

**TMD Friction Holdings GmbH, TMD Friction Services GmbH, TMD Friction EsCo GmbH, TMD Friction GmbH  
– Purchasing Terms and Conditions –**

**1. Placement of orders**

- 1.1. The legal relations between the Supplier and us shall be governed exclusively by the Terms and Conditions below. No other general terms and conditions, in particular general sales terms and conditions shall apply, even if we have not expressly objected to such terms and conditions.
- 1.2. No exceptions to our Purchasing Terms and Conditions shall be binding upon us unless they have been agreed or confirmed by us in writing.

**2. Order acceptance**

- 2.1. Orders shall be acknowledged by the Supplier within 24 hours of receipt.
- 2.2. Where we do not receive the Supplier's acknowledgement of our order within the period stated above, we shall consider our purchase order as not having been placed.
- 2.3. Obvious mistakes, calculation or typing errors in a purchase order shall not be binding, even if the order has been accepted.

**3. Delivery time**

- 3.1. The delivery time indicated in our purchase order shall be binding. It shall count from the date when the purchase order is issued. The delivery time shall only be considered as observed if the subject matter of the order has been completely received or the service has been rendered at the site and on the due date indicated by us.
- 3.2. If the Supplier fails to deliver in due time, we shall be entitled to statutory claims. In particular, we shall be entitled to claim damages instead of performance after the futile elapse of a reasonable time of grace granted by us. Our claim to delivery shall only be excluded after the Supplier has paid damages.
- 3.3. The Supplier shall immediately notify us in writing of any impending delays in delivery.

**4. Cost and risk of transport**

- 4.1. The Supplier shall assume any direct and indirect cost of transport.
- 4.2. Unless otherwise agreed, the Supplier shall effect an adequate transport insurance at his own cost.
- 4.3. The risk of all deliveries effected on the basis of our purchase orders shall only pass to us on the date when the goods have arrived and/or the services have been rendered at the destination indicated by us and after we have received a proper dispatch note or proof of performance.

**5. Delivery**

- 5.1. Not later than two days before arrival of the goods or services our purchasing department shall be notified in writing, stating the precise date of delivery. The arrival shall serve as evidence of timely delivery. The date and number of our purchase order as well as our material number shall be stated in all shipping and freight documents, and a delivery note shall be included in every package.
- 5.2. If the Supplier's performance requires acceptance procedures, such procedures shall be exclusively effected at the place of performance indicated by us. The Supplier or his representative may attend such acceptance procedures if he reserved this right in his order acceptance.

Any circumstances beyond our immediate control shall exempt us from our acceptance obligation as long as such circumstances remain effective.

- 5.3. The Supplier shall only be entitled to deliver the quantities stated in our purchase order. Our liability for safekeeping surplus deliveries shall be limited to the usual care applied to our own goods. We shall be entitled to return any surplus deliveries at the Supplier's expense and risk without special notification. Upon our request the Supplier shall be obliged to immediately collect such surplus deliveries at the place of performance at his own expense and risk.

**6. Prices and payment**

- 6.1. The prices indicated in our purchase order shall be binding. Any price variations that would mean extra cost to us shall require our written approval. The price shall include packaging. A return of packaging material shall be subject to special agreement.
- 6.2. Each invoice shall indicate the number and date of our purchase order as well as the shipping address and the mode of dispatch. A separate invoice shall be issued for each purchase order.
- 6.3. Our payment shall not be considered as satisfactory acceptance or a waiver of our right to complain.

**7. Warranty**

- 7.1. Goods received and services rendered will be inspected at our works within the customary inspection periods. To this extent the Supplier waives the objection of delayed complaint. In any case our inspection obligation will only begin after the goods have been completely received at the place of performance indicated by us and after we have received a proper despatch note.
- 7.2. Should the goods have a material defect we shall be entitled to statutory rights at our option. After the first unsuccessful attempt a subsequent improvement by the Supplier shall be considered to have failed. We shall be entitled to cancel even if the concerned breach of duty was irrelevant. In urgent cases we shall be entitled, without setting a deadline, to remedy faults ourselves or to have them remedied by third parties or to effect a replacement at the Supplier's cost in agreement with the Supplier.
- 7.3. To the extent that defective goods are returned to the Supplier, they shall be returned at the Supplier's expense and risk. We can claim from the Supplier a compensation of such expenses that we have to incur in relation to our customer, if a defect already existed before the risk was passed to us.
- 7.4. Our claims based on defects shall be subject to statutory periods of limitation. They commence when a notification of defects within the meaning of 7.1 above is filed in due time. The Supplier's liability for defects shall terminate not later than ten years after delivery of the goods. This limitation shall not apply if our claims are based on facts that were known or should have been known to the Supplier and which he did not disclose to us.

**8. REACH**

- 8.1. The supplier is solely responsible for ensuring that the delivered goods are fully compliant with the requirements of EU Regulation No. 1907/2006 (REACH) from 18th December 2006 in its respective current version in-

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- cluding all changes as well as any national regulations which have been made in order to implement the EU Regulation.
- 8.2. The supplier warrants that he has met all obligations resulting from REACH. Especially the supplier warrants that any chemical substance which is used or contained in his goods has been registered and has been approved for our use.
- 8.3. Should such substance require an approval according to REACH, the supplier warrants that all approval restrictions of Annex VXII of REACH have been observed and that the supplier has fulfilled its obligation to provide security data sheets in compliance with REACH. The Supplier further warrants that he has complied with the requirements arising out of Article 32 and 33 of REACH.
- 8.4. The supplier will monitor and verify the published list of substances requiring approval by the European Chemicals Agency (List of Substance of Very High Concern according to REACH), the supplier will inform us immediately as soon as he is delivering goods which contain a substance which must be included ex officio into the list of Substances of Very High Concern.
- 8.5. The supplier is obliged to inform us in an orderly manner and without delay about any changes which have an impact on the compliance with REACH and to provide us, at suppliers own initiative and cost, with all necessary information which we require to ensure that the requirements of REACH have been met.
- 8.6. In case that the supplier is not domiciled in the EU, he has nominated an only representative who is domiciled in the EU and who is responsible for ensuring compliance with the import requirements of REACH. The supplier will provide us with the contact data of his sole representative at his own initiative before delivery.
- 8.7. We reserve the right to terminate any orders if goods or part of goods or materials are delivered which do not comply with the above mentioned requirements. In case of a cancellation of blanket or single orders or in case of a proven violation of national or international regulations regarding the compliance of REACH, the supplier is obliged to indemnify us from all claims, law suits, losses, damages, court decisions and obligations to third parties, regardless of their legal basis and to bear any loss, damage or other detriments which have been caused to us as a consequence of such violation.
- 9. Protective rights, secrecy obligation**
- 9.1. The Supplier warrants that his delivery or service does not violate any domestic or international protective rights (patents etc.) and/or rights of use or exploitation of third parties. He shall exempt us from any possible claims by third parties. The Supplier's indemnity obligation shall apply to any expenses including contingent royalties incurred by us on account of or in connection with the claim of any third party.
- 9.2. Any information, either oral, written or in the form of drawings, that the Supplier receives from us, shall be treated confidentially, even if such information has not expressly been defined as secret. Any property rights, copyrights, rights of use or exploitation in such information supplied by us, in particular in drawings, drafts, descriptions, attachments etc. shall remain with us. They are furnished to the Supplier for his exclusive personal use for the purpose of our respective purchase order. The above documents shall be treated confidentially and must not be reproduced or made accessible to any third parties without our written consent – even after execution of the order – and shall in particular not be brought to the knowledge of our competitors in any form. The Supplier shall be liable for damages if such documents pass from the Supplier's area of responsibility into the possession of any third parties where they are used or exploited. The Supplier's fault will be presumed.
- 9.3. If our purchase order is not accepted, all documents attached to our purchase order shall be returned to us immediately without request. The same shall apply after execution of our purchase order.
- 9.4. Any tools, matrices, aids etc. manufactured according to our specifications, drawings or documents shall be used exclusively for our purposes, irrespective of whether we or the Supplier are the owners of such items. The Supplier shall assume the liability for the proper handling and safekeeping of all items furnished to the Supplier at the time of order placement and in the course of the execution of the order. The same shall apply to all items etc. made available by us for the execution of the order; immediately upon completion of the order such items shall be returned to us upon request and free of charge at the Supplier's risk.
- 10. Quality, safety of delivered goods**
- 10.1. With regard to initial sample deliveries we refer to the VDA publication "Quality protection of supplies, selection of Suppliers, sample deliveries, quality performance in series production" in its most recent version. Irrespective of this, the Supplier shall from time to time inspect the quality of the delivered items. The parties hereto will inform each other on any possible quality improvement.
- 10.2. The Supplier shall be obliged to inform us in writing of any changes in the production process and/or the item to be delivered und to document such changes. Such changes shall require our previous written consent prior to their implementation.
- 10.3. The goods delivered to us shall comply with the applicable accident prevention regulations, other safety regulations, in particular VDE regulations, TÜV specifications, the state of the art, the provisions of the Law on Equipment Safety as well as the regulations of the Machinery Directive (2006/42/EG). If any purchase orders issued by us should give rise to objections regarding compliance with the above regulations, the Supplier shall immediately inform us accordingly in writing prior to accepting the order.
- 10.4. The supplier is obliged to retain any quality documentation according to VDA (for example control plans, drawings and documents related to sampling) for a duration of 15 years after such documentation has been set up and to provide us with such documents upon our request. The supplier is also obliged to comply with the notified specific requirements of our customers and the VDA guidelines on quality management in the automotive industry.
- 11. Call orders**
- 11.1. We shall be entitled to increase ordered quantities in line with our future demand. By accepting and within the framework of a call order the Supplier undertakes to accept and execute subsequent orders or call-offs in accordance with our Purchasing Terms and Conditions.
- 12. Set-off, possessory lien, assignment**

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- 12.1. The Supplier shall only be entitled to make set-offs against or claim possessory liens on receivables that are not contested by us or have been legally determined.
- 12.2. Subject to § 354a HGB the Supplier's claims arising from the purchase order may only be assigned to a third party with our previous written consent.
- 13. Product liability, indemnity, insurance, damages in the case of cartels**
- 13.1. To the extent that the Supplier is responsible for a product damage, he shall be obliged to indemnify us upon our first request from any claims for damages by third parties as far as the cause is located in the Supplier's territory and organisation and the Supplier himself is liable vis-à-vis third parties.
- 13.2. In this context the Supplier shall also be obliged to reimburse any expenditures pursuant to §§ 683, 670 BGB, that arise from or in connection with any recall action carried out by us. We shall inform the Supplier as far as possible and reasonable of the content and extent of the recall action to be carried out and allow the Supplier to provide his comments.
- 13.3. The supplier is obliged to maintain sufficient product liability insurance. The coverage must be adequate, considering the kind and amount of the product to be delivered. We are entitled to demand a written confirmation of adequate product liability insurance.
- 13.4. In the event that the Supplier is/was a member of an illegal cartel and in particular if he participated in fixing prices and/or terms and conditions, he shall be obligated to pay us flat damages in the amount of 15 % of the total amount of the orders which we placed with him during the duration of the cartel, unless the Supplier proves that the amount of the damage was less. This shall apply to cartels violating national law as well as cartels violating EU law. Membership of the Supplier in an illegal cartel shall be established if the Supplier is fined by a competition authority or is exempted from a fine because he applied for a leniency programme.
- 14. Compliance, Regulations for the prevention of accidents and other provisions**
- 14.1. The supplier will comply with all laws and regulations which are applicable to the supplier; he will especially observe the ethical standards which are usual in his industry and will monitor compliance with such laws and regulations.
- 14.2. Suppliers and their employees carrying out work on our premises shall observe the applicable regulations for the prevention of accidents. The regulations for the prevention of accidents are available for public inspection at the gates of our plants. In addition, the safety regulations covering the conduct on our premises as well as the regulations governing the entering and leaving of our premises shall apply. We will not assume any liability for any damages arising from the non-compliance with regulations or instructions; the Supplier shall be liable for any damage arising to us for the same reason.
- 14.3. The Supplier confirms that he has read the UN Global Compact Principles at <http://www.unglobalcompact.org/abouttheGC/TheTenPrinciples/index.html> and that he will comply with the provisions and rules contained therein.
- 14.4. Should the Supplier or his bodies and/or employees violate criminal law provisions in the country where he has his place of business or in the country in which he performs the major part of his service to us, we shall be entitled to terminate without notice and effective immediately and all our existing contracts with the Supplier.
- 14.5. Should the Supplier or his bodies and/or employees violate legal provisions in the country where he has his place of business or in the country in which he performs the major part of his service to us and not stop this violation within 30 days from receiving a written reminder from us, we shall be entitled to terminate the contract effective immediately.
- 14.6. Should the Supplier or his bodies and/or employees violate the UN Global Compact Principles and not stop this violation within 30 days from receiving a written reminder from us, we shall be entitled to terminate the contract giving three months' notice to the end of a calendar month.
- 14.7. Conflict Minerals: The Supplier confirms that he does not purchase the materials mentioned in The Dodd Frank Act (Dodd-Frank Wall Street Reform and Consumer Protection Act section 1502) and all other future materials from the countries mentioned in the Dodd Frank Act.
- 14.8. The Supplier confirms that to the extent that he sells recycled material to us, this material is purchased from smelters mentioned in the listing of "CFS Compliant Smelters".
- 14.9. The Supplier shall be obligated to send TMD without solicitation documents confirming his compliance with the duties described above and to submit to an audit by TMD, if required.
- 14.10. The Supplier shall be obligated to impose on his suppliers the same obligations that he has under these General Terms and Conditions.
- 15. Export controls and customs**
- 15.1. The imported goods shall be delivered duty paid. The Supplier agrees to permit inspections by the customs authorities, to provide explanations and information and to transmit all required official confirmations at his expense. Specifically, the Supplier shall be responsible for providing the correct customs values.
- 15.2. In the case of goods and services imported from EU countries, the EU VAT identification number must always be provided.
- 15.3. For all the goods and services to be provided by him, the Supplier shall comply with the respective German, European and US export and customs provisions as well as with the export and customs provisions of the country of origin.
- 15.4. The Supplier shall be obligated to inform TMD in writing of any permits required for the (re)export of the goods under the German, European and US export and customs provisions as well as under the export and customs provisions of the country of origin.
- 15.5. For goods from preference countries, the Supplier shall have each shipment accompanied by complete and correct preference certificates and/or supplier declarations. The long-term supplier declarations must be presented once a year.
- 15.6. In order to fulfil the duties mentioned above, the Supplier shall make available all required documents and information, in particular (i) the relevant export listing numbers, (ii) the ECCN (Export Control Classification Number of the U.S. Commerce Control List), provided the US. Export Administration Regulations apply to the

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goods, (iii) the commodity code in accordance with the current commodity classification of the foreign trade statistics and the HS (Harmonized System) Code, and (iv) the certificates of origin. In addition, the Supplier shall designate a contact person in his company who will answer any questions.

**16. Miscellaneous**

16.1. If the supplier terminates the delivery or services agreement, he remains obliged to continue supply of the goods which TMD orders either for the duration of 12 months or as long as it reasonably takes for TMD to obtain authorisation for a new supplier, whichever of the aforementioned periods is the longer one. Should the supplier violate this obligation, he must indemnify TMD from any and all resulting losses including the loss at TMD's customer and their customers. The Supplier's right to terminate the delivery or work agreement for grave reasons with immediate effect shall not be affected by this clause.

16.2. Place of performance for all deliveries and services shall be the place indicated in our purchase order; if no place has been indicated this will be Leverkusen. Place of jurisdiction for all obligations and any disputes arising from this contractual relationship shall be Leverkusen.

16.3. The contractual relationship as well as these Purchasing Terms and Conditions shall be governed by German law without reference to its conflict of law principles including the UN Convention on Contracts for the International Sale of Goods of 11 April, 1980.

16.4. Should individual provisions of these Purchasing Terms and Conditions be invalid, this will not affect the validity of the remaining provisions.

As of: February 2015