

## Terms and Conditions of Purchase of SAG Group Companies

hereinafter referred to as  
"SAG Conditions of Purchase"  
January 2006 edition

### **1. General Provisions**

Any and all of our orders shall be based exclusively on the present Conditions of Purchase. These Conditions of Purchase shall apply to any and all contracts of sale and contracts for work and/or services irrespective of their designations from case to case.

The term "Contracting Party", when used in the following, shall be taken to mean the contracting party commissioned by SAG in particular to effect delivery of goods, work, and/or services.

In certain cases SAG may request that delivery be made or services rendered in accordance with contract of sale, contract for work and/or services to a company other than SAG. Where an invoice for a specific purchase/work/service is to be submitted to such other company, SAG is acting on an agency basis for the company to whom the invoice is to be submitted. The terms of the respective agreement of SAG shall also apply to such purchase/work/service.

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

The legal relations with the Contracting Party shall be governed exclusively by the Conditions of Purchase as well as any individual agreements referring to these Conditions of Purchase. Such individual agreements shall supercede the present Conditions of Purchase. The Contracting Party's general terms and conditions of business shall not apply even if we do not object to them explicitly.

These Conditions of Purchase shall apply to any and all follow-up orders – whether they be placed in writing or orally – without the need for us to make this explicit.

### **3. Formal Requirements:**

We consider orders to be legally binding only if they are placed in writing. The Contracting Party shall accept orders in writing without delay. An order shall be deemed accepted as is unless it is rejected in writing or accepted with modifications within 48 hours from receipt of said order. Modified acceptance shall constitute a new offer and will have to be accepted by us explicitly in writing.

All communication relating to the order, in particular invoices, shall bear our order number, otherwise we are entitled to defer such communication, which shall then not be considered to have been received by us. Orders placed in person or by telephone shall require written confirmation from us to be valid.

The Contracting Party shall also be able to send communication by e-mail or fax. If such communication, however, reaches us outside our business hours (Monday to Thursday from 8a.m. to 4p.m., Friday from 8a.m. to 12p.m.), they shall be considered delivered as of the start of business hours on the following business day.

### **4. Subcontracting the Order/Suppliers**

The order placed shall not be subcontracted in full or in part without our prior written consent. Suppliers shall be notified to us. In no way and under no circumstance shall a legal relationship between us and any subcontractor or supplier come into effect. The Contracting Party shall be liable for the selection and any default of its subcontractors and suppliers.

The assignment of rights and obligations arising under the contract from the Contracting Party to a third party is subject to our prior explicit and written consent in cases of both singular and universal succession. We are entitled to assign rights and obligations under the contract to third parties discharging us from any and all liability by way of singular succession.

### **5. Price:**

Irrespective of any input required, offers shall be free of charge. Agreed prices shall be fixed, free delivery to destination, and shall include any and all costs of the Contracting Party, e.g. relating to quality management, functional and quality checks, packing and documentation, as well as any permits and insurance required.

Contracting Party shall during the term of this Agreement provide us with goods/works/services that are competitive in terms of price, quality, delivery and technical function. If we consider that Contracting Party's delivery is no longer competitive in relation to price, quality, delivery and technical function even though the delivered goods/works/services are in accordance with the terms of the Purchase/Work/Service Agreement, we shall supply Contracting Party with information supporting this belief. We and Contracting Party shall in good faith discuss how to make the goods/works/services competitive. If the Parties are unable to arrive at a mutually acceptable solution within thirty day after our notification, we shall have the right to terminate the Agreement insofar it concerns the non-competitive goods/works/services by giving the Contracting Party thirty day of notice. Regardless of our termination Contracting Party shall be under obligation to fulfil the orders posted before termination.

### **6. Delivery/Time of Delivery/Force Majeure**

For cross-border deliveries as well as, mutatis mutandis, non-cross-border deliveries, shipments shall be subject to INCOTERMS 2000; in case of absence of a specific Incoterms clause, DDP (delivery address of the SAG Group company) INCOTERMS 2000. The Contracting Party shall provide proper packing. Cost of delivery and packing as well as the cost of any shipping insurance shall be borne by the Contracting Party.

All shipments shall enclose appropriate shipping documents (in particular precise declaration of contents), otherwise we shall have the right to reject delivery.

Delivery of goods or services shall be effected at the receiving office stated on the date agreed during the times of acceptance stated. This shall be deemed to be the receipt of goods at the delivery address or completed acceptance. We shall be entitled to reject shipments or services or parts thereof, and/or return them at the Contracting Party's expense if they are effected before or after the agreed point in time/period of time or if they are effected in a quantity smaller or larger than stated in the order.

In case of delivery at a time earlier than confirmed we reserve the right to charge the Contracting Party for any cost of handling and storing.

Any and all agreed times of delivery shall be fixed times (transaction for delivery by a fixed date within the meaning of §919 the Austrian Civil Code), with default resulting in rescission of the contract unless we insist on performance of the contract.

In case the Contracting Party realizes prior to the agreed date of delivery that timely delivery will be partly or fully impossible, it shall inform us to this effect forthwith stating the reasons as well as the expected delay. Such circumstances shall also entitle us to rescind the contract without waiting for the agreed date and without granting an extension.

Moreover, even if we insist on performance, we shall have the right to claim compensation for all damage incurred, including lost profits as well as any indirect financial and consequential damage.

In case of delay in delivery, the Contracting Party shall pay a penalty amounting to 2% of the total contract value for each week of delay or part thereof up to a maximum of 10% of the total contract value until complete delivery has been effected. This shall not affect the right to claim any damage exceeding such penalty. The penalty shall not be subject to a court's right of mitigation.

In the event of force majeure (e.g., war, fire damage, flooding, traffic disruption, strike), we shall be released of the obligation of acceptance for the duration of the disruption and shall be entitled to rescind the contract without any claims against us accruing to the Contracting Party.

## **7. Shipping and Marking Requirements**

Our shipping requirements shall be observed strictly, with the Contracting Party being liable in full for any damage and cost arising from non-compliance with shipping requirements or agreed shipping conditions (e.g., cost of additional freight, demurrage charges). In the absence of shipping regulations or conditions, the forms of shipment and delivery most favorable for us shall be selected. Shipment by forwarding agent shall be subject to our consent; such handling shall require informing the forwarding agent of our shipping regulations and order number, with such information also to be passed on to the carrier, if applicable.

The items to be delivered shall be marked in accordance with our regulations and pursuant to any relevant documentation requirements in such a way that origin and date of production of the items (e.g., based on parts numbers, order number, description of parts) can be ascertained without any doubt.

## **8. Invoicing/Payment/Set-off**

Unless otherwise agreed, invoices shall be sent to us in triplicate after delivery of goods or performance of services. In addition to the order number, invoices shall show all order data, type of shipment, and delivery note. Invoices shall contain all legally required details to guarantee our input tax deduction and conform to customs regulations. Invoices for services shall additionally contain the relevant bills of services and materials. The period of payment shall commence at the time of receipt of invoice or goods, or upon completion of services or final acceptance, whichever is the later; in case delivery is effected earlier than agreed, the period of payment shall start at the agreed date at the earliest.

Unless otherwise agreed, payment for accepted deliveries or services shall be effected 3/14 net 60 (minus 3% cash discount within 14 days, or net within 60 days). Payment shall not constitute acceptance of the item or service to be delivered and shall not be construed as confirmation of the delivery conforming to the contract.

Payment obligations may only be offset against any claims we may have if such claims have been specifically accepted or confirmed with legal effect by a court of law. We shall have the right to offset counterclaims, including those against group companies, against the claim of the Contracting Party. The Contracting Party shall not have a right of retention.

## **9. Warranty:**

The Contracting Party shall warrant conformity of delivery of goods or services with the requirements of the law, proper and state-of-the-art construction, quality of execution for promised features, and the use of faultless materials, for a period of 36 months for movable goods, and for a period of 60 months for immovable goods or goods that are intended for installation in or use with immovable goods.

Warranty shall become effective upon acceptance of the delivery by our final customer or, in case the product or service will be used exclusively at our premises, upon unqualified acceptance of goods or services by us. Inspection and complaint obligations shall only become effective upon complete delivery or performance. Our inspection upon receipt shall be limited to defects that are obvious such as, for example, damage in transit, wrong delivery, excess or short delivery. Such defects shall be reported within 14 days of delivery. There shall be no further obligation to inspect the goods/services upon delivery and to give notice of defects if any (notice of defects under the Commercial Code). On the contrary, we shall be entitled to claim warranty for any defects that occur during the warranty period at any time.

In a case of warranty we shall have the right to opt for improvement at no cost or replacement of the defective product/service, having the defect remedied by a third party at the Contracting Party's expense, rescinding the contract forthwith, or claiming an appropriate reduction in price.

In case defects are remedied by the Contracting Party, the warranty period shall start anew after the correction has been accepted and shall apply to the entire product/service affected by the defectiveness.

The warranty thus described shall be without any prejudice to claims for damages. The Contracting Party guarantees to carry out training, maintenance, and repair work as well as the supply of wearing and spare parts for a period of 10 years from delivery.

## **10. Indemnification:**

The Contracting Party shall be liable for any and all damage we incur due to late or defective delivery of goods or services resulting from the former's negligence or that of any assistants commissioned to execute the order.

By accepting the order, the Contracting Party explicitly represents and warrants that the item to be delivered is not covered by any rights, particularly any industrial property rights, of any third party. The Contracting Party agrees to indemnify and hold us harmless against any and all claims due to or arising from infringement of any such rights.

The Contracting Party shall indemnify and hold harmless us and our agents, assistants, directors, officers, contract dealers, importers and other companies that sell goods or products in which the items delivered are integrated as well as their customers from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including but not limited to all judgments rendered and all fines and penalties imposed arising out of any damage caused by a defect, alleged or real, – unless such allegation can be rejected without comprehensive inspection of the item delivered – of the item delivered, violation of the contract of sale or for services, or any other illegal conduct of the Contracting Party.

In the event we are held liable by a third party under the regulations of the Product Liability Act, it shall fall upon the Contracting Party to prove that the product delivered is free of any defect within the meaning of the product liability provisions. The Contracting Party shall be obliged to support us in any litigation with third parties and, above all, hold us harmless and indemnify us from and against any and all claims of third parties. This shall apply even if the item delivered represents only part of services rendered by us to third parties.

The Contracting Party shall indemnify and hold harmless us and our agents, assistants, directors, officers, contract dealers, importers and other companies that sell goods or products in which the items delivered are integrated as well as their customers from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings arising from or due to a recall if such recall was necessary because of the item delivered or the services rendered by the Contracting Party.

The Contracting Party shall take out insurance at its own expense which covers its liability vis-à-vis us and third parties to the extent required.

## **11. Means of Production/Confidentiality**

Means of production shall be taken to mean production plants and facilities including dies, test tools and measuring equipment (e.g., gauges), matrices, samples, tools, components, patterns, models, drawings, printing plates, or other devices needed to produce and inspect the items to be delivered.

Any means of production we provide to the Contracting Party to fulfill its contractual obligations shall remain our tangible and intellectual property. Said means of production shall only be used to execute our orders and shall not be made accessible or transferred to external third parties without our prior written consent. The means of production shall be returned to us upon completion of the order without charge to us. Until it receives written instructions from us, the Contracting Party shall at its own cost assume storage, upkeep and maintenance of our means of production in a way that precludes damage including damage due to force majeure.

The Contracting Party undertakes to hold any and all trade and business secrets that become known to it in the course of executing the contract in strict confidence. Subcontractors, suppliers, and employees of the Contracting Party shall be bound accordingly. The obligation of keeping trade and business secrets confidential shall extend indefinitely also to the time after ending the business relationship. The Contracting Party agrees to a penalty for each and every violation of the abovementioned obligation, the amount of which will be determined at our reasonably exercised discretion. Such contractual penalty however, shall amount to a minimum of € 50.000,00 (Euro fifty thousand). Any rights beyond that shall remain unaffected.

#### **12. Intellectual Property Rights:**

If SAG's purchase, work order or services rendered for SAG, initiates development or design work, any intellectual property rights arising from such work shall accrue to SAG. If however the Contracting Party has, at his own expense contributed substantially to such work then potential intellectual property rights shall accrue to the Parties jointly, and both Parties shall be free to independently commercialise such rights.

The Contracting Party is aware that production of parts for his own account and for that of third parties is not allowed in cases where SAG possesses an intellectual property right or where SAG has provided the Contracting Party with such know-how or equipment as was necessary for the Contracting Party to be able to fulfil the development or production of a part.

#### **13. Quality:**

The Contracting Party represents and warrants that its deliveries and services conform to state-of-the-art technology, safety and quality standards, legal and other regulations, the technical specifications agreed, and the features promised.

The Contracting Party shall install and prove to use an appropriate quality management system (e.g., ISO 9001:2002, VDA [German Association of the Automotive Industry] *Schrift* 6.1. [Issue 6.1.] or similar). We shall be entitled to check the effectiveness of the quality management system on location, e.g. in accordance with VDA *Schrift* 6.1. "QM System Audit".

In the case of series deliveries, such series deliveries shall only be initiated upon receiving our written approval of the sample. For inspections of initial samples, please refer to VDA *Schrift* 2 „*Sicherung der Qualität von Lieferungen – Lieferantenauswahl, Bemusterung, Qualitätsleistung in der Serie*“ [Safeguarding the quality of deliveries – selection of suppliers, sampling, quality level for series deliveries]. This notwithstanding, the Contracting Party shall continuously monitor the quality of the items to be delivered.

In case of contractual or commercial documentation requirements for items/services to be delivered, the Contracting Party shall keep appropriate records, retain the inspection documents/documentation for 15 years after completing the last delivery, and present them to us upon request. Subcontractors, if any, shall be bound by the obligations stipulated above. For guidance, please refer to VDA *Schrift* 1 "*Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen und Qualitätsaufzeichnungen*" [Guideline on documentation and archiving of quality requirements and quality records]. The Contracting Party shall furnish us with a safety data sheet or accident instruction sheet conforming to legal regulations applying from time to time to cover materials and things which, due to their nature, qualities, or state, may be harmful to human life and health, the environment, and things, and which therefore are subject to regulations requiring special treatment in terms of packing, transportation, storage, handling, and waste disposal.

#### **14. Premature Termination**

We are entitled to terminate the contracts of sale /contract for work and/or services if a) the Contracting Party enters into composition negotiations, is declared bankrupt, goes into liquidation or for any other reason can be assumed to have become insolvent, or b) the Contracting Party is acquired by a competitor or c) Contracting Party repeatedly or seriously infringes the contract of sale/ contract for work and/or services or these Terms and Conditions.

#### **15. Counter Purchases**

SAG reserves the right to avail itself of the purchase value or part thereof for existing or possible future counter purchase obligations. SAG is entitled to assign this right to another party.

#### **16. Miscellaneous:**

Unless stipulated otherwise, the place of performance and payment shall be delivery address of the SAG Group company.

This Contract shall be governed by Austrian law. Application of the UN Sales Convention shall be ruled out explicitly. The competent courts at Salzburg, Austria shall have the exclusive jurisdiction over any legal disputes. However, we shall be entitled, at our discretion, to sue the Contracting Party at any other court which can be assigned jurisdiction according to national or international law.

If any provision in the Contracts shall be invalid, this shall not in any way affect or impair the validity of the remaining provisions and the contract as a whole.

Headings in the present Conditions of Purchase are used for illustration purposes only and shall not be used for interpretation purposes.

In case of doubt the German version of these Purchase Conditions prevails.

Modifications and additions to contractual agreements with the Client shall only be deemed valid in writing. Communication by fax or e-mail shall be considered written communication.