

# General Conditions of Purchase of the GKN companies in Germany

(As per February 2006)

*Applicable to transactions with enterprises, legal entities under public law and special funds under public law*

## **1 General**

1.1 Our Conditions of Purchase are applicable exclusively. We do not recognise any of Supplier's general terms and conditions of business that conflict with, or deviate from, our Conditions of Purchase, unless we expressly consent to their validity in writing. Our Conditions of Purchase shall also apply even if we accept or pay for deliveries of products and services from the supplier (hereinafter referred to as "subject of the contract") in full knowledge of the fact that Supplier's conditions differ or deviate from our Conditions of Purchase.

1.2 Our Conditions of Purchase shall also apply to all future dealings with Supplier.

## **2 Contract conclusion and amendments**

2.1 Purchase orders, contracts and calls for delivery, as well as amendments and supplements thereto, shall only be valid if made in writing. Purchase orders and calls for delivery can also be placed by remote data transmission or fax.

2.2 Verbal agreements made prior to, or at the time of conclusion of the contract shall only be valid if confirmed in writing by the Purchasing Department. This shall not affect Clause 2.1, Sentence 2.

2.3 Verbal agreements made after conclusion of a contract, particularly subsequent amendments and supplements to our Conditions of Purchase - including this stipulation requiring written form - and collateral agreements of any kind, shall likewise only be valid if confirmed in writing by the Purchasing Department.

2.4 Cost estimates are binding and free of charge, unless expressly agreed otherwise.

2.5 If Supplier does not accept a purchase order within 2 weeks of receipt, we shall be entitled to cancel. Calls for delivery become binding if Supplier does not object to them within 5 working days of receipt.

## **3 Delivery**

3.1 Deviations from our contracts and purchase orders shall only be permitted with our prior written consent.

3.2 Agreed dates and deadlines are binding. The decisive factor for compliance with the delivery date or delivery deadline is the receipt of the goods on our premises. If "carriage paid" delivery (DDU or DDP as per Incoterms 2000) has not been agreed, Supplier is to provide the goods on time, taking into account the time required for handling and shipping to be coordinated with the freight carrier.

3.3 If Supplier has assumed responsibility for set-up or assembly, and unless otherwise agreed, then Supplier shall, subject to deviating regulations, bear all necessary additional costs, such as travel costs, provision of tools and separation allowances.

3.4 If agreed dates are not observed, then the statutory regulations shall apply. If Supplier foresees difficulty with regard to manufacturing, primary material supplies, compliance with the delivery date or similar circumstances which may hinder him in making a timely delivery or delivery in the agreed quality, then Supplier shall immediately notify our Purchasing Department in writing.

3.5 The unconditional acceptance of a delayed delivery or service shall not indicate the waiving of any compensation claims to which we may be entitled due to the delay in the delivery or service; this shall apply up to complete payment of the amount owed by us for the delivery or service in question.

3.6 Part deliveries are generally impermissible, unless we expressly agreed to them or they can be considered reasonable.

3.7 With regard to quantities, weights and dimensions, the values determined by us during receiving inspection shall be decisive, subject to other documentary evidence.

3.8 In addition to the right to use the software and associated documentation included in the scope of product delivery to the legally permissible extent (Arts. 69 a ff. German Copyright Act), we shall also have the right of use with the agreed features and to the extent required for use of the product in conformity with the contract. We shall also be permitted to make a back-up copy without an express agreement.

## **4 Force majeure**

Force majeure, labour disputes, operating disturbances beyond the control of the party obliged to perform, civil unrest, acts of government and other unavoidable events shall entitle us to cancel the contract in part or in full - without affecting our other rights - as long as they are of significant duration and result in a considerable reduction in our demand.

## **5 Shipping advice and invoice**

The specifications in our purchase orders and calls for delivery shall apply. A single copy of the invoice, showing the invoice number and other identifying information, is to be sent to the respectively printed address. It may not be included with the shipment. Supplier is obliged to indicate our order number on all shipping papers.

## **6 Pricing and passing of risk**

Unless agreed otherwise, prices shall be carriage and duty-paid (DDP as per Incoterms 2000), including packaging. Value-added tax is not included. Supplier shall bear the material risk until the goods are accepted by us or our agent at the location to which the goods are to be delivered as specified in the order.

## **7 Terms of payment**

Unless agreed otherwise, the invoice shall be settled either within 14 days less a 2% discount, or within 30 days without deduction after the invoice is due and the invoice and the goods are received, or the service rendered. Payment shall be made subject to checking of the invoice. We expressly waive any haulage and warehousing insurance ("SLVS-Verzichtskunde"). Any premiums charged will be deducted.

## **8 Warranty claims and recourse**

8.1 The statutory provisions shall apply.

8.2 Acceptance shall be subject to examination for absence of defects, particularly also for correctness, completeness and suitability. We shall be entitled to examine the subject of the contract, to the extent that and as soon as this is expedient in the ordinary course of business. We shall report any defects immediately upon discovery. Inasmuch, Supplier shall not object on grounds of belated defect notification.

8.3 We are generally entitled to select the type of subsequent performance. Supplier shall be entitled to refuse the type of subsequent performance selected by us under the provisions of Art. 439 Para. 2 German Civil Code.

8.4 If Supplier fails to begin to remedy the defect immediately after our request to do so, then we shall be entitled in urgent cases, particularly the prevention of acute hazards or the avoidance of major damage, to remedy the defect ourselves, or to have it remedied by a third party, at the expense of Seller. Material defect claims shall be barred after 2 years, unless the material has been used in the usual manner for a building structure and caused a defect in the building structure. The period of limitation for material defect claims commences with the delivery of the subject of the contract (passing of risk).

8.5 In the event of defects in title, Supplier shall further exempt us from any existing claims of third parties.

Defects in title shall be subject to a period of limitation of 10 years.

- 8.6 For parts of the delivery that are repaired within the period of limitation of our warranty claims, the period of limitation shall begin anew when Supplier has completely fulfilled our claims for subsequent performance.
- 8.7 Supplier shall bear any costs incurred by us as a result of the defective delivery of the subject of the contract, particularly transport, travel, labour and material costs, or costs for receiving inspection that exceeds the usual scope.
- 8.8 If we take back goods manufactured and/or sold by us as a result of the defectiveness of the subject of the contract delivered by Supplier, or if our customer reduces the purchase price for this reason or we are held liable in any other way as a result thereof, then we reserve the right of recourse vis-à-vis Supplier, in which case our warranty claims shall not be subject to the fixing of a time limit as otherwise required.
- 8.9 We shall be entitled to demand that Supplier reimburse any expenses we have been forced to bear vis-à-vis our customer, because it has a claim on us for reimbursement of expenses incurred for the purpose of subsequent performance, particularly transport, travel, labour and material costs.
- 8.10 If a material defect becomes apparent within 6 months of the passing of risk, then it shall be assumed that the defect already existed at the time of the passing of risk, unless this assumption cannot be reconciled with the nature of the material or the defect.

## **9 Product liability and recall**

If claims are asserted against us on the basis of product liability, then Supplier shall be obliged to exempt us from such claims insofar as the damage was caused by a defect in the subject of the contract delivered by Supplier. In cases of liability based on fault, however, this shall only apply if the fault lies with Supplier. If the cause of the damage lies within Supplier's sphere of responsibility, then it shall bear the burden of proof. In these cases, Supplier shall assume all costs and expenses, including the costs of any legal proceedings or recall campaigns. The statutory provisions shall apply in all other respects.

## **10 Execution of work**

Persons who execute work on company grounds in order to fulfil the contract shall observe the provisions of the respective company regulations. Liability for accidents on company grounds in which these persons are involved shall be excluded, insofar as they were not caused by an intentional or grossly negligent violation of duty by our legal representatives or vicarious agents.

## **11 Retention of title, provision of materials, tools**

- 11.1 We retain title to any materials, parts, containers and special packaging materials provided by us. They may only be used as intended. The processing of materials and the assembly of parts are carried out on our behalf. It is mutually agreed that goods produced using our materials and parts, which are held in custody for us by Supplier, shall be co-owned by us at the ratio of the value of the materials provided to the value of the overall goods.
- 11.2 We retain title to any tools. Supplier shall be obliged to use the tools exclusively for manufacturing the goods ordered by us. Supplier shall be obliged to insure tools belonging to us at replacement value against damage due to fire, water and theft. It shall be obliged to promptly perform any necessary maintenance and inspection work at its own expense. Supplier shall notify us of any disturbances. Should he fail to do so out of negligence, we reserve the right to claim damages.

## **12 Documentation and confidentiality**

- 12.1 All business or technical information made available by us (including features contained in any submitted objects, documents or software and any other

knowledge or experience) is to be kept confidential vis-à-vis third parties as long as, and insofar as it is not demonstrably public knowledge; it may only be made available to persons in Supplier's own organisation who must be involved in its use for the purpose of the delivery to us and who are likewise obliged to maintain confidentiality. We retain exclusive title to this information. Without or prior written consent, information of this kind may not be duplicated or used for commercial purposes - except for deliveries to us. If so requested by us, all information originating from us (including any copies or records made) and loaned objects are to be immediately and completely returned to us or destroyed. We retain all rights to such information (including copyrights and the right to apply for proprietary rights, such as patents, utility patents, etc.). If this information was made accessible to us by third parties, then this reservation of rights shall also apply on behalf of these third parties.

- 12.2 Goods manufactured according to documents created by us, such as drawings, models and the like, or according to our confidential specifications, or with our tools or copied tools, may not be used by Supplier itself or offered or delivered to third parties. This shall also apply mutatis mutandi to our print orders.

## **13 Place of performance**

The place of performance shall be the location for delivery of the goods as specified in the order.

## **14 General provisions, legal venue, applicable law**

- 14.1 Should a provision of these Conditions, or of any further agreements made, be or become invalid, this shall not affect the validity of the remaining Conditions. The Parties hereto are obliged to replace the invalid provision with a regulation that most closely reflects its economic intent.
- 14.2 The venue for all legal disputes arising directly or indirectly from contractual relationships based on these Conditions of Purchase shall be the domicile of GKN Driveline International GmbH in D-53797 Lohmar, Germany. We shall further be entitled to take legal action against Supplier at the court of Supplier's domicile or branch office, or at the court of the place of performance.
- 14.3 We reserve the right to obtain credit insurance for business transactions and to provide the insurer with the necessary data concerning Supplier.
- 14.4 The definitions in the Incoterms 2000, including any and all supplements thereto, shall apply in addition to these Conditions.
- 14.5 Contractual relations shall be subject exclusively to German law, excluding the law concerning conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).