

Conditions of Purchase

General Conditions of Purchase (as at: January 2009) of Ernst Klimmer GmbH, Burgau

1. Area of Application and General Conditions

The legal relationship between the supplier and Ernst Klimmer GmbH (in the following: Buyer) shall be in accordance with these conditions, and any other individual agreement between the contract partners. These conditions also apply to the provision of temporary staff and other services. Other general terms of business are not valid, even if they have not been expressly contradicted. Amendments and supplements as well as any other individual agreement require the written form.

2. Orders

2.1. Supply contracts (order and acceptance) and delivery schedules, as well as their amendments and supplements, require the written form. Delivery schedules can also be made by data transmission.

2.2. If the supplier does not accept the order within one week after receipt, the Buyer shall be entitled to revocation. A delivery schedule is binding if the supplier does not revoke it within one week of receipt at the latest

2.3. The Buyer can within reason request from the supplier changes to construction and performance of the delivery item. Any consequences from this, in particular additional- or reduced costs or delivery dates, are to be fair and reasonably agreed.

3. Shipment and Packaging

The goods to be supplied by the supplier are to be packed in orderly and customary packaging together with all necessary supply- and shipment documentation, in as far as the parties have not reached any special agreement.

4. Price, Payment Conditions and Invoices

4.1. The invoice is to be issued stating the complete order number and article number. Incorrectly issued invoices are considered as not issued. (See also Point 4.8.)

4.2. The price shown in the order is binding. If there is no other written agreement the price shown shall include all other costs, for example packaging, shipment and insurances. The prices are not to include value added tax.

4.3. If there is no other written agreement, supplier invoices will be paid by the Buyer within 14 days less 3% cash discount or 30 days net.

4.4. The payment will be made by money transfer or cheque and under reservation of invoice verification. The payment is not acknowledgement of free of defect delivery.

4.5. With the acceptance of early deliveries the due payment date remains in accordance with the agreed delivery date.

4.6. With a defective delivery the Buyer shall be entitled to withhold pro-rata payment until orderly performance.

4.7. The supplier is not authorized to assign his claims against the Buyer or have them collected by a third party without the previous written consent of the Buyer, which is not to be

unreasonably denied. The consent shall be considered as given with the presentation of an extended retention of title. If the supplier assigns his claims against the Buyer without his consent to a third party contrary to sentence 1, the assignment is nevertheless effective. The buyer can however, at his option, perform his obligations to the supplier or the third party.

4.8. The correspondence relating to the order is only to be with the purchasing department, and is to include the order number and any other references. The following is always to be included in order confirmations, delivery notes, invoices and other correspondence:

- The full order number
- The Klimmer material number
- The description of the item
- The supplier number.

Suppliers' invoices that do not comply with the above paragraph are considered as not issued. The invoice will only be considered as issued when all the conditions have been complied with. The Buyer shall only inform the supplier once of the corrections necessary.

5. Confidentiality

5.1. The contract partners are obligated to treat as confidential all commercial and technical information, documentation and data that becomes known to them during the business relationship, and to only pass it on to persons who need knowledge of it for the purpose of fulfilling the contract.

5.2. This obligation begins with the first receipt of information, documentation and data and ends 36 months after the end of business relations.

5.3. Technical drawings, models, templates, samples and similar objects are not allowed to be given to third parties or made available in any way. The reproducing of such objects is only allowed for production purposes and the conditions of the copyright.

5.4. Sub-suppliers are also to be obligated to confidentiality.

5.5. The contract partners are only allowed to advertise the business relationship with previous consent in writing.

6. Delivery Schedules and Dates

6.1. Place of fulfilment is the place where the contract item is to be delivered according to the order, in as far as there is no other agreement between the parties. The material risk shall remain with the supplier until acceptance by the Buyer.

6.2. Agreed schedules and dates are binding. Definitive for compliance with the delivery schedule or delivery date is arrival of the goods at the Buyer. If the shipment is not agreed "free works", the supplier has to prepare the goods in time, taking into consideration the time required for loading and shipment.

6.3. If the supplier is aware before the due date that he cannot meet the delivery date he must inform the Buyer immediately in writing giving the reason and the duration of the delay. He is obligated to submit to the Buyer solutions as to how with competitive prices and if possible unchanged specifications the delivery of contractual agreed or compatible goods can be ensured and achieved. The supplier is further obligated to take all necessary measures at his own cost to prevent a delay and minimise any subsequent damage. The rights resulting from delay in delivery remain unaffected.

6.4. The acceptance of a delivery is not acknowledgement that it is free of defects.

6.5. The Buyer is not obligated to accept deliveries before the agreed delivery date and reserves the right to return them at the supplier's cost or to store them at the supplier's cost and risk. Part-deliveries will only be accepted if expressly agreed upon.

7. Delayed Delivery

7.1. The supplier shall be obligated to the Buyer for damage caused by delay. This does not apply to lost profit and damages resulting from business interruption.

7.2. With slight negligence compensation is limited to the extra freight costs, retrofitting costs and after an unsuccessful period of notice or lack of further interest in the delivery the extra costs involved for covering purchases.

7.3. The acceptance of a delayed delivery is not a waiver of the Buyer's right to damages.

8. Force Majeure

Force majeure, labour disputes, civil disturbances, official measures and other unpredictable, unavoidable and serious events exempt the business partners for the duration of the event from their duty to perform, and scope of the effects. This is also valid if these events occur at a time when a partner is in delay. The contract partners are obligated as far as is reasonable to inform about the situation and revise contractual obligations to the changed situation in good faith.

9. Quality and Documentation

9.1. The supplier has to comply with the recognised regulations and procedures for his delivery, as well as the state-of-the-art in science and technology, safety and environmental regulations, and the agreed technical data. The products delivered by him must comply with all valid mandatory regulations. Changes to the delivery item are only allowed with the previous written consent of the Buyer. Initial sample testing is required by us according to PPAP or VDA, current version. Irrespective of this, the supplier has to continually test the quality of the delivery item. With the delivery of standard parts the supplier is obligated to incorporate the data required in the International Material Data System (IMDS). The contract partners will inform each other of the possibilities for improving quality.

9.2. The supplier has to register in specific documentation when, in which manner and by whom the vehicle components designated in the technical documentation or in a special agreement, for example the vehicle components designated "D" or "TLD", where documentation of test results is compulsory, have been tested and the test results. The test documentation is to be kept for 15 years and to be made available to the Buyer on demand. The supplier has to obligate his sub-suppliers to the same degree within the scope of legal possibilities. A guide on this is the VDA publication "Quality Assurance of Supplies" current version.

9.4. If the authorities responsible for vehicle safety, exhaust regulations or similar request to inspect the production process and view test documentation to check Buyer compliance, the supplier declares that he is prepared to grant them the same rights in his company and give them all reasonable support.

9.5. The supplier shall provide the Buyer together with the offer a fully completed Safety Data Sheet in accordance with the Hazardous Materials Regulations and an Accident Procedure Sheet (transport) for materials (fabrics, preparations) and items (e.g. goods, parts, technical devices, unclean empties), which due to their nature, properties or condition could pose a risk to human health, the environment or material. The supplier shall provide to the Buyer updated data and safety sheets in the case of changes to the material or legal situation.

10. Acceptance and Notice of Defects

The Buyer shall inform the supplier immediately in writing of defects in a delivery as soon as they have been established in the course of an orderly business process. In this respect, the supplier waives the objection of late notice of defects.

11. Liability for Defects

11.1. The mandatory provisions shall apply for materials defect liability, in as far as there is no other agreement. If the subject matter of the contract has a defect in accordance with § 434 BGB (German Civil Code) and does not have the contractually agreed properties, the Buyer can assert the rights incorporated in § 437 BGB. If the Buyer requests supplementary performance and this is not possible by the supplier or he does not fulfil his supplementary performance obligations without delay, the Buyer can in urgent cases rectify the defects himself at the supplier's cost or have this done by a third party, without losing his warranty rights. We also reserve the right in order to maintain production selectively rectify ourselves the defective goods or have this carried out by a third party or to sort. We will charge you with the costs arising from the complaint (sorting costs, rejects, machine down-time, extra costs of goods inwards controls or similar).

11.2. The supplier shall make available to the Buyer the parts to be replaced without delay and at his cost.

11.3. Claims for liability for defects lapse after 24 months after putting into circulation the assemblies or devices with the goods delivered and at the latest 30 months after delivery to the Buyer, if nothing is agreed in the individual case.

11.4. Liability for defects does not arise if the defect is caused by improper use of the operating-, maintenance or assembly instructions, unsuitable or improper handling and natural wear and tear as well as intervention in the delivery item by the Buyer or a third party.

11.5. The right of the Buyer to replacement of costs arising from the defect and consequential costs from the defective delivery remain unaffected.

11.6. With defective deliveries the claims of the Buyer arising from the Product Liability Act, liability in tort and agent of necessity of this Section 11 remain unaffected. Warranted properties and manufacturer's guarantees must be expressly individually shown as such.

12. Liability

If no other liability provision has been made in these Conditions the supplier is only liable for the following damages which arise to the Buyer directly or indirectly as a consequence of a defective delivery, infringement of official safety regulations or for any other reason that can be attributed to the supplier.

12.1. The liability for damages is in principle only given if the supplier caused the damage with intent or he acted in gross negligence.

12.2. If the Buyer is claimed against for liability regardless of negligence or fault by a third party for an unalienable right, the supplier shall be responsible to the Buyer as if he were directly liable. The principles of § 254 BGB shall apply for the loss adjustment between Buyer and seller. This is also valid for the case of a direct claim of the supplier.

12.3. The duty of replacement is excluded, insofar as the Buyer on his part has effectively limited liability to his customer. The Buyer will also make all efforts, to the extent the law permits, to limit liability to the benefit of his supplier.

12.4. Claims of the Buyer are excluded, if the defect is due to the Buyer's misuse of the operating-, maintenance or installations instructions, unsuitable or incorrect use, faulty or negligent handling, natural wear and tear or incorrect repair.

12.5. The supplier shall be liable to the Buyer for measures to limit damage (recall actions); in as far as he is legally obligated.

12.6. The Buyer shall inform and consult the supplier without delay and comprehensively in the case that he intends to claim in accordance with the aforementioned provisions. He must give the supplier the opportunity to investigate the damage event. The partners are to agree on the measures to be taken, in particular in settlement negotiations.

12.7. The principles in Section 7.1 are to be applied, if the supplier has no insurance or insufficient insurance.

13. Proprietary Rights

13.1. The supplier shall be liable for claims which arise from contractual use of the delivery item, from the violation of proprietary rights and industrial property protection applications (proprietary rights) and copyright laws.

13.2. The supplier shall exempt the Buyer and his customers from all claims arising from the use of proprietary rights.

13.3. This does not apply, if the supplier has manufactured the delivery items according to drawings, models or similar specifications or information issued by the Buyer and does not know or does not have to know in the context of the products developed by him that proprietary have been violated.

13.4. The Buyer shall exempt the supplier from all the claims of third parties if the supplier is not liable according to 13.3.

13.5. The contract partners are obligated to inform each other immediately of any known violation risks and apparent violations and to give the opportunity to amicably settle the claims.

13.6. The supplier shall inform the Buyer at his request of the use of published and unpublished, own and licensed proprietary rights and industrial property protection applications in the delivery item.

13.7. The principles in Section 7 number 1 for limiting liability are to be applied.

14. Use of Buyer's manufacturing aids, confidential information or documentation

14.1. Models, templates, drawings, mouldings, samples, tools and other manufacturing aids, likewise confidential information, which the Buyer makes available to the supplier or are fully paid for by him are only allowed to be used for third party production with previous written consent. In as far as this incomplete list of manufacturing aids or other property loaned to the supplier is to remain the property of the Buyer; it has to be clearly identified as the Buyer's. They are to be carefully handled by the supplier and maintained and sufficiently insured at his cost. The supplier shall inform the Buyer immediately of any damage to the manufacturing aids. The supplier shall use these manufacturing aids and objects solely for the manufacturing of orders and only for third parties with the previous written consent of the Buyer. If the sole property of the Buyer ceases to exist due to assembly, mixing or processing, the Buyer will become the sole owner of the new item, as the assembly, mixing or processing was carried out for the Buyer. The named objects are to be returned to the Buyer immediately and at all times on demand. Copies may only be made with express previous written consent.

14.2. Process descriptions, drawings, designs, models, tools and similar which were manufactured according to the Buyer's instructions, become his property. The transfer will be replaced by the supplier keeping custody of the items free of charge for the Buyer. The supplier has to insure at his cost the manufactured items against fire and theft etc for the time

the items are in his custody. The supplier shall at the request of the buyer provide proof of insurance.

14.3. With contravention the Buyer has the right to damages or alternatively immediate withdrawal from the contract.

15. Further Provisions

15.1. When determining the amount of damages to be insured against to be taken into consideration are Sections 7, 11, 12 and 13, the commercial circumstances of the supplier, the type, scope and duration of the business partnership, the amount of damages expected, any causation by the Buyer to § 254 BGB and a problematic location of the parts in favour of the supplier. In particular, the replacements, costs and expenditure which have to be paid by the supplier must be in a reasonable relationship to the value of the parts.

15.2. Persons who are operative in the fulfilling of the supplier's obligations in the Buyer's factory are subject to the provisions of the Buyer's factory regulations and the Buyer's health and safety regulations. Dangerous goods are only allowed to be used in the Buyer's factory in agreement with the Buyer's specialist staff. Dangerous goods must be clearly identifiable as such.

15.3. If a contract partner stops payment or insolvency proceedings are started against his assets or an out-of-court reorganisation is filed, the other partner is entitled to withdraw from the part of the contract not performed.

15.4. The laws of the Federal Republic of Germany shall apply excluding the law of conflicts and the UN convention on contract for the international sale of goods, in as far as there is no other agreement between the parties.

15.5. The place of jurisdiction is the registered office of the plaintiff or another court having jurisdiction.

15.6. Should a provision of these Conditions and the agreement made be or become invalid; the validity of the remaining contract shall not be affected. The contract partners are obligated to replace the invalid provision with a provision that comes as close as possible commercially possible.