

# General Terms and Conditions of Purchase (GTCP)

## of DBK EMS GmbH & Co. KG, Rülzheim/Germany

For use in legal transactions with enterprises, public law legal entities and special funds under public law.

### 1. General

These GTCP shall apply to this and all future orders. Deviating terms and conditions of the supplier shall only apply insofar as they correspond with these GTCP or we expressly consent to them in writing. This shall also apply if the supplier's terms and conditions envisage one of the provisions included in them having priority. These GTCP shall also apply if we accept delivery of the supplier's products and services (hereinafter "Contractual Object") in full knowledge of supplier terms and conditions which are contradictory to, or deviate from, our terms and conditions of purchase and/or pay for these objects.

### 2. Conclusion and amendment of contracts

**2.1** Orders, agreements and call-off orders as well as corresponding amendments or supplements must be made in writing. Orders – also termed call-offs – may also be placed by data transmission or telefax.

**2.2** Verbal agreements must be confirmed in writing by the Purchasing Department. Amendments, supplements and side agreements as well as any deviation from this requirement for the written form must also be confirmed in writing by the Purchasing Department.

**2.3** Cost estimates shall be binding and non-remunerable unless specifically otherwise agreed. We shall not remunerate or reimburse any kinds of costs and outlay incurred by the supplier when compiling a quotation whatsoever, in particular planning, management and travel.

**2.4** Acceptance of orders must be confirmed in writing immediately. Orders – also termed call-offs – shall be binding if the supplier does not object within five working days of receipt. We may revoke an order if we do not receive an order confirmation within two weeks of the supplier receiving our order. Should this confirmation deviate from our order then we shall only be bound to it if we consent to the deviation in writing. The acceptance of deliveries or services shall not represent any consent. In the case of orders of materials for which DIN safety data sheets are on hand, the supplier shall provide us with said data sheets unasked.

**2.5** We may demand amendments to a contract even after it has been concluded insofar as this can reasonably be expected from the supplier. In the case of contractual amendments, the consequences for both parties, in particular with regard to cost over- and underruns and delivery schedules, must be given due consideration.

**2.6** The supplier shall not be entitled to pass on the order, either in full or in part, to third parties without our prior written consent. Should we give our consent, then the supplier shall remain responsible for performance of the contract.

**2.7** We shall be entitled to transfer rights arising from this contract to third parties.

**2.8** Quality assurance agreements shall represent an integral part of these GTCP.

### 3. Delivery

**3.1** Deviations from our agreements and orders shall only be permitted following our prior written consent. Partial deliveries shall, as a matter of principle, not be permitted unless we have specifically consented to them or we can reasonably be expected to consent to them. Any additional costs which are incurred shall be borne by the supplier. The right to acknowledge excess or shortfall deliveries shall remain reserved.

**3.2** Agreed dates and deadlines shall be binding. The receipt of the goods by us shall be definitive for compliance with the delivery date or deadline. Should delivery "free works" (DDU or DDP as per Incoterms 2010) not have been agreed, then the supplier must, taking into consideration the time agreed with the freight forwarder, make the goods available for loading and shipping in good time. The supplier shall be responsible for compliance with all legal regulations, in particular also with regard to labelling.

**3.3** Should the supplier have undertaken to assemble or erect the goods and nothing else have been agreed, then the supplier shall, subject to deviating provisions, bear all required auxiliary costs such as, for example, travel costs; provision of tools and allowances.

**3.4** Should agreed dates not be complied with, then the following shall apply:

- The supplier must inform us immediately in writing concerning delays or postponements.

- Where deliveries are accepted early payment shall be due in line with the agreed delivery date

- Where deliveries are faulty we shall be entitled to withhold payment proportionally until the contract has been duly performed.

Our claims to compensation of damages incurred due to delays shall be based on legal regulations. Our acceptance of a delayed delivery shall not imply any waiver of claims to damages; this shall apply until payment of the remuneration owed by us for the shipment or service concerned has been made in full.

**3.5** The supplier shall announce changes concerning lead times; availability of materials; materials and production sites at least 6 months in advance.

**3.6** The unit quantities, weights and dimensions determined by us during the incoming goods inspection shall, subject to any other evidence, be definitive.

**3.7** All delivered goods and accompanying documentation shall be transferred to our ownership upon payment. The supplier shall guarantee that there are no conflicting third party retentions of title or other third party rights.

**3.8** Supplementary material (provided by the customer) shall, following placement of the order, be ordered in writing by the DBK EMS Purchasing Department including a binding delivery date for the customer. The unit quantities ordered shall take additional requirements due to technical reasons into consideration. In the case of shortfall deliveries of the unit quantities ordered DBK EMS shall not accept any delivery quantity guarantee for component assemblies. The delivery time for orders to the customer as per our quotations shall begin upon full delivery of the supplementary material to the DBK EMS Incoming Goods Department. The "Technical Delivery Regulations" annex for the relevant orders to customers for supplementary material shall apply in addition to these GTCP. We shall not accept any liability for faulty supplementary material.

**3.9** We shall have the right to use of software included within the scope of product delivery, including the corresponding documentation, to the legally permitted extent (Sect. 69a ff. German Copyright Act, UrhG); the right to use with the agreed performance characteristics and to the extent required for use of the product in line with the contractual agreement. We may also make a back-up copy without concluding any express agreement.

**3.9.1** Acts of God, strikes or other circumstances for which the supplier is not responsible and which make it impossible for him to perform the contract either fully or partially shall entitle us to withdraw from the contract either fully or in part or to postpone its performance without this resulting in the supplier having any claims against us.

**3.10** Packaging for all shipments of moisture-sensitive components must include a MSL label indicating the components' moisture sensitivity level (MSL).

**3.11** ESD packaging –delivered components must be supplied in undamaged ESD packaging in compliance with regulations.

### 4. Prices/Payment

**4.1** The prices stated in the order / on the call-off shall be fixed prices and shall include all incidental costs for insurance; packaging; loading; wedging and fixing on the transport means; transport; customs clearance; unloading; handling at the agreed delivery address; etc. The legal rate of value added tax must be stated separately on the invoice. The one copy of the invoice must be sent to the printed address and include the invoice number and other identifiers; it may not be enclosed with shipments.

**4.2** We must be notified immediately concerning any surcharge arising from model alterations; any surcharge shall require our written consent before the goods are delivered or manufactured. Price increases shall only be possible if our written consent is obtained at least 10 days before they become effective.

**4.3** Where no specific agreement has been made, prices shall be free works duty paid (DDP as per Incoterms 2010) and include packaging. Value added tax shall not be included in prices. The supplier shall bear the risk of accidental loss until the goods have been accepted by us or our representative at the destination to which the goods must be delivered under the terms of the contract.

**4.4** Insofar as no specific agreement has been made, payment of the invoice shall be either within 20 days minus 3% discount or within 30 days without deduction from the date on which the payment claim becomes due and receipt of both the invoice and also the goods respectively performance of the service. Payment shall be subject to verification of the invoice.

**4.5** Payment shall not represent any acknowledgement of the delivery or service being in accordance with the contract.

**4.6** We shall be entitled to rights of offsetting and retention to the extent granted by the law and also in the case of respectively against claims by companies affiliated to us. The supplier shall be entitled to a right to refuse performance; he shall, however, only be entitled to a right of retention or of offsetting insofar as his counterclaims have been legally established; are undisputed or have been acknowledged by us.

**4.7** The supplier shall only be entitled to assign his claims against us or to have them collected by third parties if he has our prior written consent, which may not be refused without good cause. In cases where extended retention of title exists this consent shall be deemed to have been given. Should, in breach of Sentence 1 above, the supplier assign his claim against the party placing the order to a third party without our consent, then the assignment shall still, nevertheless, be valid. We may, however, make performance to the supplier or the third party at our discretion and with discharging effect.

## 5. Quality and documentation

**5.1** The supplier shall guarantee that his deliveries will comply with recognized technical practices; safety legislation and the agreed technical specifications. Alterations to the delivery object shall require the prior written consent of the party placing the order.

The VDA document "Sicherung der Qualität von Lieferungen – Lieferantenauswahl /Produktionsprozess- und Produktfreigabe/ Qualitätsleistung in der Serie" (5<sup>th</sup> edition 2012) shall be taken into consideration when inspecting first samples. The supplier must, independent of this, continuously monitor the quality of delivery objects. The contracting partners shall inform each other regarding options for quality improvements.

**5.2.** Where the type and scope of inspections as well as the testing means and methods have not been specifically agreed between the supplier and us, then we are, at the supplier's request and within the scope of our knowledge, experience and possibilities, prepared to discuss the inspections with him in order to establish the corresponding required state of testing technology. We shall, over and above this and at the Supplier's request, inform him about relevant safety legislation.

**5.3** In the case of vehicle components which are specifically identified in the technical documentation or in a separate agreement, for example "D" labelled components, the supplier must, over and above this, document in dedicated reports when, how and by whom the delivery objects have been tested for the characteristics specified in the documentation and what results the required quality tests have produced. Testing documentation must be stored for ten years and presented to us if required. The supplier must, within the scope of his legal possibilities, oblige upstream suppliers to the same extent. The VDA document "Nachweisführung – Leitfaden zur Dokumentation und Archivierung von Qualitätsanforderungen" Frankfurt am Main 1998 shall be used as a manual for this process.

**5.4** Insofar as the authorities which are responsible for vehicle safety, exhaust gas regulations or similar demand information concerning our production processes and testing documentation in order to verify compliance with specific requirements, then the supplier shall, upon our request, declare his willingness to grant the authorities the same rights in his company and, in this context, to provide all reasonable assistance.

**5.5** The materials supplied by our supplier must correspond to legal regulations; it must, in particular, be ensured that they comply with **EU Directives 2002/95 EC, 2005/618 EC and 2011/65 EC (RoHS and/or RoHS 2)**, which specify maximum levels for heavy metals and brominated flame retardants. In addition to this, the obligations specified by **Regulation (EC) No. 1907/2006 (REACH regulation)** must be complied with. This applies in particular to obligation to provide information which ensues as soon as maximum levels for substances included on the current European Chemicals Agency (ECHA) candidate list are exceeded. Compliance with the required maximum PAH (polycyclic aromatic hydrocarbons) levels for the GS label as per ZEK 01.2-8 must also be ensured. The supplier shall confirm compliance with mandatory legal requirements, e.g. phthalate-free rubber and plastic parts (as per EU Directive 2007/19 EC and 2005/84 EC); food-grade quality of components, etc., and shall provide corresponding proof. Insofar as orders are for individual parts and materials which are used in the automotive field, then the supplier shall have the required IMDS databank entry made. The DBK EMS company ID is 137760. **The regulations of Section 1502 of the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (Dodd-Frank Act) on the avoidance of use of conflict materials must be complied with. The corresponding documentation across the supply chain must be supplied in an appropriate form (e.g. using an EICC questionnaire) if so demanded by DBK.**

**5.6** Any hazardous substances which are supplied must be identified in accordance with the law (Art. 5 German Hazardous Substances Ordinance, GefStoffV) and correspond to the GHS classification. The supplier shall, when supplying hazardous substances, undertake to provide us with a current safety data sheet.

## 6. Claims for defects and recourse

**6.1** The supplier shall undertake to perform his service free of material defects and defects in title and, in particular, always in compliance with relevant environmental protection regulations and standards as well as in accordance with current technical standards.

**6.2** Acceptance shall be subject to inspection of the goods for freedom from defects, in particular also for correctness, completeness and fitness for purpose. We shall be entitled to inspect the contractual object insofar and as soon as this is feasible in the ordinary course of business; we shall notify any defects which are discovered immediately after they are discovered. The supplier shall, in this respect, waive objection to delayed notification of defects.

**6.2.1** In the case of incoming goods we shall only carry out a visual inspection and shall only be obliged to carry out more detailed inspections insofar as corresponding separate agreements are on hand.

**6.3** Should we incur costs due to the defective delivery of the contractual object, in particular transport, road, labour or material costs or costs for an incoming inspection which exceeds the usual scope, then the supplier must bear these costs. Legal regulations concerning material defects and defects in title shall apply insofar as nothing else shall be agreed below.

**6.4** The supplier shall remedy defects in the goods supplied including documentation following corresponding notification. Remediation shall, at our discretion, take the form either of free rectification or a replacement

shipment to the place of fulfilment or delivery. The supplier shall bear the costs and risks of returning defective goods.

**6.5** Should the supplier fail to carry out rectification of defects within a reasonable period of grace set by us, then we shall be entitled to withdraw either fully or partially from the contract without paying compensation; to reduce the price and/or to demand damages. The same shall apply if the supplier declares himself to be unable to carry out rectification of defects within a reasonable period of grace or if an application for (preliminary) insolvency proceedings in respect of the supplier's assets has been submitted. In urgent cases, in particular to prevent acute danger or to avoid material damages, we shall, following unsuccessfully expiry of a reasonable period of grace, be entitled to carry out rectification of defects ourselves at the supplier's expense or to have defects rectified by a third party.

**6.6** The statute of limitation for our claims shall be 36 months from full delivery of the goods.

**6.7** The statute of limitation shall be suspended during the period in which the supplier attempts to rectify any defect. This shall not apply for acts of goodwill on the supplier's part or for immaterial defects. In the case of replacement shipments, the statute of limitations shall re-commence upon delivery of the new goods. Any further claims shall remain unaffected by this.

**6.8** The supplier shall, in the event of third party claims on the grounds of breach of German or foreign third party industrial property rights caused by delivery of the goods, indemnify us insofar as he is responsible for the defect in title. He must, in such cases, reimburse us for damages including any customer claims of recourse.

**6.9** We shall, in the event that insolvency of the supplier is imminent or has occurred, be entitled to retain a reasonable security deposit for the duration of the relevant corresponding period of rectification of the defect.

**6.10** Should a claim be made against us in connection with deliveries or due to product liability regulations, then the supplier shall herewith indemnify us insofar as he would be directly liable.

**6.11** The supplier shall bear all costs in conjunction with any product recall for which he is responsible (in partic. selection costs). He must maintain sufficient liability insurance coverage. The supplier shall take out a reasonable amount of insurance coverage against all risks arising from product liability including the risk of a product recall. The supplier shall, on demand, maintain corresponding proof of insurance cover.

**6.12** The supplier's personnel shall comply with the work regulations in force when working at our company. The supplier must comply with our monitoring provisions and shall be solely responsible for his personnel. He shall be entirely liable for this and shall bear all costs which we incur as a result of non-compliance with these regulations.

## 7. Retention of title

**7.1** We shall gain unlimited ownership of the goods and documentation supplied to us upon payment. The supplier shall, by handing over the goods, declare that he is fully authorized to dispose of them and that there are no third party rights. He must otherwise provide us with specific written notification.

**7.2** All materials, components, containers and special packaging which we make available shall remain in our ownership with the condition that we are designated the manufacturer and holder of the industrial property rights and that we gain co-ownership of the items manufactured as a result of processing these materials. This co-ownership shall be in direct proportion to the value of our products (purchase price plus VAT) vis-à-vis the other objects processed at the time of processing. The same shall apply to the mixing of our materials with objects which do not belong to us. Should, following mixing, the supplier's object be deemed to be the principal object, then the supplier shall transfer corresponding proportional co-ownership to us. The supplier shall hold our sole or co-ownership for us free of charge.

**7.3** The materials must be labelled, stored separately and managed for us free of charge and, for e.g., insured against fire or water damage or theft. They may only be used to carry out production of the commissioned order. The supplier must provide us with compensation in the event of depreciation or loss of the goods.

**7.4** Pallets and transport means shall remain our property and must be returned on request. Should they not be returned, then we shall reserve the right to assert a claim for damages.

## 8. Documentation and Confidentiality

**8.1** Orders and technical and commercial documents, sketches, data, software, samples, tools and construction plans which we provide; software written on the basis of information provided by us (including the source code) and any other information must be kept strictly confidential. They shall be subject to our sole rights of ownership and copyright rights. They may only be made accessible to third parties with our express written consent. These third parties must be informed in writing concerning the ownership and copyright rights and obliged to maintain confidentiality.

**8.2** Any and all documents provided may only be used for production of the order. The supplier shall require our prior written consent to make copies of the documents provided or to store information. Any and all documents including copies must be returned to us unrequested and stored data must be deleted following completion of the order.

**8.3** Reference to the business relationship between us, in partic. for advertising purposes, may only be made with our prior written consent.

**8.4** It is agreed that, in the event of any culpable breach of the above mentioned items, a contractual penalty to the sum of € 10 000 (ten

thousand euros) shall be payable for each breach. We shall reserve the right to assertion of any further claims for damages and other claims to which we are entitled, in particular cease-and-desist claims.

**9 Payment of the minimum legal wage as per the German Minimum Wage Act (MiLoG)** The supplier shall undertake to pay his employees the minimum legal wage and to oblige his subcontractors and any suppliers which the latter use to do so likewise. The supplier shall declare that he is not excluded from any public procurement procedures. Should services or labour be rendered in the economic sectors or industries stated in Sect. 2a of the German Act to Combat Illicit Work and Illegal Employment (SchwarzArbG), then the following shall apply: The supplier shall, on the demand of the principal, be obliged to provide proof at any time that the contractor and, where applicable, his subcontractors have been paying the minimum wage for the period of the last two definitive years for the record-keeping period as per Sect. 17 MiLoG. This proof must be provided by presenting corresponding records concerning hours worked and the remuneration paid for this work. The contractor shall, furthermore, on demand of the principal allow inspection of the relevant (anonymized) wage and salary lists at any time. Should he fail to comply with the obligation to provide proof, then a contractual penalty of € 10 000 shall be payable for each breach. Should a third party assert a corresponding claim against the principal Sect. 13 MiLoG, Sect. 14 AEntG), then the contractor shall, on first

written request, indemnify the principal against all claims including costs for a legal defence. Should the contractor breach these provisions, then the principal shall be entitled to extraordinary termination of the contractual relationship without giving any period of notice. This shall also apply in any case of a breach of the contractor's agreed obligations to provide proof.

**9.1 Child labour.** The contractor and the principal shall undertake to comply with the Code of Conduct.

#### **10. General provisions**

**10.1** Should a provision of these terms and conditions and the further agreements made be or become invalid, void or contain loopholes, then this shall not affect the validity of the remaining terms and conditions. The contractual partners shall replace the invalid or void provision or close the loophole with a provision which comes as close as possible to their intended economic purpose.

**10.2** The place of fulfilment shall be Rülzheim/Germany. German law shall apply and conflict of law rules and the United Nations Convention on the International Sale of Goods (CISG) shall be excluded. The sole place of jurisdiction shall be Karlsruhe. We shall, at our discretion, be entitled to sue the supplier before the court at his place of domicile or at his branch office or before the court at the place of fulfilment.

Rülzheim, current as of 01.06.2016