

Terms of Purchase for Production Material AUDI AG

Version: July 2015

The English version of these Terms of Purchase is a non-authoritative translation of the original German version, which is alone authentic, binding, and authoritative. The German version shall govern in the event of any conflict, discrepancy, or ambiguity.

1. Governing terms

The legal relationships between the supplier and the purchaser are governed by these Terms and any additional agreed terms. Amendments and additions are ineffective unless in written form (§ 126 BGB – German Civil Code). The supplier's general terms and conditions are inapplicable even if not expressly rejected in a particular instance.

2. Orders

1. Delivery contracts (order and acceptance) and delivery calls, as well as any amendments or additions thereto, are ineffective unless in written form. Delivery calls may also be effected by remote data transmission.
2. If the supplier does not accept an order within three weeks of receipt, the purchaser is entitled to revoke the order. Delivery call orders become binding at the latest two weeks after receipt if the supplier has not objected in the interim.
3. To the extent the delivery item is intended for use in a factory of VW AG, this factory will issue delivery calls and pay for the deliveries.
4. Within the limits of what is reasonable for the supplier, the purchaser may request modifications of the design and construction of the delivery item. The parties shall reach an appropriate mutual agreement regarding the consequences, in particular cost increases or decreases and delivery deadlines.

3. Payment

1. Payment is conditioned on the receipt of a reviewable invoice in proper form. Payment shall be made 30 days after receipt of the goods, services, or other performance, or 30 days after receipt of the supplier's invoice, whichever is later, by crediting the appropriate amount to the account maintained by the purchaser for the supplier. Where early delivery is accepted, the date on which payment is due is calculated with respect to the originally scheduled delivery date.

2. Payment shall be made by bank transfer or by check. The supplier will receive a payment advice stating its account balance. Discrepancies must be reported to the purchaser without delay.

3. In the event of improper delivery, the purchaser is entitled to withhold payment proportionate to value until proper performance is effected.

4. Without the purchaser's prior written consent, which shall not be unreasonably withheld, the supplier is not entitled to assign its claims against the purchaser or to have these collected by third parties. Where an extended retention of title (*verlängerter Eigentumsvorbehalt*) applies, such consent is deemed to have been given. The supplier's assignments of claims against the purchaser without its consent in contravention of sentence 1 are nonetheless valid. The purchaser may, however, at its discretion discharge its liability by payment made either to the supplier or to the third party.

4. Notice of defects

The purchaser must notify the supplier in writing of any defects in the delivered goods without delay as soon as they are discovered in the course of operation of a properly organized business. To this extent, the supplier waives the defense of late notice of defects.

5. Confidentiality

1. The contracting parties agree to treat as business secrets all commercial and technical information of which they become aware by reason of their business relationships unless such information is common knowledge.

2. Drawings, models, jigs and templates, sample parts, or similar property may not be provided or otherwise made available to unauthorized third parties. The reproduction of such property is permissible only within the limits of business requirements and copyright law.

3. Analogous obligations must be imposed on sub-suppliers.

4. The contracting parties may use their business relationship for advertising purposes only with the other party's prior written consent. Requests for such consent from AUDI AG are to be addressed to AUDI AG, Abt. I/VM-4, 85045 Ingolstadt.

6. Delivery deadlines and periods / shipping terms

Agreed delivery dates, deadlines, and time periods are binding. Whether delivery is timely is determined by receipt of the goods by the purchaser. The supplier must make the goods available on a timely basis, allowing the standard time for loading and shipping.

Shipments are to be handled according to the purchaser's instructions. The INCOTERMS govern all commercial terms.

7. Overdue delivery constituting default

1. The supplier is liable to the purchaser for damages resulting from overdue delivery constituting default (§ 286 BGB), other than damages for lost profits or by reason of interruption of the purchaser's business.

2. In cases of simple negligence, damages are limited to additional shipping charges, retrofitting costs, and, if the supplier fails to meet a final deadline extension set by the purchaser or if its performance would come too late to be of interest to the purchaser, additional expenses for replacement purchases from third parties.

8. Force majeure

Force majeure, labor disputes, civil disorder, governmental actions, and other unforeseeable and unavoidable events of major significance release the contracting parties from their performance obligations for the duration of the disturbance to the extent of the impact thereof. This applies as well where the contracting party that is affected by these events is in default because its performance is overdue when they occur.

The contracting parties are, within reasonable limits, required to provide the necessary information and to adjust their obligations to the changed circumstances in accordance with the principle of good faith dealing.

9. Quality and documentation

1. For its deliveries, the supplier shall adhere to accepted engineering standards, relevant safety requirements, and the agreed technical specifications. Modifications of the delivery item require the purchaser's prior written consent. For guidance on first sample testing, see the VDA publication "Volume 2, Quality Assurance for Supplies, Production Process and Product Approval (PPA)". The supplier may not commence production delivery until the purchaser has approved the sample parts.

Notwithstanding such approval, the supplier must continuously verify the quality of the delivery items. Each contracting party shall inform the other of quality improvement possibilities.

2. If no firm agreements exist between the supplier and the purchaser on the nature and scope of testing and inspection and the means and methods thereof, the purchaser is willing, at the supplier's request and within the limits of its own knowledge, experience, and resources, to discuss testing and inspection issues with the supplier in order to determine the level of testing and inspection technology required in each individual situation. If requested, the purchaser will also inform the supplier about the relevant safety requirements. For further information on measurement and inspection processes, see the VDA publication "Volume 5, Capability of Measurement Processes, Capability of Measuring Systems."

3. With regard to characteristics that have been specially marked or designated in the technical documents or by separate agreement, e.g. with the letter "D," the supplier must in addition keep special records showing when, in what manner, and by whom the delivery items were tested and inspected with respect to the special characteristics, and recording the results of the required quality testing. The testing and inspection documentation must be retained for at least fifteen years and provided to the purchaser when needed. To the extent legally possible, the supplier must impose corresponding obligations on its sub-suppliers. For documentation and archiving, see the VDA publication "Volume 1, Documentation and Archiving – Code of Practice for the Documentation and Archiving of Quality Requirements and Quality Records" as well as the VDA publication "A process description covering special characteristics (SC)."

4. Should any governmental agency with authority regarding vehicle safety, emissions standards, or the like wish to verify certain requirements by examining the purchaser's production processes and its testing and inspection documentation, the supplier agrees that, at the purchaser's request, it will accord such agencies with respect to itself the same rights as are enjoyed by the purchaser and will give them all reasonable support.

10. Warranty

1. Unless otherwise agreed, the purchaser may exercise the following rights in the event of delivery of defective goods, provided any preconditions established by applicable law or this section are fulfilled:

a) Before the commencement of manufacturing (processing or installation), the purchaser must first give the supplier the opportunity to sort out the defective goods and to correct the defects or to

deliver replacements, unless this would unreasonably burden the purchaser. If the supplier is unable to accomplish the above or fails to do so without delay, the purchaser may, without setting any further deadline, rescind this portion of the contract and return the goods at the supplier's risk. In urgent cases, the purchaser may itself remedy the defects after coordination with the supplier, or have a third party do so. The resulting costs shall be borne by the supplier. If the same goods are repeatedly delivered with defects, the purchaser may, after giving written notice of such breach, rescind the contract with respect to the as yet undelivered part thereof as well if another delivery of defective goods occurs.

b) If, despite compliance with the obligation under Section 4 (Notice of Defects), the defect is not discovered until after manufacturing has commenced, the purchaser may either

- require substitute performance under § 439 (1), (3), and (4) BGB and claim reimbursement of the necessary concomitant costs for transportation (but not towing charges) and for dismantling and re-installation (cost of labor; cost of materials only if agreed), or
- reduce the purchase price.

c) In the event of the culpable breach of an obligation over and above the delivery of defective goods (e.g. breach of a duty to inform, advise, or inspect), the purchaser may, in accordance with Section 11, claim compensation for the consequential damages flowing therefrom including the consequential damages paid by the purchaser to its customer by law. "Consequential damages" refers to damage suffered by the purchaser, by reason of delivery of defective goods, to legal interests other than those pertaining to the goods themselves.

By reason of delivery of defective goods, the purchaser shall have no further claims for damages or reimbursement of expenses under § 437 BGB or directly from the provisions cited therein unless such claims have been contractually agreed. In concluding new agreements of this nature, due regard shall be had to Section 15 (1).

2. Upon request, the purchaser shall without delay, and at the supplier's expense, place the parts which the supplier must replace at its disposal.

3. Warranty claims become time-barred 24 months from the time of first vehicle registration or installation as a spare part, as the case may be, or 30 months after delivery to the purchaser, whichever occurs first. Unless otherwise agreed, the statute of limitations established by law shall apply to goods delivered for commercial vehicles.

4. No warranty claim arises if the fault is attributable to the violation of operating, maintenance, and installation instructions, unsuitable or improper usage, improper or negligent handling, natural wear and tear, or alteration of the delivery item by the purchaser or third parties.

5. Where defective goods are delivered, the provisions of this Section 10 are without prejudice to any claims that the purchaser may have under product liability or tort law or under the theory of conduct of business on another's behalf without his authority (§§ 677 ff. BGB – agency without specific authorization / *negotiorum gestio*). Guarantees as to specific characteristics and durability must be expressly designated as such in writing.

11. Liability

Subject to other liability provisions contained elsewhere herein, the following terms define the limits of the supplier's liability for damages suffered directly or indirectly by the purchaser by reason of the delivery of defective products, the violation of governmental safety requirements, or any other legal grounds of supplier liability.

1. As a general matter, the supplier is only liable in damages with regard to harm it has caused if it is at fault.

2. If claims are raised against the purchaser based on no-fault liability which cannot be disclaimed with respect to third parties, the supplier shall be liable to the purchaser to the extent to which it would also be directly liable. The principles of § 254 BGB shall apply analogously regarding the adjustment of damages between the purchaser and the supplier. The same applies in the event the supplier is sued directly.

3. Liability for damages is excluded to the extent the purchaser has itself limited its own liability to its customer with legal effect. The purchaser shall attempt, in its agreements regarding such legally permissible liability limitations, to extend their protection to the supplier as well.

4. Claims by the purchaser are precluded to the extent the damage is due to acts of commission and omission attributable to the purchaser involving violations of operating, maintenance, and installation instructions, unsuitable or improper usage, improper or negligent handling, natural wear and tear, or faulty repair.

5. The supplier is liable for measures taken by the purchaser to avert damages (e.g. recall campaigns) to the extent the law so provides.

6. The purchaser will fully inform and consult with the supplier without delay in the event it intends to assert claims against the supplier based on the above provisions. It shall give the supplier the opportunity to investigate the damage situation. The contracting parties will consult with each other regarding the action to be taken, in particular regarding settlement negotiations.

7. The principles of Section 7 (1) shall apply mutatis mutandis if the supplier has no insurance coverage or insufficient coverage.

12. Industrial property rights

1. The supplier is liable for claims arising from the contractual use of the delivery items that are based on the infringement of industrial property rights and applications pending for such rights (industrial property rights), provided at least one of the rights in the family of related rights has been published by the European Patent Office or in the supplier's home country, the Federal Republic of Germany, France, Great Britain, Austria, or the United States.

2. The supplier shall indemnify the purchaser and its customers against, hold them harmless from, and procure their release from all claims from the use of such industrial property rights.

3. The above does not apply to the extent the supplier manufactured the delivery items according to drawings, models, or other equivalent descriptions or specifications provided by the purchaser and neither knows nor should have known with respect to the products it developed that industrial property rights were thereby infringed.

4. To the extent the supplier is not liable by reason of subsection 3, the purchaser shall indemnify the supplier against, hold it harmless from, and procure its release from all third party claims.

5. The contracting parties agree to inform each other without delay of potential infringement risks and alleged infringements that come to their attention and to afford each other the opportunity to cooperate in countering such claims.

6. At the purchaser's request, the supplier shall inform the purchaser of any industrial property rights, whether published or unpublished, self-owned or licensed, registered, unregistered or pending, that the supplier uses with regard to the delivery item.

7. The liability limitation principles of Section 7 (1) shall apply mutatis mutandis.

13. Use of purchaser's production aids/equipment and confidential information

Models, molds and dies, jigs and templates, sample parts, tools, and other production aids and equipment including confidential information that the purchaser provides to the supplier or pays for in full may only be used for deliveries to third parties with the purchaser's prior written consent.

14. Retention of title

The supplier retains title to all goods it delivers until completely paid for. For this purpose, all deliveries shall be deemed to constitute one continuous supply transaction. For current account deliveries, the retention of title shall be considered to secure payment of the account balance owing to the supplier. If the purchaser so joins the goods with other property that they form a whole, and if the other property constitutes the principal object, the purchaser is required to transfer proportionate joint ownership to the supplier, to the extent it has title to the principal object. If the purchaser sells the delivered goods as contemplated by the parties, it hereby assigns in advance to the supplier its accounts receivable from its customer by reason of sale together with all ancillary rights until complete satisfaction of the supplier's claims.

Where the circumstances so justify, the purchaser is upon request by the supplier required to notify the third party buyers of the assignment and to furnish the supplier with the information and documents it requires to enforce its rights.

The supplier must relinquish and release its interest in collateral to the extent the total value thereof exceeds that of the claims to be secured by more than 20 %.

15. General provisions

1. When determining the amount of the supplier's damage liability under Sections 7, 10, 11, and 12, due account shall be taken in the supplier's favor of its economic situation, the nature, scale, and duration of the business relationship, the extent of any contributory causation and/or negligence on the purchaser's part under the principles of § 254 BGB, and any particularly adverse aspects of the installed condition of the vendor part in question. In particular, a reasonable relationship must exist between the damages, costs, and expenses to be borne by the supplier and the value of the vendor part.

2. If a contracting party ceases paying its debts as they fall due or a petition is filed for commencement of an insolvency proceeding with regard to its assets or for an out-of-court arrangement or composition proceeding, the other party is entitled to rescind the as yet unperformed portion of the contract.

3. Should any provision of these Terms and the other agreements entered into be or become invalid, this shall not affect the validity of the other provisions of the contract. The contracting parties are required to replace the invalid provision with a provision that approximates the economic effect of the invalid provision as closely as possible.

4. Unless otherwise agreed, the contract shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

5. The place of performance is the purchaser's registered office (*Sitz*). A varying term may be agreed with respect to delivery.

6. Actions may be brought only in the judicial district of the plaintiff's registered office or in another court of proper venue.

Instructions for shipping documents and invoicing forms

If so agreed, settlement between the supplier and the purchaser shall be by means of credit notes issued by the purchaser (self-billing procedure). Information thereon is available from the purchaser. Unless settlement by credit notes (self billing) has been agreed, an invoice must be issued for each and every delivery note (Lieferschein). The prescribed invoicing forms must be completely filled out and must in particular quote the supplier number and the number of the delivery note.

Invoices shall not travel with the goods and shall be submitted only to Ingolstadt, except where Section 2 (3) applies, in which case only to Wolfsburg. Empties not entered on the delivery note (identification code) become the property of the purchaser free of charge.