

KYOCERA Automotive and Industrial Solutions GmbH

Terms and Conditions of Sale and Delivery (04/2019)

1.1 Our offers are non-binding. Technical data in our general product information is indicative only and not binding, unless expressly confirmed by us.

1.2 The prices in our quotations or order acknowledgements are net prices excluding Value Added Tax. The prices for custom-made products are based on the specifications and quantities agreed with the customer. In case of subsequent requests for modification, we are entitled to alter the price according to the additional costs. We will mutually discuss adjustments based on changes in foreign exchange rates, increases in material costs, inflation, increases in labour or other production and supply costs, or any other event affecting the price or availability of the Products.

1.3 Orders placed by the customer shall only be deemed accepted when confirmed by a written order acknowledgement. Any modifications of orders must be confirmed by us in writing.

1.4 Contracts with customers shall be subject to these Terms and Conditions of Sale and Delivery. Differing general terms and conditions shall be void and of no effect, even if the order was placed on the basis of said terms and was not expressly rejected.

2.1 Delivery dates are only binding when expressly confirmed by us in writing.

2.2 The delivery is subject to the correct and punctual supply to ourselves. Deviations from the quantity ordered by the customer within the common industrial range and partial deliveries shall be accepted if this is reasonable for the customer. We shall be entitled to assign the rights and obligations under the present Contract to a third party, including the execution of its Performance.

Where Performance is to be executed pursuant to a request by the Customer, the Customer shall be obliged to make that request to us in writing, giving an exact description of the Performance and the date of Performance, not less than four weeks prior to the execution of Performance.

2.3 In the event of default in delivery, the customer shall be entitled to cancel the part of the agreement which has not been fulfilled after a reasonable period of grace was set to no avail. Any further claims shall be subject to Section 4 hereinafter.

2.4 If we are responsible for non-compliance with the formally promised Performance periods and deadlines, and if it is in arrears as a result, the Customer shall be entitled to claim a delay compensation amounting to 0.5% of the invoice value for the relevant Performance for each complete week of delay but with a maximum of 5% of the invoice value for the relevant Performance. The aforesaid amount shall be reduced if we are able to prove that there is no loss or the actual loss is lower than the flat-rate amount referred to in sentence 1. Any additional claims shall be excluded unless the delay is based on willful intent or gross negligence on our part.

2.5 The point of delivery shall be our works or depot ("ex works") unless otherwise agreed in writing. Where goods are delivered ex works the risk of loss passes to the Customer as soon as we inform the Customer that the goods are ready for collection.

2.6 Where Performance is executed free carrier ("FCA Incoterms 2010") the point of handover shall be our registered office. If we are to bear all or part of the freight charges, we shall be entitled to stipulate both the route and the mode of dispatch. If the Customer should request a different route and/or mode of dispatch the Customer shall bear the difference in cost.

2.7 In case of acts of God and any other temporary events beyond our control that directly or indirectly impede the manufacturing and delivery of the goods we shall be released from the contractual obligations as long as the impediment continues, or are entitled to cancel the part of the agreement not yet fulfilled.

3.1 The Performances must only have the qualities which are referred to in writing in the Contract. The Performances shall be finally and conclusively specified by the aforesaid quality features. We shall be entitled to change the quality feature unilaterally if this is done on the strength of legal regulations, or if it constitutes an improvement and if the use presupposed in the Contract is not adversely affected as a result.

3.2 If we make a sample or a specimen available to the Customer before or after the conclusion of the Contract, these do not have to have the specific qualities as stated in the Contract. Clause 1 shall apply correspondingly for drawings, illustrations, dimensions, weights and any other data which we make available to the Customer before or after the conclusion of the Contract.

3.3 Obvious defects have to be notified to us immediately upon receipt, others immediately on detection. We are entitled to inspect the goods or request a sample to be sent to us. In the event of a justified and due notification of a defect, we can at our choice remedy the defect or supply goods free from defects. Otherwise we may charge the costs for the examination.

3.4 The post-rectification does not cover disassembly and installation or any costs related hereto except as otherwise expressly confirmed by us.

3.5 If the remedy failed, the customer may cancel the agreement, reduce the purchase price or claim damages within the limits set forth by Section 4 hereinafter.

3.6 The statutory period for claims for defects is limited to one year from delivery. This does not apply where the law as laid down in §§ 438 para. 1 No. 2, 479 para. 1 and 634a para. 1 No. 2 of the BGB lays down longer periods, nor in cases of damage to life, limb or health in the event of deliberate or grossly negligent breach of duty on our part, nor to undertaking a guarantee or procurement risk nor in the case of deliberate failure to disclose a defect.

3.7 Defect remedying and subsequent delivery shall always take place on a goodwill basis and without recognition of a legal obligation.

4.1 We shall be liable without any restrictions in accordance with the German Product Liability Act as well as due to intentional or grossly negligent breaches of duty. We shall also be fully liable in the event of injury to life, body or health.

4.2 In case of slight negligence, we shall be liable for property damages and pecuniary losses only in case of a breach of contractual duties which must be fulfilled if the contract is to be implemented in a due and proper manner at all, and the fulfillment of which can thus particularly be relied upon by the customer ("fundamental contractual duties"), provided, however, that our liability is limited to the typical damages foreseeable for such a contract.

4.3 In any other case, our liability shall be excluded.

5.1 Payments shall be made within 14 days of the invoice date unless otherwise agreed in writing. Payment punctuality shall depend on the date of receipt or an unconditional credit to our account.

5.2 If, after concluding a sales agreement, facts regarding the financial situation of the customer become known to us which may jeopardise its completion, we may request cash in advance or a security deposit prior to the delivery of the goods. We shall not be obliged to accept payment by cheque or bill of exchange; in each case, acceptance of a cheque or bill of exchange shall only be regarded as a conditional payment. The costs associated with the collection of a cheque or bill of exchange shall be for the account of the Customer.

5.3 In the event of default in payment, interest is due at the applicable statutory rate for default interest, provided, however, that we shall be entitled to claim further damages (for delay).

5.4 Any fees for bank transfer shall be borne by the customer.

6.1 All goods delivered shall remain our property until all open accounts resulting from the business with the customer have been paid in full.

6.2 Any processing or transformation is carried out on our behalf as manufacturer but without any obligation for us. We acquire a pro-rata co-ownership to the new goods according to the ratio of the invoice value of our goods and the new product. The Customer shall protect the ownership of the User gratuitously.

6.3 The customer is entitled to process or resell our products within the scope of lawful conduct of business. The customer already assigns to us now any accounts receivable from the resale of the respective goods. As long as it meets its payment obligations to us, the customer may collect the accounts receivable until revoked.

6.4 If the realisable value of the securities given to us exceeds the claims secured by more than 10%, we will release securities of our choice at the customer's request.

6.5 The customer undertakes to inform us immediately about any actions by third parties which could affect the goods subject to retention of title.

7.1 We reserve any proprietary rights to illustrations, drawings including technical drawings, sketches and other documents as well as tools, moulds and equipment. They remain our property and may not be made accessible to third parties without our express agreement. At our request, the Customer shall be obliged to return all of them to us without delay and completely if they are not longer used by the Customer in the ordinary course of business or if no order is finally and conclusively placed with the Customer.

7.2 The customer assumes full responsibility for legitimate use of its drawings, in particular the production according to its instructions and the distribution of the goods, by which proprietary rights of third parties will not be infringed.

8. Industrial Property Rights and Copyrights

8.1 If and insofar as a third party enforces justified claims against the Customer on account of a breach of an industrial property right or copyright (hereinafter referred to as a "Property Right") as a result of a Performance developed and/or executed by us, we shall be liable as follows unless opposed by legal regulations:

a) We shall, at our option and at our cost, either acquire a usufructuary right for the developed and/or executed Performance, or change the Performance in such a way that the Property Right is no longer breached or shall replace the Performance if the use of the Performance envisaged in accordance with the Contract is not adversely affected as a result. If and insofar as we are finally and conclusively unable to grant the due usufructuary right to the Customer as a result of the measures referred to in Clause 1, the Customer shall be entitled to withdraw from the Contract after having set a reasonable period of grace.

b) We shall only be obliged to carry out the measures referred to in para. a), Clause 1 if the Customer immediately informs us in writing of the third party claims and with an illustrative description of the breach of a property right, if a breach is not recognized and if the Customer grants us all decision-making powers with regard to the appropriate legal defence and executes the settlement negotiations without restriction. If the Customer ceases to use the Performances for loss minimizing or any other major reasons, he/it shall be obliged to draw the attention of the third party to the fact that the usage restriction is not associated with a recognition of a breach of a property right.

8.2 Any claims by the Customer under para. 8.1 shall be excluded if and insofar as the Customer is responsible for the breach of the property right. Claims by the Customer shall also be excluded if and insofar as breach of the property right was caused by special instructions of the Customer or due to the fact that our Performance was changed by the Customer or is used together with performances not carried out by us.

8.3 The Customer shall be obliged to support and assist us to the best of his/its abilities with the defence against the breach of the property right.

9.1 German law shall apply to all legal relationships between us and the customer under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

9.2 Dietzenbach shall be the exclusive place of jurisdiction for all disputes resulting from the contractual relationship. We are also entitled to file suit with the competent court at the general place of jurisdiction of the customer.