

# General Terms and Conditions of Purchase for the JOPP Group

(08/2018 Version)

## I. Determining Conditions, Exclusion of Application of Other Business Terms

These conditions apply for companies in the JOPP Group. The purchaser in the sense of these conditions is Jopp Holding GmbH or its respective subsidiary placing an order in each individual case. The legal relationship between supplier and purchaser shall be determined exclusively by the following conditions. Changes and amendments to these conditions have to be made in writing. Any other business terms shall not be applicable, even if they were not rejected explicitly in any individual case. These conditions shall also apply within a current business relationship for all future contractual relationships with the supplier even if it is not explicitly agreed again that these conditions are applicable. They shall only apply towards entrepreneurs in the sense of § 310, Subsection 1, German Civil Code (Bürgerliches Gesetzbuch – BGB).

## II. Orders

1. Supply contracts (orders and acceptance of such orders) as well as any changes and amendments thereof have to be made in writing. Call-off orders may also be issued in the form of text or by means of data telecommunication.
2. In case the supplier does not accept the order within one week of its receipt, the purchaser shall have the right to revoke such order. Call-off orders shall become binding at the latest if the supplier does not reject such order within two weeks of its receipt.
3. To the extent it is reasonably acceptable to the supplier the purchaser may demand changes to be made to the goods relating to both design and model. In this case the consequences, especially with respect to additional costs or reduction of costs, as well as with respect to delivery dates, are to be resolved in an appropriate and mutually agreeable manner.
4. Packaging is carried out according to the current version of the customer's logistics specifications (available at [www.jopp.com](http://www.jopp.com)).

## III. Prices, Delivery and Payment

1. The agreed prices are fixed prices and include all ancillary services (e.g. insurance, packing and carriage). Turnover tax is not included. Delivery is made "FCA" (Free Carrier and duty paid) to the "specified place of use" (benannter Verwendungsort) in the supply agreement. If the agreed price is "ex works" or "ex warehouse", the purchaser's forwarding agent is to be employed. The supplier shall bear all costs incurred (including loading costs) until the goods are handed over to the carrier. Should the packaging directive require the supplier to take back the used packaging, the supplier shall bear the shipping and recycling costs. Agreement on the place of performance shall not be affected by the manner of setting the price. The purchaser reserves the right to accept excess or short deliveries.
2. Unless otherwise agreed by the parties, payment shall be made with a discount of 3 % within 14 days or without a discount if payment is made within 30 days. The deadline for payment shall commence with the receipt of a correct invoice but not before the full receipt of the contractual goods/rendering of the full service. The purchaser reserves the right to choose the means of payment. The execution of performance is decisive for punctual payment.
3. If premature shipments are accepted, payment shall be due as per the agreed delivery date. In the case of a defective delivery the purchaser shall be entitled to withhold a proportionate amount of the payment until the delivery has taken place according to the specifications.

## IV. Delivery Dates and Time Periods, Delay

1. Agreed delivery dates and time periods are binding. Compliance with such dates or time periods shall be determined by the time when the goods to be supplier are received by the purchaser. If delivery is not agreed "free works", the supplier shall make the goods available in good time taking into consideration the time usually required for loading and shipment.
2. The supplier must inform the purchaser without undue delay about foreseeable delays in delivery. If delivery is delayed, the supplier is obliged to compensate the purchaser for all damages caused by delay.

3. The purchaser's acceptance without reservation of a delayed delivery does not constitute a waiver of claims for compensation.

4. Unless proved otherwise, the values which the purchaser determines for the number of pieces, weights and measures shall be decisive.

## V. Force Majeure

Force majeure, industrial action, civil unrest, official measures and other unforeseeable, unavoidable and severe events shall release the contractual partners from their obligations for the duration of the disturbance and to the extent their obligations are affected. This shall also apply if such events occur at a time when the affected contractual partner is in default. The contractual partners are obliged to give each other the necessary information which may reasonably be expected without delay and to adjust their obligations to the changed circumstances.

## VI. INCOTERMS, Certificates of Origin, Turnover Tax, Export Restrictions

1. INCOTERMS as applicable when an order is placed shall apply when interpreting commercial terms.
2. The supplier is responsible for obtaining the documentation to accompany its delivery, which documentation is required pursuant to customs regulations or other applicable state regulations, until the delivery is made to the purchaser, especially supplier declarations, movement certificates, drawback documents and certificates of origin as well as other details referring to the origin of the goods or materials included. The supplier shall make such documentation, including all necessary details, available immediately.
3. The supplier is obliged to state in the offer already full details of the country of origin of the goods. The purchaser must be notified in writing without undue delay of any changes in the origin of the goods. The supplier is liable towards the purchaser for any damage which occurs due to incorrect or erroneous information about the country of origin of the goods.
4. If the transaction concerns the sale or manufacture of tools, the supplier shall insure that the turnover tax regulations of the country are observed where the tools are to be used and also guarantee that the purchaser is entitled to deduct tax.
5. The supplier shall inform the purchaser in case a delivery item is either fully or partially subject to export restrictions pursuant to German law or any other foreign trade legislation.
6. The supplier shall release the purchaser in an internal relationship between the two parties from any damage which the purchaser incurs due to the non-fulfilment of the above obligations.

## VII. Reservation of Title

Ownership of the goods is transferred to the purchaser at the latest upon payment. An extended or broader reservation of title is not part of the agreement unless agreed otherwise in writing.

## VIII. Quality and Documentation

1. The supplier is obliged with respect to its deliveries to observe the recognized standards of engineering, applicable industrial safety regulations, rules for the prevention of accidents as well as rules for the care of the environment and to put into practice quality assurance methods which correspond to the latest state of the art technology and to provide evidence thereof if requested. Suppliers of production material are obliged as a minimum requirement to apply constantly a quality management system, for example, based on DIN EN ISO 9001 applicable at the time.
2. The ascertained specifications apply as contractually assured. Previous written consent by the purchaser is required in case of changes to the delivery item. With regard to series parts and the first sample inspection the supplier has to take into account the VDA publication "Sicherung der Qualität von Lieferungen in der

Automobilindustrie-Lieferantenbewertung, Erstmusterprüfung", as per the latest version (VDA - Verband der Automobilindustrie – German Association of the Automotive Industry). For new parts the supplier shall always deliver a gratuitous first sample inspection report including at least five measured parts and ten parts as demonstration and assembly samples before the purchaser releases the new parts for serial production. Irrespective of the aforementioned, the supplier shall constantly check the quality of the goods to be delivered. The supplier shall document on its own premises the quality of all the items to be manufactured and supplied for the purchaser. The contractual partners shall inform each other of possibilities to improve the quality of the goods to be delivered.

#### **IX. Notification of Defects, Warranty for Defects**

1. Upon receipt of the delivery the purchaser shall check the identification and quantity of the goods as well as inspect the delivery for transport damage which is easy to detect. Should the purchaser hereby discover a defect, it shall notify this to the supplier without undue delay. The purchaser shall notify the supplier within an appropriate time period of any defects which are not discovered in the above manner as soon as such defects are ascertained during the course of orderly business practice. The supplier insofar waives its right to reject delayed notification of defects.

2. If defective goods are delivered, the purchaser is entitled to claim the following if the respective statutory preconditions and the following prerequisites exist:

a) Before the start of production (processing or assembly) the supplier shall first be given the opportunity by the purchaser to separate the rejects as well as rework or replace the defective parts unless this cannot reasonably be expected from the purchaser. In case the supplier is unable to accomplish the afore-stated or in case it does not conform with it immediately, the purchaser is entitled insofar to rescind the agreement and return the goods at the supplier's risk. In urgent cases the purchaser may rework the defective parts itself or have it done by a third party after consulting the supplier. Any costs resulting therefrom shall be borne by the supplier. In case the same goods are repeatedly supplied in a defective condition, the purchaser shall be entitled after a written warning to rescind the agreement even with respect to the goods not yet supplied if the supplier has again delivered defective goods.

b) In the event the defect is discovered only after the start of production and the purchaser has observed the obligation in cipher 1 (notification of defects), then the purchaser is entitled

- pursuant to § 439, subsections 1, 3 and 4, BGB to claim subsequent fulfilment and indemnification for the cost of transport (minus towing costs) as well as dismantling and assembly costs (labor costs, material costs as agreed), which costs are required for the subsequent fulfilment, or  
- to reduce the purchase price.

c) If in addition to the delivery of defective parts the supplier has violated further contractual obligations (e. g. obligations of information, consultation or examination), the purchaser can claim indemnification for the resulting subsequent damage as well as the subsequent damage which the purchaser statutorily reimburses to its client under the terms of section X. Subsequent damage is damage which the purchaser suffered due to the delivery of defective goods regarding other goods than the parts delivered.

3. At the supplier's request and cost the purchaser shall make the parts to be replaced available to the supplier without undue delay.

4. Unless there is a different written agreement, the warranty for defects expires at the end of 36 months since the first registration of the vehicle or installation of the spare parts and at the end of 42 months after delivery to the purchaser, at the latest. In case the final product is licensed in North America or supplied there, the above time periods are extended to 48 or 54 months respectively.

5. If a defect occurs within the first six months after risk is transferred, it is assumed that said defect already existed when risk was transferred unless this assumption is not consistent with the type of delivery item or defect.

6. A warranty claim does not arise if the defect is attributable to the non-observance of operation, service or installation instructions, inappropriate or unsuitable use, incorrect or careless treatment, normal wear and tear as well as to changes by the purchaser or a third party to the goods supplied.

7. If defective goods are delivered, claims by the purchaser pursuant to the German Product Liability Act, tortious acts and management without

specific authorization shall remain unaffected by this section. Guarantees regarding quality and durability must be explicitly and individually designated in writing as such.

8. The supplier is obliged to take out insurance in an appropriate amount against risks of product liability, including the risk of recall actions, and to prove this to the purchaser if requested.

9. The supplier is obliged with respect to its deliveries to comply with the applicable statutory regulations, e.g. the REACH regulation (Regulation (EC) No. 1907/2006), the German Electrical and Electronic Equipment Act (Elektro- und Elektronikgerätegesetz – ElektroG) as the national transposition of the EC directives 2002/95/EC (RoHS) and 2002/96/EC (WEEE) and the End-of-Life Vehicle Act as the national transposition of the EC directive 2000/52/EC.

10. The supplier is obliged to inform the purchaser without undue delay about relevant changes in the product due to statutory regulations, in particular the REACH regulation, its ability to supply the goods, use or quality of the goods and shall in individual cases agree with the purchaser on suitable measures to be taken. This also applies as soon as and to the extent to which the supplier realizes or should have realized that such changes must take place.

#### **X. Liability**

Insofar as these conditions do not provide for other liability clauses, the supplier shall only be liable for damage directly or indirectly caused to the purchaser as a result of defective supply, violation of official safety regulations or for any other legal reason, attributable to the supplier, according to the following:

1. Liability for compensation only exists in general if the supplier was at fault when causing the damage.

2. If a claim is made against the purchaser for non-negotiable liability towards third parties regardless of negligence or fault, the supplier shall only assume such liability towards the purchaser to the extent that it would also be directly liable. Compensation between the supplier and purchaser shall be settled by applying the principles of § 254, BGB, correspondingly. This shall also apply if a claim is made against the supplier directly. This damage includes all costs and expenditures including costs for legal procedures and costs for precautionary recall actions.

3. Any liability shall be excluded to the extent the purchaser has on its part effectively excluded any liability towards its customer.

4. If the purchaser intends to assert a claim against the supplier according to the afore-stated provisions, it shall forthwith and comprehensively inform and consult the supplier. The purchaser must give the supplier the opportunity to investigate the damage occurred. The contractual partners shall consult each other on the steps to be taken, especially in the case of negotiations for a settlement.

#### **XI. Confidentiality**

1. The contractual partners are obliged to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are already in the public domain.

2. Documents, drawings, data, IT information, software, materials or other similar objects (samples, models, etc.), provided to the supplier by the purchaser in order to carry out the order shall not be made available or otherwise accessible to unauthorized third parties. Reproduction of such objects is only permitted according to business requirements or in compliance with the laws on copyright. After completing the order the supplier must return documents and drawings, etc., of its own accord.

3. Products and spare parts for such products which are produced with the assistance of the purchaser's property, with its information or with its significant participation in the development phase shall only be supplied to third parties with the purchaser's written consent.

4. Knowledge acquired from the documentation stated in cipher 1 shall not be used any more or forwarded to third parties even after completing the order.

5. Subcontractors shall commit themselves accordingly.

6. The contractual partners may only use the established business relationship for advertising purposes after having obtained previous written consent.

## **XII. Industrial Property Rights**

1. If the delivery items were used as agreed, the supplier shall be liable for any claim which results from the violation of industrial property rights and applications therefor, of which rights at least one is published in the supplier's home country, by the European Patent Office or in either the Federal Republic of Germany, France, Great Britain, Austria or the United States of America.
2. The supplier shall release the purchaser and the purchaser's customers from all claims resulting from the use of such industrial property rights.
3. The afore-stated shall not apply inasmuch as the supplier manufactured the goods to be delivered according to drawings, models or equivalent descriptions or information provided by the purchaser and did not know or was unable to know that industrial property rights were infringed.
4. The contractual partners are obliged to inform each other without undue delay about all risks of violation or alleged violations and to give each other the opportunity to object to such claims in cooperation.
5. At the purchaser's request the supplier shall inform the purchaser about the use of any published or unpublished industrial property rights and applications therefor relating to the goods to be delivered regardless of whether such rights are owned by the supplier or licensed to the supplier.

## **XIII. Means of Production, Provision of Material**

1. Material, goods, molds, templates, samples, tools and other means of production, which are provided by the purchaser or where the purchaser made a considerable contribution to their costs, shall remain the purchaser's property and may only be used for the supplier's own purposes and deliveries to third parties with the purchaser's prior written consent. The same applies to the produced items.
2. The supplier carries out the processing, combining and linking of the delivery items for the purchaser. If items which do not belong to the purchaser are processed, combined or linked to the purchaser's items, the purchaser shall acquire co-ownership of the new items in proportion with the value of the items provided by the purchaser to the other item at the time of processing, combining or linking. If the combining is carried out so that the supplier's item is considered the main item, it is agreed that the supplier shall transfer its proportion of the co-ownership to the purchaser; the supplier shall maintain the sole ownership or co-ownership for the purchaser.
3. Means of production, including accessories and documentation, which are paid for directly or indirectly by the purchaser shall become the purchaser's property. This shall also apply to subsequent and/or substitute means of production. The supplier is allowed to have the means of production on a loan basis. The purchaser can request the return of the means of production at any time. Following completion of the order the supplier must surrender the means of production in good condition and without undue delay. Destroying the means of production is only permitted with the purchaser's prior consent. The supplier's right of retention due to outstanding payment remains unaffected.
4. The means of production shall be stored free of charge and separately as well as with the diligence of a prudent businessman. The supplier shall carry out a stock-take at its expense and at least once a year. Any deviances shall be charged to the supplier. The means of production must be designated as the purchaser's property, maintained in good time and as required at the supplier's own expense, repaired and kept in good condition as well as insured at current replacement value against fire and water damage and theft at the supplier's expense. The supplier assigns now already all compensation claims arising from such insurance to the purchaser. The purchaser accepts such assignment. The supplier must give compensation in the event of a culpable decrease of value or loss, whereby the supplier is also responsible in the case of slight negligence.
5. Subcontractors must be obligated accordingly.

## **XIV. Adhering to Laws**

1. The supplier is obliged to adhere to the laws of the applicable jurisdiction. It is furthermore obliged to observe the principles of the UN Global Compact. In particular the supplier shall not participate either actively or

passively or directly or indirectly in any form of corruption, any violation of human rights or in child or forced labor. It shall adhere to the laws on health and safety for its employees at their workplace as well as on data protection and environmental protection.

2. The supplier shall take all necessary organizational measures, particularly with regard to the protection of assets, business partners, personnel and information security and logistics, in order to guarantee security in the supply chain.
3. The supplier must maintain an adequate information security management system, such as equivalent to DIN ISO/IEC 27001 in the currently applicable version. It must document every incident which is relevant to the security of its IT system (in particular any hacker, Trojan horse, virus attacks) and notify the purchaser thereof without undue delay.
4. If the supplier culpably violates the above duties, the purchaser is entitled, irrespective of further claims, to rescind or terminate the agreement. If it is possible to eliminate the violation of duty, the right of rescission/termination may only be exercised after the fruitless elapse of an appropriate time period to eliminate the violation of duty.

## **XV. General Provisions**

1. In the event one of the contractual partners ceases to make payments or insolvency or out-of-court settlement proceedings are applied for, then the other party shall be entitled to rescind the agreement with respect to the part not yet performed.
2. Should one of the provisions of these conditions or of any additional stipulations agreed upon be or become invalid, the validity of the remaining part of these conditions shall not be affected thereby. The contractual partners are obliged to replace the invalid provision by another equivalent provision in so far as this is possible with respect to the commercial effect.
3. The place of performance shall be the purchaser's registered office. The parties may agree otherwise with regard to delivery.
4. The court of jurisdiction shall be at the place where the plaintiff is registered or any other competent court.
5. If the parties have not agreed otherwise, the laws of the Federal Republic of Germany shall be applied exclusively to all contractual and business relationships between the purchaser and the supplier. The provisions of the UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) (the Vienna Convention) and the international provisions on the conflict of law shall not apply.