

General Terms and Conditions of Purchase for Walterscheid Brasil Industria de Equipamentos Agricolas Ltda. and Powertrain Brasil Serviços para Equipamentos Ltda.

- 1 Definitions and introduction**
“we”, “us” and “our” refers to the applicable purchaser among Walterscheid Brasil Industria de Equipamentos Agricolas Ltda. and Powertrain Brasil Serviços para Equipamentos Ltda.or other members of the Walterscheid Powertrain Group “WPG”). Our agreement with you (the “Contract”) consists of: (i) any duly signed contract which applies to our purchase of goods and/or services from you; (ii) any purchase order or delivery schedule order (an “Order”) that we issue to you and you confirm; (iii) these General Purchasing Conditions; (iv) any specifications and safety, health and environmental requirements that we agree with you; (v) any supplementary terms and conditions of purchase that we agree with you; and (vi) our quality and other requirements or procedures made available to you (via WPG’s Supplier Portal or otherwise). If there is any inconsistency between any parts of the Contract, the parts placed higher in the list will prevail.
- 2 Your conditions excluded**
If you seek to impose additional or different terms on our purchase, they will not form part of the Contract and are excluded and rejected by these General Purchasing Conditions.
- 3 Delivery**
- 3.1** You must deliver goods and/or services that we order in accordance with the delivery terms and dates set out in the Contract. If any goods and/or services are not delivered on time or are delivered incorrectly, we may terminate the relevant Order.
- 3.2** Goods must be delivered DDP (as defined in current Incoterms), unless another part of the Contract states different delivery terms. Ownership of the goods you deliver will transfer to us on delivery.
- 3.3** All goods must be packaged so as to protect them adequately before, during and after delivery and, if we require, each delivery shall be accompanied, in a form acceptable to us, by a certificate of conformity and/or an up-to-date material safety data sheet.
- 4 Quality, rejection and indemnity**
- 4.1** Any goods supplied by you must be: (i) of the quantity and description specified in the Contract; (ii) of satisfactory quality; (iii) fit for their normal purpose and any specific purpose we inform you about or which you ought reasonably be aware of; (iv) free from defects in design, material and workmanship; and (v) free from any encumbrances.
- 4.2** Any services supplied by you must be: (i) performed efficiently, safely and competently by suitably qualified and experienced personnel, in conformity with any applicable industry code of practice; and (ii) of the quality which would reasonably be expected from a skilled and experienced operator providing equivalent services in the same circumstances.
- 4.3** Any goods or services (and any associated technology) supplied by you must: (i) comply with all applicable legal requirements and regulations, including those relating to transportation, health, safety and the environment; (ii) not infringe the intellectual property rights of any third party; (iii) conform to any specification or other requirements referred to in the Contract; and (iv) conform to any sample approved by us.
- 4.4** We may (but are not obliged to) inspect and test the goods delivered by you and may reject and return (at your risk and expense) any goods that fail to conform with the terms of the Contract. You must replace such rejected goods within a reasonable time (being not more than 15 days after notice of rejection) with goods which do comply with the Contract.
- 4.5** You will reimburse each member of the WPG for all losses, damages, costs and expenses (including reasonable legal fees) or other claims (including third party claims and costs relating to recalls and service measures implemented by our customers or their customers) arising from or incurred as a result of: (i) any breach by you of the Contract; and (ii) any negligent act or omission by you or your employees, agents or sub-contractors in supplying goods and/or services pursuant to the Contract.
- 5 Invoicing and payment**
- 5.1** We will pay you the price set out in the Contract (which will be exclusive of sales tax but inclusive of delivery costs and all other taxes payable under local laws) for the goods and services that you deliver in accordance with the Contract. You may only invoice us after delivery of the goods and/or services ordered by us and in accordance with any payment schedule in the Contract.
- 5.2** Invoices must show: the date of delivery, Order number, delivery address and description of goods/and or services delivered, and must be sent to the invoice address specified in the relevant Order.
- 5.3** Unless otherwise set out in the Order, payment will be due from us within 90 days of receipt by us of a validly issued invoice. All payments will be made by us in local currency.
- 5.4** We may deduct from the price of the goods and/or services ordered by us any sums due to the WPG under the Contract or any other contract between you and the WPG.
- 6 Confidentiality and Intellectual Property**
- 6.1** You must not disclose to any other person or entity any confidential information belonging to the WPG or any of its divisions, customers, suppliers or collaboration partners (including, without limitation, this Contract, specifications, formulae, manufacturing processes, know-how and any technical or economic information) or use such information for any purpose except for the supply of goods and/or services to us or as expressly authorized in writing by us. You must return to us such information and any copies if requested.
- 6.2** You must, on request, transfer to us, free of charge and free from encumbrances, any documents, specifications, plans, drawings, samples, information or goods created or prepared for us by you or your employees, subcontractors and consultants, which we may use without any charge.
- 6.3** Intellectual property rights in any information, documentation, prototypes or tooling provided by us to you shall remain owned by us or our customers or our suppliers and shall only be used for the sole purpose of supplying goods and/or services to us. If any intellectual property rights are created or generated from such information, documentation, prototypes or tooling or in performing the Contract then such rights shall be owned by us.
- 7 Our Property**
- 7.1** This section relates to all property (including tooling of any kind) and any related information, documentation and intellectual property rights therein: (i) purchased by us and/or manufactured by you pursuant to an Order; (ii) provided by us to you for use in the supply of goods and/or services or for any other purpose; whether or not modified, repaired or replaced (“Our Property”).
- 7.2** Our Property (and any scrap resulting from it) is solely owned by us and we shall keep title to it at all times. If we disagree as to who owns any of Our Property, the presumption will be that we do.
- 7.3** Where you are in possession or control of Our Property it is on a fiduciary basis as our bailee and you have no rights in it. You have a revocable non-exclusive licence to use Our Property at your premises only for performing the Contract until we request its return, which we may do at any time. You may not sublincense the use of Our Property or use it for any other purpose.
- 7.4** Risk in Our Property passes to you on delivery and remains with you until it is returned to us. Whilst Our Property is in your possession or control you shall: (i) be responsible for any loss or damage to it (other than fair wear and tear); (ii) store and use it at your premises in a proper and secure manner; (iii) clearly label or identify it as belonging to us; (iv) maintain insurance against all loss or damage; (v) use it with care; (vi) inspect it and maintain it in good order and condition; (vii) immediately notify us if it is lost, damaged or seized; (viii) not modify or tamper with it, or attach it to anything, or anything to it; (ix) not part with possession of it or allow anyone else to use it (x) not sell, dispose or encumber it; (xi) give us free and unrestricted access to it on reasonable notice during ordinary business hours; (xii) make it available for collection by us at any time and allow us access to your premises to remove it; and (xiii) not copy or reproduce it in any way. We have an exclusive, irrevocable option to purchase all bespoke tooling owned by you and put in place for the production of goods pursuant to the Contract at its present value.
- 8 Termination**
- 8.1** We may cancel all or any part of any Order by giving you notice at any time prior to your full performance of the Order and in such event we will not be liable to pay the price for such goods or services.
- 8.2** We may terminate the Contract: (i) for convenience by providing you with written notice; (ii) immediately if you or your parent company become subject to a bankruptcy or insolvency event or enter into a composition with any of your creditors; or (iii) if you breach the Contract, and, if the breach can be remedied, you fail to remedy such breach within 10 days of receiving notice of the breach.
- 8.3** Termination of all or part of an Order or the Contract will not prejudice accrued rights.
- 8.4** You may be required to continue to supply spare parts and related services up to 15 years after termination or expiry of the Contract.
- 9 General**
- 9.1** You and your suppliers must comply with all applicable laws, regulations and codes and also with the requirements of the WPG Code of Conduct (https://www.walterscheid-group.com/wp-content/uploads/WPG_Supplier_Code_of_Conduct_2019_EN.pdf) of which we may provide you with a hardcopy upon your request. We have the right to visit your premises on reasonable notice to audit and ensure compliance.
- 9.2** You must provide us with any information we request relating to the goods and services supplied by you, all of which must be complete and accurate.^{9.3} You and your employees, agents and sub-contractors must abide by applicable site and safety rules when on our property and you shall provide evidence of your applicable insurance.
- 9.4** Our rights or remedies under the Contract will not limit any of our other rights or remedies, whether under the Contract or otherwise.
- 9.5** You will not be entitled to transfer or subcontract any of your rights or obligations under the Contract without our prior written consent. Each company within our WPG shall have the benefit of the Contract and may purchase goods and/or services pursuant to the terms of the Contract.
- 9.6** Any failure or delay by us to enforce or partially enforce any provision of the Contract will not be a waiver of any of our rights.
- 9.7** Neither you, nor any of your employees, clerks, representatives, agents or service providers shall be treated as our officers or employees. If any of your employees transfer to us by law then we may dismiss him/her and you shall indemnify us for all costs arising from such dismissal. If any of your personnel bring any claim against us, including under Brazilian labor and social security laws, or we incur any other liability in respect of any of your personnel, employees, clerks, representatives, agents or service providers, you shall indemnify us from all losses and costs arising from such claims or liabilities.
- 9.8** The Contract does not create any association, partnership or joint venture relationship between you and us, whether express or implied, and you shall perform this agreement as an independent contractor.
- 9.9** The provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded.
- 10 Law and Jurisdiction**
- The Contract shall be exclusively governed by Brazilian law. If you are incorporated or otherwise legally resident in Brazil, the courts of São Paulo/SP, Brazil shall have exclusive jurisdiction to settle any disputes or claims that arise out of or in connection with the Contract or its subject matter (“Claims”). If not, any Claims shall be referred to and finally resolved by arbitration in São Paulo/SP, Brazil under the rules of arbitration of the Brazil-Canada Chamber of Commerce (*Centro de Mediação e Arbitragem da Câmara de Comércio BrasilCanadá*) by one or more arbitrators appointed in accordance with those rules. The language of the arbitration shall be Portuguese.