

Recommendation

Purchase Conditions

General Terms and Conditions of Business for
Purchasing Production Materials and
Replacement Parts for Use in Automobiles



Non-binding VDA recommendation, version dated March 17, 2023

The German Association of the Automotive Industry (VDA) recommends to its members the following terms and conditions of business for use in business transactions with their suppliers, insofar as they as bulk purchasers depend on the supply of a variety of products.

I. Governing conditions

The legal relations between the supplier and the buyer are subject to these conditions and any other agreements. Any amendments or additions must be made in writing. Other general terms and conditions of business shall not apply even if no explicit objections have been raised in any individual case.

II. Orders

1. Supply contracts (order and acceptance of the order) and delivery call-offs, and any amendments or additions thereto, must be made in writing. Deliveries may also be called off by remote data transmission.
2. If the supplier does not accept the order within three weeks of receipt, the buyer shall be entitled to cancel the order. Delivery call-offs shall become binding at the latest if the supplier does not object to them within two weeks of receipt.
3. Within the scope of what is reasonably acceptable for the supplier, the buyer may request modifications to the design and execution of the goods to be delivered. The consequences of such modifications, in particular regarding increased or decreased costs and the delivery dates, shall be regulated appropriately by mutual agreement.

III. Payment

1. Payment shall be made ...
If early deliveries are accepted, payment shall become due in accordance with the agreed delivery date.
2. Payment shall be made by bank transfer or check.
3. In the event of a defective delivery, the buyer shall be entitled to withhold payment in proportion to the value of the defective delivery, until the order has been properly fulfilled.

4. Without the prior written consent of the buyer, which may not be unreasonably withheld, the supplier is not entitled to assign its receivables or to have them collected by third parties. In the case of extended reservation of title, consent shall be deemed to have been given.

If the supplier assigns its receivable against the buyer to a third party without the buyer's consent in contradiction of sentence 1, the assignment shall nonetheless be effective. The buyer may, however, choose whether to make payment to the supplier or the third party, with discharging effect.

IV. Notification of defects

The buyer shall notify the supplier in writing of defects in delivery without delay as soon as they are detected in the course of ordinary business. In this respect the supplier waives the right to object on the grounds of delayed notification of defects.

V. Confidentiality

1. The contractual partners undertake to handle all commercial and technical details not in the public domain, which become known to them through the business relationship, as confidential in the meaning of the German Trade Secrets Act (Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG), to guarantee their secrecy, and to use them solely for performance of the contract (including the enforcement of potential warranty and liability claims and pursuing other purposes envisaged in the contract).
2. Drawings, models, templates, samples and similar objects may not be passed to or otherwise made accessible to unauthorized third parties. The replication of such items is permitted only within the scope of business requirements and the provisions of copyright law.
3. Sub-suppliers must be placed under the same obligation.
4. The contractual partners may use the business relationship for advertising purposes only with the prior written consent of the other party.
5. The contractual partners undertake to secure all trade secrets effectively using state-of-the-art technology against unauthorized access, alteration, destruction and loss, unauthorized transfer, other unauthorized processing and other forms of misuse. The supplier shall be deemed to have met this obligation if the requirements of the most recently published version of the VDA ISA (basic level) are satisfied.
6. At the explicit prior request of the buyer, the supplier is required to have a TISAX audit performed within a reasonable period of time with the TISAX assessment objective specified by the buyer and to make the result available to the buyer. The contractual partners shall reach mutual agreement on the details.

VI. Delivery dates and deadlines

Agreed delivery dates and deadlines are binding. Compliance with the delivery date or delivery deadline shall be determined by the time of receipt of the goods by the buyer. Unless “ex works” has been agreed, the supplier shall provide the goods in time, taking into consideration the time normally required for loading and shipping.

VII. Delayed delivery

1. The supplier shall compensate the buyer for damages caused by delay.
This shall not apply to lost profit or damage arising from interruption of business.
2. In the case of minor negligence, the compensation shall be limited to additional freight costs, retrofitting costs and, after the unsuccessful expiry of an extended deadline or after interest in the delivery has ceased, to the additional expenditure arising from covering purchases.

VIII. Force majeure

Force majeure, industrial disputes, unrest, governmental or official actions and other unforeseeable, unavoidable and serious events shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent that it affects their performance obligations. This shall also apply if such events occur at a time when the contractual partner affected is in default. The contractual partners are required to take reasonable measures without delay to provide the necessary information and to adjust their obligations to the altered conditions in good faith.

IX. Quality and documentation

1. Concerning its deliveries, the supplier must comply with the accepted engineering standards, safety regulations and the agreed technical data. Any modifications to the goods to be delivered require the prior written consent of the buyer. On initial sample inspection, see the VDA publication “Volume 2 Quality Assurance for Supplies Production process and product approval PPA.”
Notwithstanding the above, the supplier shall continuously monitor the quality of the goods to be delivered. The contractual partners shall inform each other about the options for improving quality.
2. If no firm agreement exists between the supplier and the buyer on the type and scope of inspections and the equipment and methods to be used therefor, the buyer shall, upon request from the supplier, willingly discuss the inspections with the buyer to the extent possible in view of its knowledge, experience and capabilities, in order to determine the inspection technology required in each case. Furthermore, upon request, the buyer shall inform the supplier about the relevant safety regulations.
For further information on measuring and inspection processes, see the VDA publication “Volume 5 Test Process Suitability, Suitability of Measurement Systems, Measurement and Test Processes, Extended Measurement Uncertainty, Conformity Assessment.”

3. Furthermore, in the case of specially designated characteristics, for example those marked "D" in the technical documents, or owing to a separate agreement, the supplier shall keep special records showing when, how and by whom the goods to be delivered were tested in relation to the special characteristics, and the results from the required quality tests.
The testing documents shall be retained for at least fifteen years and presented to the buyer if necessary. The supplier shall obtain an undertaking of the same scope from upstream sub-suppliers to the extent permitted by law. For documentation and archiving, see the VDA publication "Volume 1 – Documentation and Archiving – Code of practice for the documentation and archiving of quality requirements" and the VDA publication "Product Development: Process description Special Characteristics."
4. If any governmental authorities that are responsible for motor vehicle safety, exhaust regulations or similar demand access to the buyer's production process and the testing/inspection documentation in order to verify certain requirements, the supplier shall, upon request from the buyer, willingly afford them the same rights regarding its business operations and provide all reasonable support.

X. Liability for defects

1. Unless otherwise agreed, if defective goods are delivered, the buyer may demand the following, provided that the applicable legal requirements and those indicated below are met:
 - a) Before the start of production (processing or installation), the buyer shall firstly give the supplier the opportunity to sort out the defective goods and to remedy the defects or to provide a subsequent (replacement) delivery, unless this is unreasonable for the buyer. If the supplier is unable to accomplish this, or does not do so without delay, the buyer may withdraw from the contract in this respect without setting a further deadline and return the goods at the supplier's risk. In urgent cases the buyer may, after consultation with the supplier, remedy the defects itself or have this work done by a third party. Any costs thus incurred shall be borne by the supplier. In the event of another delivery of the same defective goods, the buyer shall, after issuing a written warning, also be entitled to withdraw from the contract in respect of the goods not yet delivered.
 - b) If the defect is not detected until after the start of production despite compliance with the obligation pursuant to section IV (Notification of defects), the buyer may:
 - in accordance with section 439(1), (3) and (4) of the German Civil Code (Bürgerliches Gesetzbuch, BGB) demand subsequent performance and reimbursement of the associated necessary transportation costs (excluding towing charges) and dismantling and installation costs (labor costs; material costs where agreed), or
 - reduce the purchase price.
 - c) In the event of a culpable breach of obligation over and above the supply of defective goods (e.g. obligations of information, consultation or examination), in accordance with section XI the buyer may demand compensation for the resulting consequential damages and for the consequential damages paid by the buyer to its customer under the law. Consequential damage is damage to legally protected interests other than the goods themselves, which the buyer has suffered as a result of the delivery of defective goods.

The buyer may assert further claims regarding expenses and compensation for damages based on the delivery of defective goods arising from section 437 BGB or directly from the regulations cited therein only if this has been contractually agreed. Section XV subsection 1 shall apply to new agreements.

2. Upon request, the parts to be replaced by the supplier shall be made available to the supplier at its cost by the buyer without delay.
3. Unless agreed otherwise, any claims arising from liability for defects shall become time-barred after 24 months from the vehicle's first registration or the installation of the replacement parts, but at the latest after 30 months from delivery to the buyer. Unless agreed otherwise, goods supplied for commercial vehicles are subject to the statutory period of limitation.
4. Warranty claims do not arise if the defect can be attributed to violation of operating, maintenance or installation regulations, unsuitable or improper use, incorrect or negligent handling, natural wear and tear, or interference by the buyer or third parties with the goods delivered.
5. In the case of defective deliveries, claims of the buyer arising from the German Product Liability Act (Produkthaftungsgesetz), tort law, or conducting business without authority shall remain unaffected by this section X. Quality and durability guarantees must be explicitly stated individually as such in writing.

XI. Liability

Unless liability is regulated differently elsewhere in these conditions, the supplier shall be liable for compensation for damage suffered by the buyer either directly or indirectly as a consequence of an incorrect delivery, or violation of official safety regulations or for any other legal reason attributable to the supplier, only as set out in the following.

1. In general the liability for compensation for damage exists only if the damage was caused by fault of the supplier.
2. If a claim is brought against the buyer based on no-fault liability under mandatory law, the supplier shall assume liability on the buyer's behalf to the extent to which it would be directly liable. The principles of section 254 BGB shall apply mutatis mutandis to settlement of damages payments between buyer and supplier. The same shall apply in the event of a direct claim against the supplier.
3. The obligation to compensate for damages is excluded if the buyer, for its part, has effectively limited liability to its customer. The buyer shall endeavor to agree liability limitations to the extent permissible by law also in favor of the supplier.
4. Claims brought by the buyer are excluded if the damage was caused by violations attributable to the buyer of operating, maintenance or installation regulations, unsuitable or improper use, incorrect or negligent handling, natural wear and tear, or faulty repair.

5. To the extent provided by law, the supplier shall be liable for measures taken by the buyer to avert damage (e.g. product recalls).
6. If the buyer wishes to assert a claim against the supplier in accordance with the foregoing regulations, the buyer shall fully inform and consult with the supplier without delay. It shall give the supplier the opportunity to investigate the damage. The contractual partners shall consult with each other on the measures to be taken, in particular regarding settlement negotiations.
7. The principles set out in section VII subsection 1 shall apply *mutatis mutandis* if the supplier is not insured or is insufficiently insured.

XII. Intellectual property rights

1. The supplier shall be liable for claims that arise during contractual use of the goods delivered and which are based on violation of intellectual property rights and applications for intellectual property rights (patents), if at least one of the rights in the family of related rights has been published either in the home country of the supplier, or by the European Patent Office, or in one of the following states: Federal Republic of Germany, France, United Kingdom, Austria, United States of America.
2. The supplier shall indemnify the buyer and its customers against all claims arising from the use of such intellectual property rights.
3. This shall not apply if the supplier has produced the goods delivered in accordance with the buyer's drawings, models or equivalent other descriptions or specifications provided by the buyer, and did not know, or with respect to the products it developed did not have to know, that intellectual property rights were thus violated.
4. To the extent that the supplier is not liable under subsection 3, the buyer shall indemnify it against all claims brought by third parties.
5. The contractual partners undertake to inform each other without delay of risks of violation and alleged violations that become known to them, and to give each other the opportunity to cooperate on counteracting associated claims.
6. At the buyer's request, the supplier shall inform it of the use of its own or licensed, published and unpublished intellectual property rights and applications for intellectual property rights to the goods to be delivered.
7. The principles set out in section VII subsection 1 regarding limitation of liability shall apply *mutatis mutandis*.

XIII. Use of the buyer's means of production and confidential information

Models, matrices, templates, samples, tools and other means of production, and confidential information, which the buyer makes available to the supplier or which the buyer pays for in full, may be used for deliveries to third parties only with the buyer's prior written consent.

XIV. Retention of title

The supplier retains title to all goods it delivers until they have been paid for in full; in this respect all deliveries shall be regarded as one single delivery transaction. In the case of current account deliveries, the retention of title shall be regarded as security for the payable balance.

If the buyer combines the goods with other objects into a single unit, and if the other object is to be considered the principal constituent, the buyer is required to assign to the supplier joint ownership in proportion to the extent that the principal constituent belongs to it. If the buyer sells the goods delivered in accordance with the contract, it hereby immediately assigns in advance the receivables from its customers arising from the sale and all ancillary rights to the supplier until all the supplier's claims are settled in full.

In justified circumstances, at the request of the supplier the buyer is required to inform the third party buyers of the assignment and to provide the supplier with the required information and documents necessary for asserting its rights.

The supplier shall release the securities it has held insofar as their value exceeds that of the claims to be secured by more than 20% in total.

XV. General provisions

1. The amount of compensation for damages to be paid by the supplier pursuant to sections VII, X, XI and XII shall be determined, in favor of the supplier, in due consideration of the economic situation of the supplier, the type, scope and duration of the business relationship, any contributory causes and/or fault of the buyer in accordance with section 254 BGB, and a particularly unfavorable installation situation of the part supplied. In particular, the replacements, costs and expenditures to be borne by the supplier must be proportionate to the value of the part supplied.
2. In the event that one contractual partner ceases payment, or applies for insolvency proceedings with regard to its assets or for an out-of-court settlement procedure, the other contractual partner shall be entitled to withdraw from the part of the contract not yet fulfilled.
3. If one provision of these conditions or of the other agreements entered into should be or become invalid, this shall not affect the validity of the remainder of the contract. The contractual partners shall replace the invalid provision with a valid regulation that comes as close as possible to the economic outcome of the invalid provision.

4. Unless otherwise agreed, the contract shall be governed exclusively by the law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, is excluded.
5. The place of performance is where the buyer has its registered office. A different place of performance may be agreed for delivery.
6. The place of jurisdiction is where the plaintiff has its registered office, or another competent court.

Published by Verband der Automobilindustrie e.V. (VDA)
Behrenstrasse 35, D-10117 Berlin
www.vda.de

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Version dated March 17, 2023