



Terms and Conditions for the purchase of materials and spare parts for all-terrain vehicles as of September 18, 2019 for use exclusively in relation to companies within the meaning of section 310 (1) of the BGB

I. General

- 1.1 The following Terms and Conditions shall apply to the purchase of materials and spare parts for all-terrain vehicles, as well as to all related deliveries and/or services which we purchase from the supplier within the scope of this order or of further follow-up orders. Any General Terms and Conditions of the supplier to the contrary shall only apply if expressly confirmed by us in writing.
- 1.2 The supplier may only assign claims arising out of contracts concluded with us, or have such claims redeemed by third parties, with our prior written approval, as long as the supplier's interests are not unreasonably impaired thereby. Partial or multiple assignments shall always require our prior written approval. In cases of an extended retention of title, our approval shall be deemed to be given.
- 1.3 For statements which are not of particular importance to the supplier, a written notice to the customer's latest address known to us shall be sufficient for the effectiveness of any notification, demand, or other communication sent by us to the supplier in connection with this contract.
- 1.4 These General Terms and Conditions are drawn up in both an English, and a German language version. Should difficulties of interpretation arise, the German language version shall prevail.

II. Signing and Contents of the Contract; Orders

- 2.1 Any supply contracts (order and acceptance) and agreements for delivery on demand, as well as any amendments or supplements thereto, must be in text form. Written form shall also include remote data transfer.
- 2.2 If the supplier does not accept an order within two weeks of its receipt, then we shall be entitled to rescind the contract. We shall be bound to our offer, as submitted through the order, for a period of two weeks. Call-downs shall become binding at the latest within one week of receipt by the supplier unless cancelled by the supplier during this period in writing.
- 2.3 In as far as can be reasonably expected of the supplier, we may request modifications to the construction and finish of the goods. The effects, especially with regard to increases or decreases in costs as well as to delivery dates, will be mutually agreed in a reasonable manner.
- 2.4 Any information on the delivery, appearance, capacity, measurements and weights, fuel consumption, operating expenses etc. of the goods given in any specifications, flyers or other brochures valid at the time of signing of the contract shall become part of the contract.
- 2.5 The supplier is not authorized to subcontract third parties without our prior written consent. The unauthorized subcontracting of third parties entitles us to rescind or terminate the contract in whole or in part and to claim damages.

III. Prices; Payments; Invoices

- 3.1 The price State in the Order shall be binding. In the Absence of any written agreement to the contrary, the price does not include VAT and is inclusive of delivery "DAP, INCOTERMS 2010", to the place given in the order and of packing.
- 3.2 At our option, payments may also be made by bank transfer or check.
- 3.3 Unless agreed otherwise, invoices shall either be settled within 14 days less a discount of 3%, or within 30 days without any deduction. The above-mentioned time limits shall commence upon receipt of both the auditable invoice within the meaning of section 3.5 hereof and the goods. If premature deliveries are accepted, delivery shall be deemed to have only been made on the agreed delivery date.
- 3.4 Should the payment day be a Saturday, Sunday or a bank holiday the payment shall be made the following business day.
- 3.5 Any interest rate for late payment of the supplier shall be limited to the legal interest rate stipulated in Section 288 II in connection with Section 247 of the German Civil Code (BGB). Section 288 IV BGB shall be excluded.
- 3.6 In case of defective deliveries, we shall be entitled to retain payment in proportion to the value until such delivery has been fulfilled in an orderly manner.
- 3.7 Invoices must contain the number and the date of the order (or of the purchase agreement and the call-down), additional data relating to the ordering party (account details), the VAT number (in the case of cross-border deliveries within the European Community), the place of unloading, the number and date of the delivery note and the quantity of goods invoiced, as well as all the information in accordance with the relevant VAT requirements (section 14 of the UStG - German VAT Act).

- 3.8 If either of the contracting parties discontinues its payments, or if insolvency proceedings or out-of-court composition proceedings are opened in relation to this party's assets, then the other contracting party shall be entitled to withdraw from the contract with regard to that part thereof which has not been fulfilled.

IV. Confidentiality

- 4.1 The contracting parties shall be obliged to treat any non-public commercial and technical information which they become aware of in the course of their business relationship as business secrets.
- 4.2 The supplier shall be obliged to treat all models, patterns, samples, data, illustrations, drawings, calculations and any other documents and information he/she receives as strictly confidential. Such objects may only be disclosed to third parties with our express consent and may only be duplicated for the purpose of operational requirements and the relevant copyright regulations. The duty to observe secrecy shall continue to exist after the performance of this contract and it shall only expire once, and in so far as, the technical knowledge contained in such models, patterns, samples, data, illustrations, drawings, calculations and any other documents and information received has become generally known.
- 4.3 The supplier must ensure that his/her subcontractors enter into a similar obligation.
- 4.4 Neither of the contracting parties may publicize its business relationship with the other party without that other party's prior written consent.

V. Place of Performance, Delivery Dates and Delivery Periods

- 5.1 The place of performance for all present and future claims arising under this business relationship shall be Laupheim. In so far as any claims are based on transactions concluded with one of our branch offices, the place of performance shall be the registered office of such branch office.
- 5.2 Deliveries are made DAP, INCOTERMS 2010, unless agreed otherwise. Agreed delivery dates and delivery periods shall be binding. Relevant for the timeliness of deliveries and services is the receipt at the receiving place specified by us.
- 5.3 Advance deliveries and advance services as well as deliveries and services after the agreed delivery date are permitted only with our consent.
- 5.4 We are not obliged to accept partial deliveries or services. In the case of agreed partial deliveries, the remaining quantity still to be delivered shall be stated in the deliveries note.

VI. Delays in Delivery

- 6.1 In cases of delays in delivery, we shall be entitled to exercise the statutory rights. In particular, we shall be entitled to withdraw from the contract and/or demand compensation for non-performance after a reasonable additional period of time has expired without results.
- 6.2 The acceptance of a delayed delivery shall not imply a waiver of the rights mentioned in section 6.1.

VII. Acceptance, Transfer of Risk

- 7.1 The supplier shall package, ship and insure the deliveries properly and comply with all relevant packaging and shipment provisions. The supplier shall be liable for all damages, which we suffer because of the improper or insufficient packaging, shipping or insurance.
- 7.2 Shipping papers such as e.g. deliveries notes and packing slips shall be included with the deliveries. All documents shall state the order number and the identification marks stipulated by us in the order. No later than on the day of shipping, a shipping notice shall be sent to us in advance by fax or e-mail.
- 7.3 Additional costs, which we incur as a consequence of non-compliance with the above rules, shall be borne by the supplier.
- 7.4 In the case of deliveries without installation or assembly, the risk passes when the goods are received at the receiving place specified by us. In the case of deliveries with installations or assembly, risk passes upon acceptance to be carried out at the place of assembly.
- 7.5 The implied acceptance set forth in Section 640 paragraph 1 sentence 3 of the German Civil Code (BGB) is excluded.

VIII. Quality and Documentation

- 8.1 As regards his/her deliveries, the supplier must comply with generally accepted technical requirements, the safety regulations and the agreed technical data. He/she must set up and provide proof of a suitable quality management system (e.g. DIN EN ISO 9000 ff.). We reserve the right to examine the effectiveness of the quality management system on site. Any modification of the goods requires our prior written consent. The supplier must constantly inspect the quality of the goods. The contracting parties shall inform each other of potential quality improvements.
- 8.2 If the nature and the extent of the inspections, as well as the methods and the means to be used, have not been firmly agreed on between the supplier and us, then we shall, at the supplier's request and within the scope of our own knowledge, experience and possibilities, be willing to discuss such inspections with him in order to determine the test engineering requirements in each case. Furthermore, we shall, upon request, inform the supplier of the relevant safety regulations.
- 8.3 In the case of initial deliveries of items by the supplier to us, the supplier must enclose complete technical documentation of such objects (e.g. identifications of the parts, drawings, operating or maintenance instructions, IT documents and the like). Items that have been issued with DIN numbers must be marked as such. The above regulations shall also apply accordingly to items which have already been delivered in the past, if these have been modified. With regard to all products, the supplier must also note in his/her quality records when, in what way and by whom the defect-free manufacture of the delivery was ensured. This evidence must be preserved for 15 years and presented to us if required. The supplier shall be entitled to reduce the preservation period for the evidence if he/she can rule out danger to life and health occurring during the use of the products. As far as legally possible, the supplier must oblige any upstream suppliers to comply with this requirement to the same extent.
- 8.4 In the case of materials which require special treatment with regard to packing, transport, storage, handling and waste disposal on the grounds of any laws, regulations or other provisions, or on the grounds of their composition or their effects to the environment, the supplier shall submit to us, together with the offer, a completed safety data sheet, the data sheet required for possible redelivery to a foreign country and the applicable accident report sheets. If the materials have been modified, or the legal situation has changed, the supplier shall provide us with updated data sheets and report sheets.

IX. Examination of Defects; Warranty

- 9.1 The acceptance of deliveries shall be subject to an examination for possible defects in quality and/or quantity.
- 9.2 We are obliged to apply due diligence in checking supplied goods for possible defects in quality and/or quantity within an appropriate period of time.
- 9.3 We are entitled to enforce the statutory claims for quality defects or defects of title in full; regardless of this, we have the right to demand the rectification of defects or the supply of replacement parts from supplier, at our discretion. In such instances, the supplier is obliged to bear all costs required to rectify the defect or to supply replacement parts. In urgent cases, we can – in agreement with the supplier – undertake improvement work ourselves or have it performed by a third party. Costs incurred by any such action will be borne by the supplier. The right to damages due to non-performance as well as the compensation of subsequent costs which are in connection with the supplementary performance remain in force.
- 9.4 Unless the statutory period is longer or a different period has been agreed in writing in individual cases, the period of liability for quality defects and defects of title shall be 24 months from delivery of the goods.

X. Product Liability; Indemnification; Third Party Liability Insurance Cover

- 10.1 In so far as the supplier is responsible for any product damage, he/she shall be obliged, on our first demand, to indemnify us against any third party claims in so far as the cause lies within his/her area of control and organization and he/she is liable vis-à-vis third parties.
- 10.2 As part of its liability for damages within the meaning of section 9.1 above, the supplier shall also be obliged to reimburse any expenses pursuant to sections 683 and 670 of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code) and also in accordance with sections 830, 840 and 426 of the BGB which accrue from or in connection with measures taken to avert damages (e.g. recalls). We shall, so far as possible and reasonable, inform the supplier of the nature and the extent of the measures to be taken and give him/her the opportunity to make comments.
- 10.3 The supplier undertakes to maintain (flat rate) product liability insurance in the amount of € 5,000,000 (in words: five million euros) per case of personal injury/damage to property; any more far-reaching claims for compensation remain unaffected.

XI. Industrial Property Rights

- 11.1 The supplier guarantees that no industrial property rights or applications for these will be infringed in connection with his/her deliveries.
- 11.2 If a third party files claims against us with regard to the above, the supplier shall be obliged to indemnify us against such claims upon our first written demand. We shall not be entitled to enter into any arrangements with such third party, in particular effecting a settlement, without the supplier's consent.
- 11.3 The supplier's indemnification obligation relates to any expenditure necessarily incurred by us in connection with such third party claims.
- 11.4 The period of limitations is ten years from the date on which the contract is concluded.

XII. Retention of Title; Supply; Tools

- 12.1 If the supplier retains title to goods delivered by him/her until payment has been effected in full and if we combine the goods with other items into a homogeneous object in which the other item is to be regarded as the principal item, we shall be obliged to transfer co-ownership rights to the supplier on a pro rata basis if we own the principal item. If we resell the goods delivered as intended, we hereby assign to the supplier any claims against our customers arising from such resale, together with all ancillary rights, until all the supplier's claims have been satisfied.
- 12.2 We shall, on the supplier's demand, be obliged to disclose such assignment to the third party buyers for good cause and to furnish the supplier with any information and documents required by him to assert his/her rights.
- 12.3 The supplier shall release the security held by him in so far as its value exceeds the value of the claims to be secured by a total of more than 10%.
- 12.4 In so far as we supply any parts to the supplier, we shall retain title thereto. Any treatment or reforming by the supplier shall be carried out for us. If supplied parts are processed with other items not owned by us, we shall acquire co-ownership to such new items in proportion of the value of the supplied parts to the value of the other processed items at the time of such processing.
- 12.5 If parts supplied by us are inseparably mixed with other items not owned by us, we shall acquire co-ownership to such new items in proportion of the value of the parts supplied to the value of the other mixed items at the time of such combination. If this combination occurs in such a manner that the supplier's item is to be regarded as the principal item, it is agreed that the supplier transfers co-ownership thereto to us on a pro rata basis. The supplier shall hold the sole ownership, or the co-ownership, for us.
- 12.6 All documents and objects of any kind provided to the supplier by us remain our property. They may be used exclusively for providing the ordered deliveries or services.
- 12.7 We shall retain title to tools made available to the supplier. The supplier shall be obliged to use such tools exclusively for the manufacture of the goods ordered by us. The supplier shall be obliged to insure such tools at his/her own expense against fire or water damage or theft at the original value. He/she shall be obliged to carry out any necessary maintenance and inspection work in good time at his/her own expense. The supplier must notify us of any incidents immediately; if he/she fails to do so in a culpable manner, any claims for compensation shall remain unaffected.

XIII. Long-term supplier declaration

The supplier undertakes to provide us an annual long-term supplier declaration (in accordance with the Council Regulation (EC) No 1207/2001 of 11 June 2001) for all items which the supplier delivers to us.

XIV. Final Provisions

- 14.1 These Terms and Conditions are governed by German law. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 14.2 The exclusive place of jurisdiction for all present and future claims arising under this business relationship shall be Ulm. We shall, however, also be entitled to assert our claims against the supplier, at our option, before the court competent in the supplier's registered office or before the courts which have jurisdiction over the registered office of any of our branch offices if the claims relate to the business relationship with such branch office.
- 14.3 If individual parts of these Terms and Conditions are legally ineffective, the effectiveness of the remaining provisions shall not be thereby affected. The contractual partners shall endeavour to replace the ineffective clause with another clause which is as close as possible to the financial purpose and legal meaning of the original formulation and is in accordance with the relevant legal regulation.
- 14.4 We collect and process data in accordance with the EU General Data Protection Regulation and the Federal Data Protection Act.