

§ 1 SCOPE, GENERAL PROVISIONS

1. Unless explicitly otherwise agreed from time to time all of TECMOTIVE'S orders are being made solely according to these terms and conditions of purchase. The Supplier's terms and conditions of sale, which deviate in content, shall not become part of the contract even if TECMOTIVE does not explicitly object to them in each individual case. Changes, amendments and other subsidiary agreements must be made in writing.
2. The Supplier shall deliver goods and provide its services in full accordance with the agreed specifications, drawings, descriptions and other documents.
3. The Supplier shall provide its services by applying a quality management system that meets at least the requirements of ISO EN 9001.
4. More extensive obligations from an eventual Quality Assurance Agreement shall remain unaffected.

§ 2 ORDERS

1. Orders shall not become legally binding until they have been placed in writing or text form. Orders placed orally and subsequent amendments shall only be effective if they have been confirmed by TECMOTIVE in writing or in text form.
2. The Supplier must confirm individual orders in writing immediately after their receipt.
3. If the Supplier ought to know on the basis of its expertise that an order placed by TECMOTIVE is incomplete or that the purpose pursued by TECMOTIVE with the ordered products cannot be fulfilled, the Supplier must inform TECMOTIVE thereof promptly.
4. Unless otherwise stipulated TECMOTIVE shall abide by an order for 10 working days.

§ 3 DELIVERY, TIME OF DELIVERY

1. All delivery dates the parties have agreed upon – or in the absence of such agreement – as set out in the order shall be binding.
2. The Supplier has to immediately inform TECMOTIVE of any delays as soon as they are foreseeable.
3. Unless otherwise agreed in writing, all deliveries are DDP by the Supplier to the delivery address indicated in the purchase order (INCOTERMS 2010).
4. A delivery note for TECMOTIVE shall be enclosed to each delivery.

§ 4 CERTIFICATE OF ORIGIN

1. The Supplier shall provide TECMOTIVE prior to the delivery of products, with a legally binding Suppliers' Declaration in accordance with the current EC-Regulation and to immediately inform TECMOTIVE of any changes of the origin of the delivered products. The Supplier shall be liable for any and all damages that result from an improper or delayed submission of the Suppliers' Declaration.

§ 5 PAYMENTS, PAYMENT CONDITIONS

1. If not agreed otherwise the following payment conditions shall apply: 10 days less 4 per cent cash discount, 30 days less 2 per cent cash discount, for the rest 45 days net from receipt of both, the delivery suitable for performance and the invoice. Payment shall be made by the means of payment of TECMOTIVE'S choice.
2. Only the actual quantity. TECMOTIVE has taken delivery of shall be payable in each case. The weight as determined from the weighing slips of the calibrated scales at the agreed receiving location shall be decisive.
3. Notwithstanding the existing provisions is TECMOTIVE shall be entitled in the event of defective delivery to retain payment equivalent to the value of missing or defective goods until the order has been properly completed.

4. The Supplier is not entitled to assign any claims it may have against TECMOTIVE to third parties or to allow third parties to collect amounts due from these claims without first seeking the prior written consent of TECMOTIVE. Such consent may not be unreasonably withheld. If the Supplier is supplied by its own suppliers subject to an extended retention of title ("verlängerter Eigentumsvorbehalt") TECMOTIVE's consent to the assignment to the Supplier's sub-suppliers shall be deemed to having been granted. Should the Supplier assign its claims against TECMOTIVE to third parties contrary to the above provision without having obtained TECMOTIVE's prior written consent, the assignment shall nonetheless be effective. TECMOTIVE may, however, at its own choice effect the payment with discharging effect either to the Supplier or the third party.

§ 6 CONFIDENTIALITY

1. Drawings, drafts, samples, manufacturer's instructions and tools and other Information that is not publicly available, handed over to the Supplier for submitting a quotation, for executing an order or otherwise for cooperation purposes, shall remain TECMOTIVE's property and shall not be used for other purposes, reproduced, or made available to third parties.
2. Supplier must not advertise, publish or disclose to any third party other than to Seller's professional advisors on a confidential and need-to-know basis in any manner the fact that Seller has contracted to furnish TECMOTIVE with Supplies or any terms of business or prices, or use any of TECMOTIVE's trademarks or trade names in any press release, advertising or promotional materials and on its website without having obtained TECMOTIVE's prior written consent.
3. The Supplier must not offer to or manufacture for third parties or make available to third parties samples of products, the Supplier manufactures in accordance with plans, drawings or other specifications provided by TECMOTIVE and using know-how that is not publicly available and that TECMOTIVE has made available for this purpose.

§ 7 SOCIAL RESPONSIBILITY, PROTECTION OF THE ENVIRONMENT, REACH

1. The Supplier shall comply with all applicable laws and regulations.
2. The Supplier shall set up and further develop a management system in accordance with ISO 14001 wherever possible.
3. In particular Supplier shall safeguard that it or its subcontractors pre-register all substances for use in products delivered to TECMOTIVE that are to be registered according to the REACH directive and registered timely for the purported use.
4. Supplier warrants that neither it nor any of its subcontractors shall engage in abusive employment or corrupt business practices, in the supply of goods or provision of services to TECMOTIVE.
5. The supplier is obligated to comply with the relevant anti terrorist regulations of the European Union, UNO or Germany, and control all transactions concerning TECMOTIVE with regard to these provisions.
6. At TECMOTIVE's request, Supplier shall certify in writing its compliance with the foregoing.

§ 8 CHANGES TO SPECIFICATIONS AND MANUFACTURING PROCESS

1. The Supplier shall inform TECMOTIVE as soon as possible, at the latest however 3 months before its introduction, of any intended technical changes to products that the Supplier has undertaken to provide TECMOTIVE with according to a framework agreement or based on any other long-term delivery obligation.
2. The supply of products that have been subject to technical changes requires in every case the explicit written approval of TECMOTIVE.
3. The same shall apply accordingly to substantial changes in the Supplier's manufacturing process.

§ 9 DEFAULT

1. If the Supplier does not meet the delivery dates specified according to Article IV the Supplier shall be obliged to indemnify TECMOTIVE in accordance to Sec. 280 para.2, 286, 288 BGB (German Civil Code) for any damage caused by the delayed delivery, unless the Supplier can prove that it is not legally responsible for the delay. It is not necessary that TECMOTIVE gives the Supplier a warning. If in default the Supplier is liable for performance in the case of chance as well, unless he can prove that the damage would have occurred even if performance had been made in good time.
2. If the Supplier failed to deliver within a grace period set by TECMOTIVE, or if TECMOTIVE is no longer interested in the delivery at a later date, TECMOTIVE shall be entitled to cancel the respective order and to demand compensation in lieu of performance. Any of TECMOTIVE's eventual claims to compensation for damage caused by the Supplier's default shall remain unaffected.
3. If it is agreed that in respect of a delivery time is of the essence, TECMOTIVE's right to demand delivery shall only lapse if TECMOTIVE does not demand delivery within a period of 15 working days from the delivery date.
4. If the Supplier repeatedly is in default of delivery, TECMOTIVE shall be entitled, after having issued at no avail a formal warning to the supplier, to cancel with immediate effect any purchase orders which at that time have not yet been performed.

§ 10 OBLIGATION TO NOTIFY ABOUT DEFECTS, NOTICE OF DEFECTS

1. TECMOTIVE will promptly notify the Supplier of any defects of the delivered products, as soon as they are discovered within the course of a proper business procedure.
2. TECMOTIVE's incoming inspection is limited to a check of identity, quantity and a visual inspection of the transport packaging with regard to damages during shipment that are visible without unboxing. The identification check may be based on an inspection of the delivery documents. Defects that are not detectable in the course of the incoming inspection are usually only discovered in the course of further processing. The Supplier waives insofar any objections on the basis of late notice of defects.

§ 11 LIABILITY FOR DEFECTS

1. The Supplier warrants that the Products are free of defects and are in compliance with the agreed specifications and the generally accepted requirements followed by the members of the industry ("anerkannte Regeln der Technik") have been complied with. Neither TECMOTIVE's approval of any specifications, drawings, calculations or other documents the Supplier may produce nor opinions or recommendations given by TECMOTIVE shall affect the Supplier's sole responsibility for the products being free of defects.
2. If defective products are supplied, TECMOTIVE shall be entitled to demand immediate cure at TECMOTIVE's discretion by either delivery of a replacement or rectification of the defective delivery.
3. If the defective delivery results in increased costs on TECMOTIVE's side that are necessary for meeting TECMOTIVE's own delivery deadlines (e.g. for sorting, special transports, etc.), Supplier shall indemnify TECMOTIVE for such costs.
4. If the Supplier fails to cure the defective delivery within a reasonable period of time or stipulated by TECMOTIVE, TECMOTIVE shall be entitled to cancel the order and return the products to the Supplier at the Supplier's risk and cost or to reduce the purchase price. In addition, TECMOTIVE shall have the right to compensation for damages. It shall not be necessary for TECMOTIVE to specify a period of time if it is practically or economically impossible to cure the defects. A rectification is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances leads to a different conclusion.
5. In urgent cases TECMOTIVE shall be entitled, where feasible after prior notice to the Supplier, to carry out rectification of defects on its own or to let it be carried out by third parties and to procure a replacement delivery free of defects from third parties in order to

meet its own supply obligations. The Supplier shall carry the necessary appropriate and evidenced costs thereof.

6. Should a defect only be discovered after further processing of the Products despite observance of the known provisions of these terms and conditions of purchase, the Supplier shall be obliged to bear all the costs in connection with the exchange or rectification of defective Products, in particular the costs of inspection, transportation, labor and material, regardless of whether these costs are incurred at the Supplier, at TECMOTIVE or at third parties. These costs shall also include all costs of any exchange or repair of products into which TECMOTIVE has fitted defective Products.
7. Should an epidemic defect make it necessary to replace a whole series of Products or TECMOTIVE products into which the Products have been assembled, for instance because an analysis of defects in each individual case is not economical, not possible or not reasonable, the Supplier must also bear the abovementioned costs also to the part of the affected series that does not show any technical defects.
8. Unless the parties have explicitly stipulated otherwise in writing, TECMOTIVE's claims arising from liability for defects shall be time barred after a period of 24 months after delivery to TECMOTIVE. TECMOTIVE's claims to reimbursement of expenses against the Supplier for a defect in a newly manufactured product sold by TECMOTIVE in which products supplied by the Supplier were used or in which a Supplier's Product was fitted shall become time-barred, however, at the earliest two months after the date on which TECMOTIVE satisfies the claims of its customer.
9. Unless otherwise provided in the preceding provisions the liability for defects shall be governed by the applicable statutory regulations.

§ 12 LIABILITY

1. The Supplier shall be liable in full for any and all damages resulting from a culpable (negligence, gross negligence and purpose) breach of its contractual or statutory obligations vis-à-vis TECMOTIVE within the limits of statutory Law.
2. If TECMOTIVE is obliged to settle third party claims for damages resulting from the Supplier's breach of its obligations, TECMOTIVE shall be entitled to recover its respective costs in full from the Supplier and Supplier shall be obliged to exempt TECMOTIVE from such obligations.
3. Notwithstanding further reaching rights of TECMOTIVE the Supplier shall be obliged to exempt TECMOTIVE, upon its initial request, from claims for compensation for damages asserted by third parties, to the extent that the cause is located within its sphere of authority and organizational area, and it is individually liable to third parties. In this context, the Supplier shall also be obliged to reimburse any expenditure resulting from, or in connection with a recall campaign conducted by TECMOTIVE. TECMOTIVE shall inform the Supplier of the content and extent of the recall measures to be carried out - insofar as this is possible and feasible - and give the Supplier the opportunity to comment. Any further claims of TECMOTIVE shall remain unaffected by the foregoing.
4. The Supplier undertakes to maintain a sufficient product liability insurance policy with insurance coverage appropriate for the risks resulting from the intended use of the delivered products that is known to the Supplier or of which TECMOTIVE has informed the Supplier.

§ 13 INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, RIGHTS TO INVENTIONS

1. The Supplier shall be responsible for ensuring that protective rights of third parties are not infringed in connection with the delivery. Should, in connection with the delivered products, TECMOTIVE be held liable for infringing protective rights of third parties, the Supplier shall be obliged to exempt TECMOTIVE from any such claims. The Supplier's indemnification obligation shall also include all expenses that TECMOTIVE may thereby have necessarily incurred connection with the claim asserted by a third party. TECMOTIVE shall inform the Supplier immediately of any claim asserted by third parties.

Insofar as the Supplier has indemnified TECMOTIVE or exempted TECMOTIVE from its liability, the Supplier shall be entitled, at its own sole discretion, to take appropriate measures to take up legal defense against the third party or for obtaining the necessary rights of use. All statutory claims of TECMOTIVE, particularly claims for compensation, shall remain unaffected thereby.

2. The liability is not applicable if the Supplier has manufactured the Product pursuant to mandatory instructions from TECMOTIVE.
3. If TECMOTIVE has contributed to the development of the delivered products - notwithstanding any further-reaching rights - TECMOTIVE shall be entitled to the non-exclusive right of use for all purposes, unrestricted in time and geographically and including the right to sublicense the inventions used in the products or the intellectual property pertaining to such inventions.

§ 14 SET-OFF, RETENTION, ASSIGNMENT

1. TECMOTIVE shall be entitled to rights of setoff and retention to the extent provided by law. The Supplier shall only be entitled to set-off with own claims if these have been established as final and absolute, are legally uncontested or have been acknowledged by TECMOTIVE. The Supplier shall only be entitled to exercise a right of retention insofar as his counterclaim arises from the same contractual relationship.
2. Supplier may not, without TECMOTIVE's prior written consent assign or delegate (including without limitation by subcontract) its obligations under the order. In the event of any assignment or delegation (including without limitation subcontract) authorized by TECMOTIVE Supplier shall retain all responsibility for supplies, including all related warranties, guarantees and other claims, unless otherwise expressly agreed in writing by TECMOTIVE.
3. If the Supplier assigns own claims against TECMOTIVE to a third party, TECMOTIVE's payments to Supplier shall still have discharging effect unless the Supplier informed TECMOTIVE of the assignment and assignee in writing or the assignee has provided TECMOTIVE with evidence of the assignment.

§ 15 FINAL PROVISIONS

1. Should any provision of these terms and conditions of purchase be or become void or unenforceable, the validity of the remaining provisions shall not be affected.
2. The place of performance shall be the registered office of TECMOTIVE or -if different - the location TECMOTIVE designates for receiving the goods.
3. For this contractual relationship and all disputes arising there from or in connection therewith, German substantive Law shall be applicable with the exclusion of the uniform United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. The exclusive place of jurisdiction for all disputes from or in connection with any order, delivery or other transaction under or in connection with these terms and conditions of purchase shall be Wuppertal. However, TECMOTIVE shall also be entitled to file legal action at the court having jurisdiction for the principle place of business of the Supplier.