

# General Conditions of Purchase

of the Farmingtons Automotive GmbH, Bееkebreite 18-20,  
49124 Georgsmarienhuette, Germany  
Status: 2013-06-12



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## I. Validity

1. The following general conditions of purchase shall become content of the contract made between Farmingtons Automotive GmbH (referred to hereinafter as the Purchaser) and a contracting party (referred to hereinafter as the Supplier), regardless of whether this be a purchase agreement, a contract dealing with the supply of movable things to be produced or manufactured, a contract to produce a work, or a service contract. All deliveries, performances and offers by the Supplier shall be made exclusively on the basis of these general conditions of purchase. These shall also apply to all future deliveries, performances or offers by the Supplier to the Purchaser, even if their validity is not separately agreed once more.
2. General terms and conditions of the Supplier or of third parties shall not apply, even if the Purchaser does not separately oppose their validity in individual cases. Even if the Purchaser refers to a letter that contains general terms and conditions of the Supplier or of a third party, or refers to such general terms and conditions, this shall not imply any consent to the validity of those general terms and conditions.

## II. Making and changing a contract

1. Individual contracts and framework agreements, and changes or supplements to them, shall come into being on the placing of an order or when the Purchaser states his request for a change and these are accepted or confirmed by the Supplier. In order to be effective, all statements require to be in written or text form. If an order or a request for a change is not accepted or confirmed in due form by the Supplier within one week of receiving it, the Purchaser shall be entitled to cancel the order or the request for a change. In order to be effective, such cancellation requires to be in written or text form.
2. Framework agreements may be made on the one hand as quantity or value contracts and on the other hand as delivery schedules.
  - a) When a framework agreement is made in the form of a quantity or value contract, during the contract period the Supplier must supply the quantities or values forming the subject matter of the contract to the Purchaser in response to his individual call-off orders, and specifically - unless otherwise provided for in an individual contract - within a performance deadline of five working days from the date of receipt of the respective call-off order. The Purchaser is obliged to accept and pay for the quantities or values forming the subject matter of the contract by not later than the end of the contract period.
  - b) When a framework agreement is made in the form of a scheduling agreement, during the contract period the Supplier must supply the quantities or values forming the subject matter of the contract to the Purchaser in the individual agreement releases of the Purchaser, and specifically - unless otherwise provided for in an individual contract - within a performance deadline of five working days from the date of receiving the relevant agreement release. The Purchaser shall not be obliged to stipulate agreement releases or to accept and pay for the target quantities forming the subject matter of the contract.
3. In all correspondence, the Supplier must state the Purchaser's supplier number, order number, material number and item numbers in accordance with the Purchaser's order, his call-off order or his agreement release.
4. In the event that a delivered good is manufactured, created or processed by the Supplier on the basis of a contract dealing with the supply of movable things to be produced or manufactured or a contract to produce a work made with the Purchaser, or the Supplier owes a service, the following regulations shall apply:
  - a) If it turns out during the performance of the contract that deviations from the agreed quality are necessary for technical or other reasons, the contracting parties are obliged so to notify the other contracting party immediately.
  - b) The Purchaser shall be entitled to call for changes in the due performance at any time, even after the making of the contract. The Supplier may oppose a request for a change if complying with it is unreasonable for him.
  - c) If the bases for the price of a performance provided for in the contract are changed by a request for a change, a new price that takes account of additional or reduced costs is to be agreed. Before being performed, the agreement is to be made in written or text form.
  - d) If a performance not provided for in the contract is requested by the Purchaser, the Supplier shall be entitled to special remuneration. Before beginning the performance, however, he must notify his claim to the Purchaser in written or text form. Remuneration shall be deter-

mined in accordance with the basis for the pricing of the contracted performance and the special costs of the performance requested. As far as possible, it is to be agreed in written or text form before implementation begins.

- e) If, because of the time effect of the change in the performance, compliance with the originally agreed performance deadline is not possible, or is possible only at unreasonable expenditure, the agreed performance deadline shall be invalid and the contracting parties shall be obliged to agree on a new, reasonable performance deadline that takes account of the interests of both contracting parties.

## III. Performance, delivery, acceptance, right of retention and transfer of ownership

1. The performance must be provided by the Supplier at the place of performance stated in the order. Deliveries of goods have to be "delivered duty paid" (DDP) to the delivery address stated in the order, the call-off order, or the agreement release, in accordance with Incoterms 2010.
2. Unless explicitly agreed otherwise, the Purchaser is not obliged but is entitled to accept partial, reduced or additional performances.
3. If the Supplier owes a work performance, an acceptance by the Purchaser is necessary, and the statement by the Purchaser regarding the acknowledgement of the work as being a performance in the main as stipulated in the contract requires to be in written or text form to be effective.
4. If performance deadlines are designated by the Purchaser in orders, call-off orders or agreement releases, they shall be regarded as obligatory. If the Supplier fails to meet such an agreed obligatory deadline, he is in default.
5. In the event of default in performance by the Supplier, following the fruitless expiry of a reasonable grace period, the Purchaser shall be entitled without restriction to legal claims, including the right of withdrawal and right of termination and a claim to damages instead of the performance.
6. § 376 of the HGB [Handelsgesetzbuch, Commercial Code] is waived. Any regulation to the contrary shall be applicable only if a performance deadline is explicitly designated as such in accordance with § 376 of the HGB or is expressly described with the term "fix".
7. The Supplier is obliged to notify the Purchaser immediately if he wishes to perform a service at an earlier time or cannot comply with the agreed performance deadline. The contractual and legal rights of the Purchaser on grounds of delay and default in performance shall remain unaffected.
8. Reminders from the Purchaser may be made as individual reminders or as a part of subsequent orders, call-off orders or agreement releases. In all cases, a notification of a quantified delay in performance constitutes the issue of a reminder from the Purchaser to the Supplier. In all cases, the Supplier must perform the service promptly in response to such a reminder, at the latest by the expiry of a time limit set in each individual case, otherwise at the latest by the expiry of a time limit of one week from receiving the reminder.
9. If the Supplier is in default with his performance, he must pay 0.2%, but not more than 5%, of the net order amount as a contractual penalty for each working day of his default in performance. The net order amount is to be understood as the remuneration due under the relevant contract. The assertion of legal claims on grounds of default or delay in performance shall remain unaffected by the contractual penalty. The contractual penalty shall be counted against the damages occasioned by the default in performance. The Purchaser need not claim the contractual penalty at the time of the passage of risk: he may claim it up to the time of the final payment.
10. In regard to the performances due from him, the Supplier is only entitled to a right of retention on grounds of counterclaims that are undisputed or that have been recognized by a declaratory judgment.
11. Ownership in the goods to be delivered by the Supplier is transferred to the Purchaser not later than on the complete fulfilment of the consideration due from the Purchaser. Any extended or prolonged reservation of title by the Supplier shall be excluded.

## IV. Packaging and delivery documents

1. If the Supplier must supply goods, he must pack them at his own cost properly and as is customary in the trade, and label them as specified by the Purchaser.
2. Each delivery of goods is to be accompanied by a delivery note stating the Purchaser's supplier number, order number, material number and

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item numbers in accordance with the Purchaser's order, his call-off order or his agreement release.

- The delivered good is to be provided with the CE conformity marking, and the appropriate EC declaration of conformity is to be attached to the delivery in order to document its compliance with the safety requirements for being brought into circulation in the Federal German Republic. Operating instructions and, where appropriate, installation instructions, are likewise to be attached. If the delivered good is a material or substance, the delivery is to be accompanied by processing instructions containing information for its proper processing and/or use. If the material or substance is dangerous, a preparation, or some other product defined in the Gefahrstoffverordnung [Ordinance on dangerous substances] (GefStoffV), the Supplier shall guarantee its compliance with the provisions of the GefStoffV and other relevant legal regulations. In this event, a safety data sheet as defined by § 14 of the GefStoffV shall accompany the delivery. If the Supplier has been informed that the delivered good is intended for export, he must provide a written declaration regarding the origin of the delivered good as prescribed in customs law, and must pass it promptly to the Purchaser. The Supplier shall be liable for disadvantages suffered by the Purchaser due to an incorrect or belated declaration by the Supplier.

## V. Force majeure

- In cases of force majeure, the contracting party affected by it shall be exempted from the obligation of providing the performance for the duration and to the extent of its effects. Any event not within the control of the respective contracting party due to which he is wholly or partly prevented from fulfilling his obligations, including strikes and legitimate lockouts, fire damage for which he is not responsible, floods and any other kind of operational stoppage for which he is not responsible, or official regulations, shall constitute force majeure. Supply difficulties and other impairments to the performance of an obligation of the Supplier's upstream suppliers shall only be considered to be force majeure if the upstream supplier is himself impeded in providing the performance for which he is responsible by an event defined in clauses 1 and 2 of this section V, subsection 1.
- The affected contracting party shall promptly inform the other contracting party of the occurrence of force majeure and its discontinuation.

## VI. Price, terms of payment and rendering of accounts

- The price shown in the order shall be binding. It shall be applicable in addition to the value-added tax due by law.
- In the absence of agreement otherwise, which requires to be in written or text form to be effective, the price shall include labelling, packaging, delivery and transport to the contractually agreed delivery address.
- Payment shall be made subject to the performance being carried out completely and - if it is a work performance - its acceptance and the issue of a verifiable invoice within 90 days or, at the choice of the Purchaser, within 30 days less a 3% discount.
- If the contracting parties have agreed on payment in installments, these shall be paid subject to the complete performance of the respective partial performance and - if the latter is a work performance - its partial acceptance and the issue of a verifiable invoice within 90 days or, at the choice of the Purchaser, within 30 days less a 3% discount.
- In all invoices, besides the information required under § 14 subsection 4 of the UStG [Umsatzsteuergesetz, value-added tax law], the Supplier must state the Purchaser's supplier number, order number, material number and item numbers in accordance with the Purchaser's order, his call-off order or his agreement release. If processing by the Purchaser in the ordinary course of his business is delayed because one or more of these items of information are missing or incorrect, the time limit stated in subsections 3 and 4 of this section VI shall be extended by the period of the delay.
- In the event of default in payment, the Purchaser shall owe interest on arrears amounting to five percentage points above the basic rate of interest in accordance with § 247 of the BGB [Bürgerliches Gesetzbuch, German Civil Code].

## VII. Termination

If the Supplier owes the delivery of a non-fungible movable thing that is to be produced or manufactured, or a work performance or a service, the Purchaser shall be entitled to terminate the contract in accordance with the provisions of law.

## VIII. Use of the Purchaser's production resources and confidential information, property rights, rights to operating results

- The Purchaser retains the copyright and ownership of drawings, illustrations, calculations, descriptions, documentation, reports, graphs, diagrams, pictures, films, data, data media, models, matrices, templates, samples, tools and other production resources and confidential information that the Purchaser provides to the Supplier for use. The Supplier must make known the Purchaser's copyright and rights of ownership, must carefully conserve the corresponding goods and data, must safeguard them against damage of any kind, and may only use them for the purposes of the contract. The Supplier must not make them available to third parties or disclose them, or use or copy them himself or through third parties, without the express agreement of the Purchaser. In the absence of any other agreement, each of the contracting parties shall bear half of the costs of the maintenance and repair of these goods and data. If the Supplier, his staff members or other assistants is or are responsible for damage, the Supplier alone shall make amends for it. The Supplier must promptly inform the Purchaser of all damage to the goods and data that is not merely insignificant. On request, the Supplier shall be obliged to return these goods and data to the Purchaser in proper condition, if he no longer requires them in order to fulfil the contract made with the Purchaser.
- The Purchaser is exclusively entitled to rights to the use of drawings, illustrations, calculations, descriptions, documentation, reports, graphs, diagrams, pictures, films, data, data media, models, matrices, templates, samples, tools and other production resources in connection with the performance of the contract made between the contracting parties. The Supplier shall be entitled to retain one or, if necessary, more copies of the aforementioned goods and data as evidence of the performances provided by him. The Supplier shall not be entitled to further rights, in particular a right to copy or distribute this material. Original goods and original data are to be delivered and are also to be assigned to the Purchaser if this is legally possible.
- The Purchaser shall become the owner of all documents delivered by the Supplier and created in the context of the contract made between them. The Purchaser shall be given an exclusive, irrevocable, transferable right of use for all kinds of use, unrestricted as regards time, space or content, to these documents and to other results and unprotected knowledge arising from their cooperation. This shall include in particular the right of copying, distributing, exhibiting, reciting, presenting and the right of reproduction by means of video and audio media and the right of processing and redesign.
- If the Supplier's existing industrial property rights, copyright or unprotected knowledge (expertise) are used in the performance of the contract, and if they are necessary for the exploitation by the Purchaser of the results of the work, the Purchaser shall be given a non-exclusive right of use of the industrial property rights, the copyright and the unprotected knowledge (expertise). This shall include all kinds of use, in particular those stated in subsection 3 of this section VIII.
- The Supplier guarantees that, in connection with his performance, no property rights of third parties are infringed in countries of the European Union, North America or other countries in which he provides his performances. He guarantees that all performances provided are free from rights of third parties. If this is not the case, he must agree contractually with the originators that he is in a position to grant rights in favour of the Purchaser. The Supplier shall exempt the Purchaser from all claims by third parties against the Purchaser on the grounds of the infringement of rights to the performances provided by the Supplier.
- The Supplier shall promptly report to the Purchaser all inventions or other patentable results that arise in connection with the performances provided to the Purchaser, and shall grant him all requisite information. All inventions are to be transferred to the Purchaser. If the Purchaser has no interest in filing a patent application for the registration of an invention, he shall reassign the invention to the Supplier. The Purchaser shall retain a simple, unrestricted right of use free of any charge. IX. Replacement parts The Supplier must ensure that he continues to supply the Purchaser with replacement parts for the goods delivered by him for at least 15 years after the date of discontinuation of any series of vehicles fitted with them. The contracting parties, at their reasonable discretion, shall agree on the prices of the replacement parts. The Purchaser shall provide information, if required, regarding periods of provision and requirement forecasts. Regardless of ownership rights, any change of use or scrapping of part-specific manufacturing facilities may only take place with the agreement of the Purchaser, which must be in written form in order to be effective.

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## X. Confidentiality

1. The contracting parties shall be obliged to treat as business secrets all commercial and technical details that become known to them through business relationships and that are not common knowledge.
2. Drawings, illustrations, calculations, descriptions, documentation, reports, graphs, diagrams, pictures, films, data, data media, models, matrices, templates, samples, tools and other production resources and confidential information must not be transferred or otherwise made available to unauthorized third parties. The copying of such things is permissible only in the context of operational requirements and in compliance with copyright provisions.
3. The Supplier must correspondingly bind his upstream Suppliers, where appropriate.
4. The contracting parties may only advertise their business connection after prior agreement, which requires to be in written or text form in order to be effective.
5. The provisions of any confidentiality agreement made between the contracting parties shall remain unaffected by the foregoing regulations.

## XI. Quality and documentation

1. In providing his performances and deliveries, the Supplier must comply with the generally acknowledged rules of technology, the safety regulations, the agreed technical data, and the applicable regulations for protection at work and the prevention of accidents. Changes to the object of the performance or delivery shall require the prior agreement of the Purchaser, which must be in written or text form in order to be effective. For first sample testing, reference shall be made to the guidelines of the VDA [Verband der Automobilhersteller, German association of motor-vehicle manufacturers] "Sicherung der Qualität von Lieferungen [ensuring the quality of deliveries]" in the latest edition, currently the 4th (2004) edition. Notwithstanding this, the Supplier must constantly check the quality of his performances and of the goods to be delivered by him, and must perform tests on his outgoing merchandise. The contracting parties shall mutually inform each other of possible ways to improve quality.
2. If the nature and extent of the tests and the test equipment and methods are not firmly agreed between the Supplier and the Purchaser, the Purchaser is prepared, within his knowledge, experience and capabilities, at the Supplier's request, to discuss the tests with him, in order to determine the state of the art in testing techniques. The Purchaser shall moreover inform the Supplier of the relevant safety regulations, at the Supplier's request.
3. In the case of vehicle parts specially labelled, for example with "D", in the technical documents or by separate agreement, the Supplier must state in special recordings when, how and by whom the goods to be delivered by him were tested for the properties subject to obligatory documentation, and the results that the requisite quality tests yielded. The test documents are to be conserved for ten years and are to be provided to the Purchaser, if required. The Supplier must bind upstream suppliers to the same extent, as far as is legally possible. As a guide, reference is made to the guidelines of the VDA, "Dokumentation und Archivierung – Leitfaden zur Dokumentation und Archivierung von Qualitätsanforderungen [documentation and archival – guidelines for the documentation and archival of quality requirements]" in the latest edition, currently the 3rd (2008) edition.
4. If authorities responsible for vehicle safety, exhaust regulations or the like ask to inspect the production processes and the Purchaser's test documents in order to check up on specific requirements, the Supplier states his readiness at the Purchaser's request to grant them the same rights in his works and to give them all reasonable assistance at the same time.
5. The provisions of any quality assurance agreement that may have been made between the contracting parties shall remain unaffected by the aforementioned regulations.

## XII. Liability for defects and reporting of defects in the case of purchase agreements, contracts dealing with the supply of movable things to be produced or manufactured and contracts to produce a work

1. By accepting or approving samples or specimens that are presented, the Purchaser does not waive the right to make claims on the grounds of liability for material defects.
2. If the Supplier owes the delivery of a good, including the delivery of a movable thing that is to be produced or manufactured, the Purchaser must promptly after delivery check whether the good corresponds with

the quantity and type ordered, and whether externally visible transport damage or externally detectable defects are present. If during the aforementioned tests the Purchaser discovers damage or a defect, he must notify this to the Supplier in written or text form within five working days. If in the ordinary course of business the Purchaser discovers damage or a defect at a later time, he must thereupon notify this to the Supplier in written or text form within five working days. The Purchaser shall not be obliged to make any more extensive tests and notifications than those stated above on behalf of the Supplier, nor in particular does the Purchaser have any obligations to the Supplier under § 377 of the HGB [Handelsgesetzbuch, Commercial Code]. To that extent, the Supplier waives the right to complain of a delayed check or notification. This section XII, subsection 2, shall not apply if the Supplier owes a work performance.

3. When the Supplier receives the notification of a defect or damage, the statutory limitation of liability for claims for defects and damages shall be suspended until the Supplier, in written or text form, either rejects his warranty obligation or declines to meet the claim made against him.
4. The Supplier must respond to every notification of defect or damage with an 8D report and must carry out defect or damage analysis. The Supplier must explain points 1 to 3 of the 8D report within 24 hours and must submit the complete 8D report within a time, not exceeding ten days, specified by the Purchaser. The Purchaser's legal claims shall remain unaffected by this. In particular, the right of the Purchaser to demand supplementary performance within a reasonable period shall remain unaffected.
5. The Supplier's supplementary performances must be provided at the place of performance designated in the order, or at the designated delivery address. This shall not apply if the defective good delivered by the Supplier has been taken to another place by the Purchaser in accordance with the terms of the contract. The supplementary performance must then be provided at this other place.
6. Claims of the Purchaser on grounds of defects shall cease to be enforceable when 24 months have elapsed since the first registration of the motor vehicle fitted with the defective contractual products, or since their installation as replacement parts, but not more than 36 months since the delivery of the performance and - in the case of performances under a contract to produce a work - their acceptance. § 438 subsections 3 - 5 and § 634a subsections 3 - 5 of the BGB [Bürgerliches Gesetzbuch, German Civil Code] shall remain unaffected.
7. In general, the provisions of law shall apply.

## XIII. Liability in the case of service contracts

The provisions of law shall apply to the liability of the contracting parties under service contracts.

## XIV. Product liability and liability for damages due to fault

1. The Supplier shall be responsible for all claims made by third parties on grounds of personal injury or damage to property attributable to a defective product delivered by him, and he shall be obliged to indemnify the Purchaser against liability resulting therefrom. If, because of a fault in a product delivered by the Supplier, the Purchaser is obliged to perform a recall action for third parties, the Supplier shall bear all costs associated with the recall action.
2. Exclusions and restrictions of the liability of the Supplier, his executive bodies, legal representatives, staff or other assistants for damages because of fault shall not apply.

## XV. Assignment and outsourcing

The transfer of rights and obligations arising from these general conditions of purchase, or arising from contracts made that incorporate these general conditions of purchase, require the prior agreement of the contracting parties, which must be in written or text form in order to be effective. This does not apply to the assignment of monetary claims.

## XVI. Financial collapse

If a contracting party discontinues his payments, or insolvency proceedings are opened on his assets, or extrajudicial composition proceedings are applied for, the other contracting party shall be entitled to withdraw from the unfulfilled part of the contract or to terminate the contract.

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## **XVII. Applicable law and place of jurisdiction**

1. German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, shall apply to these general conditions of purchase and to all contracts made that incorporate these general conditions of purchase, and to all relationships between the contracting parties associated herewith. German is agreed to be the contract language.
2. The exclusive place of jurisdiction for all present and future claims arising from the business connection, including claims for bills of exchange and cheque receivables, shall be the head office of the Purchaser. If the Supplier has no general place of jurisdiction in the Federal German Republic, or transfers his head office or his habitual residence outside this country after making the contract, or if his head office or habitual residence is not known at the time when an action is brought, the same place of jurisdiction shall apply. The Purchaser shall, however be entitled, at his option, to take legal action before the competent courts in accordance with the general provisions of law.

## **XVIII. Severability clause**

If one or more provisions of these general conditions of purchase or of the contracts made that incorporate these general conditions of purchase should be or become wholly or partially ineffective or infeasible, the effectiveness of the other provisions shall not thereby be affected. A correspondingly ineffective or infeasible provision shall be replaced with a clause that comes closest to the purpose of the ineffective or infeasible provision; in the event of a lacuna, the same shall apply.

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