



PORSCHE

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Terms and Conditions of Purchase for Special Equipment
Status 08/2022

1. **Scope of application**
- 1.1 Tools, tool elements, moulds, gauges, measuring and testing equipment, templates, models, stencils and other production equipment which are necessary for the manufacture of specific components produced for Dr. Ing. h.c. F. Porsche Aktiengesellschaft (hereinafter: "Porsche") are classed as "special equipment" within the meaning of these Terms and Conditions of Purchase for Special Equipment (hereinafter: "Terms and Conditions"). The placement of orders, manufacture, use, maintenance and care as well as the new acquisition of such special equipment, the rights to such special equipment and the right to dispose of the same are governed exclusively in accordance with these Terms and Conditions and additionally in accordance with Porsche's Terms and Conditions of Purchase for Production Material.
- 1.2 The Contractor's General Terms and Conditions shall not apply, even if they have not been expressly rejected in specific cases.
- 1.3 A basic distinction is made between three types of special equipment:
 - Serial tools from EUR 1,000.01 net (hereinafter: "Serial Tools")
 - Serial tools up to EUR 1,000.00 net (hereinafter: "Pool Tools")
 - Non-serial tools (hereinafter: "Other Tools")Serial Tools and Pool Tools are special equipment used for a serial production of components (including tools for spare parts, Classic, Motorsport road vehicles, "large volume" and "small volume" customer race cars and serial backup tools (*Serienabsicherungswerkzeuge*)). Other Tools are special equipment that are not used for a serial production of components (e.g. prototype tools, testing and concept tools, tools for works racing and backup tools (*Absicherungswerkzeuge*) for non-serial components).
2. **Ownership and possession of the special equipment and design data**
- 2.1 The Contractor herewith transfers ownership of the special equipment to Porsche. Porsche herewith accepts such assignment, subject to the condition precedent that full payment of the agreed remuneration has been made. The Contracting Parties agree that Porsche has sole ownership of the special equipment. The Contractor will store the special equipment for Porsche free of charge and will use it exclusively in accordance with these Terms and Conditions. The Contractor informs its lessors in verifiable form that the special equipment located on the business premises of the lessors is owned by Porsche, and also demands such obligation from any subcontractors.
- 2.2 If, in accordance with section 9.1, the special equipment is located with a subcontractor, the Contractor herewith cedes its claim for return of the special equipment from the subcontractor to Porsche. Porsche herewith accepts the cession. The Contractor must ensure that it is able to demand the return of the special equipment from the subcontractor at any time.
- 2.3 If the Contractor is not the manufacturer of the special equipment, the Contractor herewith assigns all expectancy rights to the special equipment to which it is entitled to Porsche. Porsche herewith accepts this assignment, subject to the condition precedent that full payment of the agreed remuneration has been made.
- 2.4 At the request of Porsche, the Contractor must inform Porsche in writing without undue delay whether the special equipment was supplied by the manufacturer with reservation of title and what payments the Contractor has previously made to the manufacturer. The Contractor must provide Porsche with copies of all relevant documents free of charge.
- 2.5 In any contract with the manufacturer, the Contractor must agree a right of subrogation in favour of Porsche. In addition, the Contractor hereby assigns its claims for return against the manufacturer to Porsche. Porsche hereby accepts the assignment. Irrespective of this, the Contracting Parties agree that Porsche is entitled to make direct payment to the manufacturer with the effect of discharging its obligations to the Contractor.
- 2.6 The Contractor's right to possession and usage of the special equipment ends automatically with the end of the supply contract for the parts concerned, which are manufactured with the special equipment, and no later than the last delivery of the parts concerned, unless expressly agreed otherwise in writing. Regardless of this, Porsche is entitled to exercise its right of ownership at any time if the statutory conditions are met, and to demand return of the special equipment from the Contractor, in particular if Porsche terminates the supply contract for good cause. If Porsche exercises this right, the Contractor is obliged to return the special equipment to Porsche in the contractually agreed condition. The Contractor may only assert rights of retention on claims which are undisputed or which have been declared final and absolute by a court of law.
- 2.7 The Contractor must make plans of the special equipment that it or the manufacturer produces available to Porsche in hard copy and digital form at the latest upon full payment of the agreed remuneration for the special equipment. The Contractor grants Porsche a simple right of use to documents made available to Porsche, including the right to edit, which is unlimited with respect to territory, time and content. The right of use is settled by payment of the remuneration.
3. **Purchasing special equipment**
- 3.1 When the Contractor submits its offer, the special equipment offered must be broken down individually and must indicate the respective necessary investment costs, the place where the special equipment is manufactured and the respective future manufacturing facility where the special equipment will be used. The Contractor must inform Porsche in writing without undue delay in the event of changes to the place of manufacturing.
- 3.2 If there is a nomination agreement in place, the order of the special equipment by Porsche is binding for the Contractor.
- 3.3 In the case of Serial Tools and Pool Tools, the order serves exclusively to reserve production and material capacities in the tool shop until an approved data set is sent in accordance with section 3.4 and 3.5. If this is not sent by the deadline for the initial sample, this tool order ends automatically without further explanation being required. In this event, the Contractor will have no claims for compensation.
- 3.4 On receipt of a data set marked TOD (For Tool Design = "B-casting approval" ("B-Freigabe Guss")) the Contractor is entitled and required to start casting procurement and tool development.
- 3.5 The receipt of a data record marked TOM (For Tool Manufacture = "B-approval/ B-construction approval" ("B-Freigabe/ B-Freigabe Bau")) entitles and requires the Contractor to start tool production and – if this has not already occurred – to procure castings and develop tools.
- 3.6 For Other Tools, the contract regulates the conditions, is used for planning and preparation, and merely represents capacity reservation. Unless there is a contract which provides otherwise, the Contractor is entitled and required to start tool production and tool development for Other Tools as of receipt of the order.
- 3.7 An order must be confirmed by the Contractor in the ONB system. If the Contractor is not connected to this system, the order confirmation must be made in writing.
- 3.8 The INCOTERMS 2020 shall apply, unless explicitly agreed otherwise with the Contractor.
- 3.9 The negotiated tool costs which are used as a basis for ordering the special equipment represent in principle the maximum limit. An investment split (*Investsplit*) which shows each individual tool with its respective remuneration must be submitted upon nomination. In the case of special equipment where manufacturing costs exceed EUR 50,000 (net), the Contractor shall submit a binding investment split and a fully completed offer-cost-breakdown to the responsible procurer for special equipment at Porsche six weeks before the date of the so-called B-approval. Six weeks before the so-called invoice approval, the Contractor shall then again submit the investment split, a fully completed actual-cost-breakdown and the list of operating resources. If one or more positions are omitted from this investment split compared to the one which was submitted for B-approval, the agreed remuneration shall be reduced accordingly by these position(s). If, in addition, there are significant reductions to certain cost positions for similar reasons (e.g. tool manufacturing location changed, reduction of refinement of tool concept), the agreed remuneration shall be reduced by the appropriate proportion which is to be agreed between the Contracting Parties.
4. **Delivery Date**
- 4.1 If there is a risk that the deadline for the initial sample or for providing the most recently approved components for the pilot series dates cannot be met due to missing data, the Contractor is obliged to notify Porsche in writing in good time so that the deadlines can still be met, provided that Porsche submits the data within two weeks of notification.
5. **Marking requirements and tool documentation (including confirmation of possession)**
- 5.1 The Contractor undertakes to properly mark the special equipment made available on loan with a plate or in any other unchangeable form (e.g. by engraving or laser). The special equipment must be marked in a permanent and adequately visible manner and must contain at least the following information: (i) "Property of Dr. Ing. h.c. F. Porsche Aktiengesellschaft"; (ii) DUNS no. of Porsche: "34-140-4124"; (iii) the inventory number(s) specified by Porsche.
- 5.2 If it is not possible to mark the special equipment, the tool's storage box and/or the fixed storage location can be marked.
- 5.3 The following also applies to Serial Tools: The Contractor is obliged to document the tools using the WIN application and to document the mandatory fields specified in the system up to invoicing. In particular, digital photos of the entire special equipment and the marking according to section 5.1 or section 5.2 must be uploaded in a legible form.
- 5.4 Confirmation of the data entered in the WIN application takes place by means of confirmation of possession and is a prerequisite for payment of the invoice. The Contractor must sign the confirmation of possession and send it to Porsche in the version current at the time of invoicing in accordance with the specifications in the confirmation of possession.
- 5.5 In addition, on special request of Porsche, for tax purposes, the Contractor is obliged in each individual case to provide Porsche, by return and free of charge, with separate confirmations of possession and all other documents such as invoices, delivery note, etc., which are necessary for the purpose of reimbursing value-added tax already paid. If the Contractor fails to comply with this obligation in individual cases, Porsche reserves the right to claim for losses incurred.
- 5.6 The costs associated with marking and documentation are covered by payment of the contract value agreed in the order.
6. **Invoicing and payment**
- 6.1 Unless advance payments or payments on account have been agreed, remuneration will only be due for Serial or Pool Tools if the component is graded "1" or is ready for series production and, in the case of Serial Tools, the approved tool documentation in WIN, including confirmation of possession, is also fully and properly available to Porsche. If, in addition, a proof of serial production has been agreed with the Contractor, this also constitutes a prerequisite for the payment due date. In the case of Other Tools, remuneration will only be due when the service has been rendered and accepted in accordance with the order.
- 6.2 Invoices must be clearly designated as final, part or advance payment invoices and submitted to Porsche in a verifiable form, stating the Porsche supplier number, order number, inventory numbers, component numbers and name of the contact person, and must comply with the applicable general invoice requirements in accordance with Sections 14, 14a German VAT Act (*Umsatzsteuergesetz - UStG*) or the relevant country-specific mandatory invoice information. In addition, the invoice must state the Contractor's tax number/VAT ID that is appropriate for the place of performance, the location of the tools in the future and the expected time of performance.
- 6.3 The terms of payment result from the order. If an advance payment by Porsche has been agreed, Porsche may demand that the advance payment be made concurrently with the provision of an advance payment guarantee by a bank or insurance company that is authorised to conduct business within the EU or EEA, which is free of charge for Porsche, is unlimited, irrevocable, directly enforceable, in the amount of the sum of the advance payment including VAT as security for the advance payment to be made. The guarantee for the advance payment will be returned to the

- Contractor concurrently in the amount in which Porsche acquires ownership of the special equipment or parts thereof or otherwise gains an increase in value through performance by the Contractor.
- 6.4 All amounts stated in the contract are inclusive of any tax deductions. If Porsche is obliged pursuant to Section 50a of the German Income Tax Act (EStG) to withhold and pay withholding tax for the account of the Contractor in respect of remuneration, licence fees, payments in kind or other non-cash benefits paid or granted to the Contractor under this contract, Porsche shall be entitled to deduct the relevant amounts from the payments to be made to the Contractor. This shall apply even if it is doubtful whether the conditions for the tax deduction are fulfilled. The Contractor shall bear all withholding taxes for which it is liable. Tax will be generally deducted from the total remuneration, unless a separate apportionment is agreed in writing and the Contractor issues Porsche an invoice corresponding to this apportionment. If the withholding taxes to be withheld by Porsche exceed the payments to be made or made to the Contractor, the Contractor shall be obliged to pay the excess amount to Porsche in advance or to reimburse Porsche as soon as Porsche has requested the payment from it in writing. This shall apply mutatis mutandis to withholding taxes in connection with the granting of benefits in kind and other non-cash benefits, and in the event that the contracting parties have divided the remuneration for the purposes of tax deduction and the tax amount is subsequently adjusted. When paying out the remuneration, Porsche will only take account of any benefits under a double taxation agreement if the contracting parties have received a certificate of exemption from the Federal Central Tax Office and have presented it to Porsche before payment of the remuneration (Section 50c (2) sentence 1 no. 1 of the German Income Tax Act).
- 7. Inventory**
- 7.1 In the case of Serial Tools, the Contractor undertakes, within three years of initial documentation or the last inventory, to at its own expense perform a proper inventory of assets and to document this in the WIN application.
- 7.2 For Serial Tools that have not been subjected to an inventory or initial documentation within three years, the Contractor will receive a request from the system to perform an inventory of assets on 1 March of each year. The inventory must be completed by November, 30 at the latest. The data set must be confirmed for each Serial Tool and any deviations must be reported immediately.
- 8. Changes to special equipment**
- 8.1 If changes to the special equipment are instructed by Porsche, these Terms and Conditions will apply accordingly.
- 8.2 If the Contractor makes changes to the special equipment without Porsche having previously instructed such changes, it will compensate Porsche for resulting damages and in particular the following costs: Costs for change management, documentation, qualification and provision of samples.
- 9. Relocation, use of the special equipment at subcontractors' premises and disclosure to third parties**
- 9.1 The Contractor may only relocate the special equipment to a manufacturing facility other than the originally agreed manufacturing facility with Porsche's prior written consent. The same applies in the case of special equipment which is located at the premises of the Contractor's subcontractors.
- 9.2 In the case of Serial Tools, any change of location or relocation, subject to approval under section 9.1, must be updated without undue delay by the Contractor via the WIN application and an updated confirmation of ownership must be sent.
- 9.3 In the case of Pool Tools and Other Tools, any change of location or relocation, subject to approval under section 9.1, must be notified without undue delay by the Contractor (email: abh_werkzeuge@porsche.de). Subsequently, the Contractor must provide tool documentation on the WIN application and the Contractor must comply with and implement the processes and measures applicable to the Serial Tools in accordance with these terms and conditions for special equipment.
- 9.4 The Contractor is obliged to independently submit the declarations required under tax and customs law for any cross-border change of location or relocation and to bear the associated customs duties and import turnover tax itself. The relevant documentation regarding duties must be sent to Porsche (email: customs@porsche.de). The Contractor is also obliged to provide its finance contact person at Porsche with all evidence and documents (consignment notes, vouchers, confirmation of arrival, etc.) required under the respective local law so that Porsche does not incur any definitive charges for local VAT or any other taxation associated with the transaction as a result of the relocation process.
- 9.5 If the Contractor uses the special equipment or parts of the special equipment at one or more of its subcontractors, it must ensure by means of appropriate contractual provisions (loan contract) that the present provisions and rights of Porsche are also guaranteed in the relationship with the respective subcontractor.
- 9.6 A breach of the above obligations may result in significant tax penalties, loss of tax benefits or other disadvantages, damages and costs for Porsche (hereinafter: "Disadvantages"). If Disadvantages arise for Porsche as a result of the breach of the above obligations, the Contractor shall compensate these to the full extent, unless it is not responsible for breach of the above obligations. In particular, the Contractor must compensate Porsche for the following Disadvantages according to the above regulation: Costs for change management, documentation, qualification and provision of samples as well as any additional taxes incurred.
- 10. Maintenance, care and insurance**
- 10.1 The Contractor must handle the special equipment with care, maintaining it in a timely manner in accordance with the usual time intervals at its own expense, and must ensure for the duration of the loan at its own expense, that it is always operational and complies with the most recent drawing revisions.
- 10.2 As the hirer, the Contractor is responsible for the dimensional accuracy of the special equipment, in particular of gauges. In this context, the Contractor must assess the deviations caused by wear and tear accordingly and, if necessary, correct them at its own expense. If wear and tear exceeds the normal level, the Contractor is obliged to inform Porsche in writing without undue delay.
- 10.3 Porsche will assist the Contractor appropriately in such checking and correcting.
- 10.4 The Contractor is obliged to insure the special equipment against the risks of fire, lightning, explosion, aircraft crash and theft as well as against natural hazards at its own expense at replacement value and to maintain the insurance during the period of use.
- 10.5 The Contractor must bear any storage costs which may be incurred.
- 10.6 Porsche or a third party instructed by Porsche – after the conclusion of a confidentiality agreement – is entitled to monitor compliance with these obligations and to request evidence of the insurance
- from the Contractor at any time during the term of the loan during the Contractor's normal business and working hours at the place where the special equipment is used. Unless there are exigent circumstances or the purpose of the visit excludes it, Porsche will notify the Contractor of the visit in advance. Porsche is also entitled to a corresponding right for the purpose of inventory.
- 10.7 The Contractor will procure any new special equipment necessary as a result of wear and tear, damage and similar events. Insofar as the original special equipment was owned by Porsche, the Contractor hereby transfers ownership of the newly procured special equipment to Porsche. Porsche hereby accepts such transfer of ownership. Section 2 of these Terms and Conditions applies accordingly. The necessary investment costs will be authorised and paid separately by Porsche if an appropriate written provision has been made or is made in the individual case. The Contractor must request the necessary follow-up tools and follow-up equipment from Porsche in good time so that continuous serial production or delivery can be guaranteed at all times.
- 10.8 In the event of changes and/or wear tools the document "Tool Lifecycle Purchase" ("*Werkzeuglebenslauf Einkauf*") must be updated by the Contractor every year in December and, for components which have been specified by Porsche as "critical parts", these must also be updated in July without special request and sent to Porsche.
- 11. Right of disposal**
- 11.1 The special equipment must only be used for fulfilling Porsche's call-offs, for both serial and spare parts. Fulfilling call-offs of another group brand requires the written consent of Porsche.
- 11.2 Porsche has the right to demand the return of the special equipment from the Contractor or to instruct the Contractor with the disposal.
- 11.3 Any use by the Contractor of the special equipment owned by Porsche for manufacturing components for third parties during the term of the loan and when there is no longer a need for Porsche to produce parts for third parties requires in all cases the prior written consent of Porsche. If special equipment owned by Porsche is used for production for the Independent After Market, the Contractor undertakes to develop without undue delay a corresponding plan to safeguard Porsche after Porsche's consent for such use.
- 11.4 The Contractor is obliged to pay a contractual penalty to Porsche for each case of a breach of the prohibition set out in 11.3 unless he acted neither negligently nor intentionally. The amount of the contractual penalty shall be determined by Porsche at its reasonable discretion. In the event of a dispute, the adequacy of the penalty may be reviewed by the competent court. This shall not affect any further-reaching claims and rights which Porsche may have. Any incurred contractual penalty shall be offset against any claims for compensation.
- 11.5 If the Contractor sells components to third parties which do not differ significantly from those components which the Contractor manufactures for Porsche, the Contractor shall be responsible for proving, at Porsche's request, that these components were not manufactured using special equipment owned by Porsche.
- 11.6 Pledging, transferring by way of security or any other act of disposal by the Contractor relating to the special equipment is not permitted.
- 12. Disposal or alternative use of obsolete special equipment**
- 12.1 The Contractor is not entitled to sell, dispose of or otherwise discard the special equipment unless there is a written agreement for this purpose with Porsche.
- 12.2 If, from the Contractor's point of view, there is no longer any need for the use of special equipment, Porsche must be notified of this in writing without undue delay. In the case of Serial Tools, this must be done via the WIN system. Before disposing of or otherwise discarding obsolete special equipment, the Contractor must send Porsche a list (inventory number/material number, description, price per unit, quantity and total price). On request, the special equipment must be made available for inspection by the Contractor so that it can be identified and checked.
- 12.3 Obsolete special equipment may only be physically disposed of after the Contractor has received special instruction from Porsche in this respect. The Contractor must ensure that Porsche's specifications in the respective instruction are complied with.
- 12.4 The Contractor is obliged to provide the information requested by Porsche in the course of handling obsolete special equipment without undue delay. Expected secondary raw material revenues and costs must be notified to Porsche in writing and invoiced separately in accordance with the applicable statutory provisions.
- 12.5 If the Contractor disposes of the obsolete special equipment, the Contractor must ensure that all necessary approvals have been obtained, that the special equipment is stored, transported and disposed of properly in an environmentally-friendly manner in accordance with and in compliance with the applicable statutory regulations and that any reporting obligations are complied with. This applies accordingly with regard to storage and transport by the Contractor if Porsche carries out or commissions disposal of the obsolete special equipment. In addition, the Contractor must check and monitor in an appropriate manner the suitability and reliability of the methods of disposal and the companies commissioned by it for disposal. The Contractor must document the proper disposal of the special equipment in verifiable form and provide Porsche with appropriate proof of this without undue delay upon request.
- 13. Liability**
- 13.1 The Contractor is liable for damage incurred to the special equipment unless it is not responsible for this damage. The Contractor is responsible for intent and negligence. As a result, the Contractor is held accountable for the conduct of its employees and of any further assistants/vicarious agents it deploys. Claims by Porsche for damage to the special equipment become time-barred at the earliest within twelve months from the time of knowledge or return.
- 13.2 If damage is incurred to legally protected interests of third parties as a result of the special equipment or its use or disposal by the Contractor, or it being otherwise discarded by the Contractor, and these third parties lodge claims against Porsche arising from infringement of these legally protected interests, the Contractor must indemnify Porsche from these claims in this respect and reimburse the costs resulting from a corresponding claim by Porsche. This also includes the resulting legal costs.
- 13.3 Porsche's liability is limited to wilful intent and gross negligence.
- 14. General provisions**
- 14.1 Porsche's General Terms and Conditions of Purchase for Production Material in the currently available version also applies accordingly.
- 14.2 In the case of legitimate ownership of the special equipment by the Contractor, sections 2, 5.1, 9.1 and 11.4 do not apply. Informal itemisation is used in place of the confirmation of possession in section 5.3 and section 5.4. Section 2.6 only applies, however, to the extent that Porsche is entitled to purchase the special equipment from the Contractor, subject to the prerequisites section 2.6 being met. For this purpose, the purchase price should be based on the market value

of the special equipment at the time. Within the context of relocation, the non-applicability of section 9.1 does not absolve the Contractor from any approvals/audits of the new production facilities/processes which may be necessary in the individual case. The remaining clauses apply

14.3 accordingly taking into account the fact that the special equipment is owned by the Contractor. These Terms and Conditions are produced in German and English. In the event of contradictions and discrepancies between the German and the English version the German version shall prevail.