

Model Contract Terms for Automotive Supply Agreements

1. Clauses for all contracts and agreements

General provisions

1.1 Changes in the agreed terms and conditions of business require prior approval by the other contractual partner and take account of any changes in the costs of the supplier.

Prices and price changes

1.2 If the customer has undertaken to change or adjust the object of delivery or the manufacturing process in qualitative or quantitative terms or in terms of price, amortisation of these services through the delivery transaction or other reasonable remuneration for these services of the supplier is required.

1.3 Provided that the products and processes remain the same, supply prices agreed for the duration of the contract are not placed in question by subsequent cost analyses by a contractual partner or offers from third parties during the period of the contract.

1.4 Cost savings achieved by the supplier through the joint efforts of the contractual partners should be passed on only if this is expressly agreed. In this event, the cost savings are to be fully offset against any price reductions agreed in advance until such time as this is fully covered by such offsetting. Cost savings above and beyond this are to be offset against the list prices to the extent that the customer has contributed to the cost savings.

1.5 The contractual partners undertake that, unless appropriate remuneration arrangements are stipulated for the advance services carried out by the supplier, the remuneration or acceptance of the supplier's service will not improperly be made dependent on reservations by the customer or on factors outside the supplier's control.

1.6 If the contract is terminated prematurely, the contractual partner who had reason to trust in the continuance of the contract will be compensated for any advance services provided.

1.7 If the supplier has delivered partly defective goods, the customer is nevertheless obliged to make payment for that part of the delivered goods which is indisputably free of defects. In all events, the customer may offset only legally enforceable or undisputed counterclaims. No arbitrary penalty terms may be imposed on the contract beyond the cost of rectification of partly or wholly defective goods.

1.8 The supplier should be compensated for stocks held at the bequest of the customer on consignment, for example by shorter terms of payment or increased piece prices.

Confidentiality

1.9 If the other party describes them as confidential or has an evident interest in keeping them secret, all documents (including samples, models and data) and knowledge received by each contractual partner as a result of the contractual business relationship will be used by the partner only for the jointly pursued purposes and kept secret from third parties with the same care as for equivalent documents of its own. This obligation starts on first receipt of the documents or knowledge and ends thirty-six months after the

end of the business relationship.

- 1.10 The obligation does not apply to documents and knowledge which are generally known or, when received, were already known to the contractual partner without an obligation of secrecy, or which thereafter are passed on by a third party which is entitled to divulge them or which are developed by the recipient contractual partner without using documents or knowledge which are subject to secrecy.

Drawings and descriptions

- 1.11 If one contractual partner makes available to the other contractual partner drawings or technical documents about the goods to be supplied and their manufacture, these remain the property of the contractual partner which makes them available.

Samples and manufacturing equipment

- 1.12.1 The customer is aware that the samples and manufacturing equipment (tools, dies, patterns, etc) commissioned by it embody substantial development know-how of the supplier and that the supplier has a particular interest in keeping them secret. For this reason it is agreed that the customer has no right at any time, other than in the case of closure or bankruptcy of the supplier, to demand surrender of the samples and manufacturing equipment for any legal reason, even in the case of complete payment of the tool costs by the customer and/or through termination of the supply relationship. This does not affect the customer's right to ask for compensation if the legal requirements are met.

- 1.12.2 In the absence of an agreement to the contrary, the production costs for samples and manufacturing equipment (tools, dies, patterns, etc) are to be invoiced separately from the goods to be supplied. This also applies to any manufacturing equipment that needs to be replaced as a result of wear and tear attributable to the contract order.

- 1.12.3 The costs of maintenance and proper safekeeping and the risk of damage to or destruction of the manufacturing equipment are borne by the supplier.

- 1.12.4 If the customer suspends or terminates collaboration during the period of preparation of samples of manufacturing material, the production costs necessarily incurred to date are to be borne by the customer. Further claims by the supplier are unaffected.

- 1.12.5 The manufacturing equipment is to be kept by the supplier without charge for three years after the last delivery to the customer. The supplier thereafter will request from the customer in writing within six weeks instructions with regard to its further use. The supplier's duty to keep the manufacturing equipment ends if no reply is received and no new order is placed within this six-week period.

- 1.12.6 Customer-dedicated manufacturing equipment may be used by the supplier for manufacturing components for third parties only with the prior written consent of the customer.

Partnership Clause

- 1.13. All compensation payments, and particularly the amount of compensation for damages, should in good faith take reasonable account of the economic circumstances of the contractual partners, the nature,

scope and duration of the business relationship and the value of the goods.

Industrial Property Rights

1.14.1 The supplier guarantees that, if its delivery is used in accordance with the contract, no rights of third parties are infringed in **xxxxxx****. **[**The national or European territory]**

1.14.2 If a third party pursues claims against the customer in this regard, the supplier is on first request obliged to indemnify the customer against such claims; the customer is not entitled without the consent of the supplier to enter into any agreements with the third party or in particular to enter into a settlement.

1.14.3 The supplier has a corresponding indemnity claim against the customer to the extent that the goods supplied were produced by the supplier in accordance with the drawings, models or other specifications given by the customer and the supplier did not know or could be expected to know that this infringed industrial property rights of third parties.

1.14.4 The indemnity duty relates to all expenses which may possibly be incurred by the contractual partner as a result of or in connection with the claim by a third party.

Warranty

1.15.1 If the supplier has to deliver in accordance with drawings, specifications, samples, etc of the customer, the latter bears the risk for fitness or suitability for the intended purpose of use. For the purpose of deciding whether the condition of the goods is in accordance with the contract, the time when the risk passes is decisive.

1.15.2 For defects arising as the result of unsuitable or improper use, faulty installation or commissioning by the customer or third parties, normal wear and tear or faulty or negligent treatment, no guarantee is given; this also applies to the consequences of improper modifications or repair work carried out by the customer or third parties without the consent of the supplier.

1.15.3 In the absence of an agreement to the contrary, the warranty period is in accordance with the provisions of the law, or for a maximum of 24 months.

1.15.4 Evident defects must be reported by the customer in writing to the supplier promptly after receipt of the goods at the stipulated destination, hidden defects promptly after discovery of the defect and at the latest within six months after the risk passes.

1.15.5 If final goods acceptance or examination of initial samples is agreed, complaints about defects which the partner could have found in the course of careful acceptance procedures or examination of initial samples are excluded.

1.15.6 The supplier must be given an opportunity to check the defect complained of. Goods subject to a complaint must be promptly returned on demand; the supplier pays the transportation costs if the complaint is justified. If the customer fails to meet these obligations or, without the consent of the supplier, carries out modifications to goods about which a complaint has already been made, it loses its warranty rights.

1.15.7 In the case of justified and timely complaint about a defect, the supplier will at its discretion repair the defective goods or supply a defect-free replacement. In the case of volume deliveries, the customer will give the supplier a brief opportunity to sort the defective goods.

1.15.8 If within a reasonable period the supplier fails to fulfil these guarantee obligations or to fulfil them in accordance with contract or the repair is unsatisfactory, the customer may stipulate in writing a final deadline by which the supplier must fulfil its obligations. On expiry of this period to no effect, the customer is entitled at its own discretion to demand a reduction in the price, to withdraw from the contract or, at the expense of the supplier, to carry out the necessary repair itself or to arrange for it to be carried out by a third party. If the repair is successfully carried out by the customer or a third party, all claims of the customer are met through reimbursement of the necessary costs incurred by the customer.

Other Claims and Liabilities

1.16.1 In the absence of an agreement to the contrary below, other and more extensive claims of the customer against the supplier are excluded. This applies particularly to claims for compensation for damage or loss as the result of default, impossibility of performance, culpable breach of contractual duties, fault in entering into the contract, and tort. The supplier is therefore not liable for damage which does not arise in the delivered goods themselves. Above all it is not liable for loss of profit or other financial damage incurred by the customer.

1.16.2 The above restrictions of liability do not apply in the case of wilful intent or gross negligence by the legal representatives or executive employees or in the case of culpable infringement of material contractual duties. In the case of culpable infringement of material contractual duties, the supplier is - except in cases of wilful intent or gross negligence by the legal representatives or executive employees - liable only for damage typical of the contract and foreseeable by a reasonable person.

1.16.3 In addition, the restriction of liability does not apply in cases where liability exists in accordance with Product Liability Law for personal injury or material damage to privately used objects in the case of defects in the goods delivered. Nor does it apply in the case of absence of promised characteristics if and to the extent that the purpose of the promise is precisely to protect the customer against damage that does not arise in the delivered goods themselves.

1.16.4 To the extent that the liability of the supplier is excluded or restricted, this also applies to the personal liability of its salaried staff, hourly-paid workers, employees, legal representatives and assistants in performance.

1.16.5 The legal regulations on burden of proof are unaffected by the above.

1.16.6 The supplier is free to select public liability insurance cover for all his goods and services.

Product Damage and Recalls

1.17.1 To the extent that the supplier is liable for product damage, it is obliged to indemnify the customer on first request against third-party claims for compensation to the extent that the cause is within its area of control and organisation and it is itself liable in external relationships.

1.17.2 The contractual partners will - as far as possible and reasonably to be expected - inform each other in advance about the content and scope of recall measures and give each other an opportunity to comment.

Logistics

1.18 If important parameters (for example maximum and minimum quantities per goods delivery, transportation costs, call-off periods, expected warehouse stocks, etc) change significantly, each contractual partner is entitled to demand a reasonable adjustment of the price in view of these factors.

2 Clauses and guidelines for series supply contracts, long-term contracts and call-off contracts

Pricing

2.1 Different prices generally apply for series and replacement requirements. After series run-out and/or in the case of order quantities lower than originally agreed, prices are to be adjusted accordingly.

2.2 If the parties explicitly or implicitly agree special advance services which the supplier carried out in expectation of a delivery transaction, these services are to be paid for at the time of delivery or other reasonable time.

2.3 A price negotiated and agreed for a specific period should be subject to change only by means of an agreed price adjustment or re-negotiation clause.

2.4 A long-term contract which stipulates fixed prices should leave open the possibility of negotiations about a price adjustment in the case of unforeseen significant cost changes.

2.5 Both contractual parties will strive to achieve continuous quality improvements and cost reductions. In the case of price negotiations, cost reductions achieved in the meantime may be taken into account. Where a long-term productivity improvement or price reduction is agreed by both parties, there must be tangible benefits to both of the parties. Rebates requested during the period of the contract must be reasonable to both parties.

Contract amendments

2.6 To the extent that volume and/or specification changes or additional requirements affect costs, the contractual parties will work towards appropriate and reasonable price changes.

2.7 If in the case of long-term contracts in the event of a substantial change in labour, material or energy costs arises, each contractual partner is entitled to demand an appropriate adjustment of the price in view of these factors.

2.8 If raw material is purchased by the customer on behalf of the supplier, cost changes should be reflected fairly in the contract price.

2.9 If raw material supplies to the supplier are withdrawn, the customer must not penalise the supplier and should make best endeavours to secure alternative supplies.

2.10 If the customer takes less than the target quantity, the supplier is entitled to increase the price per unit by an appropriate amount. If the customer takes more than the target quantity, it is entitled to reduce the price per unit accordingly provided that it has notified the supplier of the additional requirements at least two months before delivery.

2.11 In the event of the cancellation of a contract order, the supplier should be fully compensated for parts produced and/or raw materials purchased.

Information

2.12 The contractual parties will keep each other informed as comprehensively as possible, in particular about conformity with appropriate regulations relating to the geographical usage of the product and about planning and decision processes in the concept phase and during series development.

Industrial Property Rights, Copyright and Labelling

2.13 If in the course of joint development together with the customer or other suppliers, common industrial property rights, copyright or know-how which is subject to an obligation of secrecy are developed, these are attributable to the contractual parties jointly. The customer may immediately use them for its own production for the replacement market or for delivery to third parties.

3 Clauses and Principles for Development Contracts

Concept competitions

3.1 In accordance with clause 1.9, the supplier receives full protection of its know-how even during the course of the concept competition. The customer will itself use the supplier's concept or divulge it to third parties only with the consent of the supplier.

Remuneration

3.2 If, in exceptional cases, series participation by the supplier is not agreed, the development costs and the costs of producing test tools and prototypes are borne by the customer.

3.3 In the absence of an agreement to the contrary, remuneration for all development costs must be paid at the latest when the supplier hands over the work results to the customer. The remuneration must take full account of the extent to which inventions and/or industrial property rights and copyright pass to the other contractual partner.

Development results, inventions and industrial property rights

3.4.1 In the case of inventions by one contractual partner only, the rights to information and development results are attributable in each case to the contractual partner by whom they were developed.

3.4.2 Industrial property rights based on the above are attributable to the relevant contractual partner; it alone has a right of disposal

3.4.3 Each contractual partner is entitled to use the information and development results of the other contractual partner for the development work.

3.4.4 Industrial property rights which are important for the object of the contract will - as far as legally possible and reasonably to be expected - be established and maintained by the contractual partners.

Addendum

The following contract terms should also be considered.

1 Force Majeure

Acts of God, labour disputes, unrest, official measures and other unforeseeable, unavoidable and serious events release the contractual partners from their performance duties for the duration of the disturbance and to the extent of its effect. This applies even if such events occur when the affected contractual partner is already in default. In so far as can reasonably be expected, the contractual partners are obliged to provide the necessary information without delay and in good faith to adjust their obligations to reflect the changed circumstances. If the hindrance lasts longer than three months, each contractual partner is entitled to withdraw from the still uncompleted part of the contract to the exclusion of further claims.

2 Warranty and Quality

In all deliveries, appropriate account should be taken of the following in favour of the supplier:

2.1 The principle of good faith, the economic circumstances of the supplier, the nature and scope of the business relationship, special technical stipulations by the customer, the installation situation not influenced by the supplier, the value of the supplied part and the different levels of value-added generated by the contractual partners in the end product.

In addition, the sales and profit achieved by the supplier from deliveries to the customer of the product which is subject to a warranty obligation.

In the assessment of the warranty period, the value, nature, usual life expectancy and natural wear and tear of the product and the possible influence of the end user on the above.

2.2 With regard to the assessment and cost distribution of the customer's warranty expenses, agreements are entered into which are oriented towards the actual costs incurred by the customer, which allow the supplier to carry out an appropriate examination of the reimbursements claimed by the customer, and which do not make it impossible or difficult for the supplier to fulfil its product observation duties. Cost items which are to be borne by the customer (for example costs of precautionary measures, testing and complaint notification) are not reimbursed.

3 Development Results, Inventions and Industrial Property Rights

3.1 In the case of joint inventions which cannot be registered separately for patent and/or industrial design protection, the contractual partners will reach agreement about registration, processing and maintenance of industrial property rights from case to case.

3.2 Joint inventions and industrial property rights granted on them belong to both contractual partners. Each contractual partner is entitled to use them without paying a levy to the other contractual partner.

3.3 Licences with regard to joint inventions or joint industrial property rights which have been granted on them are issued by the contractual partners only on a joint basis.

4 Duration of Development Contract, Termination

4.1 The development contract ends at the latest on the date of series run-out of the last contracted product unless collaboration between the contractual partners is terminated prematurely.

4.2 If the development contract ends or is terminated prematurely, the justified interests of both contractual partners must be taken into account in deciding when the contract is to end.

4.3 If, in the course of collaboration, the development objective cannot be achieved for technical reasons or, for reasons outside the control of the customer, the contracted product cannot be used, the customer is entitled to terminate the collaboration prematurely.

4.4 If the customer is responsible for premature termination of the contract, the supplier is entitled to reimbursement of order-related costs incurred by it up to the end of the contract. Account will be taken of whether and to what extent these costs were already amortised in the course of series supply and another economic possibility for using the development results exists. In addition, unavoidable costs resulting from contracts with third parties will be reimbursed to the supplier.

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