

General Terms of Business

of the Farmingtons Automotive GmbH, Beekebreite 18-20,
49124 Georgsmarienhütte, Germany
Status: 2017-08-07



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I. Scope of validity

1. The following General Terms of Business shall form an integral part of the contract concluded between Farmingtons Automotive GmbH (hereinafter referred to as the Supplier) and its contractual partner (hereinafter referred to as the Purchaser), irrespective of whether this relates to a contract of purchase, a contract for work and materials, a contract for work and services, or a service contract. All deliveries, performance and offers provided by the Supplier shall solely and exclusively be subject to these General Terms of Business. They shall equally apply to all future deliveries, performance or offers provided to the Purchaser by the Supplier, even in cases when agreement on their validity is not specifically reiterated.
2. Purchasers within the meaning of these General Terms of Business shall solely be entrepreneurs, legal entities under public law, or special funds under public law. An entrepreneur is any natural or legal entity, or partnership with legal personality, who or which, when entering into a contract, acts in exercise of his or its trade, business or profession (Sect. 14 German Civil Code [BGB]).
3. The general terms of business of the Purchaser or any third party shall not be accepted, even if the Supplier does not specifically contest their validity in each individual case. Even if the Supplier should refer to a letter containing or referencing the general terms of business of the Purchaser or a third party, this shall not be construed as any form of consent to the validity of said general terms of business on the part of the Supplier.

II. Offer and conclusion of contract

1. Any and all offers provided by the Supplier shall be without engagement and non-binding unless they are expressly cited as being binding or contain a specific deadline within which they are to be accepted. The Supplier shall be entitled to accept orders or contracts within fourteen (14) days of their receipt.
2. The sole document determining the legal relationship between the Supplier and the Purchaser shall be the contract concluded in text form, including these General Terms of Business. Said contract shall represent the full agreement between the parties to the contract with respect to the subject of the contract. Verbal agreements given by the Supplier prior to conclusion of this contract shall be legally non-binding, whilst verbal agreements given by the parties to the contract shall be superseded by the contract recorded in text form unless such verbal agreements are, in each case, expressly deemed to remain binding on the parties.
3. Any amendments or additions to the agreements entered into between the parties, including these General Terms of Business, must be provided in text form in order to be valid and effective. With the exception of managing directors and persons with legal authority to sign on behalf of the company, as provided for in Sections 48 – 53 of the German Commercial Code (HGB), the Supplier's employees shall not be entitled to reach any verbal arrangements that deviate from these Terms.
4. Should, after conclusion of the contract, the Purchaser request that amendments or additions be made to the delivery or performance undertaken by the Supplier, these must be mutually agreed upon in text form in each individual case, including any and all resulting amendments with respect to payment, delivery or performance.
5. All details provided by the Supplier with respect to delivery or performance (e.g. weight, dimensions, serviceability, load capacity, tolerances and technical specifications) as well as any depictions thereof on the part of the Supplier (e.g. drawings and illustrations) are only approximations unless their applicability for the contractually envisaged purpose shall require specific conformity. They shall not constitute guaranteed quality features but rather descriptions or characterisations of the delivery or performance. Deviations that are customary in trade or deviations resulting from legal regulations or representing technical improvements, as well as replacements of parts and components through equivalent ones, shall be permissible provided that they do not compromise their usability for the intended contractual purpose.

6. If, and to the extent, that the delivery of vehicles is the subject of the contract, the order – during the lead time – shall be subject to amendments to the design or shape, deviations in colour shades, or amendments to the scope of delivery on the part of the manufacturer of the basic vehicle provided that the amendments or deviations shall, in consideration of the Supplier's interests, be deemed reasonable for the Purchaser. If, and to the extent, that the Supplier or the manufacturer of the basic vehicle requires marks or numbers in order to designate the order or the ordered delivery item, no rights may be derived solely from these.
7. The Supplier reserves the right to the ownership or the copyrights to all offers and quotations submitted by it as well as to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the Purchaser. The Purchaser shall not be entitled to provide or disclose said items – whether in their actual form or in terms of their content – to third parties without the Supplier's express consent, nor use or copy them for itself or third parties. At the request of the Supplier, the Purchaser shall return these in full and destroy any copies which may have been made if these should cease to be required in the ordinary course of business or if the negotiations fail to result in the conclusion of a contract.

III. Performance and time of performance

1. Time periods and deadlines for deliveries or performance proposed by the Supplier shall always be non-binding unless a binding time period or binding deadline has been expressly promised or agreed. If, and to the extent, that the dispatch of a product has been agreed, the delivery periods or delivery time shall refer to the time the product is handed over to the forwarding agent, carrier, or other third party vested with the task of transportation.
2. The Supplier shall only be obliged to commence providing its deliveries or performance after receipt of an agreed advance payment. In this respect, the Purchaser shall be obliged to make a payment in advance.
3. The Supplier shall be entitled to have owed deliveries or performance supplied, in whole or in part, by affiliated companies or other third parties.
4. Without prejudice to its rights arising from a delay in performance on the part of the Purchaser, the Supplier may require that the Purchaser accept an extension of the delivery or performance periods or the postponement of delivery or performance times by the time period in which the Purchaser fails to honour its contractual obligations towards the Supplier.
5. The Supplier shall not be liable for the impossibility of a delivery or performance or for delays in delivery or performance if, and to the extent, that this has been caused by force majeure or any other circumstances that were unforeseeable upon conclusion of the contract (e.g. operational stoppages of any kind; difficulties procuring materials or energy; transportation delays; strikes; legitimate lockouts; workforce, energy or raw material shortages; difficulties obtaining required permits, especially export licences from the Federal Office for Economic Affairs and Export Control (BAFA); official measures; or missing, false or untimely deliveries by upstream suppliers) and beyond the control of the Supplier. If, and to the extent, that said circumstances significantly complicate delivery or performance for the Supplier or make delivery or performance impossible and the impediment is not of a temporary nature, the Supplier shall be entitled to withdraw from the contract. In the case of impediments of a temporary nature, the delivery or performance periods shall be extended and the delivery or performance deadlines shall be postponed by the duration of the impediment plus a reasonable re-commencement time. If, and to the extent, that the Purchaser should not be reasonably expected to accept the delivery or performance as a result of the delay, the Purchaser may withdraw from the contract by serving immediate notice in text form to the Supplier.
6. The Supplier shall only be entitled to make partial deliveries or partial performance provided that the partial delivery or partial performance is useable for the Purchaser within the bounds of the intended use specified in the contract, that delivery or performance of the remaining ordered goods is guaranteed and that the Purchaser does not incur any

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significant outlays or additional costs as a result (unless the Supplier commits to assuming such costs).

7. The Supplier shall be entitled to require payment in advance or securities prior to fulfilling outstanding deliveries or performance if, subsequent to conclusion of the contract, the Supplier becomes aware of circumstances which significantly lessen the Purchaser's creditworthiness and as a result of which payment of the Supplier's outstanding receivables by the Purchaser arising from the respective contractual relationship (including from other individual orders for which the same framework agreement applies) is endangered.
8. The Supplier shall notify the Purchaser of its readiness to make delivery or performance by sending a notification in text form or an invoice with corresponding reference thereto.
9. Any and all claims for damages in lieu of performance shall be excluded in the event of simple negligence on the part of the Supplier.
10. If, through chance, delivery becomes impossible for the Supplier while the Supplier is in default of performance, the Supplier's liability shall be restricted to the aforementioned agreed limitations of liability. The Supplier shall not be liable if the damage would have also occurred even with timely delivery.
11. The limitations or exclusions of liability stated in this section shall not apply to damage which is due to the grossly negligent or wilful breach of duties on the part of the Supplier, its legal representatives or vicarious agents, or where injury to life, limb or health is concerned.

IV. Place of performance, dispatch, packaging, acceptance, passing of risk

1. Unless otherwise specified, the place of fulfilment for all duties arising from the contractual relationship shall be the facility Farmingtons Automotive Georgsmarienhuetten, Germany. The Supplier's deliveries shall be made ex works Farmingtons Automotive Georgsmarienhuetten, Germany (ex works Georgsmarienhuetten, in accordance with Incoterms 2010). Should the Supplier also be responsible for the installation, the place of performance shall be the place where the installation is to be completed.
2. In the event that a shipment has been agreed, the Supplier shall be dutifully bound to choose the form of shipment and the packaging at its own discretion.
3. In the event that a shipment has been agreed, the Supplier shall insure the product in question against theft, breakage, damage or loss in transit, fire and water damage or other insurable risks solely at the explicit request and cost of the Purchaser.
4. The Purchaser shall be obliged to take receipt of the Supplier's delivery or performance within fourteen (14) days of receiving the Supplier's notification of readiness to make delivery or performance and, if necessary, to accept and pay for the delivery or performance. If the delivery item is a vehicle, the Purchaser shall be entitled to test drive the vehicle over a distance not to exceed 20 kilometres.
5. Should the Purchaser fail to take receipt of the Supplier's delivery or performance – and, if required, to accept the same – within fourteen (14) days of receiving the Supplier's notification of readiness to make delivery or performance, the Supplier shall, after setting a grace period of fourteen (14) days, be entitled to avail of its legal rights. A grace period shall not be required if the Purchaser insistently and definitively refuses to take receipt of and, if necessary, to accept the Supplier's delivery or performance.
6. If no acceptance has taken place, the risk shall, at the very latest, be passed on to the Purchaser upon handover of a delivery item (the definitive point in time being the commencement of the loading operation) to the forwarding agent, carrier or other third party vested with the task of transportation. This shall also apply even if partial deliveries or partial performance occur or the Supplier has accepted other types of performance (e.g. shipment or installation). If the shipment or handover is delayed as a consequence of a circumstance for which the Purchaser is responsible, the passing of risk to the Purchaser shall occur on the day on which a delivery item is ready for dispatch and the Supplier has indicated this to the Purchaser.
7. If acceptance is required, the passing of risk to the Purchaser shall

occur upon acceptance. The delivery or the performance shall, at all events, be deemed to have been accepted if the delivery or performance and – in the event that the Supplier is also responsible for the installation – the installation has been completed; if the Supplier has informed the Purchaser of such and simultaneously referred to the deemed acceptance, as specified in this Section IV Subsection 7, and has requested the Purchaser's acceptance; if fourteen (14) working days have passed since the delivery or installation was completed, or if the Purchaser has begun to use the delivery item or performance (e.g. has put the delivered installation into operation) and, in this case, seven (7) working days have passed since completion of the delivery or installation, and the Purchaser has refused to issue its acceptance within this period for reasons other than notification to the Supplier of a defect making the use of the delivery item or the delivered performance impossible or substantially impairing the use thereof.

2. The storage costs shall be assumed by the Purchaser following the passing of risk. In the event that the Supplier should assume the task of storage, the storage costs charged for each expired week shall amount to 0.10% of the net invoice amount for the delivery items being stored. The Purchaser is hereby expressly granted the right to prove that no damage whatsoever has been caused or that such damage is substantially lower than the lump sum. The Supplier shall be entitled to assert a claim for higher damages in cases where this can be proved.

V. Remuneration, advance payments, payments

1. Unless otherwise agreed, all references to remuneration in EUR ex works (ex works Georgsmarienhuetten, in accordance with Incoterms 2010) shall be understood to be exclusive of packaging and the statutory level of value-added tax in force on the due date and, in the case of export deliveries, exclusive of customs duty and fees as well as any other public dues.
2. Payments may be made in cash by making an irrevocable deposit into the Supplier's account, by payment of a check irrevocably certified by a German bank or savings bank, or by a cheque made out to one of the German states' central banks (Landeszentralbank = LZB cheque).
3. Unless otherwise agreed, advance payments shall be made immediately upon conclusion of the contract. The Supplier shall only be obliged to commence providing its deliveries or performance after receipt of an agreed advance payment. In this respect, the Purchaser shall be obliged to make a payment in advance.
4. Should the Purchaser fall fourteen (14) days in arrears with an advance payment or a remuneration payment, the Supplier shall, after setting a grace period of fourteen (14) days, be entitled to avail of its legal rights. A grace period shall not be required if the Purchaser insistently and definitively refuses to make the advance payment or remuneration payment.
5. Set-off rights or rights of retention shall solely be owing to the Purchaser if its claims are uncontested or have been established as final and absolute by a court of law. With respect to defects in delivery or performance, the Purchaser's rights as the opposing party shall remain unaffected.

VI. Retention of title

1. The agreed retention of title referred to hereinafter serves to safeguard the claims to which the Supplier is entitled on the basis of the contract. The retention of title shall also serve to safeguard all the Supplier's existing and future claims against the Purchaser arising from the purchaser-supplier relationship between the parties to the contract (including outstanding balance claims arising from open account terms granted exclusively for the purchaser-supplier relationship).
2. Goods delivered by the Supplier to the Purchaser shall remain the Supplier's property until full and complete payment of all secured debts. Both the goods and those goods replacing them that are covered by the retention of title in accordance with this clause, shall be referred to hereinafter as goods subject to retention of title.
3. The Purchaser shall hold goods subject to retention of title in safe custody for the Supplier without charge. For the duration of the goods

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remaining subject to retention of title, the Supplier shall be entitled to possess a Part II registration certificate (vehicle registration document).

4. The Purchaser shall be entitled to process and sell the goods subject to retention of title in the ordinary course of business until such time as their realisation comes into effect within the meaning of Subsection 9 below of this Section VI. Pledges and transfers by way of security shall be impermissible.
5. Should the goods subject to retention of title be processed by the Purchaser, it is hereby agreed that such processing shall occur in the name and for the account of the Supplier as the manufacturer and that the Supplier shall immediately acquire full ownership or – if the processing involves materials from several owners, or the value of the processed item is greater than the value of the goods subject to retention of title – a share in the ownership (fractional ownership) of the newly created item in proportion to the value of the goods subject to retention of title to the value of the newly created item. In the event that no such acquisition of ownership on the part of the Supplier should occur, the Purchaser hereby assigns its future ownership or share in the ownership – in the above-mentioned proportion – of the newly created item as security for the Supplier. Should the goods subject to retention of title be combined or inseparably mixed with other items to form one unified item, and should one of the other items be regarded as the main item, the Supplier – inasmuch as it is not owner of the main item – hereby assigns to the Purchaser a proportionate share in the shared ownership of the unified item in the proportion stated in Sentence 1 hereto.
6. In the event that the goods subject to retention of title be resold, the Purchaser hereby assigns the claim resulting against the buyer – in the event of the Supplier's shared ownership in the goods subject to retention of title, a corresponding proportion of the share in the ownership – to the Supplier. The same shall apply to other claims that replace the goods subject to retention of title or that otherwise arise with regard to the goods subject to retention of title, such as insurance claims or claims arising from a tortious act in the event of loss or destruction. The Supplier authorises the Purchaser with revocable effect to collect, in its own name, claims assigned to the Supplier. The Supplier may only revoke this collection authorisation in the event of realisation.
7. Should third parties take possession of the goods subject to retention of title, in particular by way of debt enforcement, the Purchaser shall immediately inform them of the Supplier's ownership and inform the Supplier of such actions in order to enable the Supplier to enforce its rights of ownership. If the third party is not in a position to reimburse the Supplier for the court fees or extrajudicial costs incurred as a result, the Purchaser shall be correspondingly liable to the Supplier.
8. On request, the Supplier shall, at its discretion, either release the goods subject to retention of title – as well as the items replacing them – or release the outstanding claims, provided that their value exceeds the amount of the secured debts by more than 10%.
9. If, as a result of the Purchaser's conduct not being in conformity with the contract – in particular by falling into arrears with payments – the Supplier should withdraw from the contract (realisation), the Supplier shall be entitled to demand the return of the goods subject to retention of title.

VII. Property rights

1. The Supplier warrants, in accordance with this Section VII, that the delivery item is free from third-party industrial property rights or copyrights in countries of the European Union, in North America or in other countries in which the Supplier renders its services. Each party to the contract shall immediately inform the respective other party to the contract in text form if claims are asserted against it due to any infringement of such rights.
2. Should the delivery item infringe an industrial property right or a copyright belonging to a third party, the Supplier shall, at its discretion and expense, either modify or replace the delivery item so that no third-party rights are infringed whilst still maintaining the contractually agreed functions, or obtain a right of use for the Purchaser by

concluding a licensing agreement. Should the Supplier not succeed in doing so within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract or to reduce the purchase price by an appropriate amount.

3. In the event of any rights being violated by products supplied by the Supplier that have been made by other manufacturers, the Supplier shall, at its discretion, either assert its claims against the manufacturers and upstream suppliers for the account of the Purchaser or assign such claims to the Purchaser. In such instances, claims against the Supplier shall only exist in accordance with this Section VII if the judicial enforcement of the claims stated above against the manufacturers and upstream suppliers was unsuccessful or has no prospects of success – due to insolvency, for example.

VIII. Confidentiality

1. The parties to the contract shall be obliged to treat as business secrets all commercial and technical details that become known to them through their business relationships and that are not common knowledge.
2. Drawings, illustrations, calculations, descriptions, documentation, reports, graphs, diagrams, images, films, data, data media, models, matrices, templates, samples, tools and other production resources and confidential information must not be disclosed or otherwise made available to unauthorised third parties. The duplication of such items shall only be permissible if operational requirements so dictate and such action is in compliance with the copyright provisions.
3. The Purchaser must correspondingly bind its buyers, where appropriate.
4. The parties to the contract may only advertise their business relations with the prior consent (in text form) of the respective other party.
5. The provisions of any confidentiality agreement which may have been concluded separately between the parties to the contract shall remain unaffected by the foregoing regulations.

IX. Liability for defects in the event of delivery of an item, including movable items to be produced or manufactured, and in the event of a contract for the supply of work performances

1. Where the delivery of an item is concerned – including movable items that are to be produced or manufactured – claims resulting from material defects shall become time-barred one (1) year after delivery and, in the event of a contract to produce a work performance, one (1) year from acceptance of the same. Any delivery of used items agreed with the Purchaser in an individual case shall occur to the exclusion of any warranty for defects.
2. Neither the restrictions in the statute of limitations specified in Section IX, Subsection 1, Sentence 1 nor the exclusion of any warranties for defects specified in Section IX, Subsection 1, Sentence 2 shall apply if the damage is due to a grossly negligent or wilful breach of duties on the part of the seller, its legal representatives or its vicarious agents or involves injury to life, limb or health.
3. Immediately after delivery or performance, the items delivered and/or work performances provided by the Supplier shall be examined carefully by the Purchaser or by a third party appointed by the same.
4. The items delivered and work performances provided shall be deemed to have been approved unless the Supplier receives a complaint in text form with regard to obvious defects – or other defects that became discernible during a prompt, careful inspection – no later than seven (7) working days after delivery of the item or provision of the work performance or, otherwise, no later than seven (7) working days after discovery of the defect, or any earlier time at which the defect became discernible without further investigation during the normal use of the item or work performance.
5. The Purchaser shall bear the full burden of proof for satisfying all the prerequisites for a claim, in particular for the defect itself, for the time of discovery of the defect and for the timeliness of submitting the complaint in respect of the defect.
6. Section 377 of the German Commercial Code (HGB) shall remain unaffected.

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7. Supplementary performance shall, at the discretion of the Supplier, take place at the facility Farmingtons Automotive Georgsmarienhuetten, Germany, or at a specialist workshop which the Supplier shall be at liberty to commission. At the Supplier's request, the delivery item subject to the complaint shall be returned to the Supplier freight or carriage paid. If the complaint in respect of the defect is justified, the Supplier shall cover the costs of the least expensive shipping route; this shall not apply if the costs rise because the delivery item is situated at a location other than the location of its intended use.
8. The Supplier shall, initially at its own discretion, provide subsequent performance on any defects in the delivery item by remedying the defect or by delivering an item which is free from defects.
9. In the event of defects being established in components from other manufacturers which the Supplier – for licensing or other effective reasons – is unable to remedy, the Supplier shall, at its own discretion, assert its warranty claims against the manufacturers and upstream suppliers for the account of the Purchaser, or assign said claims to the Purchaser. In the case of such defects, warranty claims against the Supplier shall only exist under other preconditions and in accordance with these General Terms of Business if the judicial enforcement of the aforementioned claims against the manufacturer and upstream supplier was unsuccessful or has no prospects of success – due to insolvency, for example. The statute of limitations on the Purchaser's respective warranty claims against the Supplier shall be suspended for the duration of the lawsuit.
10. If the Purchaser is furnished with inadequate operating or installation instructions, the Supplier shall only be obliged to supply operating or installation instructions that are free from defects if the defect in the operating or installation instructions precludes the correct operation of the delivery item.
11. Parts that are replaced in the course of supplementary performance shall become the Supplier's property.
12. The warranty shall become void in the event that the Purchaser, without the Supplier's consent, personally alters the delivery item or arranges for it to be altered by a third party thereby rendering any rectification of the defects impossible or unreasonably difficult. At all events, the Purchaser shall be liable for any and all additional costs involved in rectifying the defects resulting from the alteration.
13. Should statutory provisions dictate that the Supplier be liable for damages resulting from an act of simple negligence, the Supplier's liability shall be limited as follows:
 - a) Any liability shall solely apply in the event that material contractual duties are breached, for example those which the contract – by its very content and purpose – seeks to impose on the Purchaser or only the fulfilment of which enables the due and proper execution of the contract and on the compliance of which the Purchaser depends and must depend. Said liability shall be limited to the damage typically foreseeable at the time the contract was concluded.
 - b) The personal liability of the Supplier's legal representatives, vicarious agents and employees shall be excluded in the event that their simple negligence should result in any damage.
 - c) The aforementioned limitations and exclusions of liability shall be governed by Section IX, Subsection 2 accordingly.
14. Notwithstanding any culpability on the part of the Supplier, the Supplier's liability shall remain unaffected in the event of fraudulent concealment of a defect, as a result of the assumption of a warranty or a procurement risk, and under the law governing product liability.

X. Liability for other damage

1. All other claims brought by the Purchaser not governed by Section IX shall become time-barred in the standard limitation period.
2. Any liability arising from a delay in delivery shall be definitively governed by Section III.
3. For all other claims for compensation against the Supplier, the provisions of Section IX, Subsections 13 and 14 shall apply accordingly.

XI. Applicable law / Place of jurisdiction

1. With respect to the contract that has been concluded as well as all associated relations, the parties to the contract agree to abide by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980. German has been agreed as the language of contract.
2. If the Purchaser is a businessman, the Supplier's registered office shall be the exclusive place of jurisdiction for all present and future claims arising from the business relationship, including claims based on bills of exchange or cheques. The same place of jurisdiction shall apply if the Purchaser has no general place of jurisdiction in the Federal Republic of Germany; moves its domicile or habitual residence from this country after concluding the contract; or whose domicile or habitual residence is unknown at the time an action is brought. The Supplier shall, however, also be entitled, at its discretion, to bring an action before the courts having jurisdiction in accordance with the general provisions of the law.

XII. Severability clause

1. Should one or more provisions of these General Terms of Business or of the contract that has been concluded be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain affected. Any such ineffective or unenforceable provision shall be replaced by a clause that most closely reflects the original intent of the ineffective or unenforceable provision; the same shall apply in the event of any gaps or omissions.
2. In the event of any deviations in content between these English General Terms of Business and the German, the German version shall have precedence at all times.

End of General Terms of Business

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