

## **Purchasing Terms and Conditions** (April 2019)

### **I. Scope of the global MD ELEKTRONIK's Purchasing Terms and Conditions**

1. All contracts concluded by MD ELEKTRONIK 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. These General Terms and Conditions of Purchase shall apply exclusively. Any and all general 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.
2. All future transactions with the Supplier shall likewise be subject to MD Purchasing Terms and Conditions.
3. As a result of every order placed by an affiliated company and every contract of sale resulting therefrom, an independent contractual relationship shall be created exclusively between the affiliated company and the Supplier. Obligations arising from this contractual relationship shall not be binding on the buyer, the buyer shall not be responsible or liable for obligations undertaken by the companies affiliated with the buyer.  
Companies affiliated with the Supplier are companies within the meaning of sections 15 et seqq. of the German Joint Stock Corporation Act (AktG). Companies affiliated with MD ELEKTRONIK GmbH shall be defined as any companies in which MD ELEKTRONIK GmbH has a direct or indirect stake of 50% or more.
4. 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. Only orders placed by MD in writing and/or by way of data transmission as purchase orders or call-offs shall be considered to be legally binding. 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 2011/65/EU and the directive 2000/53/EC regarding end-of-life vehicles). Items of capital expenditure shall require CE marking.
3. In case of series parts, the product label shall include the 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 into the IMDS system (International Material Data System at [www.mdssystem.com](http://www.mdssystem.com)). 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. In case of series parts, the Supplier undertakes to create them in compliance with IATF 16949 and ISO 14001 standards. Any derogation therefrom must be agreed upon in writing between MD and the Supplier.
7. Unless otherwise agreed, any packaging means required shall be provided by the Supplier on the basis of packaging requirements conveyed to the Supplier.

#### **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 MD 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 industry. 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 of series parts intends to use tools, raw materials or manufacturing procedures other than those approved by MD, then advance approval must be obtained from MD, including renewed confirmation of an already existing order.
4. MD shall have the right to give notice of termination of contract at any time, indicating in the written notice the reason for termination, to the extent MD becomes unable to make use of the ordered products in the course of its own business operations for reasons occurring after formation of contract. Where such circumstance occurs, MD agrees to indemnify the Supplier against the partial performance already rendered by the Supplier unless it would be possible for the Supplier to make use of the partial performance rendered for other purposes.

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

1. The delivery date specified in the order or the delivery call-offs issued by MD shall be binding. Delivery date means date of arrival at the specified MD location. Where based on the Incoterm agreed upon it is necessary for the product to be picked up by MD, the Supplier agrees to advise the MD forwarding agent - on behalf of and in line with specifications made by the MD location placing the order - in due time of the readiness of the consignment of goods. Early delivery may only be made on prior agreement and written confirmation by MD.
2. If it becomes evident to the Supplier that he will be unable to meet the delivery date, he shall be obliged to notify MD immediately in writing, advising the reasons for and estimated duration of the delay.
3. In the event that the date by which the shipment will have to be made at the latest may be determined based on the contract, the Supplier shall be deemed to be in delay after this date has expired fruitlessly without MD explicitly having to send the Supplier a reminder.
4. A delay in delivery shall in no way diminish MD statutory rights.
5. 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. This shall be without prejudice to MD's right to furnish proof of having incurred losses in excess of the lump sum according to sentence 1.

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

1. Unless otherwise agreed to in writing or stipulated in the order, delivery shall be made DAP (Delivered At Place ordering address MD Incoterm 2010).
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. On the item level of the delivery note, the Supplier shall provide information on customs tariff number and country of origin.
3. For every shipment, the Supplier shall comply with customs and/or NAFTA obligations, requirements as to marking of origin of goods as well as labeling, requirements applicable in the country of destination with respect to invoicing and documentation as well as requirements applicable with respect to records for value-added tax purposes. Unless specifically agreed otherwise in writing on a case-by-case basis, the Supplier shall obtain the export licenses and permits required. Where specifically agreed otherwise, the Supplier shall procure the information MD needs to obtain these licenses and permits. Otherwise, the Supplier agrees to notify MD without delay of export restrictions applicable under German or any other law in part or as a whole with respect to a shipment.

The Supplier agrees to fully exempt MD from liability for any claims that may be asserted against MD by public authorities or other third parties for non-observance of obligations applicable under export control legislation by the Supplier and undertakes to indemnify MD against any losses or expenses that may be incurred by MD in this context.

4. On the item level of the invoice, the Supplier shall provide export control information (e.g. export list number). The ECCN (Export Control Classification Number - US Export Administration Regulations, EAR) also has to be indicated on the item level to the extent this information is relevant for the item. Alternatively, information may also be supplied by e-mail to the following e-mail address: [customs@md-elektronik.de](mailto:customs@md-elektronik.de)
5. With respect to shipments of goods to the purchaser, suppliers based within the European Community and in Turkey shall have the duty to furnish proof of the preferential origin status of products delivered based on a supplier's declaration for products having preferential origin status reproducing the text prescribed by law, to the extent possible in the context of issuance and submission of a long-term supplier's declaration for products having preferential origin status. Supplier's declarations that do not meet statutory requirements shall not be accepted. Relevant evidence shall be provided and submitted by the Supplier without the Supplier having to be prompted to do so. The Supplier shall bear any and all costs (e.g. for customs) that may be incurred as a result of failure to present certificates of preferential origin. The Supplier shall also have the duty to make reliable statements on the status of origin for commercial policy purposes of any goods supplied by the Supplier (in line with ISO-ALPHA-2 code published by the International Organization for Standardization) and to furnish suitable evidence for such origin to the extent required.
6. The Supplier shall have the duty to promptly notify the purchaser in writing whenever the Supplier's declaration for products having preferential origin status and/or the statement on the status of origin for commercial policy purposes become(s) invalid in part or as a whole or whenever any changes have occurred, if any.
7. The Supplier undertakes to make sure that the purchaser will receive the shipment on time by complying with the respective international supply chain security standards (e.g. C-TPAT or AEO) that may be relevant. In the event of the Supplier's non-participation in either of these supply chain security standards, the Supplier shall issue a Security Declaration already with the first shipment. A new Security Declaration must be issued and submitted every year.

## **VII. Prices and payment**

1. The price indicated in the purchase order shall be considered to be binding and shall be deemed to include the costs of packaging and transportation as stated in Incoterm 2010 DAP (Delivered at Place) unless specifically agreed otherwise in writing.
2. Invoices must be provided in duplicate, include the complete postal address, MD order number, MD part number, order 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 if not stated otherwise in writing.

## **VIII. Warranty**

1. The Supplier hereby guarantees and assures that all goods and/or services shall conform to state-of-the-art technology, 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.  
The Supplier also assures that any items of capital expenditure and services provided shall be in compliance with the requirements listed above as well as the respective purchase order and, if applicable, specifications, drawings, CAD data, descriptions and/or samples transmitted or specified by MD and shall be suitable for being used for the intended purposes (warranty of fitness for a

particular purpose) and intended output and shall dispose of any and all markings, labeling and certification required for such use at the intended operation site.

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. No changes may be implemented except prior to written consent. 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. Acceptance or approval of samples or specimen presented shall not imply a waiver of warranty claims on the part of MD.
5. 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.
6. Should the Supplier fail to honor his 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.
7. Warranty claims expire after a period of 48 months after initial vehicle registration or installation of the replacement parts, however no later than 60 months after delivery of the goods to MD, providing no longer periods are applicable by law for warranty claims.  
By way of derogation from foregoing provisions, a warranty period of 24 months shall apply with respect to items of capital goods. The warranty period shall start on acceptance of the items of capital goods.
8. 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 statutory warranty period for repaired or replacement parts shall recommence upon completion of the repair or upon receipt of the replacement parts by MD.
9. For expenses incurred due to defective goods, MD shall receive a reimbursement for each affected warranty case as follows:  
warranty case of MD locations in Europe: 75 EUR  
warranty case of MD locations in Asia: 750 CNY  
warranty case of MD locations in Mexico: 1,500 MXN  
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.
10. Upon receipt by the Supplier of the written letter of formal notice of defects issued by MD, the limitation period applicable with respect to warranty claims shall be deemed to be suspended until the Supplier either rejects the claim or declares that the defect was remedied or otherwise refuses to continue negotiations regarding the claims.
11. 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. He 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 or foreign production 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. Where MD is required to call back goods from third parties for reasons induced by a non-conformity in the product supplied by the Supplier, the Supplier agrees to bear any costs that may be incurred in connection with the call back campaign as specified in the previous sentence. Where civil responsibility for own fault as well as the fault of vicarious agent applies, the Supplier also agrees to indemnify proportionally MD against any costs incurred by running a replacement or call-back campaign in line with the percentage of contributory negligence attributable to the seller even if no such order was explicitly issued by operation of law or by public authorities.
2. The provisions of part VIII shall apply where the items of capital expenditure may not be used by MD in accordance with the contract because of a culpable failure on the part of the Supplier to make proposals or provide advice before or after formation of contract or culpable provision of faulty advice or making of erroneous proposals before or after formation of contract or as a result of commission of a culpable breach of other ancillary obligations related to the contract – including but not limited to operating and maintenance instructions for the delivered item. This shall be without prejudice to the right to assert additional statutory rights.
3. In the case of series parts, the Supplier undertakes to maintain a reasonable extended lump-sum product liability insurance included fitting and removal costs and call-back insurance with an adequate sum insured for bodily injury / property damage and has to confirm it once a year unsolicited in writing; this shall be without prejudice to additional claims for damages MD may have, if any.
4. 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 assurance 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 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.

As far as items of capital expenditure are concerned, spare parts shall be available and service options shall be offered to MD for a period of 15 years following shipment.

## **XII. Customer nominated parts**

Where products are not procured based on MD's own commercial decision but rather subject to one of MD's customers' specifications ("Customer Nominated Parts"), the following provisions shall apply:

1. MD shall notify the Supplier of or upon placement of the first purchase order in an informal fashion of the fact that this constitutes an order for Customer Nominated Parts. It shall suffice for MD to notify the Supplier thereof once and with the first order and no such indication will have to be repeated or renewed in any other way.
2. The Supplier understands that as far as the procurement of directed parts is concerned, MD shall only have very limited commercial options. The Supplier therefore understands that an elevated standard for liability shall apply with respect to Customer Nominated Parts compared to liability rules applicable with respect to products selected and evaluated by MD itself.
3. The warranty period applicable with respect to directed parts is sixty (60) months from the date of initial registration of the motor vehicle into which the directed part concerned was integrated, however, no more than seventy-two (72) months from the date of delivery to MD.
4. Where a Customer Nominated Parts is the subject-matter of a letter of formal notice of defects, it shall be assumed that such defect has occurred within the Supplier's sphere of influence and that the Supplier shall assume responsibility for such defect. The Supplier shall, if applicable, have the right to provide evidence to the contrary.

5. The Supplier agrees to exempt MD from liability for and indemnify MD at MD's first request against any claims that may be asserted against MD for a material or legal defect existing in a Directed Part and to fully defend MD against any such claims at its own expense.

### **XIII. 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. In this context the Supplier understands that the products supplied by the Supplier may be used in any country around the globe.
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.

### **XIV. 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 reforming undertaken by the Supplier, which deviates from the agreed MD specifications must be agreed to by MD before commencement. Where MD processes, mixes or combines (further processes) materials supplied by the Supplier, MD shall be considered the manufacturer and shall become the owner of the product subject to statutory provisions at the latest on further processing.
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. In this case evidence of destruction of copies made thereof by the Supplier must be provided. This rule shall not apply with respect to back-up copies made and shall not govern statutory obligations as to retention of documents.
3. The Supplier shall also have the obligation to mark and label with a proprietary notice any samples, models, tools, product information, documents etc. legal title to which was transferred.
4. Orders for tools shall be subject to MD Supplementary Terms and Conditions for Tooling Contracts.
5. The Supplier's retention of title shall only apply to the extent it relates to MD's obligation to pay for the respective products title to which the Supplier has reserved. In particular, no extended reservation of title governing not only the object delivered but also the object into which the object delivered was integrated (verlängerter Eigentumsvorbehalt) nor extended retention of title until payment in full not only of the purchase price, but also of any other debts of the buyer to the seller (erweiterter Eigentumsvorbehalt), shall be permitted.

### **XV. 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 his employees and subcontractors.

**XVI. 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.

**XVII. 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. Supplementary hereto, the contract shall be subject solely to the law of the Federal Republic of Germany with the exclusion of the UN Convention on the International Sale of Goods.
4. 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.
5. The address of the MD location concerned that placed the order with the Supplier shall be considered the place of performance of shipments and performance as well as the place of jurisdiction. MD shall reserve the right to institute legal proceedings at any other place of jurisdiction permitted by law.

- End of contractual provisions –