

## General Conditions of Sale and Delivery

The below Conditions of Sale and Delivery are based on the conditions of 5 Dec 2002 recommended by the Verband der Automobilindustrie e.V. (VDA). Individual sections have been changed or supplemented.

### I. Authoritative Conditions

The legal relation between ITW Fastener Products GmbH (supplier) and the purchaser is subject to these conditions and any supplementary agreements. All changes and supplements shall become effective only if submitted in written form via standard or electronic mail. This also applies to the renunciation of the written form.

Any differing general terms and conditions shall not come into effect independently of our explicit objection to individual cases.

### II. Order

1. Supply contracts (order and acceptance) and requests for delivery as well as their changes and supplements become effective only if submitted in written form. Requests for delivery may also be effected via electronic data interchange.
2. If the supplier does not acknowledge the order within three weeks after receipt, the purchaser shall have the right to cancel the order. Requests for delivery shall become binding two weeks after receipt unless the supplier objects within this period of time.
3. The purchaser may, to a for the supplier reasonable extent, request changes or modifications to the delivery item with regard to design and finish. The effects from such changes or modifications in particular with regard to the additional or reduced costs and the delivery schedule shall be settled by proper mutual agreement.

### III. Payment

1. Payments shall be made on the 25th day of the month following delivery.  
Unless other written agreements have been made, our prices shall be ex works; packaging shall be excluded and invoiced separately. Our prices do not include statutory VAT which will be reported separately in the invoice.  
Deliveries ahead of schedule shall be due and paid in accordance with the agreed upon delivery date.
2. All payments are effected by bank transfer or check. Checks shall be accepted on account of performance only and free of cost for the supplier.
3. Non-conforming deliveries entitle the purchaser to withhold payment ad valorem until delivery has been fulfilled in compliance with the requirements.
4. The supplier is not allowed to assign accounts receivable from the purchaser to or have them collected by third parties without prior written consent of the purchaser, which must not, however, be denied unreasonably.  
Approval shall be deemed granted upon presentation of extended reservation of title.  
If the supplier assigns the accounts receivable from the purchaser to a third party notwithstanding section 1 without the purchaser's approval, the assignment shall nevertheless be effective. It is, however, the purchaser's choice whether to settle the accounts with the supplier or the third party.

#### **IV. Notification of Defects**

The purchaser shall give the supplier written notice of defects as soon as they are identified during the course of normal business. The supplier therefore waives the defense for belated notice of defects.

#### **V. Nondisclosure**

1. The contractual parties undertake to treat all commercial and technical details which are not general knowledge and which they become privy through their business relationship, as business secrets.
2. Drawings, models, templates, samples, molds and similar including software that was made available by any of the contractual parties may not be abandoned or made accessible to unauthorized third parties and shall remain the property of the supplier or purchaser. Any reproduction of such items is allowed only within the framework of business requirements and copyright provisions.
3. Subcontractors are to be bound accordingly.
4. The contractual partners may not use the business relationship for promotional purposes without prior written consent from the other party.

#### **VI. Delivery Schedules and Deadlines**

All agreed upon schedules and deadlines are non-binding unless specified differently in other written agreements.

#### **VII. Delay in Delivery**

1. The supplier shall compensate the purchaser for all damages occurred from the delayed delivery but not for any lost profits and damages from business interruptions.
2. Compensation for damages from slight negligence is limited to the additional freight costs and upgrade costs, and to the additional expenditure for covering purchase in case of unsuccessful extension of delivery time or discontinued interest in the delivery.

#### **VIII. Acts of God**

Force majeure, labor disputes, riots, official measures and other unforeseeable, inevitable and grave events free the contractual parties from their contractual obligations for the duration of the disturbance and to the extent of its effect. This also applies if such events occur at a moment when the contractual partner in question is already in delay. The parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adapt their obligations in good faith to the changed circumstances.

#### **IX. Quality and Documentation**

1. The supplier subjects his delivery to the generally acknowledged rules of technology, safety provisions and agreed upon technical data. All changes to the delivery item are subject to prior written approval by the purchaser. For initial sampling please refer to the VDA volume 2 document "Quality Assurance of Supplies". Independently thereof, the supplier shall check the quality of the delivery items on a permanent basis. The contractual partners promise to exchange information on the possibilities of quality improvement.
2. If purchaser and supplier have not defined type and extent of tests and testing equipment and methods and if the supplier so requests, the purchaser shall be ready to discuss such tests with the supplier within the framework of his knowledge, experience and possibilities in order to determine the required test engineering level. If asked by the supplier, the purchaser shall furthermore provide information on the standard safety provisions.
3. Automotive parts with specific characteristics marked, for example, with a "D" in the technical documentation or in separate agreements require special supplier records which indicate when, how and by whom the delivery items were checked for their agreed-upon characteristics, and what resulted from the required quality tests and inspections. All test documents are to be archived for fifteen years and submitted to the purchaser upon his request. The supplier shall, within the framework of legal possibilities, commit his sub-suppliers to the same extent. For further details please refer to VDA volume 1 document "Guidelines for Documentation".

4. As far as public authorities responsible for vehicle safety, emission provisions etc. request access to the purchaser's production process and test documentation to assure compliance with specific requirements, the supplier shall, on the purchaser's request, grant them the same rights and provide them with the support which may reasonably be expected.

### **X. Warranty for Defects**

1. If the goods delivered do not comply with the requirements and upon existence of the respective legal and subsequently listed prerequisites and unless agreed otherwise, the purchaser can request as follows:

a) Prior to production (processing or installation), the purchaser shall give the supplier the opportunity to sort out and eliminate the non-compliance or replace or make an additional delivery unless none of the above can reasonably be expected from the purchaser. If the supplier cannot at all or immediately carry out any of the above, the purchaser can withdraw from the contract without any further extension of deadlines and return the goods at the supplier's risk. In urgent cases and in accordance with the supplier, the purchaser may carry out the subsequent performance himself or contract third parties to do so. The costs arising from such action shall be charged to the supplier's account. If the same products are repeatedly delivered in non-conforming conditions, the purchaser shall, after written warning to the supplier, have the right to withdraw from the contract and cancel the yet to be delivered quantities at the arrival of another non-conforming delivery.

b) If despite adherence to the obligation set forth in section IV (Notification of Defects) the non-compliance is identified only after production start, the purchaser can make use of § 439 clauses 1, 3 and 4 BGB (German Civil Code) and demand supplementary performance and reimbursement of the transport costs (without hauling costs) as well as disassembly and assembly costs (labor costs; material costs if agreed upon) arising from the supplementary performance, or reduce the purchase price.

c) If in addition to the delivery of non-conforming goods the supplier has violated any obligations (e.g. duty to provide explanations, consulting, inspection), the purchaser can request compensation for any consequential damage as well as reimbursement of any compensation paid to the purchaser's customer due to such violation as set forth by law and in section XI. This consequential damage caused by a non-compliance is determined by the damages which the purchaser suffered from the delivery of defective goods at other objects of legal protection. Further claims regarding expenses and damages due to the delivery of defective goods on the basis of § 437 BGB or directly on the basis of the provisions named therein can be brought forward by the purchaser only if stipulated by contract. Clause XV, subclause 1 applies to all new agreements.

2. The purchaser shall surrender all parts that need to be replaced to the supplier on request and at the expense of the latter.

3. Claims from warranty expire 24 months after delivery.

4. Warranty claims do not arise for defects that are caused by a violation of operating, maintenance and installation instructions, inappropriate or inexperienced use, faulty or negligent treatment and natural wear, or by interferences with the delivery item on the part of the purchaser or third parties.

5. In the case of non-conforming deliveries, the Purchaser's claims with regard to the Product Liability Act, unlawful acts and agency of necessity remain unaffected by this clause X.

Quality and durability warranties need to be designated individually and expressly in writing.

### **XI. Liability**

Unless differing liability provisions have been set forth in other sections of these General Conditions of Sale and Delivery, the supplier shall compensate the purchaser uniquely and as follows for damages caused directly or indirectly by non-conforming deliveries, violations of official safety directives or any other legal grounds attributed to the supplier

1. The supplier shall be obliged to pay damages only if he is the causer of and thus responsible for the damage.

2. If claims are forwarded against the purchaser as a result of liability towards third parties regardless of fault and according to laws which may not be modified by agreement between the parties, the supplier's liability towards the purchaser shall be equal to direct liability. The principles set forth in § 254 BGB apply to the compensation of damage between purchaser and supplier. This is also true for direct claims on the supplier.

3. The duty of replacement is excluded if the purchaser has effectively limited his liability towards the customer. The purchaser shall do his best to set forth liability limitations in favor of the supplier as far as legally allowed.

4. Claims by the purchaser shall be excluded if the damage is attributable to violations of operating, maintenance and installation instructions, inappropriate or inexpert use, faulty or negligent treatment, normal wear or incorrect repairs by the purchaser.
5. The supplier shall be liable for actions carried out by the purchaser to prevent damages (e.g. recalls) as prescribed by the law.
6. If the purchaser intends to make a claim on the supplier as set forth above, he shall inform and consult the supplier immediately and in detail. The purchaser shall grant the supplier sufficient time to investigate the occurrence of damage. The contractual parties shall, in particular if involved in conciliation proceedings, mutually agree on the action to be taken.
7. The principles set forth in clause VII subclause 1 are to be applied if the supplier has no or insufficient insurance coverage.

## **XII. Industrial Property Rights**

1. The supplier shall be liable for claims arising from the violation of industrial property rights during the contractually stipulated use of the delivery items if at least one of the related rights has been published in the supplier's home country, by the European Parliament or in Germany, France, Great Britain, Austria or the USA.
2. The supplier shall indemnify the purchaser and the purchaser's customers from all claims arising from the use of such industrial property rights.
3. The above regulation shall not be applicable if the supplier has produced the delivery items according to drawings, models or similar descriptions or information made available by the purchaser, and if he does not know or if the by him developed items did not need him to know that property rights would be violated.
4. If the supplier is free of any liability as in subclause 3, the purchaser releases him from all third party claims.
5. The contractual partners shall inform each other immediately if they identify any risk of violation and alleged cases of violation and give each other the possibility to counter any claims thereof.
6. The supplier shall on request of the purchaser inform on the use of published and unpublished own and licensed property rights and property right applications regarding the delivery item.
7. The principles contained in clause VII subclause 1 regarding the limitation of liability are to be applied as set forth.

## **XIII. Use of Manufacturing Equipment and Confidential Purchaser Information**

Models, matrices, templates, samples, tools and other manufacturing equipment as well as confidential information the purchaser makes available to the supplier or carries the full costs for may be used for deliveries to third parties only if the purchaser has given his prior written consent.

## **XIV. Reservation of Title**

The supplier reserves the title on all goods delivered by him until all receivables under this business relation have been settled by the purchaser. All deliveries shall be considered as one inclusive delivery transaction. The reserved ownership shall be security for his current account claims. If the purchaser combines the goods delivered with other goods to form one uniform unit and if the other goods are being considered the main constituent, then the purchaser shall assign partial ownership to the supplier to the extent the main unit belongs to him. If the purchaser sells the delivered goods as intended, he at the moment of sale cedes the accounts receivable from his clients together with all ancillary rights to the supplier until his accounts receivable from the orderer are entirely balanced. For justified reason and in particular if the purchaser does not fulfill his payment obligation, the purchaser shall on request of the supplier inform the third-party buyer on the cession and give the supplier all details and documents required to assert his claims. The supplier shall release the securities that he has retained if the total value thereof exceeds the claims that are being protected by more than 20%.

## **XV. Transfer of Risk, Acceptance and Default of Acceptance**

1. The risk passes to the purchaser as soon as the goods are consigned to the forwarder or have left the supplier plant or warehouse. This also applies when the supplier carries the transport costs by way of exception.
2. If the purchaser defaults in accepting the consignment or intentionally violates any other duties of cooperation, the risk shall pass to the purchaser at the moment he fails to accept or pay as due.
3. Partial deliveries are allowed within for the purchaser reasonable limits.

4. If the supplier withdraws from the contract for reasons caused by the purchaser - especially in default of acceptance - the supplier is entitled to a lump-sum compensation in the amount of 25% of the agreed upon net invoice total. The purchaser has the explicit right to prove that a damage has not occurred or that the damage was considerably lower than the lump sum. The supplier reserves the explicit right to assert further claims taking into consideration the incurred penalty as minimum amount of damage.

#### **XVI. General Provisions**

1. For determination of the amount for damages to be paid by the supplier as in clauses VII, X, XI and XII, the economic situation of the supplier, type, extent and duration of the business relation, possible contribution to the causation by the purchaser as in § 254 BGB and a particularly difficult assembly or installation situation for the delivered part need to be considered adequately and in favor of the supplier. Damage compensation, costs and expenditure which the supplier is to bear shall be in appropriate relation to the value of the delivered item.
2. If one of the contractual parties suspends payment or is subject to insolvency proceedings or arrangements out of bankruptcy, the other party to the contract shall have the right to withdraw from the unfulfilled part of the contract.
3. Should any individual provisions in the above terms be or become invalid, either in part or in full, or impracticable, this will not affect the validity of the other provisions. The invalid or impracticable provision shall be replaced by a ruling that is as close as possible in economic purpose to the invalid or impracticable provision in a legally effective and practicable form.
4. Applicable law is that of the Federal Republic of Germany unless other agreements have been made. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not be applied. The contract language is German.
5. Place of delivery/performance shall be the main office of the supplying enterprise under this contract, otherwise Iserlohn. The same applies to the place of payment.
6. Venue for all legal actions shall be Iserlohn.
7. We point to the fact that the supplier stores and uses the contractual partner's data throughout and for their cooperation as set forth in the German Data Protection Act.