

## **Purchasing Terms & Conditions (June 2011)**

### **I. Scope of MD ELECTRONICS CORPORATION's Purchasing Terms and Conditions**

1. All contracts concluded by MD ELECTRONICS CORPORATION at all locations (referred to hereafter as MD) as purchaser or customer shall be subject to these Terms and Conditions, unless expressly otherwise agreed to in writing. Any and all conditions of the vendor, supplier or service provider (collectively referred to as Supplier hereafter) shall not be deemed an integral part of the contract, even if MD fails to expressly contradict such conditions. In the event the conditions of the Supplier contradict these Terms and Conditions, these Terms and Conditions shall prevail.
2. All future transactions with the Supplier shall likewise be subject to MD Purchasing Terms and Conditions.
3. The present Terms and Conditions shall not affect any additional rights to which MD may be entitled in accordance with the statutory provisions.

### **II. Conclusion of contract**

1. No order issued by MD shall be legally binding unless confirmed in writing. In the case of informal business transactions, any order issued by MD shall be deemed a letter of confirmation for commercial purposes.
2. Unless expressly otherwise agreed to in writing, failure on the part of MD to react to suggestions, demands or documents submitted by the Supplier, shall on no account be deemed to constitute consent.

### **III. Scope and content of performance**

1. The performance obligations of the Supplier shall be based on the specifications forwarded upon conclusion of the contract or, in the absence of the same, on the particulars contained in quotations and brochures provided by the Supplier.
2. Unless expressly otherwise agreed to in writing, any and all deliveries shall comply with the DIN and/or VDE standards currently prevailing, as well as with other standards customary in the trade, including EU standards (especially the RoHS directive 2002/95/EC and the directive 2000/53/EC regarding end-of-life vehicles), as well as all applicable legal standards of the United States and the State of New York.
3. Product label shall include MD part number if one exists.
4. MD shall accept delivery of the ordered quantity or number only. Short, excess or partial delivery shall not be permitted without MD prior consent.
5. The following additionally applies to suppliers of automotive series parts: The Supplier is obliged to enter all necessary data in the IMDS system (International Material Data System at [www.mdssystem.de](http://www.mdssystem.de)). The data must be made available before preparation of the initial sample test report or PPAP documents, or at the same time that the initial sample is presented. The data entered must be addressed to ID number 2669.
6. The Supplier must work towards fulfilling the TS 16949 and ISO 14001 specifications.

### **IV. Changes in performance**

1. Should it become evident during execution of the contract that deviations from the specifications originally agreed to are necessary or expedient, the Supplier shall notify MD accordingly without delay. MD shall then advise whether it agrees with the proposed modifications.
2. MD shall reserve the right to request changes in performance following conclusion of the contract, provided that such changes may reasonably be expected of the Supplier or are usual in the trade. In the event that MD requests changes in performance, it shall make reasonable allowance for any implications this may have, particularly with regard to increases or reductions in costs, and delivery dates.
3. If the Supplier intends to use tools, raw materials or manufacturing procedures other than those approved by the customer, then advance approval must be obtained from MD, including renewed confirmation of an already existing order.

### **V. Delivery dates and delayed delivery**

1. The delivery date specified in the order issued by MD shall be binding. Delivery date means date of arrival at the specified MD location.
2. If it becomes evident to the Supplier that it will be unable to meet the delivery date, the Supplier shall be obliged to notify MD immediately in writing, advising the reasons for and estimated duration of the delay.
3. A delay in delivery shall in no way diminish MD statutory or legal rights.
4. Notwithstanding such rights, MD shall be entitled to demand a contractual penalty from the first day of delay in delivery amounting to 0.5% for each week or part thereof, however in total no more than 5% of the overall contract value of the delivery, unless the Supplier is able to conclusively prove that MD has incurred no damages whatsoever or damages that are substantially (i.e. at least 10% lower) than the amount of the penalty. The right of MD to claim the contractual penalty shall not affect MD's right to claim damages exceeding the amount of the contractual penalty.

### **VI. Transfer of risk, documentation**

1. Unless otherwise agreed to in writing or stipulated in the order, delivery shall be made free of charge DAP MD's Plant in Jamestown, NY, USA (Incoterms 2010). Risk of Loss and title shall not transfer to MD until the goods arrive at the incoming goods dock at the specified location.
2. Each delivery shall be accompanied by a consignment note stating the order number and order item. Invoices should be forwarded to MD simultaneous with dispatch of the goods. Order confirmations, consignment notes, dispatch notes and invoices must all include the purchase order numbers, part numbers or cost center numbers from MD.

#### **VII. Prices and payment**

1. The price stated in the order shall be binding.
2. Invoices must be provided in duplicate, include the complete postal address, MD order number MD part number, quantity and agreed price. Any invoices received which deviate from these stipulations shall be deemed not received.
3. In the event of faulty goods or inadequate performance, MD shall be entitled to withhold payment until the contract has been duly completed without loss of any rebates, discounts or similar preferential terms of payment.
4. **Payment for goods or services accepted without demur shall be made within 60 days net from date of invoice, or alternatively within 14 days minus a 3% discount.**

#### **VIII. Warranty**

1. The Supplier hereby guarantees and assures that all goods and/or services shall conform to state-of-the-art technology, MD specifications, all relevant legal provisions, rules and regulations issued by the applicable authorities and /or industrial trade associations. If, in individual cases, it is necessary to deviate from such stipulations, the Supplier shall obtain the prior written consent of MD. Such consent shall in no way diminish obligations under the warranty.
2. In the event that the Supplier has reservations regarding the type of construction requested by MD, they shall immediately advise MD accordingly in writing and obtain written consent from MD before proceeding. This shall in no way influence the binding nature of the delivery date originally envisaged.
3. MD shall immediately notify the Supplier of any defects in the goods or services and of any damage incurred during transport or packing as soon as these are identified in the normal course of business, however in the case of recognizable defects, no later than 14 working days following delivery of the goods, and with concealed defects, within 7 working days after discovery.
4. Within two working days after having received the returned goods (being complained about), the Supplier shall inform MD of the corrective measures that were immediately taken.
5. Should the Supplier negligently fail to honor its obligation to subsequent performance within a reasonable period of time stipulated by MD, or should subsequent performance be unjustly refused by the Supplier, be unsuccessful or make unreasonable demands on MD, especially in the case of imminent danger, MD may, notwithstanding the warranty obligations of the Supplier, undertake the necessary measures itself at the expense and risk of the Supplier, or commission a third party to carry out the same.
6. Warranty claims expire after a period of 24 months after initial vehicle registration or installation of the replacement parts, however no later than 48 months after delivery of the goods to MD, providing no longer periods are applicable by law for warranty claims.
7. In the case of parts which cannot remain operational while the defect is being investigated and/or remedied, any warranty period still in effect shall be extended by the duration of such interruption. If parts are replaced or defects remedied, the applicable or statutory warranty period for repaired or replacement parts shall recommence upon completion of the repair or upon receipt of the replacement parts by MD.
8. MD shall receive a reimbursement of €75 for expenses incurred due to defective goods for each affected warranty case. MD's right to claim damages exceeding the incurred expenses remains unaffected. The Supplier is equally justified to prove that a lower reimbursement of expenses, or even none at all, is appropriate.
9. MD reserves the right to return any goods which deviate from MD specifications, to the Supplier at Supplier's expense for credit, refund or replacement.

#### **IX. Liability/limitation**

1. The liability of the Supplier shall be governed by the stipulated provisions in VIII and X. The Supplier shall on no account be exempt from liability, including in the event of ordinary negligence.
2. Statutory limitation shall apply in accordance to VIII; any shorter periods of limitation shall be ruled out.

#### **X. Product liability**

1. In the event that claims are brought against MD on the grounds of infringing safety regulations or pursuant to German, United States or other production or product liability provisions due to defects or deviations in MD products resulting from faulty goods delivered by the Supplier, MD shall be entitled to demand compensation from the Supplier for such damages insofar as these were caused by goods supplied by the latter; or as an alternative, MD can demand release from claims by a Third Party for payment upon first demand. Furthermore, to the extent that the Supplier is responsible, the Supplier shall reimburse MD according to the proportion of its contributory negligence for the costs of any precautionary exchange or recall operations which may prove necessary.
2. In order to safeguard against the risks specified under subclause 1. above, the Supplier shall arrange for an appropriate product liability and recall insurance and on request shall furnish MD with evidence of the same.
3. The Supplier shall carry out quality controls of an appropriate kind and scope based on state-of-the-art technical standards and on request shall furnish MD with evidence of the same. The Supplier shall conclude a quality-control agreement to this effect with MD to the extent that such agreement is considered necessary by MD.

#### **XI. Replacement parts**

The Supplier hereby guarantees the supply of replacement/service parts, for all supplied products for the period of at least 15 years after serial end or if the series is still running, 15 years after the termination of the contract with MD.

#### **XII. Proprietary rights**

1. The Supplier hereby guarantees and assures that all deliveries shall be free from the proprietary rights of any third parties and in particular that delivery and use of the items supplied shall not result in infringement of any patents, licenses or other third-party proprietary rights.

2. The Supplier shall indemnify MD and MD customers against any third-party claims on the grounds of infringement of proprietary rights and shall bear any and all costs incurred by MD in connection therewith.
3. MD shall, at the expense of the Supplier, be entitled to obtain permission from the rights holder to use the relevant items and services supplied, unless disproportionate expenses would be incurred by the Supplier.

#### **XIII. Reservation of title, contribution of materials, samples, models, tools**

1. MD shall reserve the title to all parts provided to the Supplier. Any processing and reworking undertaken by the Supplier, which deviates from the agreed MD specifications must be agreed to by MD before commencement. In the event that the goods contributed are processed together with other items not belonging to MD, MD shall acquire part ownership of the new object based on the value of the goods contributed in proportion to the value of other items processed at the time of such processing or, if this is not applicable, the Supplier shall reimburse MD for the price of goods contributed in the event the ownership of the new object is not transferred to MD.
2. MD shall reserve the title as well as all proprietary rights to samples, models, tools, product information, documents etc. paid for or provided by MD. The Supplier shall be obliged to use such samples, models and tools solely for the manufacturing of goods ordered by MD, and must return them at any time requested, unless they are still required for specific orders from MD.
3. Orders for tools shall be subject to MD Supplementary Terms and Conditions for Tooling Contracts.

#### **XIV. Confidentiality**

1. The Supplier shall be obliged to keep secret and confidential all information relating to their co-operation within the scope of this agreement and use it solely for the purposes of this agreement, unless such information is in the public domain, has been lawfully acquired from a third party or acquired by the party's own efforts independently of any third party. Classified information shall include, but not be limited to: technical data, purchase volumes, prices and information pertaining to products and product developments, present and future research and development projects, customer data and all information relating to MD.
2. Furthermore, the Supplier shall be obliged to keep secret and confidential all illustrations, drawings, calculations and other documents and not disclose the same to third parties without the express written consent of MD, except if the information contained therein is in the public domain.
3. The Supplier shall also pass on this obligation of confidentiality to its employees and subcontractors.

#### **XV. Assignment**

Assignment of any claims against MD on the part of the Supplier shall not be possible unless MD receives a prior written notification of the assignment and agrees to such assignment in writing.

#### **XVI. Final provisions**

1. The Supplier may not transfer the order or parts thereof to third parties, in particular to subcontractors, without the prior written consent of MD.
2. As soon as an interim receiver is appointed to regulate the affairs of the Supplier or insolvency proceedings are opened in relation to the Supplier's assets, MD shall be entitled to rescind the contract in whole or in part.
3. Should any individual clauses of these Terms and Conditions of Purchase be void, this shall not prejudice the operating effect of the remaining provisions. The voided clause shall be replaced by an acceptable clause whose sense and purpose most nearly approximates the voided clause.
4. Each Purchase Order will be governed by the laws of the State of New York without regard to any otherwise applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Buyer and Supplier agree that any and all disputes between them will be resolved by, and they each consent to, the exclusive jurisdiction and venue of the Supreme Court of New York, Chautauqua County, and the United States District Court for the Western District of New York to resolve any such disputes, including for lawsuits seeking monetary relief or equitable relief. Seller specifically waives any and all objections to venue in such courts.

- End of contractual provisions -