

## Purchasing Terms and Conditions

(April 2019)

## 采购格式合同

(2019年4月)

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

1. All contracts concluded by MD ELECTRONICS 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 Purchaser, the Purchaser shall not be responsible or liable for obligations undertaken by the companies affiliated with the Purchaser.  
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.

### I. 恩德电子全球采购条款和条件的范围

1. 除非另有书面约定，否则恩德电子（以下简称“恩德”）作为买方或客户在所有地点签订的所有合同均受这些条款和条件约束，这些一般采购条款和条件唯一适用。供应商、服务提供商（以下统称为“供应商”）的任何和所有一般条件均不应被视为合同的组成部分，即使恩德未明确反驳此类条件。
2. 与供应商的所有未来交易应同样遵守恩德采购条款和条件。
3. 由附属公司发出的每一份订单以及由此产生的每份销售合同，应在附属公司和供应商之间专门建立独立的合同关系。本合同关系产生的义务不应对方具有约束力，买方亦不对买方附属公司所承担的义务负责。供应商的附属公司是指《德国股份公司法》(AktG)第15及以下各节所指的公司。恩德电子有限责任公司的附属公司应定义为恩德电子有限责任公司直接或间接持股50%或以上的任何公司。
4. 本条款和条件不影响恩德根据法律规定可能享有的任何其他权利。

### II. 签订合同

1. 只有恩德书面和/或通过数据传输发出或取消的订单才被视为具有法律约束力。在非正式商业交易的情况下，恩德发出的任何订单都应被视为商业用途之确认函。
2. 除非另有书面约定，否则若恩德未对供应商提交的建议、要求或文件作出反应，在任何情况下都不应视为同意。

### III. 履约的范围和内容

1. 供应商的履约义务应基于合同订立时所提交的规格，或者如果没有相应的规格，则应基于供应商提供的报价单和小册子中的详细资料。
2. 除非另有书面约定，否则任何和所有交付均应符合当前通行的DIN和/或VDE标准，以及行业中惯用的其他标准，包括欧盟标准（尤其是RoHS指令2011/65/EU和关于报废车辆的指令2000/53/EC）。资本支出项目需要CE标记。
3. 对于系列零件，如果存在恩德零件编号，则产品标签应包括恩德零件编号。
4. 恩德仅接受其订购数量的交付。未经恩德事先同意，不得少交付，多交付或部分交付。
5. 以下同样适用于汽车系列零件供应商：供应商有义务将所有必要的数据输入IMDS系统（国际材料数据系统，网址为[www.mdssystem.com](http://www.mdssystem.com)）。在准备初始样品测试报告或PPAP文件之前，或在提供初始样品的同时，必须提供该数据。输入的数据必须填入ID号2669。
6. 对于系列零件，供应商承诺按照IATF 16949和ISO 14001标准进行生产。任何标准偏离必须由恩德和供应商之间达成书面共识。
7. 除非另有约定，否则供应商应根据告知给供应商的包装要求，提供所需的任何包装方法。

### IV. 履约变更

1. 如果在合同执行过程中发现有必要或权宜地偏离最初商定的规格，供应商应立即通知恩德。然后，恩德应告知恩德是否同意建议的修改。
2. 恩德保留在合同订立后要求变更履约的权利，前提是此类变更可由供应商合理预期或在业内常见。如果恩德要求变更履约，则应合理考虑这可能产生的影响，特别是有关成本的增加或减少以及对交付日期的影响。
3. 如果系列零件供应商打算使用恩德批准以外的其他工具、原材料或制造程序，则必须预先获得恩德批准，包括重新确认现有订单。
4. 恩德有权在任何时候发出终止合同的通知，并在书面通知中指明终止的原因。由于在合同成立后发生的原因致使恩德在其自身业务运营过程中无法使用订购的产品，如果发生此类情况，恩德同意赔偿供应商已提供的部分履约，除非供应商有可能将已提供的部分履约另做他用。

**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.

**V. 交付日期和延期交付**

1. 订单中指定的交付日期或 迈恩德 发出的取消交付均具有约束力。交付日期指到达迈恩德指定 地点的日期。对于根据《国际贸易术语解释通则》的约定必须由 迈恩德 提货的产品，供应商同意在货物托运准备就绪的适当时间内，代表并按照 迈恩德 下单地点提出的规格，通知迈恩德 运输代理商。提前交付只能在事先达成协议并由 迈恩德 书面确认的情况下进行。
2. 如果供应商发现其无法满足交付日期，则供应商有义务立即书面通知 迈恩德，并告知延误的原因和预计延误的持续时间。
3. 如果根据合同可以确定最迟装运日期，且无明确要求 迈恩德 必须向供应商发送提醒，则在此日期过期后，供应商应被视为延误。
4. 延迟交付不应以任何方式削弱 迈恩德 的法定权利。
5. 尽管有这些权利，但 迈恩德 仍有权要求从延迟交付的第一天起，收取每周或其中一部分合同按合同规定收取 0.5% 的违约金，但总额不超过交货合同总价值的 5%，除非供应商能够确凿证明 迈恩德 未发生任何损害或实质上的损害，即至少比罚款金额低 10%。这并不影响 迈恩德 根据第 1 条规定提供损失超过一次性总付款的证据的权利。

**VI. 风险转移, 文件**

1. 除非另有书面约定或订单中另有规定，否则交货应以 DAP 方式进行（于《2010 年国际贸易术语解释通则》迈恩德 订购地址的地交货）。
2. 每次交付时，应附上注明订单号和订单项的运单。发票应在发货的同时送交迈恩德。订单确认、运单、发货单和发票中都必须包括迈恩德的采购订单编号、零件号或迈恩德的成本中心编号。在交货单的项目级别，供应商应提供海关关税号和原产国的信息。
3. 对于每批货物，供应商应遵守海关和/或北美自由贸易协定的义务、符合关于货物原产地标记和标签的要求、目的地在发票和文件方面适用的要求、以及关于增值税目的记录相适用的要求。除非根据情况另有书面明确约定，否则供应商应取得所需的出口许可证和相关许可。如果另有明确约定，则供应商应获取 迈恩德 获得这些许可证和许可所需的信息。否则，供应商同意立即通知 迈恩德 根据德国或任何其他法律对于货物的部分或全部适用的出口限制。

供应商同意，完全免除 迈恩德 对公共机构或其他第三方因为供应商不遵守出口管制法规所适用的义务而可能针对 迈恩德 提出的任何索赔的责任，并承诺赔偿 迈恩德 在此情况下可能造成的任何损失或费用。

4. 在发票的项目级别，供应商应提供出口控制信息（例如出口清单编号）。ECCN（美国出口管理条例（EAR）下的出口管制分类编号）也必须在项目级别上指明此信息与项目相关的程度。或者，也可以通过电子邮件将信息提供至以下电子邮件地址：[customs@md-elektronik.de](mailto:customs@md-elektronik.de)
5. 关于向买方运送货物，欧洲共同体和土耳其境内的供应商有义务根据供应商对具有优惠原产地状态的产品的申报，提供所交付产品的优惠原产地状态证明（复制法律规定的文本），并且在可能的范围内，为具有优惠原产地状态的产品签发和提交长期供应商申报。不符合法定要求的供应商申报将不予受理。相关证据应由供应商提供和提交，且无须提示供应商这样做。供应商应承担因未能出示优惠原产地证书而可能产生的任何和所有费用（例如海关）。供应商还有责任为供应商提供的任何货物（符合国际标准化组织发布的 ISO-ALPHA-2 代码）出于商业政策目的对原产地状态作出可靠的陈述，并在必要的范围内为此类原产地提供适当的证据。
6. 当供应商对具有优惠原产地的产品的申报和/或出于商业政策目的而作出的原产地声明部分或整体变得无效，或发生任何变化时（如果有的话），供应商有义务立即以书面形式通知买方。
7. 供应商承诺通过遵守相关的国际供应链安全标准（例如 C-TPAT 或 AEO）来确保买方按时收到货物。如果供应商不参与上述任何一种供应链安全标准，则供应商应在第一批货物上签发安全声明。每年须签发和提交一份新的安全声明。

## 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.

## VII. 价格和付款

1. 采购订单中写明的价格应视为具有约束力，并应视为包括《2010年国际贸易术语解释通则》DAP（目的地交货）中所述的包装和运输成本，除非另有书面约定。
2. 发票必须提供一式两份，包括完整的邮政地址、迈恩德 订单号，迈恩德 零件号、订单数量和商定价格。收到的任何偏离这些规定的发票均视为未收到。
3. 如果货物有缺陷或性能不足，迈恩德 有权在合同正式完成之前不予付款，且不得损失任何返利、折扣或类似的优惠付款条件。
4. 未提出异议接受的货物或服务的付款应自发票日期起 60 天内支付。或者，如果没有另行书面说明，可在 14 天内按减去 3% 折扣后的价格付款。

## VIII. 保修

1. 供应商特此保证并确保，所有商品和/或服务均符合有关当局和/或行业协会颁布的新技术、所有相关法律法规和规章制度。如果在个别情况下有必要偏离此类规定，供应商应事先获得 迈恩德 的书面同意。此类同意不得减少保修项下的义务。  
供应商还保证所提供的任何资本支出和服务项目应符合上述要求和相应的采购订单，以及（如适用）由 迈恩德 发送或指定的规格、图纸、CAD 数据、描述和/或样品，并且适用于预期目的（适用于特定用途的保证）和预期输出，并应在预期操作现场处置此类使用所需的任何和所有标记、标签和证书。
2. 如果供应商对 迈恩德 要求的建造类型有任何保留，应立即以书面形式通知 迈恩德。除书面同意外，不得实施任何变更。这绝不影响最初设想的交付日期的约束性质。
3. 在正常业务过程中，一旦发现货物或服务存在任何缺陷，和在运输或包装过程中发生的任何损坏，迈恩德 应立即通知供应商这些缺陷和损坏，如果是可识别的缺陷，则 迈恩德 应在货物交付后的 14 个工作日内通知供应商，如果是隐藏的缺陷，则应在发现后的 7 个工作日内予以通知。
4. 接受或批准所提供的样品或样本并不意味着 迈恩德 放弃相应的保修索赔。
5. 在收到退回货物（被投诉）后的两个工作日内，供应商应告知 迈恩德 其立即采取的纠正措施。
6. 如果供应商未能在 迈恩德 规定的合理时间内履行其后续履约义务，或者供应商不当拒绝了后续履约、不成功或对 迈恩德 提出不合理要求，特别是在即将发生危险的情况下，那么虽然有供应商的保修义务，但是 迈恩德 仍可以自己采取必要的措施（费用和 risk 由供应商承担），或委托第三方执行相同的措施。
7. 保修索赔在车辆初始登记或更换零件安装后的 48 个月内到期，但不迟于货物交付给 迈恩德 后的 60 个月，前提是：法律规定下无更长的保修索赔期限适用。  
作为对上述规定的减损，资本货物保修期为 24 个月。保修期应在接受资本货物项目时开始。
8. 对于因在调查和/或修复缺陷而无法继续运行的零件，任何仍然有效的保修期应按中断时间相应延长。如果更换零件或修复缺陷，则修理或更换零件的法定保修期应在修理完成后或 迈恩德 收到更换零件后重新开始。
9. 对于因缺陷货物而产生的费用，迈恩德 应按照以下标准获得每个相关案例的赔偿：  
迈恩德 欧洲地点的保修案例：75 欧元  
迈恩德 亚洲地点的保修案例：750 元人民币  
迈恩德 墨西哥地点的保修案例：1,500 墨西哥比索  
迈恩德 对超过已发生费用的损害提出索赔的权利不受影响。供应商同样可以合理地证明赔偿费用应当更低，或甚至根本不需要赔偿。
10. 在供应商收到 迈恩德 发出的正式缺陷通知后，与保修索赔相适用的限制期应被视为暂停，直至供应商拒绝索赔，或声明缺陷已得到纠正或以其他方式拒绝继续就索赔进行协商为止。
11. 迈恩德 保留将任何偏离 迈恩德 规格的货物退还给供应商的权利，信贷、退款或更换的费用由供应商承担。

## IX. 责任/时效

1. 供应商的责任受第 VIII 和第 X 条规定条款的约束。供应商在任何条件下不得免除责任，包括在发生一般过失时。

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.

2. 法定时效将根据 VIII 适用；任何更短的时效期限均排除在外。

**X. 产品责任**

1. 如果由于供应商提供的有缺陷的货物导致 迈恩德 产品存在缺陷或偏差，进而使迈恩德被以违反安全法规或依据德国或外国生产责任规定而提出索赔，迈恩德 有权要求供应商赔偿此类损害，只要这些损害是由后者提供的货物造成的；或作为替代方案，迈恩德 可以要求第三方在第一次要求付款时免除索赔。如因供应商提供的产品不合格而导致 迈恩德 需要从第三方召回货物，则供应商同意承担与前述召回活动相关的任何费用。如因本身的过失及替代代理人的过失而须承担民事责任，即使法律实施或公共机关没有明确发布此类命令，供应商也同意按照卖方的共同过失百分比，按比例向 迈恩德 支付因进行更换或召回活动而产生的任何费用。
2. 第 VIII 部分的规定适用于 迈恩德 根据合同不得使用资本支出项目的情况，如：由于供应商未能在合同订立之前或之后提出提案或提供建议而应当追责；或在合同订立之前或之后提供错误建议或提出错误提案而应当追责；或因违反与合同有关的其他附属义务而应当追责，包括但不限于交付项目的操作和维护说明。这并不影响主张其他法定权利的权利。
3. 对于系列零件，供应商承诺保持合理的延长一次性总付产品责任保险，包括装配和拆除费用以及召回保险，并为人身伤害/财产损失提供足够的保额，而且必须每年以书面形式主动确认一次；这并不影响 迈恩德 可能提出的其他损害赔偿要求（如果有的话）。
4. 供应商应根据最先进的技术标准进行适当种类和范围的质量控制，并应 迈恩德 要求提供相应的证据。如果 迈恩德 认为有必要，供应商应就此与 迈恩德 签订质量保证协议。

**XI. 更换零件**

供应商特此保证对所有供货产品在系列结束后至少15年内提供替换零件，或者如果该系列还在运行，则在与 迈恩德 合同终止后的 15 年内提供替换零件。对于资本支出项目，应提供备件，并向 迈恩德 提供装运后 15 年期限的服务选择。

**XII. 客户指定的零件**

如果产品不是根据 迈恩德 自己的商业决定采购，而是根据 迈恩德 客户的规格之一而采购（“客户指定零件”），则以下规定适用：

1. 迈恩德 应通知供应商，或在第一个采购订单下达后，以非正式方式通知供应商该订单构成客户指定零件的订单。迈恩德 在第一个订单中通知供应商一次便已足够，不需要以任何其他方式重复或更新此类指示。
2. 供应商理解，就采购指定零件而言，迈恩德 仅具有非常有限的商业选择。因此，供应商理解，与适用于 迈恩德 自己选择和评估的产品的责任规则相比，对于客户指定的零件应适用更高的责任标准。
3. 适用于指定零件的保修期为自机动车辆初始登记之日起六十（60）个月（有关的指定零件已纳入到该保修期内），但自交付至 迈恩德 之日起不超过七十二（72）个月。
4. 如果客户指定零件是缺陷正式通知函的主题，则应假定该缺陷已发生在供应商的影响范围内且供应商应对此类缺陷承担责任。如适用，供应商有提供相反的证据。
5. 供应商同意在 迈恩德 第一次提出请求时免除 迈恩德 的责任，赔偿 迈恩德 因指定零件中存在的物质或法律缺陷而可能针对 迈恩德 提出的任何索赔，并自行承担费用，全力保护 迈恩德 不受任何此类索赔的影响。

**XIII. 所有权**

1. 供应商特此保证并确保，所有交付不受任何第三方所有权的约束，特别是所提供项目的交付和使用不得导致侵犯任何专利、许可或其他第三方所有权。在此背景下，供应商知晓其提供的产品可能会在全球任何国家/地区使用。
2. 供应商应赔偿 迈恩德 和 迈恩德 的客户因侵犯所有权而遭受的第三方索赔，并承担 迈恩德 因此而产生的任何和所有费用。
3. 迈恩德 有权获得权利持有人的许可，以使用所提供的相关项目和服务（费用由供应商承担），除非供应商将发生不成比例的费用。

**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 Purchaser 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.
6. The original text of these Terms and Conditions has been drawn up in English. If there are any discrepancies between the English and Chinese versions, the English text shall prevail in all instances.

- End of contractual provisions -

**XIV. 所有权的保留, 材料、样品、模型、工具的贡献**

1. 迈恩德 应保留提供给供应商的所有零件的所有权。供应商进行的任何加工和改造如偏离商定的 迈恩德 规格, 则必须在开工前得到 迈恩德 的同意。如果迈恩德 加工、混合或组合 (进一步加工) 供应商提供的材料, 则 迈恩德 应被视为制造商, 并成为产品的所有者, 但须遵守有关进一步加工的法律规定。
2. 迈恩德 对 迈恩德 支付或提供的样品、模型、工具、产品信息、文件等享有所有权和所有专权利。供应商有义务仅将这些样品、模型和工具用于制造迈恩德 订购的货物, 并且必须随时归还, 除非 迈恩德 的特定订单仍然需要这些样品、模型和工具。在这种情况下, 必须提供供应商销毁其复制件的证据。本规则不适用于所制作的备份复制件, 也不适用于有关保留文件的法定义务。
3. 供应商也有义务在转让给他的任何样品、模型、工具、产品信息、文件等合法所有权上作标记和张贴专有通知。
4. 工具订单应以工具合同的 迈恩德 补充条款和条件为准。
5. 供应商的所有权保留仅适用于 迈恩德 为其保留的相应产品所有权付款的义务范围。尤其是, 既不延长保留所有权, 不仅管辖所交付的对象, 而且管辖所交付的物体被整合进去的对象; 也不允许全额支付购买价格及买方对卖方的任何其他债务之前的延长保留所有权。

**XV. 保密**

1. 供应商有义务对本协议范围内与双方合作有关的所有信息保密, 并仅将其用于本协议的目的, 除非此类信息不受版权限制, 是从第三方合法获得, 或独立于任何第三方通过该方自身努力获得。机密信息应包括但不限于: 与产品和产品开发有关的技术数据、购买量、价格和与产品及产品开发有关的信息、当前和未来的研发项目、客户数据和所有与 迈恩德 有关的信息。
2. 此外, 供应商有责任对所有插图、图纸、计算和其他文件保密, 未经 迈恩德 明确书面同意, 供应商不得向第三方披露这些资料, 除非其中包含的信息属于公共领域。
3. 供应商还应将此保密义务传递给其员工和分包商。

**XVI. 转让**

除非迈恩德事先收到转让的书面通知并书面同意此类转让, 否则供应商不得转让任何针对 迈恩德 的索赔。 迈恩德

**XVII. 最后条款**

1. 未经 迈恩德 事先书面同意, 供应商不得将订单或其中的部分转让给第三方, 特别是转让给分包商。
2. 一旦指定临时接管人来管理供应商的事务, 或者就供应商的资产展开破产程序后, 迈恩德 有权全部或部分解除合同。
3. 除此之外, 本合同仅受德意志联邦共和国法律管辖, 《联合国国际货物销售公约》除外。
4. 本购买条款和条件如有个别条款无效, 不影响其余条款的执行效果。被撤销的条款应被意义和目的最接近于被撤销条款的可接受条款所取代。
5. 向供应商下订单的 迈恩德 地点的地址应视为为装运地和履约地以及司法管辖地。迈恩德 保留在法律允许的任何其他司法管辖区提起法律诉讼的权利。
6. 这些条款和条件的原文是用英文起草。如果英文和中文版本之间存在任何差异, 则在所有情况下均以英文版本为准。

- 合同条款终止 -