

# GENERAL TERMS AND CONDITIONS OF PURCHASE PRODUCTION MATERIAL



## 1. Scope of Application, Form Requirements

1.1 The legal relationship between the supplier and us shall be exclusively governed by our general terms and conditions of purchase. They apply to all orders placed by us, related amongst others to the supply of goods or the provision of services based on purchase or work contracts or contracts of employment (hereinafter together referred to as "service").

1.2 These terms and conditions shall apply in their respective version also to all future orders without any requirement on our part to refer to them again in each individual case. The respective current version is available at [www.rapa.com](http://www.rapa.com).

1.3 Upon acceptance of the order these general terms and conditions of purchase shall become subject matters of the contract. Deviant conditions of the supplier and other differing agreements shall be applicable only if we have consented to them in writing. Silence or unconditional acceptance of the service on our part as well as payment by us shall not constitute a consent. A consent granted for one case shall be valid for the individual case exclusively, not for former or future contracts.

## 2. Order, Sub-contractors

2.1 Contracts (order and acceptance) and the calling off of the service as well as changes and amendments require the written form. Call-offs may also be carried out by means of remote data transmission.

2.2 The supplier is required to immediately confirm our order; this does not apply to delivery call-offs. For the purpose of correction and/or completion the supplier shall inform us about obvious errors (e. g. typing or calculation errors) and incompleteness of the order or of a delivery call-off before their acceptance, otherwise the contract shall be deemed not concluded.

2.2 Call-offs of the service shall at the latest become binding when the supplier does not object to them within 48 hours after receipt. Precisely agreed delivery dates shall always have priority.

2.4 The supplier shall not be entitled without our prior written consent to have third parties (e. g. sub-contractors) provide the service owed by him. The supplier bears the risk of procurement for his service, unless otherwise agreed in writing in the individual case.

2.5 Within reasonable limits for the supplier the orderer may require changes to the service in terms of design and execution. The supplier shall implement these changes within a reasonable period of time. In this context, the impacts, especially with regard to the increase or reduction in costs and the delivery dates, shall be reasonably regulated by mutual agreement. In the case of absence of an agreement within a reasonable period of time, we are entitled to refrain from further orders.

## 3. Prices and Conditions of Payment

3.1 Unless otherwise agreed in writing, the prices stated in the order are fixed prices. All prices include the legal sales tax, unless this tax is separately stated. In no case unilateral changes to the prices by the supplier shall be permissible.

3.2 Unless otherwise agreed in the individual case, the price stated when the order is placed shall include all services and ancillary services of the supplier (e. g. assembly) as well as all ancillary cost (e. g. proper packaging, transport costs including transport and liability insurance).

3.3 Unless otherwise agreed, our payments are made within 30 calendar days and in the case of payment within 14 calendar days with a 3% discount on the net amount of the invoice. The period shall begin upon receipt of the complete provision of the service according to the contract (including any acceptance that may have been agreed) and receipt of a proper invoice indicating the order number, supplier number, part number, quantity of pieces and unit price. In the case of early deliveries the due date shall be based upon the agreed delivery date.

3.4 The supplier agrees to take part in a credit memo procedure at our request. In the case of faulty delivery we are entitled to withhold the payment proportionately to the value until due performance has been rendered.

3.5 The supplier shall not be entitled to assign his claims against us or to have these claims collected by third parties, unless we have granted the prior written consent which shall not be unreasonably refused.

3.6 We are entitled to the rights of set-off and retention as well as to the defense of non-performance of the contract, to the extent provided by law. We are particularly entitled to withhold due payments as long as we are still entitled to other claims arising against the supplier from incomplete or faulty service. The supplier shall be entitled to the rights of set-off and retention only based on counterclaims which have been legally confirmed or are uncontested.

## 4. Dates and Periods of Delivery, Delay

4.1 The time of performance of services stated by us in the order or in the delivery call-off is binding. The supplier is obliged to immediately inform us in writing in the event that he anticipates not being able to comply with the agreed times of performance of services for whatever reason.

4.2 The receipt of the goods or the performance of the service at our premises shall be decisive for the compliance with the date of performance of services. If the supplier fails to deliver or to perform a service or does not deliver or perform a service in due time or if he gets into delay for any reason whatsoever, we shall be entitled to assert the legal claims resulting thereof, without prejudice to the other regulations of these terms and conditions of purchase.

## 5. Transport and Packaging, Passing of Risk, Default of Acceptance

5.1 Within Germany the delivery of goods shall be free domicile to the place stated in the order. If the place of destination is not stated and unless otherwise agreed, the service shall be provided at our registered office in Selb. The respective place of destination is considered to be the place of performance (obligation of performance at the creditor's domicile).

5.2 The supplier shall be obliged to ensure the quality of the goods by means of appropriate means of transportation and packaging. Any packaging and delivery note shall contain the following data: order number, supplier number, name of the parts, item number including the condition, delivery quantity, gross weight, net weight, quantity (number) of the package items. The individual items shall be listed as single batches. The production batch number shall be indicated per item at the delivery note. Separately of the delivery note a respective dispatch note with the same content shall be sent to us. The packaging is defined in the RAPA packaging instruction. The individual package items shall be loaded containing one batch number only (production batch); packaging units which are not entirely filled shall in consequence be inadmissible. The packaging of the parts always requires consideration of and compliance with the CTU guidelines.

5.3 The packaging and the labelling of dangerous substances shall be carried out in compliance with the applicable laws; the corresponding safety data sheets shall be included in the delivery. The classification of the dangerous goods or the note "no dangerous goods" shall be indicated on the delivery note. The legal and official regulations applicable at the date of delivery shall be complied with upon delivery and performance of service. This refers in particular to EU regulations, legal acts based on EU directives, accident prevention and occupational health and safety regulations, the Equipment Safety Act as well as to the state of technology regarding safety and health at work.

5.4 As far as applicable and unless otherwise agreed, the CE mark shall be clearly visibly attached; the declaration of conformity and the danger analysis shall be included in the delivery. The packaging materials should be produced without CFC, free of chlorine, chemically inactive, neutral to ground water and nontoxic during combustion. The packaging should generally be reusable packaging and should consist

of environmentally friendly materials as well. The supplier shall take back packaging materials upon our request.

5.5 The risk of accidental loss and of accidental deterioration of the item shall pass to us upon handover at the place of performance. As far as an acceptance has been agreed this shall be authoritative for the passage of risks. Apart from that, the acceptance is governed by the legal regulations on contracts for work and services.

## 6. Inspection and Verification Entitlement

6.1 During the normal business hours and without prior notice RAPA and RAPA customers are at any time entitled to verify - during the production and until the dispatch, at the business premises of the supplier - materials, manufacturing processes and all other works necessary for the performance of the service. They are entitled to have the inspection and/or verification carried out by an independent company which we may freely choose for the purpose of such an inspection.

6.2 If the verification should not be allowed without any important reason we are entitled to withdraw from the contract without the supplier having any claim to damages or to payment of the services performed so far. This also applies in the case where defects or deviations from the contractually fixed aspects become obvious already during the verification. As an alternative, we may claim the immediate supplementary performance. We are at any time entitled to request reports on items ordered by us and in particular on the current status of production. The supplier shall assume full responsibility for the production of the parts.

## 7. Quality, Documentation

7.1 In the context of his services, the supplier shall observe the specifications of the customer specifications sheet concluded with us. Unless otherwise provided, for an initial sample testing the VDA paper (VDA - German Association of the Automotive Industry) *Quality Assurance of Deliveries in the Automotive Industry - Supplier Assessment, Initial Sample Testing* (original title: *Sicherung der Qualität von Lieferungen in der Automobilindustrie - Lieferantenbewertung, Erstmusterprüfung*, Frankfurt am Main) shall be suggested.

7.2 Regardless of this suggestion, the supplier shall be obliged to verify permanently the quality of the service at his own expense. In particular, he shall indicate in his records when the service was verified as well as in which way and by whom. The testing documents must be stored for a period of at least 15 years and submitted to us if needed. For the documentation and archiving the VDA paper *Volume 1 Documentation and Archiving - Guidelines for the Documentation and Archiving of Quality Requirements* (original title: *Band 1, Dokumentation und Archivierung - Leitfaden zur Dokumentation und Archivierung von Qualitätsanforderungen*) as well as the VDA paper *Process Description of Significant Characteristics (SC)* (original title: *Prozessbeschreibung besonderer Merkmale (BM)*) in their respective current editions shall be suggested.

7.3 If there is no agreement between the supplier and us on the way and the extend of the testing and on the testing equipment and methods, we will, on demand of the supplier and within the bounds of our knowledge, provide the experiences and possibilities to discuss the testing and the required state of testing technology in each case. For this purpose and upon request, the supplier undertakes to deliver samples to a laboratory to be defined by us. The supplier shall bear the reasonable costs of such a laboratory examination performed by a third institution. At his request, we will inform the supplier about the respectively applicable safety regulations.

7.4 At any time during the term of the contract, the supplier shall, with regard to the manufacturing and the sale of his products or services, make his best efforts to preserve a technology, quality, service and price level which is at least that competitive as the technology, quality, service and price level of other manufacturers of similar products/services for the intended use.

7.5 For possible defects or in the case of complaints, the supplier shall, as part of his quality management, as quickly as possible perform an examination and shall supply a properly completed 8D report. The supplier shall provide the details of the analysis and examination results and take appropriate corrective measures.

7.6 As far as this is possible according to the legal framework, the supplier shall commit his pre-suppliers to the same extent to

compliance with the quality requirements. The contractual partners shall mutually inform each other about possibilities of quality improvements.

7.7 As far as authorities responsible for the motor vehicle safety, exhaust gas regulations or similar should demand insight into the production process and our testing documents for the purpose of verification of certain requirements, the supplier agrees to grant these authorities the same rights at his premises as he grants to us as well as to provide every reasonable support in this context.

## 8. Extent of Liability and Warranty

8.1 The supplier is aware of the intended purpose of the service; otherwise, he shall ask RAPA for this purpose. Unless otherwise provided in the following, the legal provisions shall apply to our rights concerning defects as to quality and defects of title (including wrong delivery and short delivery as well as improper installation, faulty assembly, operation and operating instructions) and to other violations of obligations.

8.2 By way of derogation from § 442 (1) sentence 2 of the German Civil Code (BGB) we are entitled to warranty claims for defects upon the purchase even in the case where we had not been aware of the defect upon conclusion of the contract due to gross negligence.

8.3 The legal provisions (§§ 377, 381 of the German Commercial Code HGB) shall apply to the commercial obligation of examination and notification of defects, subject to the following condition: our obligation of examination shall be limited to defects which become apparent upon visual check during our incoming goods inspection, including the delivery documents, as well as during our quality check in the context of the sample procedure (e. g. transport damages, wrong or short delivery). As far as an acceptance is agreed, there shall be no obligation of examination. In all other cases the examination shall depend on the extent to which an examination is feasible according to the proper business routine, with due consideration to the circumstances of the particular case. The obligation to give notice of defects discovered later remains unaffected. In all cases, our notification of defects (notice of defects) shall be deemed to be given without delay and in due time if received by the supplier within 10 working days.

8.4 If the supplier fails to meet his obligation of supplementary performance - at our option by rectification of the defects (subsequent improvement) or by delivery of an item free of defects (replacement delivery) - within a reasonable period defined by us, we shall be entitled to replace or mend defective parts at the cost of the supplier. If the supplementary performance by the supplier has failed or is unreasonable to us (e. g. because of particular urgency, risk to operational reliability or the imminent occurrence of disproportionate damages) no preliminary period setting shall be required; we will inform the supplier without delay, and if possible previously, about such circumstances.

## 9. Recourse

9.1 In addition to the claims for defects, we are entitled without limitation to our legally defined rights of recourse within a supply chain (recourse against suppliers according to §§ 478, 479 of the BGB). In particular, we shall be entitled to claim from the supplier the exact form of supplementary performance (subsequent improvement or replacement delivery) asserted by our customer in the individual case. Our statutory right to choose (§ 439 (1) of the BGB) shall not be limited by this.

9.2 Before we acknowledge or meet a claim for defects asserted by one of our customers (including reimbursement of expenses according to §§ 478 (3), 439 (2) of the BGB) we will notify the supplier and, giving a brief account of the facts, request a written statement. If the statement is not submitted within a reasonable period of time and if there is no amicable agreement, the claim for defects actually granted by us shall be deemed to be owed to the customer; in this case, the supplier is responsible for supplying counter evidence

9.3 Our claims arising from the supplier regress shall also apply, if the goods have been further processed by us or by one of our customers before they were sold to the consumer; e. g. by way of integration into another product.

## 10. Manufacturer's Liability

10.1 If the supplier is responsible for product damage he shall indemnify us against any claims of third parties insofar as the cause lies within his area of control and organization and as he is liable for this in the external relationship.

10.2 In the context of his indemnity obligation the supplier shall reimburse expenses according to §§ 683, 670 of the BGB which arise from or in connection with a demand of third parties, including product recalls carried out by us or by our customers. As far as possible and reasonable, we will inform the supplier about the content and the extent of the product recalls and give the supplier the opportunity to make a statement. Further legal claims shall remain unaffected.

10.3 The supplier shall take out and maintain a product liability insurance with a minimum sum insured of 10 Million EUR per incidence of personal injury or damage to property.

## 11. Limitation

11.1 Unless otherwise provided in the following, the reciprocal claims of the contractual parties shall become time-barred according to the statutory provisions.

11.2 By way of derogation from § 438 (1) no. 3 of the BGB und § 634a (1) no. 1 of the BGB, the general period of limitation for claims for damages shall be 3 years starting from the passage of risks and the acceptance as the case may be. This 3-year period of limitation also applies accordingly to claims arising from defects of title; moreover, defects of title will in no case become time-barred as long as the third party may assert the right against us, especially in the absence of limitation.

## 12. Provisions, Reservation of Ownership

12.1 Materials, parts, reservoirs, special packaging or the like (provisions) provided by us shall remain our property. Any processing, combining, mixing (further processing) of the provisions shall be carried out for us, in a manner that we shall acquire joint ownership of the new product based on the ratio of the value of the provisions to the value of the product as a whole.

12.2 Reproductions may be made only with our prior written consent. Upon their production, the reproductions shall pass into our ownership.

12.3 The supplier has no right of retention in relation to the provisions, for any reason whatsoever. Point 3 paragraph 6 shall apply accordingly. Provisions as well as reproductions shall not be made accessible to third parties (also sub-suppliers) and shall only be used for the agreed purposes.

12.4 The transfer to us of the ownership of the goods shall be effected unconditionally and regardless of whether the price has been paid. If we should, in an individual case, accept an offer by the supplier related to the transfer of ownership with the condition of payment of the purchase price, the reservation of ownership by the supplier shall cease to exist upon the payment of the purchase price for the delivered goods at the latest. In the context of the normal course of business, we remain entitled to resale the goods prior to the payment of the purchase price and with the assignment in advance of the claim resulting therefrom (alternatively application of the simple reservation of ownership extended to the resale). Thereby all other forms of reservation of ownership are excluded, in particular the extended and the forwarded reservation of ownership as well as the reservation of ownership extended to the further processing.

## 13. Obligation to Deliver Spare Parts

The supplier is obliged to deliver spare parts without changes for the period of time of the usual technical use of up to 15 years after the end of production of a series at the OEM, under the conditions existing at that time and using the original tools.

## 14. Tools

14.1 Without prejudice to other agreements, we shall acquire full or joint ownership of the tools to the extent we have contributed to the proven costs for the tools used to manufacture the supplied goods.

14.2 Upon payment, the tools shall pass into our (joint) ownership or, depending on the agreement, into the ownership of our customer. They remain on loan to the supplier. The supplier shall be entitled only with our approval to actually and legally dispose of the tools, to change their location or to render them durably inoperative.

14.3 The supplier shall bear the costs for the maintenance, repair and the replacement of the tools. We shall have ownership of replacement tools in the same proportion as in the original tools. For the joint ownership of a tool we shall have a right of first refusal with respect to the joint ownership share of the supplier.

14.4 The supplier shall use tools which are (jointly) owned by us exclusively for the purpose of manufacturing the delivery items. After termination and upon request, the supplier shall hand over the tools immediately to us; in the case of the joint ownership of tools, we shall reimburse the supplier for the current value of the share of the joint ownership of the supplier.

14.5 In no case the supplier shall have a right of retention. Point 3 paragraph 6 shall apply accordingly. The supplier shall be obliged to hand over the tools also in the case of an insolvency application filed against him or of a long-term interruption of delivery. The supplier shall insure the tools to the extent agreed, and to the usual extent, if no agreement has been made.

## 15. Property Rights

15.1 The supplier shall be liable for ensuring that the service is free from rights of third parties and that the service and its use under the contract does not infringe any patent or any other property right of third parties, of which at least one of the family of intellectual property rights has been published either in the suppliers home country, by the European Patent Office or in one of the following states: Federal Republic of Germany, France, United Kingdom, Austria or the USA. In this respect, an obligation falls to the supplier to make inquiries and to check if there are conflicting property rights of third parties. Sentence 1 shall not apply insofar as the supplier has produced the service in accordance with our drawings and models or any other equivalent description or data submitted by us and does not know or, in the context of the products developed by him, does not need to know that thereby industrial property rights are being violated.

15.2 The supplier undertakes to inform us without delay if he becomes aware of any risks of violations or any alleged cases of violation.

15.3 The supplier shall notify without request the use of published or unpublished own or licensed property rights and applications for intellectual property rights in the service ordered and of existing limitations of this service.

15.4 In the event of any claim being made by a third party because of the violation of any property right, the supplier shall obtain at his costs from the holder of such property rights the required license for the service, the commissioning, use, sublicense and resale etc. of the service. If the supplier proposes a change in the service in order to avoid a violation of property rights and the end customer unconditionally approves this change for the series delivery in compliance with his requirements for the series approval, there shall be no obligation to obtain license.

## 16. Confidentiality

16.1 The contractual partners undertake to treat all commercial and technical details which are not commonly known and become known to them in the context of the business relations as business secret.

16.2 Electronical data, drawings, models, templates, samples and other documents shall not be transferred or made accessible to unauthorized third parties. The respective contractual party shall retain all rights of ownership and all copyrights of these electronical data, drawings, models, templates, samples and other documents. The reproduction of such items shall only be permissible within the limits of the operational requirements and the copyright provisions.

16.3 The obligation of confidentiality continues to exist for a period of time of 5 years after termination of the contract.

16.4 If sub-suppliers have been commissioned by the supplier with our consent, these sub-suppliers shall be committed accordingly to this obligation of confidentiality.

**17. Place of Jurisdiction, General Provisions**

17.1 Place of performance of the services is our registered office in Selb.

17.2 If the supplier is a merchant as defined by the Commercial Code, a legal entity under public law or a special assets under public law, the place of jurisdiction for all disputes arising from or in connection with this contract or these conditions shall – also internationally – be Hof (Bayern), provided no exclusive jurisdiction is indicated. Additionally, we shall be entitled to bring an action against the supplier alternatively at another court which is competent in relation to the supplier.

17.3 These terms and conditions and all legal relations between us and the supplier shall be governed by the law of the Federal Republic of German, with the exclusion of all international and supranational (contractual) legal systems and of the UN Sales Law (CISG) in particular.

17.4 This agreement and all rights and obligations of this agreement cannot be transferred to third parties without the prior written approval of the respective other contractual partner.

17.5 The ineffectiveness or infeasibility of single provisions shall not affect the effectiveness of the remaining provisions of these terms and conditions. Ineffective or infeasible provisions shall be deemed to be replaced by such effective/feasible regulations which are appropriate to realize as far as possible the economic purpose of the omitted regulations. The same applies to a loophole.

17.6 Subsidiary agreements or changes to these agreements shall only be effective, if they have been confirmed in writing. The same applies to the waiver of this written form requirement.

17.7 The supplier shall use our business relationship for advertising purposes only with our prior written consent. This shall apply in particular to the use of the name RAPA and of the RAPA logo.