



Standard Terms of Purchase

MS Powertrain Technology Group

Locations:

Powertrain Technologie GmbH, Trossingen-Schura

MS PowerTec GmbH, Zittau

MS Precision Components LLC, Webberville, USA, Michigan

As of: 10/2017



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**1 Data on the document**

title: standard terms of purchase
version: 3
state/valid from: 12/2016
author : MS Industrie Verwaltungs GmbH
C. Kuroczka / Öffentlichkeitsarbeit/Unternehmenskommunikation

Document history:

version	date	pages	number of installations	adopted by
1	12/2015	8	0	
2	10/2016	8	0	
3	12/2016	8	0	
4	10/2017	9		

installation number	installation title
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2 Conclusion of Contract

- 2.1. Our orders are placed exclusively on the basis of our Standard Terms of Purchase. Other terms or conditions shall not become a part of the contract, even if we have not specifically objected to them. Receipt of deliveries or performance without specific objection does, in no case whatsoever, infer that we would have accepted terms or conditions of delivery of Vendor.
- 2.2. We expect order confirmations within a period of three calendar days following receipt of the order, otherwise we shall have the right to cancel such order.
- 2.3. Orders, release orders or any modifications thereof or amendments thereto may also be placed through electronic data transmission or data-processing media. The writing requirement is deemed complied with when e-mails are encrypted pursuant to the German Digital Signature Act.
- 2.4. No remuneration is payable for visits or the preparation of offers, projects et cetera.
- 2.5. We may demand changes to be made to the goods to the extent that this is reasonably acceptable for Vendor. In this case the consequences, especially with respect to additional costs or reduction of costs and delivery dates, shall be appropriately addressed by both parties.
- 2.6. Vendor shall include our order number, EDP number and any project number for the article ordered in any written communication with us.
- 2.7. Vendor shall keep contract negotiations with us and the conclusion of the contract confidential. He shall not disclose the business relationship in advertising materials without our prior written consent.
- 2.8. Our Standard Terms of Purchase shall apply in the then applicable version also with respect to future contract relationships and also if not specifically reconfirmed. The most recent version of the Standard Terms of Purchase are publicized on www.ms-ultraschall.de or www.ms-powertrain.de.
- 2.9. These Standard Terms of Purchase shall apply only with respect to businesspersons within the meaning of the German Commercial Code.

3 Prices, Dispatch, Packaging

- 3.1. The agreed prices are fixed prices and not amenable to any kind of extra charges. They apply DDP (ICC Incoterms® 2010), including packaging, unless otherwise agreed. For orders in which no prices are specified, the Vendor's current list prices shall apply, taking into account usual deductions.
- 3.2. We take delivery of no more than the volumes or quantities ordered. Overdeliveries or underdeliveries shall require our prior agreement.
- 3.3. The Vendor's obligation to take back packaging shall be governed by the applicable statutory provisions. Any packaging materials used must be environmentally friendly. If, exceptionally, packaging is charged separately, we shall be entitled to return packaging items that are still in good condition freight free to Vendor, deducting a remuneration of 2/3 of the respective amount invoiced.
- 3.4. Deliveries for the Powertrain Technology Group shall be subject to a duty to supply replacements for a period of 15 years. Such period shall start when we discontinue serial production.

**4 Invoicing and Payment**

- 4.1. Re Upon dispatch of the goods, invoices shall be sent separately and in duplicate. Invoices must indicate the order number and the order date. Invoices submitted incorrectly shall not be deemed received unless corrected.
- 4.2. Payment is either made within 15 days with a 3% early payment discount or after 60 days net, as from the date when the goods were received.
- 4.3. Payment of an invoice does not constitute a waiver of the right to notify defects related to the goods invoiced.

5 Delivery Dates, Default in Delivery

- 5.1. Agreed delivery dates are binding. Adherence to delivery dates or delivery periods is determined by the time when the goods are received at the unloading point specified by us and/or by the timeliness of successful acceptance.
- 5.2. In the event of delivery dates allocated to a calendar week, the latest date shall be the Friday of any such week.
- 5.3. In the event that, for whatever reason, Vendor realizes that it cannot adhere to agreed deadlines, it shall notify us without undue delay in writing and indicate the reasons for and the expected duration of the delay.
- 5.4. Should the Vendor default in delivery, we shall have the rights provided for by statute.
- 5.5. In such a case and upon unsuccessful expiry of an appropriate grace period set by us, we shall, at our own option, be entitled to demand payment of damages for non-fulfilment and/or procure a replacement from a third party or withdraw from the contract.
- 5.6. We reserve the right to return early deliveries at the expense of the Vendor. If early deliveries are not returned, the goods are stored at the expense and risk of Vendor until the delivery date. We reserve the right to make payments with respect to early deliveries only as of the agreed maturity date.
- 5.7. Force majeure, disruption of operation for which we are not responsible, commotion, governmental measures and other inescapable events release the contracting parties from their obligation to provide performance during the period of time any such event persists. The contracting parties are committed to give each other the necessary information which may reasonably be expected without delay and to adjust their obligations in good faith to the changed circumstances.
- 5.8. The provisions of article 4.7 above shall also apply in the case of labor disputes.
- 5.9. We shall be, in whole or in part, released from our duty to accept deliveries/performance ordered and entitled to withdraw from the contract to such extent if we can no longer utilize the delivery or performance due to any delay referred to in Articles 4.7 or 4.8 above respectively, taking into account economic aspects.

6 Guarantee, Liability for Defects and Defective Delivery

- 6.1. Vendor guarantees and promises adherence to any technical data specified in our drawings and/or delivery instructions.
- 6.2. Vendor further guarantees and promises that any deliveries/performance provided comply with the state of the art and knowledge and science, and any applicable legal provisions and the guidelines and rules issued by authorities, employers' liability insurance associations and/or trade associations.
- 6.3. Vendor undertakes to use environmentally friendly products and processes with respect to deliveries/performance, also with respect to own deliveries or ancillary performance by a third party, wherever economically and technically reasonable. Vendor shall be liable for the environmental compatibility of products and materials supplied and for any consequential damage resulting from non-compliance with its statutory disposal duties. Vendor is under the obligation to procure relevant safety data sheets together with the respective delivery. It shall hold us harmless



- with respect to any claims for indemnification by a third party if safety data sheets are not supplied or not supplied in time. The same shall apply to subsequent amendments.
- 6.4. Defects regarding the delivery/performance that are notified during the guarantee period or warranty period, including failure to achieve guaranteed data and absence of warranted characteristics, shall be removed by Vendor without undue delay and free of charge, including any ancillary costs, upon our request and at our option by removing the defect or providing a replacement. Further rights, including the right to rescission of contract/reduction and/or damages, remain unaffected.
- 6.5. Should Vendor fail to comply with its duties under guarantee and/or warranty within an appropriate period set by us, we shall be entitled to perform the required measures by ourselves or have them performed by a third party at Vendor's own expense and risk, notwithstanding its duties under the guarantee.
- 6.6. If, for reasons of urgency, it is no longer possible to notify Vendor of the defect and the pending damage, we shall be entitled to remove the defect by ourselves or have it removed by a third party. Expenses incurred may be charged to Vendor's account, notwithstanding its duties under guarantee and/or warranty.
- 6.7. The guarantee and/or warranty period shall be 24 months, unless otherwise specifically agreed. It starts upon handing over of the goods to us or to a named third party. The guarantee and/or warranty period for devices, machinery and plant starts upon acceptance.
- 6.8. A notification of defect must be made within the warranty and/or guarantee period. Rights under guarantee and/or warranty shall be subject to a prescription period of six months following notification. A handling fee in the amount of €250 is charged for each notification of defect.
- 6.9. We notify Vendor in writing of unresolved defects in the delivery/performance without undue delay, as soon as they have been identified in the due course of business.
- 6.10. The warranty and/or guarantee period shall be suspended in the event of a justified notification of defect. If a replacement is provided or a defect removed in any other way under a justified notification of defect, the guarantee and/or warranty period shall start anew.
- 6.11. In the event of defective delivery we shall, at our own option, either withhold payment pro rata to the value until proper performance is provided or charge Vendor the defective goods upon return. Vendor shall then prepare a new invoice for the repeat delivery. Expenses for the return of defective goods shall be borne by Vendor.
- 6.12. Deliveries for the Powertrain Technology Group shall be subject to the Product And Process Approval Process (PPAP/PPF). These can be found on the MS Technology Group homepage. Each year, Vendor shall requalify parts delivered. Proof shall be submitted upon request.

7 Product Liability

- 7.1 In the event that we incur liability based on nonadherence to official safety provisions or on domestic or foreign product liability law due to the defectiveness of our product attributable to Vendor's product, we shall be entitled to demand reimbursement for such damage from Vendor to the extent that the damage has been caused by its products and that Vendor itself is externally liable. Furthermore, we shall then be entitled to demand Vendor to hold us harmless from third parties' claims.
- 7.2 Under its duty to hold us harmless, Vendor is under the obligation to reimburse expenditure pursuant to Sections 683 and 670 German Civil Code BGB that ensues from or in connection with a third-party claim, including any call-back initiated by us. Contents and scope of call-back measures will be communicated to Vendor if possible and reasonable and it will be granted the opportunity to comment on the matter. Any further statutory rights shall remain unaffected.
- 7.3 Vendor shall take out and maintain product liability insurance cover with an insured amount of no less than €10 million per incident (death, injury and damage to property).

**8 Industrial Property Rights of Third Parties**

- 8.1. In connection with its deliveries, Vendor shall be responsible that industrial property rights of third parties are not infringed in any countries in which it manufactures its products or has them manufactured or in any countries in which we distribute our products.
- 8.2. Vendor is under the obligation to hold us harmless from any claims asserted by a third party against us due to any infringement of industrial property rights referred to in Article 7.1 above and reimburse us for any necessary expenditure incurred in connection with such a claim.

9 Secrecy and Protection of Title

- 9.1. We reserve right of ownership and copyright in any illustrations, plans, drawings, calculations, process instructions, product descriptions and any other documents. Any such documents shall be used exclusively for the purpose of providing performance under the contract and have to be returned to us upon completion of the contract. Documents must be kept secret from third parties, also following termination of the contract. The duty to maintain secrecy shall not expire unless and to the extent that the information in the documents submitted has become general knowledge.
- 9.2. The aforementioned provision applies mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products), tools, models, samples and other items we make available to Vendor for manufacture. Such items are – as long as they are not being processed – to be kept separately and insured against the usual risk of destruction and loss at the expense of Vendor.
- 9.3. Any processing, amalgamation or combination of such items through Vendor is deemed to be made on our behalf. In the event that ownership rights pertaining to third party-property involved in such processing, amalgamation or combination persist, we shall acquire co-ownership in the new item in proportion to the value of the items supplied by us and the other items.

10 Retention of Title and other Security Interest by Vendor

We accept simple forms of retention of title. As a matter of course, we do not recognize and expressly reject other types of retention of title and security interest, of whatever form, contents, effect and extent. Vendor represents that we may use and/or sell on goods supplied without any restriction in the ordinary course of our business.

11 Contract Penalty (for Default)

- 11.1. Following prior written warning, we shall be entitled to demand a contract penalty in the amount of 0.5% of the order value for Vendor's default for each working day during which the default persists. The contract penalty is capped at a maximum of 5% of the respective total order value. Even if we should accept delayed deliveries from Vendor, this does not constitute a waiver of the contract penalty. In the event that we do take delivery of delayed performance, claims for contract penalty must be brought by us no later than together with the final payment.
- 11.2. We reserve the right to directly set off penalty payments against Vendor's claims for payment by way of a debit note. Furthermore, we reserve the right to claim for any additional damage. The contract penalty payment will then be deducted from the claim for damages.

**12 Miscellaneous**

- 12.1. Should any individual provisions of the present Standard Terms of Purchase be or become legally invalid, the validity of the remaining provisions shall in no way be affected.
- 12.2. Vendor is under the obligation to treat confidentially any commercial or technical details it becomes aware of through the business relationship and that are not obvious and it shall not make them accessible to a third party. The Contractor shall also commit its subcontractors accordingly.
- 12.3. In the event that Vendor suspends payment, an interim insolvency administrator is appointed or insolvency proceedings are started with respect to its assets or an out-of-court settlement procedure is started, we shall be entitled to withdraw from the contract in whole or in part.
- 12.4. The venue for disputes from the business relationship between Vendor and us shall be the Local Court Tuttlingen and the Regional Court Rottweil in the case of a dispute value exceeding €5,000. We are also entitled to bring an action at the place of performance of the delivery obligation.
- 12.5. The law applicable shall be the law of the Federal Republic of Germany to the exclusion of any other law. The application of the Convention of the United Nations of 11 April 1980 on Contracts International Sale of Goods (UNCITRAL) is hereby specifically excluded.
- 12.6. Child labor must not be used in any phase of the production of goods or provision of services. Vendor undertakes to adhere to the recommendations of the ILO conventions regarding the minimum age for employment of staff. The minimum age threshold must not be below the age when compulsory education ends, however no less than 15 years. An exception is made with respect to countries whose economy and education institutions are less well developed; in this case a minimum age of 15 years is applicable. For hazardous work a minimum age of 18 years applies.
- 12.7. Remuneration and employees' benefits, working time, minimum wages and overtime must comply with the respective statutory provisions and the ILO conventions, with the more stringent provision being applicable. Overtime should be worked only on a voluntary basis and one day's rest shall be granted after six consecutive days of work.
- 12.8. Forced or compulsory labor is inadmissible. Workers shall have the right to terminate employment within an appropriate notice period. Workers must not be requested to hand over identity cards, passports or work permits as a precondition for work.
- 12.9. Workers must have the right to communicate openly with the management regarding work conditions without having to fear reprisals.
- 12.10. The employer warrants safety at work and health protection at least on the level prescribed by national provisions and supports the promotion of improvements of the working environment.
- 12.11. All business activities and business relations are expected to comply with the highest degree of integrity. Any type of corruption, bribery, extortion and embezzlement are strictly prohibited. Discrimination of staff of whatever form is inadmissible. This includes without limitation discrimination based on sex, race, caste, color of skin, disability, affiliation to unions, political beliefs, religion, age, pregnancy, and sexual orientation.
- 12.12. In case of deliveries for a company of the VW-group: the supplier shall qualify and assign a Commissioner for Product Safety. The supplier shall pass this requirement to his sub-suppliers.