

## **General Terms and Conditions of Trade**

(January, 1<sup>st</sup> 2005)

The following terms apply as a contractual basis for all benefits between the company German Procurement Services GmbH (in the following called GPS) and their purchaser / customer (in the following called Principal). Alternative regulations of the Principal do not become subject terms of contract unless GPS has agreed particularly to them.



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### ***I. Conclusion of contract***

1. The Principal is bound to the order for not more than six weeks. The contract of sale is concluded if GPS confirms the acceptance of the named object of purchase within this respite or carries out the delivery.
2. All agreements as per among other things sub-agreements, assurances and subsequent contractual alterations are to be in written form. For the transfer of rights and duties of the Principal arising from the sales contract, it requires the written consent of GPS.

### ***II. Prices***

1. All prices are valid net, ex works without cash discount or any other deductions, exclusively packing, freight and eventual insurances and plus sales tax. The costs of agreed incidental services as per among other things custom etc. are calculated additionally.
2. In case of any occurred increase in costs during the conclusion of the contract and during the supply, GPS is entitled to add this increase opposite a full trader contracting party or a legal entity under public law to the agreed purchase price.

### ***III. Payment and delay***

1. One half of the purchase price is due for payment at conclusion of the contract. The further half is also due delivery versus payment under delivery or transmission of the invoice versus delivery of the object of purchase, however, ten days after receipt of the written appropriation. Any agreed specified completion respite begins to run for GPS with the receipt of the first half amount.
2. If GPS and the Principal agree on payment by instalments and if the Principal defaults with one instalment is the complete remaining fault due at once after an ineffective expiration of the additional respite of two weeks. The complete remaining fault is also due if the Principal suspends the payment generally or if insolvency proceedings are requested about his property. Furthermore, GPS is entitled to set an additional respite of ten days for payment and after an ineffective expiration of this additional respite to withdraw from the contract and to claim for damages because of non-performance instead of requiring the remaining fault. An entitlement to performance is excluded.
3. Giro transfer orders, cheques or bills will only be assumed after a special agreement and only in fulfilment under calculation of all recovery charges and discount expenses.
4. The Principal can only challenge against the claims of GPS providing his counterclaim is undisputed or is the final force of law. The Principal can assert a lien only due to claims resulting from this contractual relationship. Interest is charged with 5 per cent above the base interest rate of the European Central Bank. They have to be counted more highly or lowly, if GPS can prove a charge with a higher interest rate or the Principal with a lower one.

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#### **IV. Delivery**

1. Delivery dates or delivery periods which can be agreed on obligatory or without obligation have to be indicated in written form. Delivery periods start to run with conclusion of the contract. In case of subsequent alterations of the contract have been agreed, new delivery dates or new delivery periods have to be agreed on at the same time if required.
2. The Principal is entitled to request GPS in writing six weeks after transgression of the non-committal delivery date or non-committal delivery period to supply within an adequate respite. GPS defaults with receipt of this request. In the case of an obligatory delivery or an obligatory delivery period, GPS already defaults with the transgression of the delivery date or delivery period.
3. GPS shall be legally liable as far as the underlying contract of sale is a time-bargain under § 286 II, 4 German Civil Code or § 376 German Commercial Code. GPS shall be responsible after the legal regulations providing the principal's interest in the further performance of contract is eliminated due to a delay in delivery caused by GPS. GPS shall be again legally liable only if the delay in delivery is due to a deliberate or a grossly negligent violation of the contract caused by GPS respectively by their representatives or their vicarious agents. Unless the delay in delivery is based on a deliberate violation of the contract caused by GPS respectively by their representatives or vicarious agents, GPS's liability for damages is limited on the predictable, typically occurred damage.
4. GPS shall be legally liable providing the delay in delivery is based on a culpable injury of a significant contractual obligation chargeable to GPS; in this case, however, the liability for damages is limited on the predictable, typically incurred damage.
5. As for the rest GPS shall be liable in the case of a delay in delivery in the context of global delay compensation in the amount of 5 per cent of the agreed purchasing price.
6. An Act of God or breakdowns (e.g. uprising, strike, lockout) arisen for GPS or its suppliers which temporary prevent GPS not through an own fault to deliver the object of purchase at the agreed delivery date or within the agreed delivery period, the dates and periods stated in articles 1 and 2 will change around the duration of the defaults caused by these circumstances.
7. On conclusion of the contract, the stated details current descriptions about the scope of supply, appearances, obligations, measures, weight, consumption of working materials and overhead expenses etc. of the object of purchase are subject terms of contract. They have to be regarded as approximate and do not justify any acceptance of the guarantee but are a measure of the assessment whether the object of sale, in accordance with VIII of this agreement, correspond to the real set condition (§ 434 I, 1, 2 German Civil Code). Provided that GPS or the manufacturer uses signs or numbers to indicate the order or the object of purchase, no rights can alone be derived from this.
8. Production revision, deformations, colouring variations and modifications of the scope of supply on the part of the manufacturer keep reserved during the time of delivery providing the object of purchase is not being considerably changed and the modifications are reasonable for the Principal.

#### **V. Transfer of Perils**

Transfer of perils is already fulfilled with the receipt of the notice of appropriation to the Principal. For want of such notification is the transfer of perils fulfilled with the point of time GPS turns the performance as agreed in the contract over to the forwarding and transport company ( § 269, 3). This also applies for part delivery. At dispatch delays which are outside the responsibility area of GPS the danger changes at the time of GPS's dispatch readiness to the Principal.

#### **VI. Acceptance**

1. The Principal has to check the purchase object at the place of effect immediately after receipt of the notice of appropriation and the duty to accept the purchase object if it doesn't show any significant defects. (§ 377 HGB applies)
2. Any test drive before acceptance is to be kept in a common limit of 20 km at most.
3. If the offered object of purchase shows any unforeseeable defects, or defects which were not discovered in the first inspection, the Principal has to notify GPS immediately. (§ 377 HGB applies)

4. If the Principal has deliberately or grossly negligent not accepted the object of purchase immediately after receipt of the notice of appropriation GPS shall be entitled to withdraw from contract by a written declaration and to demand for damages for non-performance amounting 15 % of the purchasing price. The compensation for damage is to be charged more highly or lowly if GPS proves a higher or the Principal a lower one.
5. If the object of purchase is steered by the Principal or his authorized representative during the test drive and before the acceptance, the Principal is also responsible for the deliberately or grossly negligent damages occurred on the vehicle by the motorist.

## **VII. Retention of title**

1. The object of purchase together with all further items supplied, remains property of GPS up to the settlement of the demands being entitled to GPS due to the sales contract.
2. If the Principal is a legal entity under public law, a separate property under public law or a merchant who requires the contract to conduct his trade business, the retention of title also applies for demands which GPS arises from its current business connections opposite the Principal.
3. During the continuity of the retention of title GPS is obliged to own the motor vehicle registration certificate. Furthermore, is in this period of time any sale, any pledging, any mortgage or any leasing (except of any expressly contractually accounted commercial hirer) or another abandonment of the vehicle or its several parts respectively the fitting of strange property without a prior written consent of GPS illegitimate.
4. If GPS has to accomplish reorganisation work on the vehicle of the Principal, co-ownership is entitled to GPS at the again provided thing, in accordance with the portions of value, which the things have at present time of the connection. (§ 947 German Civil Code).
5. If the Principal acquires titles by actions contrary to the terms of contract opposite third parties, these claims are already transferred to GPS at this moment.
6. With accesses of third, in particular at attachment of the object of purchase or on practice of the mechanic's lien, the Principal has to make a written report to GPS immediately as well as to refer the third party to the retention of title of GPS immediately.
7. The Principal has to insure the vehicle during the continuity of the retention of title with a comprehensive cover insurance with an adequate own contribution and to transfer all rights to GPS subject to this contractual relationship. GPS accept this transfer of rights concerning this insurance. The Principal authorizes GPS to apply for a certificate of insurance over the vehicle full insurance for itself and to obtain information about the insurance relationship.
8. The Principal has the duty to keep the object of purchase in proper condition during the continuance of the retention of title and to let to carry out the maintenance and essential repair work scheduled by GPS respectively foreign manufacturers immediately - emergencies excepted – by GPS or workshops which are accepted in written form by GPS for the support of the object of purchase.
9. If the Principal does not fulfil his contractual duties for sentences 2, 6, 7, 8 for this section in accordance with number 3, GPS is being authorized – without exposing itself to claims for compensation in aid of the Principal – to take back the object of purchase for the limited purpose of securing. After setting an adequate respite to the proper performance of the contract, GPS shall be authorized to utilize the purchase object under crediting the selling price by a freehand sale to invoice and risk of the Principal in the best possible way. The Principal bears all costs of the repurchase and the retraction of the purchase object amounting 5 % of the utilization proceeds without proof and plus sales tax. They have to be attached more highly or more lowly if GPS proves higher or the Principal lower costs. Rights of retention of the Principal which are not based on the sales contract are excluded.
10. Every certificate or document, which proves GPS's ownership of the purchase object remains property of GPS until fulfilment of the contract and receipt of full payment.

#### **VIII. Guarantee**

1. GPS guarantees the faultlessness of the object of purchase according to the respective level of the technological development for comparable vehicles of this type for the duration of 24 months since transfer of perils. The limitation period in the case of a delivering recourse according to §§ 478, 479 German Civil Code remains untouched.
2. According to the guarantee the Principal has to report defects to GPS immediately after their determination in written form and to take the purchase object to the after-fulfilment ( § 439 German Civil Code) to GPS or workshop named in writing by it. If the object of purchase gets inoperable due to a fault of the obligation of guarantee, the Principal has also to consult exclusively GPS by a written declaration. GPS decides whether the required work is carried out on the spot or in a workshop.
3. If the after-fulfilment (repair of defects) fails two times, the Principal is authorized to demand rescission or reduction at his own option. § 439 German Civil Code does not apply to private purchasers.
4. GPS shall be liable after the legal regulations providing the Principal asserts claims for compensation which have to be shown in writing and which are based on firm intention or gross negligence of GPS or firm intention or gross negligence of its representatives or vicarious agents. The compensation liability is limited on the predictable and typically standing up damage, as far as the wilful violation of the contract is not based on GPS.
5. The liability remains untouched because of a culpable injury of the life, the body or the health. This also applies for the mandatory liability according to the product liability law.
6. The liability is excluded, unless something different or divergent has been regulated.
7. GPS does not guarantee the scope of supply of other manufacturers under assignment of the claims against the foreign manufacturer to the Principal, unless the foreign manufacturer does improve within an adequate period.
8. According to the contract of sale, liability is guaranteed on the build-in parts on the remedy until the expiration of the guarantee period of the object of purchase. Replaced parts become property of GPS.

#### **IX. Liability**

1. A further-reaching liability of GPS on compensation for damage as provided in section VIII is excluded without consideration for the cause in law of the asserted claim. This applies particularly for compensation for damage due to faults at competition of a contract, for another breach of duty or for tortuous claims for compensation in accordance with § 823 German Civil Code.
2. As far as the liability for damages is excluded and limited opposite GPS, is this also valid with regard to the personal liability for damages of the appointees, employees, colleagues, representatives and vicarious agents.

#### **X. Place of jurisdiction**

For all present and future claims arising from the business connection with full traders, legal entities under public law or separate property under public law including bill and cheque demands is the exclusive place of jurisdiction the seat of GPS. The same place of jurisdiction is valid if the Principal does not have any general place of jurisdiction in the inland, or transfers his place of residence or his ordinary place of abode after conclusion of the contract from the inland, or his place of residence or ordinary place of abode is not confessed at the time of the filing of action.

The right of the Federal Republic of Germany is valid. The validity of the UN-law on sale is excluded.

#### **XI. Invalid Clauses**

If single regulations of these general Terms and Conditions of Trade are completely or partly ineffective, then the effectiveness of the other conditions is not touched by this.