

General Terms and Conditions of Purchase of b-plus automotive GmbH

§ 1 General

(1) These General Terms and Conditions shall form part of our purchase orders and the agreements concluded with us. They also shall apply to all contracts for work and materials concluded with us.

(2) These General Terms and Conditions of Purchase exclusively are applicable to all our (that means the b-plus automotive GmbH, Ulrichsberger Straße 17, 94469 Deggendorf and all of its affiliated companies according to §§ 15 ff. German Stock Corporation Act (Aktiengesetz)) business relations which we enter for the first time, regularly and in future with companies pursuant to section 14 German Civil Code (hereinafter referred to as Contractor); they shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

(3) We hereby object to any counter confirmation, counter offer or other reference by the Contractor to its general terms and conditions; any dissenting terms and conditions of the Contractor shall only apply if we have confirmed the same in writing.

§ 2 Offer and Contract

The Contractor has to accept our offer to enter a contract of purchase (purchase order) in written form within 4 days. The relevant dates for this time limit are the days of receiving the offer and the acceptance.

§ 3 Documentation, Specifications, Samples

Our property rights and/or Copyright and/or other intellectual property rights in any illustrations, drawings, models, samples, calculations, construction plans, Hardware schematics and layout as well as Software descriptions and codes and other documents which we provided or paid for to execute the order shall remain reserved; these documents may only be used for work involved in completing the order and may not be duplicated and/or disclosed to third parties without our express written approval. The documents, any copies made and/or tools provided must be returned to us without the need for a request and at no charge after first request or at the latest after termination of the cooperation.

§ 4 Export license

The Contractor is obliged to inform us in writing without any delay if and to what extent export licenses are required for all or part of the order or if similar statutory or official conditions must be fulfilled or if the Services are subject to US export restrictions.

§ 5 Price

(1) The price of the purchase order shall be binding and shall be based on "free works", unless otherwise expressly agreed in writing. The price shall - unless otherwise expressly agreed in writing - include the costs of packing. A charge for transportation insurance is not applicable since b-plus automotive is selfinsured. The price is exclusive of VAT at the statutory rate.

(2) All invoices of the Contractor shall be submitted in simple copy separately each order. They shall contain the following information: the order number, the order date, and the name of the person placing the purchase order. Further invoices shall contain the following reference: invoice date, name of the recipient and the supplier, delivery date of goods and/or services, references to tax exemptions in accordance with § 13 UStG, itemised rates of tax and indication of the net value. Invoices may not be enclosed with the delivery, but shall be presented separately.

(3) Unless otherwise agreed in writing, payment shall be made within 14 days less a 3 % discount or within 30 days net after delivery and receipt of the invoice.

(4) Our Payments do not in any way signify an admission in the sense of a final acceptance that the delivery/service has been performed professionally and properly.

§ 6 Set-off, Right of retention

(1) We are entitled to set-off rights and rights of retention in accordance with German law.

(2) Disputes concerning the amount of compensation payable to the Contractor do not entitle the Contractor to suspend its services in whole or in part even on a temporary basis.

§ 7 Delivery/ Period of delivery/ Default in delivery

(1) Unless otherwise agreed in writing, the delivery shall take place as "ddp" (delivery duty paid, pursuant to Incoterms 2000). The time at which the risk of damage or loss of the goods shall pass shall be fixed in accordance with the interpretation of Trade Terms of the International Chamber of Commerce of Paris (Incoterms 2000).

(2) The deadlines stated in the order or any other specifically agreed delivery deadline shall be binding. Deliveries/services performed ahead of schedule and/or deliveries/services performed in stages require the express written approval of the Customer.

(3) The Contractor is obliged to state our order number and the contractually agreed identification marks on all shipping documents and/or delivery notes, otherwise any consequences (i.e. further delays or additional costs) shall be at the charge of the Contractor.

(4) The Contractor is obliged to inform us immediately in writing if circumstances arise or become obvious as a result of which it becomes impossible to meet the deadlines.

(5) If the Contractor is in default as regards delivery or performance, we are entitled to demand a contractual penalty of 0.5% for each calendar week commenced, but in total not more than 5% of the remaining scope of delivery, taking into account possible damages. Any additional claims for delivery default (including the right to cancellation and/or damages in instead of performance) remain unaffected. Our right to demand the contractual penalty shall remain up to final invoice/payment even if it has not reserved this right when accepting the delivery/services.

(6) In addition, and regardless of any other and/or further rights that we may have, we may, after a reasonable grace period set by it has expired, or if performance of the delivery/service is no longer of interest to it due to the delay, or if the delay results in any danger, or in order to avoid further damage or loss or in case of an urgent need, without setting a grace period, have the delivery/services -which have not been performed by the Contractor- performed by a third party at the Contractor's expense. In the event of such substitute Performance the Contractor shall at its own expense provide us with any information that is necessary for this and deliver to us any documents in its possession, and where the Contractor or any third parties have any intellectual property rights to the services still outstanding it shall at its own expense and to the extent necessary provide us with the rights of use required for the substitute performance or shall immediately hold us harmless against claims arising from these third party rights. By execution of this agreement the contractor expressly agrees to the use of its intellectual property rights for the substitute performance by us or by third parties hired by it. The claim for payment of the contractual penalty until the moment when the assignment is granted to the third party must be complied with in any case.

§ 8 Spare parts

The Contractor warrants that for every order spare and wear parts are available for a period of at least 5 years following expiry of the guarantee period.

§ 9 Documents

The Contractor shall preserve all documents concerning manufacturing, stocking, sale and delivery of the products within a period of 5 years from the beginning of delivery. He shall - if required by us - hands out all these documents.

§ 10 Warranty, Notification of defects, Recourse

(1) The Contractor warrants that its deliveries/services comply with the accepted standards and are state-of-the-art as well as comply with the standards and regulations (including safety, occupational safety and accident prevention regulations) pertaining in the country of the Contractor and in the country of destination, that they conform to the agreed qualities, have the warranted properties and also otherwise have no material defects or defects in title.

(2) We are entitled without limitation to any statutory claims for liability for defects including the rights under Section 478 German Civil Code (recourse of contractor).

(3) We shall always be entitled to demand that the Contractor remedy the defect or replace the product or Service, such to be decided by us; the Contractor shall bear all expenses required to remedy the defect or replace the product or Service. After informing the Contractor, we shall also have the right to have the defect remedied itself, at the Contractor's expense, if any delay results in danger or there is a special urgency or if a reasonable grace period granted to the Contractor to remedy the defect has expired fruitlessly or if such remedy has not been successful or if this appears to be justified in order to limit the damage or loss. We may demand an advance from the Contractor for its resulting necessary expenses.

(4) Where pursuant to subsection 3 above we are entitled to remedy the defect itself or have it remedied by third parties. § 7 (6) shall apply with regard to the Contractor's obligations. Any costs incurred in the course of remedying defects, including the cost of dismantling, assembly, travel, freight, packaging, insurances, customs duties and other public taxes, tests and technical inspections shall be borne by the Contractor.

(5) Our claims for defects shall expire, unless otherwise agreed in writing, after 24 months counting from the date risk passes.

(6) Provided that and as long as deliveries/services can not be used for their contractual purpose due to subsequent performance work by the Contractor, the limitation period for defects shall be extended by the length of time required for said rectification work. For deliveries/services repaired and/or replaced under liability for defects the limitation period shall recommence upon acceptance of the repair or the replacement, but shall not be for more than five years from the transfer of risk.

(7) Section 476 of the German Civil Code shall apply mutatis mutandis, with the period being extended to 18 months.

§ 11 Product liability/Insurance coverage

(1) If we are held liable by a third party for damages on the grounds of a product defect, for which the Contractor is responsible, then, immediately on request, the Contractor is obliged to indemnify us against all claims from third parties, including the necessary costs of defense against such claims if the contractor has identified the cause in his own sphere of management and organization.

(2) If we are obliged to conduct a recall action in the event of damage in the sense of § 11 (1), then the Contractor is obliged to refund us all expenses which arise in connection with, or as a result of, the recall action carried out by him. If reasonably possible, also as regards time involved, we will notify the Contractor about the content and scope of the recall action, and he will give the Contractor an opportunity to put his own view. Further statutory claims on the part of us shall remain unaffected.

(3) The Contractor is obliged to conclude and maintain product liability insurance providing adequate coverage for the goods per case of personal injury and damage to property (the setting of the amount covered is to be fixed individually, depending on the product), any further statutory claims on the part of us shall remain unaffected.

(4) If we are held liable by a third party because the item supplied by the Contractor infringes a legal industrial property right of the third party, then the Contractor, immediately on our request, agrees to indemnify us against these claims, including any necessary expenses which we incurred in connection with the claim by the third party and the defense against it. We are not entitled to recognize claims of the third party without the written consent of the Contractor, and/or to conclude agreements with the third party as regards these claims. The limitation period for these rights of indemnity is three years, beginning from the date when we learn of the third party claims; at the latest, however, 10 years after delivery of the item.

§ 12 Assignment

We are entitled to assign all our claims arising from the purchase contract without written approval of the Contractor. The contractor may not assign any claims arising from this purchase contract without our written approval.

§ 13 Third-party rights

The Contractor guarantees that its performance of the order does not infringe any third-party rights. In the event of any such claim by third parties the Contractor shall indemnify us against any such claims upon first written request. The duty to indemnify relates to all expenses necessarily incurred by the Customer arising from and/or in connection with such claim.

§ 14 Applicable law

The legal relationship between the parties is governed by the Law of the Federal Republic of Germany. International purchase laws shall not apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods. Where standard terms at business are used, the INCOTERMS 2000 of the International Chamber of Commerce shall apply.

§ 15 Place of performance; Place of jurisdiction

Place of performance for all services rendered is our registered office in Deggendorf; for merchants pursuant to § 1 German Commercial Code (HGB) the Landgericht Deggendorf (Deggendorf District Court) has jurisdiction.

§ 16 Final provisions

(1) The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.

(2) This General Terms of Condition and Purchase are written in English and German. In the event of discrepancies or discrepancies in the interpretation the German version shall prevail.