

## **Terms and Conditions for the Acquisition of Capital Goods, Production Equipment and Tools (version: 1<sup>st</sup> of March 2015)**

- Kirchhoff Automotive GmbH**
- Kirchhoff Automotive Deutschland GmbH**
- Kirchhoff Witte GmbH**

### GENERAL:

A supplier is any person with whom the purchaser has placed an order for deliveries or services within the framework of contracts of purchase, for work and materials, for work and labour and service contracts.

### 1. STANDARD TERMS AND CONDITIONS, AWARDING OF CONTRACT, QUOTATION

1.1 The provisions set forth hereinafter shall become applicable as a supplement to the individual contractual agreements and the confirmation of order respectively the contract awarding memorandum. These terms and conditions shall form an integral part of the contract. Terms and conditions or regulations of the supplier, in particular the supplier's terms and conditions of business shall not become an integral part of the contract and shall have no legal validity, even if the purchaser should not contradict same in individual cases. Upon confirmation of order, the supplier accepts and acknowledges the purchaser's terms and conditions.

1.2 All agreements (order and acceptance) between the parties have to be in writing (written form) in order to become valid and effective; this shall also apply to amendments, supplements and ancillary agreements.

1.3 All orders placed shall become legally effective on both contractual parties once such orders have been placed in writing by the purchaser and are immediately accepted by the supplier without restrictions by a confirmation in writing. Until supplier has placed his confirmation in writing, purchaser is entitled to rescind his order. In case the supplier carries out a delivery without previously having placed a confirmation of the order the supply contract becomes valid, in accordance with the conditions stipulated in the order, when purchaser accepts the delivery.

1.4 The supplier shall strictly adhere to the order instructions given by the purchaser and in the event of deviations, the supplier shall be obliged to explicitly point out such deviations and obtain the prior written consent of the purchaser, without any joint responsibility by the purchaser being constituted thereby.

1.5 If no agreement with regard to a finished product or a certain category of object is involved, the purchaser shall be entitled to request the supplier to change the construction/design and specifications of the relevant object relating to the order within equitable bounds of reasonableness towards the supplier. Upon doing so, the consequences, especially with regard to increase or reduction of costs as well as delivery dates shall be appropriately regulated.

1.6. The supplier's quotations shall be binding for him, if the purchaser accepts them within a reasonable time. The supplier shall not be entitled to charge the purchaser for quotations, design/engineering drawings and other preliminary work executed by it; such work shall be rendered free of charge and shall not constitute any obligation on behalf of the purchaser. All quota-

tions shall comply with the request made by the purchaser; changes or alternatives have to be pointed out clearly.

1.7 The supplier shall not be entitled to assign any orders placed by the purchaser to any third party without the express written consent of the purchaser. In the event that the supplier should violate this provision, the purchaser shall be entitled to withdraw from the contract as a whole or partially or to claim compensation for damages.

1.8 In accordance with the EU Directives 2580/2001, 881/2002 and 753/2011, the supplier declares that it will not have any business dealings with companies, firms, banks, organizations or persons included on EU and/or US sanction lists. This also applies to subsidiaries and branches of the supplier and the shareholdings of third parties at home and abroad. The supplier further undertakes to notify the purchaser in writing, without delay, of any positive results found during the examination of the aforesaid sanction lists.

If the supplier is listed on a sanction list, purchaser shall be entitled to terminate the contract and all existing contracts with the supplier without notice, and to terminate existing business relationships immediately, without that supplier could derive claims for compensation of damages herefrom.

### 2. VOLUNTARY ELUCIDATION, FACTORY STANDARDS, DEVIATING PERFORMANCES

2.1 The supplier shall be obliged to gain information with regard to all details contained in the request and procure comprehensive clarification at its own initiative. Upon submission of quotation, the supplier acknowledges that it bears knowledge of all the necessary facts and prerequisites involved in submission of quotation, in particular with regard to the content of the purchaser's request, the conditions on site, the location of the building site as well as with regard to road conditions. If in the opinion of the supplier any additional information should be required, the supplier shall institute the necessary measures in order to acquire same. The supplier shall not be entitled to invoke misapprehension or plead ignorance.

2.2 If nothing to the contrary has been stipulated, the purchaser's factory standards shall be binding upon the supplier. Intended deviations shall be substantiated in detail in the quotation in advance. Deviations may only be executed if the purchaser has granted its prior approval in writing.

2.3 Performances deviating from the purchase order, which the supplier carries out at its own authority and any additional performance, which the purchaser has not expressly confirmed in writing, shall not establish any claim for payment by the supplier, also not based on transacting without authority.

2.4 The supplier's written confirmation of order, respectively the contract awarding memorandum constitutes the declaration by the supplier that it has examined the documentation handed over and that the supplier has judged same to be adequate and sufficient. The order shall be deemed as having been accepted at

the terms and conditions of the purchaser at the latest upon commencement of work, also without written confirmation.

2.5 In the event that any performance which is not incumbent on the supplier in terms of the contract should be demanded, it shall only be entitled to demand additional compensation if it notifies the purchaser of such claim for compensation and has given the purchaser the opportunity of verification before the supplier commences execution of performance.

### 3. PLACE OF PERFORMANCE, PACKAGING, PASSING OF RISK

3.1 Unless the contrary has been agreed in writing or text form, delivery shall be done at the risk of the supplier free of charges, including packaging, insurance and with duty paid (DDP Incoterms 2010) to the address specified by purchaser, i.e. supplier carries all costs and risks until the goods have been delivered to the delivery address determined by the purchaser.

3.2 In the event of an agreed or statutory acceptance the risks of destruction or deterioration of the delivered good / service shall pass to the purchaser only upon acceptance.

3.3 The supplier is obligated to inform purchaser about any applicable (re-) export license requirements for the goods under German, European or US export control law and customs regulations as well as the export control law and customs regulations of the country of origin of the goods. Therefore, at least in his offers, order confirmations and invoices the supplier shall provide the following information with respect to the goods:

- export list number pursuant to Annex AL to the German Foreign Trade and Payments Regulation or any comparable export list information of applicable export lists;
- ECCN (Export Control Classification Number) for US-goods (including technology and software) pursuant to the US Export Administration Regulations (EAR);
- country of origin of the goods and of the components thereof, including technology and software;
- any transport of the goods through USA, manufacture or stocking of the goods in the USA and whether the goods have been manufactured by using US technology;
- HS-Code of the goods; and
- a contact person in his organization to provide further information to us upon request.

Upon request of purchaser the supplier shall provide any other foreign trade data with respect to the goods and their components in written form and shall inform purchaser on all changes to such data without undue delay and prior to supply.

### 4. DELIVERY DATES, DELAYED DELIVERY

4.1 Agreed delivery dates shall be binding. If the supplier should establish that it is not in a position to comply with its contractual obligations as a whole or partially, or if delivery of performances should not be possible on due date, it shall inform the purchaser thereof without delay by giving reasons and announce a new delivery date. The supplier's obligation to comply with agreed delivery dates shall not be affected thereby.

4.2 Decisive for compliance with any delivery date or deadline shall be the receipt of the delivery by the purchaser, respectively as far as agreed the subject to acceptance installation or assembly of the delivery item, unless otherwise agreed on an individual basis. In the event that it has been agreed, contrary to article 3.1, that collection of goods by purchaser shall be at purchaser's expense, the supplier shall notify purchaser via facsimile to the facsimile number respectively e-mail-address specified by pur-

chaser, with regard to the availability of the relevant goods at least 2 days before expiry of the delivery date and supplier shall have the goods, including packing, ready for collection.

4.3. In the event that the supplier is in delay, purchaser shall be entitled to demand liquidated damage caused by delay amounting to 0,1 % of the delivery and performance value per calendar day, however not exceeding a total of 5 % of the delivery and performance value; Supplier reserves the right to provide proof that a damage or loss in value did not incur at all to the purchaser or is substantially lower as the lump sum set forth. Purchaser reserves the right to provide proof that a higher damage incurred to him. In this case the purchaser shall be entitled also to assert claims for these higher damages in the full amount.

### 5. FUNCTIONAL CONTROL, TRIAL RUNS, ACCEPTANCE

If nothing has been regulated by mutual agreement or in the request specifications or the contract awarding memorandum by the purchaser, the object ordered shall be subjected to an eight week trial run. If no defects have transpired, acceptance by the purchaser shall then be effected by way of written acceptance record on the basis of the pre-printed form of the purchaser.

### 6. REGULATIONS IN THE EVENT OF ASSEMBLY ON PURCHASER'S SITE

In the event that the purchaser has agreed installation/assembly with the supplier or if installation/assembly should be customary business practise falling in the field of responsibility of the supplier, the following provisions shall additionally become applicable:

6.1 In the event of preparing building sites, maintenance thereof and evacuation as well as making provision for the necessary safety measures, the supplier shall be obliged to take all precautions in order to not obstruct operations or work to be conducted within such operational area and also not to obstruct or endanger third parties. In the event of unavoidable obstruction, agreement with the purchaser has to be reached in advance.

6.2 The supplier shall be under the obligation to execute its performances at its own responsibility. The supplier shall identify an authorised representative to the purchaser; such representative shall be responsible for supervising work to be done on behalf of the supplier.

6.3 The purchaser's authorised representatives shall be entitled to monitor that all performances of the supplier are rendered in compliance with the contractual agreements between the parties and have the right to reject performances which are not rendered in compliance with the contract. The purchaser's authorised representative shall be entitled to demand faultless technical execution of work to be done in terms of the contractual provisions.

6.4 If the purchaser should lend assistance by making available workforce and equipment, especially of cranes together with operating personnel, such assistance shall exclusively be given without obligation if the supplier has supervisory authority.

6.5 Without the express consent of the purchaser, the supplier shall not carry out any changes to buildings and steel structures; in particular not carry out welding or thermal cutting work.

6.6 The supplier shall be obliged to conclude insurance policies to an adequate amount which cover public liability and construc-

tion risk insurance and to maintain such insurance. The supplier shall send a written proof to the purchaser that the before mentioned cover has been concluded within 14 days of conclusion.

6.7 In addition, all activities carried out by the supplier on the business grounds and/or premises of the purchaser shall be subjected to the house rules in its respectively valid version (refer to the download possibilities in the Purchasing Division section of the homepage: [www.kirchhoff-automotive.de](http://www.kirchhoff-automotive.de)).

## 7. PAYMENT, ACCOUNT AND DELIVERY NOTE

7.1 Purchaser shall have the right to select whether to pay by bank transfer, cheque, bill of exchange or any other means of payment.

7.2 Purchaser is entitled to offset with or against due, non-due and future claims, regardless of the legal basis for such claim, to which purchaser or a company associated with purchaser in the sense of §§ 15 ff. AktG is entitled against supplier and to offset with and against claims which supplier has against one of the companies described. In particular purchaser shall be entitled to withhold due payments as long as he has still claims against supplier resulting of short or defective deliverable and performance. Supplier is entitled to exercise a right to set off and a right of retention only against counterclaims that have been determined with legal finality or are undisputed.

7.3 The supplier shall not be permitted to assign his claims against purchaser to any third party or arrange for collection by any third party without prior written consent of purchaser, which may not be unreasonably withheld.

7.4 Accounts must be forwarded to purchaser's headquarters in duplicate. Accounts must reflect the supplier number, number and date of order (respectively conclusion of purchase order and call for release), purchaser's additional data (account assignment), unloading point, number and date of delivery note and quantity of goods accounted for. Accounts may only be issued on goods specified on one single delivery note.

## 8. PROPRIETARY RIGHTS, USAGE RIGHTS AND CLAIM FOR RESTITUTION CONCERNING OBJECTS PRODUCED BY SUPPLIER BY ORDER OF PURCHASER

As regards the ownership structure of capital goods, drawings, designs, tools and all other documentation (contractual product) to be produced by the supplier in terms of the purchaser's order, the following is agreed:

8.1 (Co-) Ownership to the ordered contractual products, together with means of production and accessories as well as the design/engineering drawings shall pass to the purchaser in the proportion of deposit paid to the total value of order. The supplier shall keep safe such objects, free of charge on behalf of the purchaser and shall arrange adequate insurance cover.

8.2 As additional security of the deposit and in order to secure the acquisition of ownership by the purchaser, the contractual products, together with means of production and accessories as well as the design/engineering drawings shall be assigned by way of collateral to the purchaser already upon commencement of production of the respective object, thus also the design/engineering drawings upon commencement of production thereof under the proviso that the supplier manufactures such objects and shall keep safe these objects, free of charge on behalf of the purchaser.

8.3 The purchaser shall be entitled to demand surrender of contractual products, together with production means and accessories as well as the design/engineering drawings before final production if application for insolvency proceedings are filed or if enforcement measures are instituted against the supplier and punctual production and/or the rights of the purchaser should be impaired or if the supplier should not be in a position or not willing to complete the contractual product within an appropriate deadline in accordance with the contractual specifications. In such a case, the purchaser shall be obliged to compensate the supplier an amount which corresponds with the degree of completion to the value of order after having set-off the deposit paid and after the purchaser balancing off additional costs for completion of the contractual product and other claims which exceed the agreed compensation as agreed with the supplier.

8.4 The purchaser shall have sole utilisation rights to constructions, drawings, data records, tools and other documentation which is produced by the supplier upon the instructions of the purchaser. The purchaser shall be entitled to use such objects anywhere and without restriction; the purchaser shall be entitled to work on the basis thereof itself or to assign production to third parties at any time. The supplier shall be obliged to protect the constructions, drawings, data records, tools and any connecting documentation against access by third parties and not to utilise same within its own interests neither for third party purposes.

## 9. COMPLAINTS, LIABILITY FOR MATERIAL DEFECT AND DEFICIENCY IN TITLE AND OTHER VIOLATIONS OF OBLIGATION, TERMS OF LIABILITY

9.1 Complaints shall be deemed as having been notified in due time, if visible (obvious) defects have been reported to the supplier at the latest within five working days as of receipt of goods respectively after acceptance of the purchaser. In cases of detection of hidden or concealed defects transpiring during inspections within the normal course of business, the purchaser shall be entitled to also lodge complaints later, i.e. within 5 working days after detection and establishment of defect.

9.2 The supplier shall be obliged to provide the purchaser with possession and ownership of the goods, free from material defects or deficiency in title.

9.3 Material defects shall be deemed as being prevalent if upon passing of risk the goods do not possess the agreed characteristics and / or should not be suitable for use in terms of the prerequisites as set forth in the contractual agreements between the parties and / or should not maintain its characteristics and / or usability for the customary life cycle.

9.4 The supplier warrants that all goods delivered and services performed comply with the specifications stipulated in the purchasing order as well as with the accident prevention regulations set forth by law and by the Employer's Liability Insurance Association.

9.5 In the event of material defects or deficiency in title or other violation of obligations, the purchaser's rights and claims shall be governed by the "BGB"/German Civil Code. In addition to the statutory rights, the following shall be deemed as having been agreed: In the event that the supplier should not meet its obligations with regard to subsequent performance within an adequate period of grace set by the purchaser, the purchaser shall be entitled to carry out subsequent performances himself at the cost

of the supplier or arrange for same to be carried out by a third party, if subsequent performance is not justly rejected by the supplier. § 323 Para 2 "BGB" shall appropriately be applicable. There shall be no need to set a deadline, if the subsequent performance is aborted or if such action should be unreasonable towards the purchaser.

9.6 The purchaser's claims based on material defects or deficiency in title as well as other contractual violations by the supplier shall become statute barred, unless if otherwise provided for by statutory regulations or deviating deadlines have been agreed in individual cases and subject to the regulations set forth under clause 9.7 as follows:

a) In the case of movable assets: after three years commencing with date of delivery of the object to the purchaser or if acceptance has been agreed; upon acceptance;

b) In cases of created products, of which the success is established through production, maintenance or changes to an object or in the rendering of planning or supervision performances: for this three years as of acceptance.

c) In the case of construction work and / or an object which is used in accordance with intended application for building purposes and such object has caused defect thereof, as in the case of created products where the success lies in rendering planning or supervision performances: for this in five years as of acceptance.

d) All remaining performances: within the regular statute barring limitation period of three years.

All limitation periods shall be extended by the time periods during which the statute barring period has been suspended. Statute barring shall only take effect three months after termination of suspension.

In the event that the supplier has acted with intent or maliciously concealed any defect, such claims shall become statute barred three years after acceptance; under reservation of longer limitation periods being applicable.

9.7 In the event that claims against the purchaser should be raised due to defects of the contractual products or other contractual violations which are constituted in any sphere related to the supplier's obligations and belated or defective delivery or performance should be the consequence, the supplier shall indemnify the purchaser from any and all claims raised by our contractual partners or any other third party, however in the case of claims for compensation only in so far as the supplier is not able to prove that he is not accountable for such defects or other contractual violations. The purchaser's claims for compensation of damages and indemnification for any and all damages and expenses relating to goods provided by the supplier shall exceed the liability/statute barring limitation periods set forth under 9.6 hereof for the time period that the purchaser is being held responsible. This shall also apply to any consequential damages and expenses pertaining to claims based on obligations falling in the field of responsibility of the supplier; however for a maximum period of time amounting 10 years as of commencement of the statutory statute barring period. Claims based on violation of obligations by the supplier which the purchaser reprimands within the warranty/statute barring limitation period, shall become statute barred at the earliest 3 months after reprimand.

9.8 During his deliverables and performances the supplier sticks to the applicable statutory rules of the European Union and the Federal Republic of Germany, e. g. the REACH-regulation (regula-

tion EG Nr. 1907/2006); the Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (ElektroG) and the End-of-Life Vehicles Act (AltfahrzeugG). The supplier commits towards purchaser to supply only those products (substances, mixtures or articles) which are in accordance with the REACH/CLP-regulation and all other material provisions. Supplier has to make sure that all obligations concerning the registration, evaluation, classification and authorization of materials and all his duties and obligations concerning the REACH/CLP-regulation as manufacturer and for purchased goods as importer including the information duties are fulfilled. The Supplier shall inform the purchaser immediately about any relevant changes caused by legal regulations, in particular to inform him immediately about changes on the goods, its ability to deliver, use or quality caused through the REACH-regulation and in each individual case agree to adequate measures with the purchaser. The same applies as soon as and to the extent that the supplier becomes aware that such changes will happen.

9.9 Further going claims and extended statute barring limitation periods pursuant to the „ProdHaftG“/Product Liability Laws based on tort, malicious acts and arising from warranties shall remain unaffected.

## 10. CONFIDENTIALITY, PROTECTION RIGHTS TO DRAWINGS, MOULDS, MODELS, TOOLS, CONSTRUCTIONS, ETC. MADE AVAILABLE BY PURCHASER

10.1 The contractual partners undertake to treat all business and technical details which are not publicly known which they should obtain knowledge of on the basis of the business relations between the parties as business secrets.

10.2 In the event that the supplier should produce moulds, models, drawings, lithographs, tools or similar objects which may be necessary for processing an order, such objects shall likewise be treated as confidential.

10.3 Drawings, moulds, models, templates, tools, samples and similar objects, which the purchaser should make available to the supplier shall be treated as strictly confidential and may solely be used towards purposes of processing the purchaser's orders. Such objects may not be copied or passed on or made accessible to any third party in any way whatsoever and shall remain the property of the purchaser. Goods manufactured on the basis thereof may not be assigned to any third party. The same shall apply to parts which the supplier has developed in terms of the purchaser's specifications.

10.4 Without the prior written consent of purchaser, supplier shall not be permitted to allude to the business relations or exhibit the products / delivery items made for purchaser.

10.5 The same obligations shall be imposed on sub-contractors.

## 11. PROTECTION RIGHTS

11.1 The supplier shall be liable for any claims which should arise during utilisation of the contractual products in terms of the contract due to violation of protection rights or registration of protection rights, however in the case of claims for compensation of damages only in so far as the supplier is not able to prove that he is not accountable for such defects or other contractual violations. The supplier shall indemnify the purchaser and its contractual partners from all claims arising on the basis of utilisation of such protection rights.

11.2 This shall not apply if the supplier has produced objects on the basis of designs, models or specifications and details of the supplier and the supplier is not aware of or can not bear knowledge of the fact that protection rights of third parties are being violated thereby.

## 12. UNGLOBAL COMPACT

12.1 The purchaser attaches superior importance to social responsibility within the framework of entrepreneurial activities and consequently takes an active part in the "United Nations Global Compact" initiative. The initiative is based upon fundamental principles, that are supposed to shape globalisation more social and ecological and to prevent corruption. Further information about the Global Compact Initiative of the UN is available on the homepage: [www.unglobalcompact.org](http://www.unglobalcompact.org).

12.2 The Supplier is obligated to comply with these principles and to pass them down in his supply chain.

## 13. PLACE OF PERFORMANCE, JURISDICTION, CHOICE OF LAW

13.1 Place of performance shall be the domicile of the purchaser.

13.2 In the event of contracts with established merchants and legal entities, venue of jurisdiction shall be the competent courts at the domicile of the purchaser. That is the domicile of the holding company in Iserlohn. This also applies in cases the order is placed from the Federal Republic of Germany in the name and for the account of a foreign subsidiary. However purchaser is also entitled to file suit at supplier's place of business.

13.3 All orders, goods and services, for which according to 13.2 the venue of jurisdiction is in the Federal Republic of Germany, shall be governed by the laws of the Federal Republic of Germany under exclusion of UN Purchase Law.

13.4 These Terms and Conditions for the Acquisition of Capital Goods, Production Equipment and Tools are being drafted in the German and English version. In case of a discrepancy of the two versions, the German version shall prevail. The English version shall only be considered for translation purposes.

## 14. SEVERANCE CLAUSE

In the event that any provision set forth in these terms and conditions and/or any agreement concluded between the parties should be invalid or become invalid, the validity of the remaining part of the contractual arrangements shall not be affected thereby. The contractual partners undertake to replace such invalid provision with a legally permissible regulation, which comes closest the economic intent of the relevant invalid provision.