

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES OF OFF-HIGHWAY POWERTRAIN SERVICES GERMANY GMBH

These Terms and Conditions for the Supply of Goods and Services govern relations between Off-Highway Powertrain Services Germany GmbH ("**Supplier**") and its customer ("**Customer**") regarding defined parts ("**Equipment**") of Customer's machinery ("**Machinery**"), including but not limited to inspection, maintenance, repair and replacement, monitoring or corrective maintenance with the intention to limit unplanned production downtimes of the Equipment. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **1. Definitions**

In these Terms and Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in Germany are open for business.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Terms and Conditions.

**Customer:** the person or entity who purchases the Goods and/or Services from the Supplier.

**Goods:** the goods (or any part of them) set out in the Order and/or the Contract.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings that are agreed in writing by the Customer and the Supplier.

**Order:** the Customer's order for the supply of Goods and/or Services.

**Services:** the services as set out in the Order.

### **2. Basis of Contract**

2.1 Unless specifically referred to as binding, any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue. The Parties shall determine content and details of the Goods and/or Services in the Contract, stating at least a detailed description of the machinery and the equipment, description of the Goods and/or Services and the time the provision of the Goods and/or Services shall commence.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Terms and Conditions. The Order shall only be deemed to be accepted when the Supplier issues acceptance of the Order in text form. Through the textual acceptance, a Contract is concluded.

2.3 The Contract constitutes the entire agreement between the parties. Any statement, promise, assurance or any guarantees made or given by or on behalf of the Supplier only become binding if and to the extent the Supplier expressly agreed to them in text form and they became part of the Contract.

2.4 Any samples, drawings, descriptions or advertising issued by the Supplier with regard the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. Unless specifically referred to in the Contract they shall not form part of the Contract or have any contractual force.

### **3. Customer's obligations**

3.1 The Customer shall:

(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the supply of the Goods and/or delivery of the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, free access to the Customer's premises, lockable dry rooms for storing the tools and items of equipment, appropriate facilities, including opportunities for washing and first aid equipment office accommodation and other facilities at Customer's premises as reasonably required by the Supplier to provide the Services;

(d) provide upon Customer's cost customary personnel protection equipment, such as safety shoes or goggles. Special preventive equipment, such as respiratory protection equipment shall be provided by Customer or, upon Customer's cost, by Supplier.

(e) provide the Supplier with such information and materials on the machinery and/or equipment, including but not limited to manuals, service instructions, previous service records, available to Customer or as reasonably required by Supplier to supply the Services, and ensure that such information is accurate in all material respects and

documents and reflects any technical modifications or other changes to the surrounding or installation site of the equipment.

(f) provide the Supplier at the Customer's expense with a reasonable number of skilled and unskilled assistants employed by the Customer;

(g) prepare the Customer's premises, the machinery and the equipment for the supply of the Services, in particular but not limited to cleaning machinery and equipment (including evacuating of fills and fluids, where necessary) and preparing safe and unrestricted access at all time. The Customer shall whenever Supplier's or its subcontractor's approach the machinery ensure that the machinery is taken out of operation as well as that any pipes are locked all times;

(h) carry out all construction, bedding and/or scaffolding work required and providing hoisting devices, heavy tools and other devices necessary for the Supplier as well as to gain access to the machinery and/or equipment necessary ("Customer Materials") for a proper and safe delivery of the Services and/or Goods;

(i) provide sufficient heating, lighting, operating materials, energy and water, including the requisite connections;

(j) obtain and maintain at Customer's cost all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and/or the Goods are to be delivered;

(k) keep and maintain all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

(l) ensure that the Supplier's personnel are not subject to any health or safety risks while performing the Services;

(m) ensure that all Customer's equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements;

(n) inform the Supplier in text form in advance of all safety regulations which it has issued for its own personnel and/or third parties on the Customer's site or related to the Customer's work;

(o) inform the Supplier in text form of any internal or external safety or other training or qualification required for Supplier's personnel before entering the Customer's site and provide for or reimburse Supplier the costs of such qualification; and

(p) inform the Supplier in text form in advance of all special hazards which may emanate from the machinery or arise from the performance of the Services and especially of any changes thereof during the term of any Contract.

3.2 Any waste accruing in connection with the performance of the Services or delivery of the Goods, such as dismantled materials and spent utilities, auxiliaries and consumables, shall be duly removed and disposed of by Customer at its own expense.

3.3 The Customer guarantees that the performance of Services and/or supply of Goods, or products containing the Goods, will not be installed in, or constitute parts of, pharmaceutical and medical engineering products, motor racing equipment, power stations and missiles, especially such as aircraft, satellites and rockets.

3.4 The Customer is obliged to notify the Supplier in writing at an early stage, but no later than on conclusion of the Contract, if Goods are subject to Germany's foreign trade legislation. If this is the case, the Supplier is entitled to withdraw from the Contract within four weeks of issue of the notification, without this giving rise to any claims on the part of the Customer.

3.5 When using the Goods outside of Germany, the Customer himself is responsible for compliance with the legal provisions applicable there. Within the framework of the scope permissible by law, we assume no liability whatsoever in the event of non-compliance.

3.6 If the Supplier's performance of any of its obligations in respect of the performance of the Services and/or supply of the Goods is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or supply of Goods until the Customer remedies the Customer Default, and to

## **TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES OF OFF-HIGHWAY POWERTRAIN SERVICES GERMANY GMBH**

rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of the Services and/or supply of the Goods;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform the Services and/or supply the Goods as set out in this clause 3.6; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### **4. Delivery of Goods**

4.1 The Supplier shall deliver the Goods to and/or perform the Services at the location set out in the Contract.

4.2 Unless stated otherwise in the Contract any quoted dates are approximate only.

4.3 The Supplier shall have no liability for any failure to deliver or any delay in delivery to the extent that such failure is caused by a Force Majeure Event, any delay of third party suppliers, the Customer's failure to undertake the necessary preparations or to provide the Supplier with adequate delivery instructions for the Goods or other instructions that are relevant to the supply of the Goods or performance of the Services.

4.4 To the extent that the Goods are to be manufactured in accordance with Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 0 shall survive termination of the Contract.

4.5 The Supplier may deliver the Goods and Services by instalments, which shall be invoiced and paid separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### **5. Transfer of title and risk**

5.1 The risk of loss of the Goods shall pass to the Customer upon their delivery.

5.2 The ownership of the Goods shall remain with the Supplier until the Supplier has received payment in full. The delivery of any Goods and/or the performance of any Services shall be deemed as coherent delivery.

5.3 Until the ownership of the Goods has passed to the Customer, the Customer shall maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery, and give the Supplier such information relating to the Goods as the Supplier may require from time to time.

5.4 The Customer may resell the Goods or incorporate them into other products in the ordinary course of its business. As far as the Good are combined with other products to form a single item ("Item"), the Customer transfers proportional co-ownership of such Item to the Supplier. In case of a sale of the Item the Customer transfers - as security - to the Supplier any rights towards its customers and all secondary rights resulting from such sale of the Item.

5.5 If Customer becomes subject to insolvency proceedings or if the Supplier reasonably believes that any such event is about to happen and informs the Customer about such presumption before the ownership of the Goods was passed to the Customer the Supplier may - without limiting any other right or remedy of the Supplier - at any time require the Customer to deliver up the Goods, provided that the Goods were not already resold, or irrevocably incorporated into other product and, if the Customer fails to do so promptly, the Supplier may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### **6. Material Defects and defects of title**

6.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ("Warranty Period"), the Goods shall conform to the Goods Specification.

6.2 The Customer must inspect the Goods immediately upon receipt and notify the Supplier of any defect discovered without delay, but within two weeks at the latest. This does particularly apply to obvious transport damages, as well as differences in identity and quantity. If the Customer fails to notify the Supplier, the Goods are considered to be approved, taking the defect in question into consideration, insofar as it is not a matter of a hidden defect. For the rest the regulations of section 377 HGB (German Commercial Code) apply.

6.3 If the Goods display a defect that was already present at the time of the passing of risk, and if the Supplier was notified of it within the time limit, the Supplier will, at its own discretion and at its own expense, remedy the defect (rectification) or deliver faultless Goods (replacement).

6.4 If the defect cannot be remedied within a reasonable period, or if subsequent performance is to be considered to have failed for other reasons, the Customer can, at his own discretion, demand a reduction in the remuneration (reduction of the purchase price) or withdraw from the Contract (withdrawal). Failure of subsequent performance can only be assumed after the Supplier has been given enough opportunity for rectification or replacement and the subsequent performance has failed to achieve the desired result, after the Supplier has refused or unacceptably delayed subsequent performance, or if Supplier's performance is unacceptable for other reasons.

6.5 On demand and at Supplier's expense, the Goods replaced or substituted in the framework of subsequent performance, and their parts, must be placed at Supplier's disposal by the Customer without delay. They become Supplier's property.

6.6 The Customer does have further claims for reimbursement of expenses and damages owing to the defective Goods only in accordance with section 9.

6.7 Claims for defects of quality do not exist insofar as the defect is attributable to

- (a) failure to comply with installation, operating or maintenance instructions, or
- (b) incorrect or unsuitable assembly, commissioning, treatment, use or maintenance, or
- (c) use of unsuitable operating materials, or
- (d) intervention in, or modification of, the Goods without Supplier's prior, written consent on the part of the Customer or third parties, or
- (e) natural wear and tear, or
- (f) the implementation of Customer's specifications or instructions by the Supplier.

6.8 Unless otherwise agreed, the Supplier is obliged to provide the Goods free of industrial property rights and copyrights of third parties ("property rights") only in the country of the place of production.

6.9 If a third party raises legitimate claims due to infringement of property rights due to the contractual use of the Goods by the Customer or its customers, the Supplier will either obtain the right to use the Goods according to Contract by the Customer or his customers at his own expense or modify these Goods in such a way that is reasonable for the Customer or his customer that the property right is no longer violated. If both fail, are unreasonable for the Customer or are rejected by the Supplier, the Customer has the right - without prejudice to possible claims for damages or reimbursement of expenses - to withdraw from the Contract or to reduce the remuneration.

6.10 In addition, the Supplier indemnifies the Customer against all undisputed or legally enforceable third-party property rights arising from the contractual use of the Goods in accordance with section 6.9.

6.11 The obligations pursuant to sections 6.9 and 6.10 only exist insofar as the Customer informs the Supplier without delay of any asserted violations of protective rights, does not recognise them, and all defensive measures, settlement negotiations and out-of-court settlements remain reserved for the Supplier. The Customer must grant the Supplier the powers of agency necessary for the latter from case to case.

6.12 Claims of the Customer for violation of protective rights are ruled out if he is himself responsible for them. This is particularly the case if the violation of protective rights is based on specifications or other statements or requirements of the Customer, or on use or modification of the Goods not foreseeable by the Supplier. At the

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES OF OFF-HIGHWAY POWERTRAIN SERVICES GERMANY GMBH

same time, the Customer has to hold the Supplier entirely harmless against all third-party claims for the violation of protective rights.

6.13 The Customer is not entitled to more extensive or other claims in connection with the violation of third-party protective rights. In particular the Supplier will not pay compensation for any consequential damages, such as loss of production and use, or loss of profits. These limitations of liability do not apply insofar as compulsory liability exists for losses typically foreseeable for the Contract in the cases indicated in section 9.2 (a) to (d).

6.14 These General Terms and Conditions of Supply also apply to repaired or replaced Goods under section 6.3.

### **7. SUPPLY OF SERVICES**

7.1 The Supplier shall provide the Services to the Customer in accordance with the Contract.

7.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

### **8. Performance prevention**

8.1 Force majeure, labour disputes, business disruptions through no fault of ours, public disorder, war, official measures, particularly bans imposed on deliveries to specific countries, and other unforeseeable, unavoidable or serious occurrences, relieve the Supplier of its obligation to perform the Services or supply the Goods, for the duration of the disturbance and to the extent of its impact. The obligations of the Customer to perform, particularly the obligation to pay, lapse only in relation to the period during which the Supplier is relieved of its obligation to perform.

Insofar as, and for as long as, the Supplier is not supplied by its upstream suppliers and the Supplier is not responsible for this hindrance of delivery, he is relieved of the obligation to supply the Goods, or perform the Services for, the Customer.

8.2 If delivery of the Goods or performance of the Services is delayed for reasons for which the Supplier is responsible, the provisions of section 9 apply, and the statutory regulations in all other respects.

8.3 If delivery of the Goods or performance of the Services or acceptance of the Goods is delayed for reasons for which the Customer is responsible, the risk for these Goods will pass to the Customer on the date of reporting readiness for shipping or acceptance, and the Customer will be charged for the costs incurred as a result of the delay. **9. Limitation of liability**

9.1 Supplier's liability for damages and costs is ruled out, insofar as it goes beyond the regulations in section 6.

9.2 This does not apply to

- a) losses or damages resulting from injury to life, limb or health in breach of Supplier's duties, or
- b) other losses or damages based on (aa) a breach of duties whose fulfilment makes proper implementation of the Contract possible in the first place, and on whose fulfilment the Customer can regularly rely (cardinal duties), or (bb) a breach of other duties caused by the fault of Supplier's legal representatives or executive employees through at least gross negligence, or caused by the fault of Supplier's ordinary employees with intent, or
- c) compulsory liability under the German Products Liability Act, as well as other compulsory statutory provisions that cannot effectively be contracted away, or
- d) guarantees assumed by the Supplier or defects maliciously concealed by the Supplier.

9.3 Except in the cases indicated in clause 9.2 a), b) (bb), c) and d), Supplier's liability is limited to the foreseeable, typically occurring loss.

9.4 The Supplier is obliged to refund to the Customer all necessary expenditure for recall campaigns directed by the competent authority or to be implemented by operation of mandatory statutory regulations, insofar as they are based on a defect in the Goods and the Supplier is liable for the defect. Insofar as the recall campaign is also based on contributory causes of others, this obligation does only exist for the Supplier to the extent attributable to Supplier's own conduct or the Goods. Insofar as possible and reasonable, the Customer is required to inform the Supplier in advance and in writing, of the necessity, content and scope of an envisaged recall

campaign, and to give the Supplier the opportunity to make a statement.

### **10. Price, Charges and payment**

10.1 The price for the Goods shall be the price set out in the Contract or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. Unless otherwise agreed the price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer at actual cost.

10.2 Unless otherwise agreed in the Contract the charges for Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the offer;
- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 a.m. to 5.00 p.m. worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate set forth in the offer of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2 (b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

10.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer upon completion of each site visit or, as far as the Services are provided off-site, weekly in arrears.

10.4 The Customer shall pay each invoice submitted by the Supplier in full and in cleared funds to the Supplier's bank account stated in the invoice or notified to Customer in writing within 30 days of the date of the invoice. Time for payment shall be of the essence of the Contract.

10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Any VAT applicable according to mandatory law must be paid by the Customer in addition to the price.

10.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

### **11. Confidentiality, intellectual property**

11.1 Regardless of the nature of their embodiment or storage, and regardless of their labelling as secret or confidential, all business or company secrets that have come to the knowledge of the Customer, as well as other commercial or technical information that belongs to the Supplier or to an affiliated company of the Supplier within the meaning of Section 15 AktG (German Corporation Act) (hereinafter referred to as "WPG Affiliates") or affect the Supplier or the WPG Affiliates, and in whose secrecy there is a justified interest (hereinafter collectively referred to as "Information"), are to be kept secret vis-à-vis third parties, as long as and insofar as they have not demonstrably become publicly known or accessible, and may only be made available to persons in the Customer's own company who necessarily have to be called upon to use them within the framework of contractual collaboration with the Supplier and are likewise committed to maintain secrecy.

11.2 Information of a written nature as well as its embodiment in documents, parts, samples and models are and shall remain the exclusive property of the Supplier or of the respective WPG Affiliates. All rights, in particular the right to file patent and / or utility model applications, remain reserved to the Supplier or the WPG Affiliates concerned.

11.3 At the request of the Supplier, all Information, together with any copies or extracts, must be returned to the Supplier without undue delay or destroyed. Electronically stored Information must be erased so that it cannot be recovered.

## **TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES OF OFF-HIGHWAY POWERTRAIN SERVICES GERMANY GMBH**

11.4 The Supplier assumes the legally largest possible extent permitted regarding no warranty, liability or guarantee for the completeness, timeliness, accuracy or usefulness of Information notified to or otherwise came to the attention of the Customer, unless otherwise agreed in writing separately in each individual case.

11.5 The Customer knows that - as far as any third parties' property rights exist in connection with the Services - he is only allowed to use the Services if and as long as the Supplier receives an appropriate license to use from the Licensor which entitles the Supplier to grant sub-licenses to the Customer.

11.6 The provisions of sections 11.1 - 11.3 shall survive termination of the business relationship between the customer and the supplier.

### **12. Termination**

Irrespective any other rights, each party may terminate the Contract without cause by giving written notice to the other party if:

- (a) the other party defaults on any payment due on the respective Contract and has not paid within 10 days after an appropriate reminder; or
- (b) the other party has breached a material obligation of the Contract which cannot be remedied or (if such cure is possible) has not been met within 30 days of such request by the other party, or
- (c) the other party no longer meets its payment obligations or has announced that it will cease to meet its payment obligations or
- (d) has applied for (provisional) insolvency proceedings, or has appointed a receiver in insolvency.

### **13. Assignment**

The Supplier may at any time assign or transfer its rights under the Contract in full or in part to a third party and may transfer its obligations under the Contract to any third party as subcontractors. The Customer may assign or transfer any of its rights or obligations under the Contract only with written consent of the Supplier.

### **14. Miscellaneous**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be modified in such way that it becomes valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### **15. Applicable law and jurisdiction**

Exclusive jurisdiction for any and all - even non-contractual - disputes and claims arising directly or indirectly from or in connection with the Contract shall be Bonn.

Only the German laws apply excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).