Supplier's company for answering any inquiry made by the Purchaser.

Upon request, the Supplier shall also agree to notify the Purchaser in writing about all other foreign trade data related to its goods and the components thereof, and notify the Purchaser forthwith (before delivering any goods concerned thereby) about any change in the aforementioned data.

### 4. DELIVERY DATES AND DEADLINES

4.1 Every date or deadline agreed shall be binding. The time relevant for compliance with the delivery date or delivery deadline shall be the receipt of the shipment at the Purchaser's location. If picking up the goods by and at the Purchaser's expense has been agreed notwithstanding item 3.1 hereof, the Supplier shall, not later than two (2) days prior to the expiry of the delivery deadline, report the availability of and have the goods including packaging ready for pickup.

4.2 The following shall not apply unless to the purchase of raw material and finished parts by the Purchaser from the Supplier and to processing orders: Upon the Purchaser's request, the Supplier will be obligated to keep a reasonable (safety) stock in excess of the corresponding delivery quantity on a constant basis and without any additional remuneration.

### 5. DELAY IN DELIVERY

5.1 The Supplier shall be obligated to compensate the Purchaser for the entire loss or damage caused by late performance.

5.2 If the Supplier incurs in any delay, the Purchaser shall be entitled to claim liquidated damages caused by late performance in an amount of 0.25 % of the value of the supply or service per business day but not exceeding a total of 5% of the value of the supply or service. The Supplier shall reserve the right to provide evidence showing that the Purchaser has not suffered any damage or loss or decrease in value or that such damage, loss or decrease in value has been considerably lower than such liquidated damages. The Purchaser shall reserve the right to provide evidence showing that a higher damage or loss has been incurred by the Purchaser. In such case, the Purchaser shall be entitled to also claim such higher damage or loss.

### 6. PAYMENT, INVOICE AND DELIVERY NOTE

6.1 Payment shall be made, at the Purchaser's option, by bank transfer, cheque, note procedure or by using other means of payment. The Supplier shall agree to participate in a credit memo procedure upon the Purchaser's request.

6.2 Unless as otherwise agreed, payment shall be made, at the Purchaser's option, either within 14 days ./. 2 % cash discount, or within 60 days, each after the receipt of the goods and of a proper invoice.

6.3 If early delivery has been accepted, the due date shall depend on the agreed delivery date.

6.4 The Purchaser shall be entitled to offset against any current or future claim, whether due and payable or not, which has accrued to the Purchaser or to any company associated with the Purchaser pursuant to Sections 15 et seq. of the German Stock Corporation Act (AktG), or which the Supplier may have against any of the aforementioned companies regardless of the legal basis on which any such claim may have accrued. The Purchaser shall, in particular, be entitled to withhold any payment due and payable for as long as the Purchaser still has any claim against the Supplier from any incomplete or defective performance. The Supplier shall have no right of offsetting or retention unless with regard to any counterclaim which is either uncontested or determined by declaratory judgment

6.5 Unless with the Purchaser's prior written consent, which shall not be unfairly withheld, the Supplier shall not be entitled to assign any claim existing against us to any third party or have any such claim collected by any third party.

6.6 The invoice shall be sent in duplicate. The invoice must include the Supplier number, number and date of purchase order (or of purchase agreement and delivery call-off), any additional Purchaser data, account assignment, unloading point, number and date of delivery note and the quantity of the goods invoiced. An invoice must only refer to one delivery note.

## 7. SECRECY, RIGHTS AND OBLIGATIONS REGARDING ITEMS TRANSFERRED

7.1 The contracting parties shall agree to treat as trade secret any commercial and technical detail not publicly known which comes to their knowledge due to the business relationship. Such obligation shall survive the termination of the business relationship.

7.2 The Purchaser shall retain all property rights and copyrights in any image, plan, drawing, calculation, performance instruction, product description as well as in any other document or object and also in any tool, jig, assembly, sample or other thing the Purchaser provides to the Supplier for manufacture. None of the foregoing must be used unless for performing the service as defined by agreement, no third party must be permitted any use thereof or access thereto, and the foregoing must be kept secret with regard to any third party even after the termination of the agreement. If and where required, no reproduction shall be admissible unless within the scope of operational requirements and subject to copyright provisions. The goods manufactured in accordance with the

specifications and/or with any object made available by the Purchaser must not be surrendered to any third party neither in a raw condition nor as semi finished or finished products. The same shall apply to any object developed and/or produced by the Supplier according to any Purchaser information.

7.3 No processing, mixture or combination (further processing) of any object provided by the Purchaser shall be made on the Purchaser's behalf. The same shall apply to any further processing by the Purchaser of the goods delivered such that the Purchaser is considered the manufacturer and acquires ownership in the product at least upon further processing.

7.4 The Supplier shall agree to impose a corresponding obligation on its employees and sub-suppliers.

7.5 Unless with the Purchaser's prior written consent, the Supplier must not make any reference to this business relationship or exhibit any delivery item manufactured for the Purchaser.

7.6 No correspondence of any kind whatsoever shall be allowed between the Supplier and the Purchaser's customer with regard to the corresponding order items unless with the Purchaser's written consent.

7.7 Any infringement of the non-disclosure obligation shall create a liability for compensation in damages. The parties shall agree to provide every reasonable assistance to the corresponding disclosing party in order to contain any violation of secrecy and/or recover any confidential material and prevent any unauthorized use or further disclosure of confidential information. The obligations of the parties shall include but shall not be limited to taking the corresponding steps against any employee whenever these are found to have violated the non-disclosure obligation.

## 8. QUALITY AND DOCUMENTATION

8.1 The Supplier shall observe the accepted rules of technology, the safety regulations and the technical data as agreed for its deliveries. Any modification of the delivery item shall be subject to the Purchaser's prior written consent. For new electrical installations/devices, the supplier shall, prior to initial operation, perform an equipment test as per DGUV, V3 (German Statutory Accident Insurance rule, former accident prevention rule BGV A3), submit the test report, and affix a test sticker at the installation/device.

8.2 The following shall apply to the purchase of any raw material and serial parts from the Supplier by the Purchaser and to processing orders: The type and scope of all tests and inspections required within the framework of initial sampling, series start-up and ongoing serial delivery will be predefined by the Purchaser and firmly agreed with the Supplier. This will include but not be limited to reference to

the regulations as applied by the Purchaser's customer from time to time.

Notwithstanding the foregoing, the Supplier shall verify the quality of the delivery items on a constant basis.

8.3 Where available, the quality guidelines of the Purchaser shall apply in other respects.

8.4 The supplier is obliged to use only material sources approved by Berg. Exceptions to this must be agreed in writing.

## 9. NOTICE OF DEFECTS, WARRANTY/LIABILITY, TERMS OF LIABILITY

9.1 The Purchaser shall have no obligation to perform any detailed incoming inspection. The Purchaser shall make spot checks and inspect for apparent defects. The values as determined by the Purchaser shall prevail for any quantity, dimension or weight.

9.2 A notice of defects shall be deemed made in time if any apparent (patent) defect is notified to the Supplier not later than five (5) working days after goods receipt. Any unapparent or hidden defect can also be notified by the Purchaser at a later time, i.e., within a period of five (5) working days after the discovery and determination of any such defect.

9.3 The Supplier shall agree to transfer possession and ownership in the goods to the Purchaser free from any material defect or defect in title.

9.4 A material defect shall be deemed to exist in but shall not be limited to the event that, upon the passage of risk, a good does not have the agreed quality and/or is unsuitable for the use as presumed under the agreement and/or fails to maintain the quality and/or usability for the customary period of time.

9.5 The Supplier shall warrant that the goods supplied meet the specifications as indicated in the purchase order as well as the accident prevention regulations as defined by law and required by the German employer's liability insurance association.

9.6 For its deliveries/services, the Supplier shall observe the statutory regulations as applicable in the European Union and in the Federal Republic of Germany from time to time, e.g., the REACH Regulation (EC Regulation no. 1907/2006), the German Act on the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (ElektroG), and the German End-of-Life Vehicles Act (AltfahrzeugG). The Supplier shall agree not to deliver any product (product, mixture, substance) to the Purchaser unless meeting the provisions as set forth in the REACH/CLP Regulations and all other legal provisions applicable to substances. The Supplier shall make certain that all obligations are fulfilled in relation with the registration, evaluation, classification and approval of substances, and all duties and obligations incumbent on the Supplier as a manufacturer and importer of purchased goods under the REACH/CLP Regulations, including but

not limited to any duty to inform. The Supplier shall immediately notify the Purchaser about any relevant change or modification in the goods, their delivery availability, possible use or quality as caused, inter alia, by the REACH Regulation, and consult and agree on appropriate actions with the Purchaser in every single case. The foregoing shall apply, mutatis mutandis, if and where the Supplier identifies any such forthcoming change or modification.

9.7 In the event of any material defect or defect in title or any other breach of duty, the Purchaser's claims and rights shall be subject to the German Civil Code (BGB). The following shall be agreed in addition to the statutory rights: When the Supplier fails to meet its obligation to subsequent performance within a reasonable period of time set by the Purchaser, the Purchaser may, at the Supplier's expense, carry out subsequent performance itself or have subsequent performance carried out by a third party. This shall also apply to any sorting costs required. No time limit needs to be applied when subsequent performance has failed. If, in the event of subsequent performance, any work (e.g., sorting out, subsequent improvement) is required at the place or plant at which the goods have arrived as intended, the Supplier shall be obligated, to either carry out or have subsequent performance carried out at such place or plant and at the Supplier's expense. To avoid any production stoppage, such subsequent performance shall take place without delay. Otherwise, the Purchaser and/or the parties concerned in the supply chain shall have the right to perform or have any such work performed at the Supplier's expense.

9.8 If any defect is found by the Purchaser at the beginning of manufacture (processing or installation), the Purchaser shall provide an opportunity for the Supplier to sort out or provide subsequent performance (subsequent improvement or subsequent delivery) where this is done without any delay; otherwise, the Purchaser shall be entitled to perform defect correction by itself and charge the expense incurred to the Supplier. Where a defect is not detected unless after the beginning of manufacture, the foregoing shall apply with the provision that the Purchaser may, in addition, require compensation for any additional expenditure incurred including for but not limited to parts processed.

9.9 Subject to any longer period as defined by law or as agreed on a single-case basis and subject to the provisions as set forth in items 9.10 and 9.11 hereof, any Purchaser claim from any material defect or deficiency in title or from any other failure of the Supplier to comply with its duties, shall not become statute-barred earlier than five (5) years after the Purchaser's receipt of the delivery concerned. Such period shall be extended by any period during which the statute of limitations is suspended.

9.10 If any claim is made against the Purchaser for any material defect or other breach of duty the cause of which is situated in the Supplier's sphere,

the Supplier shall indemnify the Purchaser for any claim made by any contracting party of the Purchaser or by any third party while this shall apply to claims for compensation in damages only if the Supplier does not provide evidence showing that such material defect or other breach of duty is not under the Supplier's control. Any claim for compensation in damages and indemnity for any damage, loss or expenditure shall survive the periods of liability/prescription provided for in item 9.9 hereof for as long as the Purchaser has any liability for the goods purchased from the Supplier and for any damage or loss resulting therefrom for any reason under the Supplier's sphere of responsibility. Any claim from any Supplier breach of duty notified by the Purchaser within the period of liability / prescription will be statute-barred not earlier than three (3) months after such notification.

9.11 Any claim and any longer period of prescription pursuant to the German Product Liability Act (ProdHaftG), in tort, from any fraudulent act and under any warranty shall remain unaffected.

## 10. SUPPLY OF PARTS AFTER SERIES DISCONTINUATION

Unless as otherwise expressly agreed in writing, the Supplier shall be obligated to ensure the supply of parts for not less than fifteen (15) years after the discontinuation of serial delivery. Part-specific manufacturing equipment (including but not limited to tools / jigs) shall be held available in a serviceable condition. The Supplier shall store, maintain and keep any such equipment ready for operation at its own cost and risk. Notwithstanding the ownership rights, the scrapping of any part-specific manufacturing equipment shall require the express authorization of the Purchaser even after such period.

The last series price agreed shall remain applicable for five (5) years after the discontinuation of serial deliveries.

## 11. PRODUCT LIABILITY, INDEMNIFICATION AND INSURANCE COVER

11.1 If and where the Supplier is responsible for any loss or damage caused by its delivery/service, the Supplier shall, upon first request, indemnify the Purchaser for any third-party claim resulting therefrom. The foregoing shall apply but shall not be limited to any claim alleged against the Purchaser under the German Act on Liability for Defective Products or under any similar national or international legal provisions.

11.2 Within the scope of any such provisions, the Supplier shall also be obligated to reimburse any expenditure necessarily incurred by the Purchaser in relation with any recall action performed. As far as possible and reasonable, the Purchaser shall notify the Supplier of the contents and extent of any such recall action, and provide an opportunity for the Supplier to make a statement.

11.3 The Supplier shall agree to take out, at its own expense, a business liability insurance and an extended product liability insurance which also covers any third-party claim for damages resulting from defective delivery and service or from any other breach of duty committed by the Supplier. When the Purchaser procures any raw material and serial parts from the Supplier for delivery to the automotive industry and for any processing order, the Supplier shall also agree to take out an automotive recall cost insurance which reimburses, inter alia, any cost involved in notification, transfer, examination, sorting, storage, removal, installation and disposal for any recall made by automotive manufacturers or public authorities.

11.4 The amount of coverage of the aforementioned insurances must each amount to not less than EUR 7.5 million per case of damage and insurance year. The Supplier shall keep up the aforementioned insurances on a constant basis throughout the contract period and provide evidence for them to the Purchaser upon request.

## 12. THIRD-PARTY RIGHTS

The Supplier shall warrant that no third party holds any right in or to the goods ordered/services performed and that the goods can be used or resold without infringing any third-party rights. The Supplier shall be liable for any claim resulting from the infringement of any industrial property right or property right application when the object of an order is used as provided for in the agreement, while, in case of any claim for compensation in damages, such liability shall only apply if the Supplier fails to provide evidence showing that such defect or breach of duty is not under the Supplier's control. The Supplier shall indemnify the Purchaser and the Purchaser's contracting parties for all claims resulting from the use of any such property rights. The foregoing shall not apply if and where the Supplier has manufactured the objects according to drawings, models or descriptions and indications of the Purchaser and is not aware or cannot be aware that this may violate any third-party industrial property rights.

## 13. FINAL PROVISIONS

13.1 If a contracting party suspends its payments, or files an application for instituting insolvency proceedings against its assets and if such proceedings are not averted within a period of three (3) months, the other party to the contract shall be entitled to rescind the contract for the part not fulfilled and/or claim compensation in damages.

13.2 If any one or more provision(s) of these Terms and Conditions and/or of any further contractual agreement made should be or become ineffective, such ineffectiveness shall not affect the validity of the terms and conditions and of the contract in any other respect. To replace any ineffective provision or fill any gap, a reasonable provision shall be agreed which shall come as close as possible to what the contracting parties had intended or to what they would have agreed in accordance with the sense

and purpose of the provisions or of the agreement if they had considered the point concerned. If any invalidity is based on any determination of time or performance, such determination shall be replaced by the measure allowed by law.

14.3 The laws of the Federal Republic of Germany shall apply on an exclusive basis unless as otherwise agreed, if any. The application of the UN Sales Convention (United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods) shall be excluded.

14.4 The place of performance shall be the Purchaser's registered office. For any contract or agreement concluded with any merchant, legal person under public law or special fund under public law, the place of jurisdiction shall be the regional court of Bonn, Germany competent for the Purchaser. The Purchaser shall nonetheless have the right to bring action at the Supplier's place of business.