

# TERMS AND CONDITIONS OF PURCHASING OF THE COMPANY

VULKAN Kupplungs- und Getriebebau Bernhard Hackforth GmbH & Co. KG (hereinafter referred to as „VULKAN“) Herestraße 66 | 44653 Herne | Germany

## § 1 APPLICATION OF THE TERMS AND CONDITIONS OF PURCHASING

- The following Terms and Conditions of Purchasing shall apply to all business relations between VULKAN and its business partners and suppliers, provided that the supplier is to be regarded as a business enterprise in accordance with § 14 BGB (German Civil Code). VULKAN operates on a worldwide basis. The Terms and Conditions of Purchasing shall also apply with respect to transactions regarding the provision of a service/work (delivery) performance which, insofar, is regarded as the delivery item.
- Any deviating provisions, in particular terms of sale, delivery and payment of the business partner or supplier are objected and shall only apply if confirmed explicitly in writing by VULKAN. This approval requirement shall always apply, even in the event that we accept delivery without reservation despite being aware of the general terms and conditions of the supplier, or if we make reference to a letter that contains general terms and conditions of the supplier or of a third party or refers to such. The offer made to VULKAN and/or the return of an acknowledgement of receipt/order confirmation shall implicate the exclusive incorporation of the present Terms and Conditions under waiver of the terms of delivery of the supplier.
- With the first delivery on the basis of these Terms and Conditions of Purchasing, the supplier accepts the Terms and Conditions for all further contractual relationships, as well, namely in their respective valid version.
- Any framework agreements that may have been concluded between the parties shall prevail. They shall be complemented by the present Terms and Conditions of Purchasing unless the framework agreements contain more detailed provisions. Any modifications of the agreement, amendments thereto or verbal side-agreements shall only apply if confirmed in writing by VULKAN.

## § 2 CONCLUSION OF THE AGREEMENT

- Orders shall only be effective if they are made in writing. Only the content of the order shall count. The seller shall notify us of any obvious mistakes (e.g. typing or calculation errors) and incompleteness of the order including the order documents to enable us to correct the mistakes or complete the data, respectively, before acceptance. Otherwise, the Agreement shall be regarded as not concluded.
- The supplier shall confirm the order in writing within 7 calendar days of the date the order is placed or, in particular, complete it without reservation by supplying the goods (acceptance). After expiration of this deadline, VULKAN shall be entitled to revoke its order(s). The supplier shall not be entitled to assert any claims based on the effectively executed revocation as well as withdrawal in accordance with §§ 11.2, 12.5.
- Delayed or deviant acceptance of the order shall be regarded as a new offer and must be accepted by VULKAN. 4. Even after the conclusion of the Agreement, VULKAN shall be entitled to demand changes regarding the delivery item, provided that those changes are not unreasonable for the supplier.
- The supplier may only place sub-orders with the consent of VULKAN.

## § 3 PRICES, PAYMENT

- The price mentioned in the order shall be binding.
- The agreed prices shall be fixed prices and include all costs for packaging, for the transport to the indicated delivery address or application site, respectively, for clearing formalities and customs duty and, if applicable, the statutory VAT. If no prices are mentioned in the order, the prices demanded by the supplier shall be announced to VULKAN in advance for approval. No price increases shall be allowed with respect to placed and accepted orders.
- Invoices must contain all corresponding data and VAT indication and shall be re-mitted in duplicate after delivery.
- Payment shall become due after receipt of the properly prepared invoice at the earliest. After receipt of the goods and the invoice, VULKAN shall pay the purchase price within 14 days less 3 % early payment discount or within 60 days net.
- VULKAN shall not have to pay any interest from the due date. The seller's claim to receive default interest payments shall remain unaffected.
- If early deliveries are accepted, the payment date shall be based on the delivery date primarily agreed upon.
- In case of incomplete or defective delivery, VULKAN shall be entitled to retain payment entirely or proportionately until correct performance. The supplier shall have offset and retention rights against claims of VULKAN only with respect to claims which have been explicitly recognised by VULKAN or recognised by declaratory judgment and/or are already ready for decision.

## § 4 DELIVERY AND PERFORMANCE

- Delivery dates and deadlines indicated in the order shall be considered as bindingly agreed upon provided that the supplier has not explicitly objected them with indication of new implicit delivery dates and deadlines to which VULKAN has declared its consent. For compliance, receipt of the goods at VULKAN or at the agreed – and in case of doubt to be stipulated by VULKAN – place of performance shall be decisive. Regarding the place of performance, § 15.4 shall apply.
- The supplier shall be obligated to immediately inform VULKAN in writing in case he realises any circumstances which lead to the fact that the agreed delivery dates cannot be complied with.
- If the supplier does not meet delivery dates and deadlines for reasons he is responsible for, VULKAN shall, after having sent a notice of default or granted an additional deadline, be entitled to withdraw from the Agreement and/or to claim damages.
- If the supplier does not meet delivery dates and deadlines for reasons he is demonstrably not responsible for, the contractual parties shall undertake to adapt the Agreement to the changed conditions in good faith. In this case, however, VULKAN shall be released from any obligation to accept the ordered delivery and shall be entitled to withdraw from the Agreement if the delivery is no longer of economical use for VULKAN due to the delay.
- Partial deliveries shall only be acceptable upon explicit written agreement.
- No retention of title is agreed upon and it does not lead to a performance of contract.

## § 5 PASSING OF RISK / PACKAGING / INSURANCE

- Delivery shall always be made free buyer's house and the supplier shall bear all risks until complete delivery to the contractually agreed delivery address or application site. In case VULKAN arranges for the delivery, the supplier shall nonetheless bear the risk of the transport.
- The supplier shall be obligated to only pack the goods to be delivered with approved and environmentally friendly packaging material in an adequate manner to avoid any damages in transit.
- The supplier shall, at his own expense, insure the delivery against loss and damage during transport. Upon request of VULKAN, the supplier shall provide evidence for said insurance.

## § 6 NOTICE OF DEFECTS

- VULKAN shall examine the delivered goods in accordance with its duty of examination and notice of a defect stipulated in § 377 HGB (German Commercial Code). This shall be done within a period of six weeks after delivery of the goods. If it is not possible to examine the function of the delivered goods and to examine whether the goods are free of defects other than with unreasonable effort before the goods' assembly or commissioning and/or acceptance of the finished goods, the examination or parts of the examination may be carried out at a later stage in connection with any one of these occasions.  
There shall be no duty of examination with respect to such parts that have a Certificate of Classification of a classification society such as, for example, Germanischer Lloyd.
  - In case the supplier and VULKAN have concluded a special quality assurance agreement, the duty of examination shall be limited to transport damages, the examination of identity and quantity and – if reasonable – the examination of function. This shall also apply if the supplier is certified according to ISO 9000 et sqq., has advertised by using this certification and has not clearly stated towards VULKAN in writing within one week after conclusion of this Agreement that this provision shall not be linked to the certification.
- Any detected defects shall be objected within two weeks.
- The supplier shall waive any objections based on late examination and/or notification of defects, provided that VULKAN has fulfilled its obligations as stated in paragraphs 1. to 2. hereunder.

## § 7 WARRANTY / GUARANTEE

- The supplier guarantees that all deliveries/services conform to the latest state of the art, the relevant national, European and international legal regulations as well as to the relevant provisions and directives of authorities, professional organisations and trade associations as well as to the respective declarations and certificates of conformity.

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Inasmuch as the delivery item bears or has to bear a CE mark and/or a GS mark, the supplier shall guarantee the admissible labelling of the products in accordance with the standards, including the conducting of the examination in accordance with § 22 Sec. 5 ProdSG (Product Safety Act). Moreover, the supplier guarantees the environmental compatibility of its delivered goods and packaging materials. If the delivered products do not correspond to the assumed guarantee, the supplier shall be liable for all damage resulting therefrom, including consequential damage. VULKAN shall be entitled to demand the supplier to present certificates of inspection regarding the delivered goods at no cost. The warranty claims shall not be affected. A defect-free delivery also includes the documentation in accordance with §§ 12, 13. In case a comparable defect occurs in several comparable delivery items from one or several delivery transactions, all comparable delivered items are insofar regarded as defective (serial defect), to the extent that and as long as it has not been proven that the individual items are free of defects or that there are individual outliers. The notice of defects in accordance with § 6 shall apply with respect to all comparable delivery items.

2. a) The warranty and guarantee period shall be two years from the detection of the defect by VULKAN, however not longer than 5 years after the transfer of risk or in the case of services / work (delivery) performances that are performed and supplied by the supplier from the time of acceptance of the goods. It shall be suspended from the moment the notice of defects in accordance with § 6 is given until the issuing of an explicit final declaration by VULKAN. In the case of replacement delivery and removal of defects, the warranty period for replaced and amended parts starts again.
- b) In case of an unmodified assembly of the delivered goods into VULKAN products, the warranty and guarantee period shall start at the time of commissioning of the products by the end customer. It shall, however, end five years after delivery of the goods to VULKAN at the latest or, in the case of works and services, after acceptance of the services by VULKAN.
- c) Any recourse rights shall remain unaffected which VULKAN may have against the supplier in case warranty or guarantee claims are made by a consumer against his contractual partner for repurchase of the goods or reduction of the purchase price. In this case, the special provisions regarding the purchase of consumables set out in §§ 478, 479 BGB (German Civil Code) shall apply.
3. If, during the warranty or guarantee period, defects come to light, the supplier must provide supplementary performance. He shall, at VULKAN's discretion, either repair the goods or replace them with defect-free goods. Any further legal claims by VULKAN, in particular for compensation, reimbursement for fruitless expenditure and withdrawal shall remain unaffected hereby. All costs necessarily incurred by the supplementary performance, replacement or repair (costs for labour / material / transport / essential recalls / litigation costs etc.) shall be borne by the supplier.
4. If VULKAN's claim for supplementary performance is not satisfied within the set time limits, the supplementary performance shall be deemed as failed and VULKAN shall be entitled to remedy the defects itself or have them remedied by third parties at the supplier's expense and risk without the supplier's liability for material defects being otherwise affected thereby. Respective rights shall apply if it is not reasonable to expect VULKAN to wait for the supplementary performance to be carried out by the supplier.

## § 8 PRODUCT LIABILITY

1. The supplier is obligated to compensate VULKAN all such damage that results from delivered goods being defective or faulty. If VULKAN, according to provisions of domestic or foreign product liability regulations, is held liable for any product defects resulting from the defectiveness of the goods delivered by the supplier, the supplier shall be obligated to indemnify VULKAN from all claims attributable to a defect in the delivered parts. The supplier's liability to pay compensation covers both compensation payments to third parties and expenditure on legal defence, warning and recall, assembling and dismantling as well as VULKAN's administration and other expenses for processing the claim and repairing the damage.
2. The supplier shall, at his own expense, be obligated to take out product liability insurance which shall include cover - if and to the extent coverable - of the recall risk, and to present VULKAN evidence of this upon respective request. The cover provided by the

product liability insurance shall be extended world-wide and shall, as far as its scope and duration are concerned, be in accordance with the applicable maximum limits of liability under the German Product Liability Act.

## § 9 SECRECY / MODELS / TOOLS / DATA PROTECTION

1. The supplier is obligated to treat the conclusion of the Agreement as well as all information and documents of VULKAN which are disclosed in this context confidentially. All commercial and technical details as well as operational procedures which have come to his knowledge through the business relationship with VULKAN are to be treated as business secrets unless they have entered the public domain. This duty of secrecy shall also remain in force after the Agreement has expired. The supplier shall contractually impose the same duty of secrecy on his personnel, subcontractors or other agents.
2. Items such as in particular tools, dies, fixtures, models, matrices, templates, patterns and other manufacturing aids which VULKAN has made available to the supplier shall remain the property of VULKAN. If the afore-mentioned items are manufactured for orders placed by VULKAN or on behalf of VULKAN, they shall already become the property of VULKAN when being produced/made, whereas the supplier shall act as a bailee. The same shall apply respectively with regard to compositions, drawings, analysis methods and any procedural methods that are disclosed.  
 The above items, documents and procedures may only be passed or otherwise disclosed to third parties or be used for own purposes with VULKAN's prior written consent. Such consent is contingent on information being provided as to the intended purpose and recipient.
3. After completed handling of requests or the order, all papers and documents shall, upon respective request, immediately be handed over to VULKAN or be destroyed, provided that there is no legal obligation to preserve records. The supplier shall be obligated to store the tools and models which belong to VULKAN or have been made exclusively for VULKAN according to the state of the art in technology, to treat them carefully and to only use them for producing goods ordered by VULKAN. Moreover, the supplier shall insure them at his own expense against loss through fire, water and theft. Any necessary maintenance and inspection work on the tools shall be performed by the supplier at his own expense. Here, sentence 1 shall apply accordingly.
4. The supplier is aware of the fact that VULKAN will store and process data from the contractual relationship in accordance with § 28 Bundesdatenschutzgesetz (German Data Protection Act) for the purpose of data processing, and that VULKAN reserves the right to transfer said data to third parties (e.g. insurance companies) if this should be necessary for the fulfilment of the Agreement.

## § 10 INTELLECTUAL PROPERTY RIGHTS

1. VULKAN performs and supplies on a worldwide basis.
2. The supplier shall be liable for any damage resulting from an infringement of intellectual property rights and/or applications during the contractual use of the supplied goods.
3. If any third party asserts a claim against VULKAN or its customers, the supplier shall, on request, indemnify them against all claims arising from the use of such intellectual property rights. The supplier's obligation to indemnify relates to all costs incurred by VULKAN or its customers from or in connection with the third-party claim. These shall in particular include the costs of legal defence and exercising of rights together with all costs for providing necessary replacements.
4. The supplier shall not have any obligation to indemnify if the supplied goods were manufactured in accordance with compositions, drawings, models or other equivalent specifications or information provided by VULKAN while being unaware of third-party intellectual property rights. This shall not apply in the case of positive knowledge or grossly negligent ignorance on the supplier's part. To the extent that the supplier shall therefore not be liable, VULKAN shall indemnify him against any third-party claims.
5. The supplier shall give written notice of using published, his own unpublished or licensed third-party intellectual property rights or applications before the conclusion of the contract negotiations at the latest. The supplier shall not be entitled to claim additional remuneration or compensation for the use of his own or third-party intellectual property rights or applications entailed in using the supplied parts. This shall be covered by the agreed price in accordance with § 3.1.
6. Without prior written consent, the supplier shall not refer to the business relationship with VULKAN in any advertising material, brochures etc., use trademarks and/or names

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- of VULKAN for advertising and exhibit delivery items that were made for VULKAN.
- The limitation period for the claims against the supplier referred to in § 10 shall be 10 years, calculated from the conclusion of the Agreement.

## § 11 SAFETY REQUIREMENTS

- The supplier is aware of VULKAN's worldwide performances and deliveries. Moreover, with regard to the goods he supplies, the supplier shall observe the generally accepted rules of engineering, safety regulations and agreed technical data or limit values which reflect the state of the art or go beyond it, in particular EC Directives (e.g. EC Machinery Directive), the German Foods, Consumer Goods and Feedstuffs Code (LFGB), the Product Safety Act (ProdSG) and implementing regulations, DIN, EN, ISO, the German Association for Electrical, Electronic & Information Technologies (VDE) and other relevant guidelines. The supplier undertakes to use only materials and constructions that conform to the respective applicable statutory requirements and regulations, in particular for restricted, toxic and dangerous substances, for environmental protection, in connection with electricity and electromagnetic fields as well as for occupational, operational and product safety. The obligations cover all globally applicable regulations and standards.
- If the supplier's products do not meet the requirements stipulated in section 1., VULKAN shall be entitled to withdraw from the Agreement. Any further-reaching claims for damages shall remain unaffected.
- VULKAN must be notified of any proposed changes to the delivery items or to any subcontractors of the supplier. Any such changes shall require VULKAN's prior explicit written approval. The agreed condition shall remain unaffected.

## § 12 SECURITY OF THE SUPPLY CHAIN; CUSTOMS AND EXPORT CONTROL; SUPPLIER'S DECLARATION

- Being a particularly reliable and trustworthy company, VULKAN is an Authorized Economic Operator (AEO) in accordance with the EU Customs Code. The supplier shall be obligated to not jeopardize the security of the supply chain.
- The supplier in particular undertakes that
  - the goods which are produced, stored, transported, delivered or taken over within the framework of the delivery transaction are only produced, (further) processed, stored, loaded, transported and delivered at secure industrial premises and transfer sites and that they are protected against unauthorised access during production, storage, handling and processing, loading and transport,
  - the staff exclusively involved in the production, storage, handling and processing, loading and transport of the goods is reliable,
  - any business partners who are acting or are involved on behalf of the supplier are instructed and obligated to also take the above-referenced measures regarding the security of the supply chain.
- The supplier guarantees that the deliveries and services are conducted in accordance with the respectively applicable provisions of the International Foreign Trade Legislation and Customs Law, including the applicable EU regulations and national regulations (in particular the Foreign Trade Law), in particular the regulations regarding import control and export control of dual-use goods. In addition, the supplier guarantees that all necessary authorisations and declarations are at hand, unless, in accordance with the applicable law, it is exclusively the buyer or a third party who is obligated to request export licenses and not the supplier.
- The supplier shall at no cost and as early as possible, yet in any case in offers and order confirmations, however at the latest before the delivery date, provide in writing all information and data which VULKAN needs in order to comply with the applicable foreign trade legislation during export and import and, in the case of re-distribution during re-export of the goods and services, in particular for each individual good/service: indication of the statistical article number or the HS code ("Harmonized System Code"); indications regarding the preferential and non-preferential origin of goods; indication whether the delivered item is subject to an export license or transfer license due to the item being subject to the respective applicable German export control list (Annex AL to the German Foreign Trade Ordinance) or the Annexes to the EG Dual Use Regulation (Regulation (EG) No. 428/2009), with indication of the relevant position on the list of goods or the applicable export list number; indication whether his products are covered by foreign export control regulations or foreign lists of goods, in particular whether they are covered by US (re-) export control regulations (e.g. EAR, ITAR) while indicating the relevant position on the list of goods (e.g. US-CCL (Commercial Control List), ECCN, EAR99, ITAR/USML).

- Indications and declarations requested by VULKAN, in particular long-term supplier declarations regarding goods having a preferential originating status, are to be presented to VULKAN immediately and without any additional charge. The submission of a valid and proper supplier declaration including the indications according to § 12.4 each form a part of the delivery agreement concluded with the supplier.
- In case any possibly required export licenses/transfer licenses regarding the delivered items or regarding further products manufactured by VULKAN while using those items are not granted or if those are subject to respective prohibitions, VULKAN explicitly reserves the right to withdraw from the Agreement.
- The supplier shall compensate VULKAN for all damages, costs and expenditures, including for loss of profits, which resulted from inapplicable, incomplete, incorrect or missing documentation or declarations and/or from any other breach of the above-cited stipulations § 12.1. – 6., unless the supplier is not responsible for this.

## § 13 QUALITY AND DOCUMENTATION

- Besides the documents stipulated in § 12, the scope of delivery shall, without any additional charge, contain product-specific and/or technical documentation, the declaration of conformity and any other documents and certificates needed for the ordered goods or their use, together with the necessary and/or existing marking of the parts (trademarks, manufacturer's marks, order references, article numbers, CE labels or GS marks, batch numbers etc.) and/or their packaging.
- The costs for documentation and declarations of conformity shall be borne by the supplier. They shall be obtained by the supplier at his own expense and, upon request of VULKAN, they shall be presented immediately in the German language. This shall in particular apply with respect to all certificates and declarations regarding CE labels and/or GS marks. The supplier shall, at his own expense, be obligated to safely store all documentation and documents for a minimum period of 10 years from the date on which the delivered items were put into circulation. Said documentation and documents shall be accessible at any time; upon request, they shall be made accessible for or handed over to VULKAN or designated third parties.
- Irrespective of this, the supplier shall constantly verify the quality of the delivered items. He shall notify VULKAN immediately of any possible improvements. This shall in particular apply with regard to safety-relevant components. The supplier shall be obligated to verify the manufacturability of the design and to perform a plausibility check. He shall notify VULKAN immediately of any discernible errors in the specified parameters and of any foreseeable complications.
- If minimum and/or maximum parameter values are specified at the time of ordering, the stated maximum values may not be exceeded in any part of the workpiece or product and the stated minimum values may in no case be undershot at any point. This shall be ensured by using suitable testing and measuring procedures and must be documented. VULKAN may, at any time, require to be given the results of this testing in writing and at no additional cost.
- If the supplier and VULKAN have not firmly agreed on the nature and scope of the testing as well as the testing equipment and methods, VULKAN shall, at the supplier's request and within the scope of its knowledge, experience and facilities, be prepared to discuss the tests with the supplier in order to determine the respective necessary state of the test technique. Irrespective of this, the nature and scope of the testing shall at least correspond to the state of the art in technology.
- Safety-relevant parts shall be tested by the supplier and said testing must be documented. When doing so, the supplier shall note in special records when, in what way and by whom the delivered items were tested for these characteristics. This shall also apply to the test results. Any safety-relevant parts shall be tested which are identified as such in the product-specific or technical documents or on the basis of separate agreements or whose safety relevance is obvious. The test records shall be kept for 30 years and shall be presented to VULKAN on request and free of charge. The supplier shall, within the limits of what is legally possible, place his own pre-suppliers under an equivalent obligation by written agreement.
- If, in order to verify specific requirements, any public authorities that deal with production safety, production marking, exhaust-gas provisions etc. require to inspect the production process and the test records of VULKAN, the supplier shall assure VULKAN of his willingness to grant VULKAN the same rights in his plant and to give all reasonable assistance.

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## § 14 AUDIT / EVALUATION OF THE SUPPLIER

1. To secure the quality and delivery time, VULKAN shall be entitled to carry out an audit of the supplier and at the supplier. This audit shall also comprise an inspection of the supplier's plant and of his quality assurance system, followed by a subsequent assessment to secure the quality and the capacity to deliver. The findings obtained in the audit shall form the basis for any future placement of orders and for internal grading (rating) of the plant by VULKAN. During this process, the supplier shall keep VULKAN comprehensively informed and provide all necessary information. VULKAN can either conduct the audit with own resources or have it conducted by qualified third parties. Respective rights shall also apply for customers of VULKAN in the case of supplier products, in particular OEM deliveries or indications of non-conformities within the framework of customer audits at VULKAN and their tracking.
2.
  - a) For this purpose there exists the right to carry out announced inspections of the supplier's ongoing business operations incl. the entering of the business premises, unless there are any urgent conflicting operational reasons on the part of the contractual partner.
  - b) In case there have been any quality problems in the past, and in case of any justified indications of quality defects, the afore-mentioned right shall also apply with respect to unannounced inspections. This right shall not apply if the most recent complaint regarding the supplier's quality assurance measures was more than one year ago or if no defects were found in two consecutive unannounced inspections.
  - c) There is also a right to inspect the documentation and documents associated with the delivery. A warranted interest therein shall in particular exist when knowledge may be obtained by this means which enables VULKAN to assess the need for and scale of a recall.

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## § 15 GENERAL PROVISIONS

1. If the supplier suspends his performance or if insolvency proceedings are initiated against his assets or if judicial or out-of-court composition proceedings are applied for, VULKAN shall be entitled to withdraw from the unfulfilled part of the Agreement.
  2. If individual clauses are invalid, the validity of the remaining parts of the Terms and Conditions of Purchasing shall remain unaffected. The contracting partners shall be obligated to replace any invalid provisions with other provisions that have an equivalent economic outcome. The same shall apply in the case of an omission.
  3. The laws of the Federal Republic of Germany shall apply to the exclusion of the International uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CSIG). The language applicable with regard to this Agreement and any proceedings or court proceedings relating thereto shall be German.
  4. The place of performance and the exclusive place of – also International – jurisdiction shall be the principle place of business of VULKAN. However, VULKAN shall, at its own discretion, also have the right to file a lawsuit at the supplier's principle place of business or at the place where services are rendered or deliveries are made.
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