

Purchasing Terms and Conditions Pass GmbH & Co. KG / Pass Purchasing and Trading GmbH & Co. KG

1. DETERMINING CONDITIONS

The legal relationship between supplier and Pass GmbH & Co. KG, Schwelm (hereinafter "Pass") shall be determined by the following conditions and any additional terms agreed between the contracting parties, unless otherwise agreed between the parties. Changes and amendments to these conditions have to be made in writing. Any other general terms and conditions shall not be applicable, even if they were not rejected explicitly in any individual case.

2. ORDERS

- 2.1 Supply contracts (order and acceptance of such order) and delivery releases as well as any changes and amendments thereof have to be made in writing. Delivery releases may also be issued by email or telecommunication.
- 2.2 In case the supplier does not accept the order within five working days of its receipt, Pass shall have the right to revoke such order. Any delivery releases shall become binding if the supplier does not reject such material release within five working days of its receipt.
- 2.3 To the extent it is reasonably acceptable to the supplier, Pass may demand changes to be made to the goods relating to design and process. In this case the consequences, especially with respect to additional costs or reduction of costs, as well as with respect to delivery dates, are to be resolved in an appropriate and mutually agreeable manner.
- 2.4 The basis for any supply contracts shall be the understanding that the supplier will be competitive in terms of price, quality, ability to innovate and security of supply. Certificated suppliers in environmental, quality, energy and data security will be preferred.

3. PAYMENT, INVOICE AND DELIVERY NOTE

- 3.1 Payment is to be made by bank transfer or by check.
- 3.2 In case of premature delivery, payment will be due in accordance with the agreed delivery date. In case of a not agreed partial delivery the due date for the entire delivery shall be determined based on the date of the last part of the delivery.
- 3.3 In case of defective or deficient deliveries, Pass shall be entitled to withhold payment pro rata to the value until the defective goods have been replaced.
- 3.4 Without previous written consent, which shall not be unreasonably withheld, the supplier shall not be entitled to assign his receivables against Pass to third parties or to have such receivables collected by third parties. In the event of an extended retention of title, agreement to resale is assumed to have been given. If the supplier assigns his receivables against Pass contrary to the first sentence of this paragraph 4 to a third party without the consent of Pass, the assignment remains valid. Regardless of the assignment, Pass may choose whether payment with full discharging effect is made to the supplier or the third party.

4. NOTIFICATION OF DEFICIENCIES

If Pass is legally obliged to investigate deliveries and to complain about defects (§ 377 HGB), this obligation is limited to externally recognizable transport damage, to discrepancy in identity and quantity as well as to other obvious defects. Pass will notify the supplier of obvious defects within one week after delivery, all other defects within one week after their discovery. There are no further duties of inspection or objection.

5. CONFIDENTIALITY

- 5.1 The contracting parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are public.
- 5.2 Tools and any other manufacturing equipment owned by or paid for by Pass or customers/end customers of Pass, models, patterns, samples, drawings, sketches and construction data and similar objects shall not be made available or otherwise be made accessible to unauthorized third parties. Reproduction of such objects is permitted only according to business requirements or in compliance with the laws on copyright.
- 5.3 Sub-suppliers shall be made to commit themselves accordingly.
- 5.4 To the extent Pass separately or by way of an apportionment to the parts price remunerates developments services provided for by the supplier, the supplier grants to Pass, unless otherwise agreed, a non-exclusive, transferrable, unlimited in terms of time, location or scope, irrevocable, free of charge right to use, change, process and disseminate in any way any development results in connection with the development or supply to Pass which are protected by copyright.
- 5.5 Each contracting party may use the established business relationship for advertising purposes only after having obtained previous written consent from the other party.

6. DELIVERY DATES AND TIME LIMITS

Agreed delivery dates and time limits are binding. Compliance with such dates or time limits shall be determined by the day of arrival of the goods to be supplied at Pass. Unless "ex works" has been agreed, the supplier shall make the goods available in time taking into consideration the time usually necessary for loading and shipment.

7. FORCE MAJEURE

In case of Act of God, war, civil commotion and other non-foreseeable, inescapable and serious events the contracting parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable in case the contracting party concerned is already in default. The contracting parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

8. QUALITY AND DOCUMENTATION

- 8.1 Concerning his deliveries the supplier shall comply with the acknowledged standards of engineering, the safety regulations and the agreed technical data. Changes to the goods to be delivered including any change of the production site or a sub-supplier are subject to the previous written consent of Pass. Concerning the first sample inspection the AIAG manual PPAP (Production Part Approval Process) or, alternatively, after prior written consent of Pass, the VDA-publication "Sicherung der Qualität von Lieferungen - Lieferantenauswahl/Produktionsprozess - und Produktfreigabe/Qualitätsleistung in der Serie", in the latest respective version has to be observed. Notwithstanding the afore-stated the supplier shall permanently control the quality of the goods delivered. The contracting parties shall inform each other of any possibility to improve the quality of the goods to be delivered.
- 8.2 In the event the kind and extent of testing, as well as the instruments and testing methods, are not agreed between the supplier and Pass, Pass shall, if the supplier so desires, agree to discuss the testing with the supplier pursuant to his know-how, experiences and possibilities in order to find out the requisite state of testing techniques.
- 8.3 In addition, the supplier shall keep quality records for all products which specify when, in what manner and by whom the defect-free production of the goods has been ensured. These records have to be kept for 15 years and have to be presented to Pass upon request. The supplier is required to obligate any sub-suppliers to the same extent if legally possible. The VDA publication "Nachweisführung - Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen", in the latest respective version has to be observed.
- 8.4 In the event any authorities responsible for vehicle safety, emissions standards and the like, demand inspection of the manufacturing process and disclosure of the test records of Pass, to scrutinize certain requirements, the supplier shall, upon request of Pass, concede to such authorities the rights which they have with regard to Pass and provide them with the support which may reasonably be expected.

9. WARRANTY

- 9.1 In case of delivery of defective goods Pass is entitled, provided that the relevant statutory requirements are met and unless otherwise agreed upon, to *inter alia* claim the following:
 - (a) Before start of production (processing or fitting) the supplier shall first be given the opportunity by Pass to sort out as well as rework or replace them unless this can reasonably be expected from Pass. In case the supplier is unable to accomplish the afore-stated or in case he does not conform with it without undue delay, Pass is entitled to rescind the contract to this extent and return the goods at the supplier's risk. In urgent cases Pass may accomplish the rework himself or have it done by a third party. Any costs resulting therefrom shall be borne by the supplier. In the case the same goods are repeatedly supplied in a defective condition, Pass shall be entitled to rescind the contract also with respect to the goods not yet supplied if, particularly upon written notification, the supplier has again delivered defective goods.
 - (b) In the event the defect is discovered only after start of production, despite observation of the duty of inspection and objection, Pass is entitled, in particular,
 - (i) according to § 439 para. 1, 3 and 4 BGB to claim supplementary performance and indemnification for cost of transport as well as cost of repair, dismantling and installation (its own as well as third party cost of labor; cost of material) relating to the supplementary performance, provided that Pass is within industry standards entitled to establish and prove the specific amount of its claim by submitting its end-customer's lump sum calculation allocating to Pass a portion of the end customer's field failure costs, or
 - (ii) to reduce the purchase price.
 - 9.2 At this request the parts to be replaced shall be made available by Pass immediately to the supplier at his own cost. In case the parts to be replaced are in the possession of a customer of Pass, this obligation is deemed to be fulfilled once Pass has assigned in writing to the supplier its respective claim against the customer for surrender of the parts in question. Pass is entitled to waive its right vis-à-vis its customers to demand surrender of defective parts within industry standards or to give its consent to the scrapping of such parts, to the extent that (i) the latter is reasonable taking into account the cost which would be incurred by shipping the defective products and (ii) the supplier has not demanded the handing over of the parts prior to them being scrapped.
 - 9.3 The warranty expires at the end of 48 months after the first vehicle registration or the installation of the replacement part, at the latest, however, 30 months after delivery to Pass. § 438 para. 3 German Civil Code ("BGB") remains unaffected.
 - 9.4 To the extent that Pass has with regard to the parts granted longer statute of limitation warranty periods to its customers within industry standards, these shall apply respectively.
 - 9.5 A warranty claim does not arise if the defect of deficiency is solely attributable to the non-observance by Pass of operation, service or installation instructions, inappropriate or unsuitable use, incorrect or careless treatment, normal wear and tear as well as to improper tampering with the supplied good on the part of Pass or a third party.
 - 9.6 Pass notes that supplied goods may be resold to affiliates of Pass and/or transported by Pass to foreign locations (China, Mexico, etc.) following delivery to Pass.
 - 9.7 All other statutory or contractual rights of Pass remain unaffected by this Section 9, in particular but without limitation rights of Pass pursuant to the Product Liability Act (Produkthaftungsgesetz) the civil law of torts (unerlaubte Handlungen), §§ 478 et seq. BGB and the institute of actions performed without a mandate (Geschäftsführung ohne Auftrag).

10. LIABILITY

Insofar as for the parties have not agreed otherwise, the supplier shall be liable for damage directly or indirectly caused to Pass as a result of defective supply, violation of official safety regulations or for any other legal reason, attributable to the supplier only according to the following.

- 10.1 A liability for compensation does, in general, only exist in case the supplier was at fault when causing the damage.
- 10.2 In case Pass is liable under law, without any fault on his part, which liability cannot be excluded with regard to third party claimants, then the supplier shall hold Pass free and harmless of any claim to the extent he would himself be liable directly. Compensation between Pass and supplier shall be settled by applying the principles of § 254 BGB correspondingly.
- 10.3 Any liability shall be excluded to the extent Pass has on his part effectively excluded any liability.
- 10.4 Any claims of Pass shall be excluded inasmuch as the damage is caused by the non-observance, attributable to Pass, of operating, service and installation instructions, to unsuitable or inappropriate use, to incorrect or careless treatment, normal wear and tear or incorrect repair.
- 10.5 As far as he is legally bound the supplier shall be liable for compensation with regard to actions which Pass or its customers undertake to avoid any damage (for instance recall actions) to the extent that these actions were caused by the defects of the goods supplied by the supplier or any other breach of duty of the supplier.
- 10.6 If Pass intends to assert a claim against the supplier according to the aforementioned provisions, Pass shall inform and consult the supplier. If possible, Pass shall give the supplier the opportunity to investigate the damage occurred. The contracting parties shall agree upon the steps to be taken, especially in the case of negotiations for a settlement.
- 10.7 All other statutory or contractual rights of Pass remain unaffected by the provisions of this Section 10.

11. INDUSTRIAL PROPERTY RIGHTS

- 11.1 The Supplier shall be liable for any claim which, by the use of goods according to the terms of the contract, result from the infringement of industrial property rights, either granted or applied for (industrial property rights), if at least one of such industrial property rights of the same industrial property rights family being published either in the supplier's mother country, by the European Patent Office or in either the Federal Republic of Germany, France, Great Britain, Austria or the United States of America.
- 11.2 The supplier shall hold Pass and its customers free and harmless of all liabilities resulting from making use of such industrial property rights.
- 11.3 The contracting parties commit themselves to inform each other on all risks of violation or alleged violations and to give each other the opportunity to jointly oppose such claims.
- 11.4 At the request of Pass the supplier shall inform Pass about the use of any published or unpublished industrial property rights which are owned by him or licensed to him relating to the goods to be delivered.

12. USE OF PRODUCTION DEVICES AND CONFIDENTIAL INFORMATION MADE AVAILABLE BY PASS

Models, matrixes, patterns, samples, drawings, sketches, tools and other manufacturing devices as well as confidential information and construction data provided to the supplier by Pass or paid for by Pass in full, may be used for deliveries to third parties only after having obtained the previous written consent of Pass.

13. RETENTION OF TITLE

Title to delivered goods is transferred upon complete payment of the respective individual delivery to Pass. Extended and expanded retention of title (verlängerter oder erweiterter Eigentumsvorbehalt) by the supplier are excluded. Pass is entitled to process and resell goods, as agreed.

14. GENERAL PROVISIONS

- 14.1 In the event one of the contracting parties ceases payment, or insolvency or non-judicial settlement proceedings are applied for, then the other party shall be entitled to rescind the contract with respect to the part not yet fulfilled.
- 14.2 Should one of the provisions of these conditions or of any additional stipulations agreed upon be or become invalid then the validity of the remaining part of these conditions shall not be affected thereby. The contracting parties are committed to replace the invalid provision by another – with respect to the commercial effect - equivalent provision, in so far as this is possible.
- 14.3 If the parties have not agreed otherwise the laws of the Federal Republic of Germany shall exclusively apply. The application of the Convention of the United Nations of April 11, 1980 on Contracts International Sale of Goods is hereby excluded.
- 14.4 Place of performance shall be the legal domicile of Pass. Concerning the shipments the parties may agree otherwise.
- 14.5 The courts of Hagen, Germany shall have exclusive jurisdiction for any disputes deriving from or in connection with this contractual relationship. In addition, Pass is entitled to take legal action at the supplier's registered or business seat.

Pass GmbH & Co. KG / Pass Purchasing and Trading GmbH & Co. KG
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