

# General Purchasing Terms and Conditions for PEX Automotive GmbH

## Status June 1, 2012

**Applicable to business transactions with companies, legal entities under public law and special funds under public law.**

### 1. Scope

- 1.1 Our purchasing orders shall be subject to the following purchasing terms and conditions exclusively. We will not recognize any changes or amendments to same, or any purchasing conditions by Supplier contrary to the purchasing terms and conditions hereafter unless same have been confirmed as an amendment to our purchasing terms and conditions in writing, thereby agreeing to their applicability. Acceptance of any shipments or services from the Supplier or their unconditional payment shall not be construed as any approval of the Supplier's terms and conditions, even if same are definitely known to us.
- 1.2 Our Purchasing Terms and Conditions shall also be applicable to all future business transactions with the Supplier.

### 2. Orders

- 2.1 Any contracts, orders, signings and/or delivery requests, plus any changes or amendments to same shall be made in writing. Delivery requests may also be made by data telemetry or fax.
- 2.2 Verbal agreements after the contract signing, especially after-the-fact changes and amendments to our Purchasing Terms and Conditions - including this written form requirement – as well as any other ancillary agreements shall require our written confirmation in order to take effect.
- 2.3 Supplier shall be obligated to accept our order within a 2 week deadline, and we shall be authorized to cancel such order if such acceptance is not issued on time. Delivery requests shall be binding unless the Supplier raises an objection within five business days after receipt of the request.
- 2.4 In the case of recurring orders or delivery schedules these orders/delivery requests authorize Supplier only to manufacture the quantities stipulated for the first 4 (four) weeks (production go-ahead) and only to order the materials required for another 4 (four) weeks (materials release). As long as no changes are made to the orders/delivery requests, the period of the production go-ahead shall be extended based on the last order/delivery request. Materials releases beyond that may only be effected after prior written approval of our corresponding specialized departments.
- 2.5 Unless otherwise specified in the order requirements, all delivery items shall be delivered in customary commercial quality and – in case of industrial standards and/or regulations, such as equivalent standards, shall be delivered in compliance with same and in compliance with agreed-upon test certificates.

### 3. Prices, Payment Terms

- 3.1 The price indicated in the order shall be binding. Unless otherwise agreed in writing, said price shall represent door-to-door delivery, customs fee paid (DDP pursuant to Incoterms 2010), including packaging and insurance but without sales tax, or delivery to the destination specified in the order. Otherwise, Supplier shall provide the merchandise at the time agreed upon with the freight forwarder for loading and shipping in a timely manner.
- 3.2 Unless otherwise specified in writing, we shall pay the purchase price within 30 days with 3% discount on the gross invoice amount, or in full within 90 days after

receipt of the invoice, conditional upon Supplier forwarding to us all contract documents in complete and legible form (such as certificates, documentations, test reports, etc.). In case the merchandise is received after the invoice, said payment deadline shall be based on the receiving date of the merchandise. Payment shall be made subject to an audit of the invoice.

- 3.3 In case Supplier lowers his prices by the delivery date, such price reductions shall be applied in our favour..

### 4. Time of Delivery, Delivery Default

- 4.1 Delivery dates and deadlines specified in the order shall be binding. They commence as of the date of order. Compliance with delivery dates and deadlines shall be determined by receipt of the merchandise at our facility, or by the date of services performed. In case the delivery was not agreed upon as door-to-door delivery (DAP or DDP pursuant to Incoterms 2010), Supplier shall provide the merchandise at the time agreed upon with the freight forwarder for loading and shipping in a timely manner.
- 4.2 Supplier shall be obligated to inform our ordering department immediately, in writing, whenever circumstances of any kind occur or become evident which indicate that the agreed-upon delivery date cannot be maintained.
- 4.3 Acts of God, labour unrest, forced operations disruptions, unrest, government actions and other unavoidable events shall authorize us – regardless of our other rights – to rescind from the contract, in full or parts thereof, if said events are of not insignificant duration.
- 4.4 We shall not be obligated to accept any delivery prior to its delivery date. In this case, we shall reserve the right to return the shipped goods at Supplier's expense. In case such early delivery is not returned, the shipped goods shall be stored at our facility until the agreed-upon delivery date, at Supplier's risk and expense. Payment will be made according to sec. 3.2, calculated from the agreed-upon delivery date.
- 4.5 The unconditional acceptance of the delayed shipment or service shall not be construed as any waiver of damage claims due to the delayed shipment or service; said claims shall remain in existence until payment in full for the remuneration owed by us for the respective delivery or service has been made.
- 4.6 Partial deliveries shall not be permitted in principle, unless expressly agreed to by us in writing, or as reasonable to us.
- 4.7 Unless otherwise proven, item numbers, weights and dimensions shall be those determined by us during the merchandise receiving check. We shall accept only those amounts and numbers of items ordered by us. Deliveries above or below such specifications shall be permitted only upon prior agreement with us in writing.

### 5. Inspection for Defects, Warranty

- 5.1 We shall not be obligated to inspect the merchandise upon receipt. We shall attempt to inspect the merchandise for defects, especially accuracy, completeness and suitability by way of sampling during the proper course of business. Applicability of § 377 HGB [German Commercial Code] shall be excluded if permissible. Any complaint within 30 days after discovery of any fault or other deficiencies shall be deemed as being timely. Supplier shall waive any objection due to late deficiency claims.

- 5.2 Statutory warranty claims shall be available to us in full unless otherwise stipulated in the following. Regardless of said right, we shall be entitled to demand from Supplier our choice between remedy of defects or substitute delivery. Any expenditures incurred with said remedy of defects or substitute delivery shall be borne by Supplier. The right to damage claims shall be reserved.
- 5.3 In the event that the supplier does not commence rectifying the defect immediately after our request to remedy it, in urgent cases, especially to ward off acute danger or to prevent greater damage, we are entitled to undertake such rectification ourselves or to have it undertaken by a third party at the expense of the Supplier.
- 5.4 The warranty period shall be 36 months or the applicable statutory minimum warranty period, starting with the transfer of risk, unless the merchandise has been used for a building, in compliance with its customary use, and has caused the defectiveness thereof.
- 5.5 Supplier shall guarantee and ascertain that all shipments are not encumbered by any industrial property rights of third parties, and that delivery and use of the shipped goods do not violate any patents, licenses or other industrial property rights of third parties within Germany. Inasmuch as Supplier is aware that his products are marketed by PRETTL in other countries as well, the above shall apply to said countries equally.
- 5.6 Supplier shall bear all costs incurred by us as a result of the defective shipment of the contract merchandise, especially costs for transportation, travel, labour, materials, incoming goods or sorting costs checks beyond the customary measure. We are entitled to perform a sampling check, and without prejudice to any claim, to return all the goods if the acceptable quality level, or AQL, has not been met or to carry out one hundred percent check at the Supplier's costs and risk, and claim compensation for faulty goods
- 5.7 In case we take back any products manufactured and/or sold by us as a result of the deficiencies of contract merchandise provided by Supplier, or if our sales price was reduced because of said deficiencies, or other claims have been raised against us because of said deficiencies, we shall reserve the right to recourse against Supplier. Said recourse shall not be subject to any separate deadline.
- 5.8 We shall be entitled to demand reimbursement from Supplier of any expenditures incurred by us in our customer relation as a result of any claims for damage filed against us for purposes of post-fulfilment, especially costs for transportation, travel, labour, materials and sorting costs.
- 5.9 Regardless of the regulations in sec. 7.4, the statute of limitation in cases of sec. 7.9 and 7.10 shall expire at the time when we have satisfied the claims filed against us by our customer, at the earliest, but five years after delivery by Supplier at the latest unless the applicable statutory minimum warranty period lasts longer.

## **6. Product Liability, Release**

- 6.1 In case we are subjected to any claims resulting from any violation of government safety rules or due to domestic or foreign product liability regulations or law due to product deficiencies traceable to Supplier's merchandise, we shall be entitled to demand compensation from Supplier inasmuch as these damages have been caused by products delivered by him. These damages also include the costs of a necessary recall action. Inasmuch as a defect occurs in a part delivered by Supplier, the assumption shall be that the defect has occurred within the realm of responsibility of Supplier exclusively.

## **7. Retention of Title, Provision**

- 7.1 Inasmuch as we provide parts to Supplier, we shall retain title to such parts. Said parts shall be used for their intended purpose only. Any processing or reshaping by Supplier shall be performed on our behalf. In case of processing or admixture of our retained merchandise with other materials not in our possession, we shall acquire co-ownership in the new merchandise pro-rated by the value of our materials (purchase price plus VAT) relative to the value of the other processed materials at the time of processing.
- 7.2 In case the matter provided by us is inseparably interspersed with others not in our possession, we shall acquire co-ownership in the new matter pro-rated by the value of the retained matter (purchase price plus VAT) relative to the value of the other admixed materials at the time of admixture. In case the admixture takes place such that the matter of Supplier shall be regarded as the main component, the agreement shall be that Supplier assigns co-ownership to us and Supplier shall be the guardian of sole or co-ownership on our behalf.

## **8. Rights of Withdrawal and Termination**

- 8.1 In addition to the statutory rights of rescission we have the right to withdraw from or terminate the contract with immediate effect if
- the supplier has stopped supplying its customers,
  - the supplier breaches a duty under the delivery contract, and does not remedy this within a reasonable time period that may not exceed 30 days from notice of the breach of duty;
  - there is or threatens to be a fundamental deterioration to the financial circumstances of the supplier and as a result of this the performance of a supply obligation to us is in jeopardy,
  - the supplier meets the criteria for insolvency or over-indebtedness, or
  - the supplier stops making its payments.
- 8.2 We also have the right to withdraw from or terminate the contract if the supplier files an application for insolvency or comparable debt settlement proceedings to be initiated with respect to its assets
- 8.3 If the supplier rendered part performance, we only have the right to cancel the whole contract if we have no interest in the part performance.
- 8.4 If we withdraw from or terminate the contract by virtue of the foregoing contractual rescission rights or respective termination rights, then the supplier must compensate us for the loss or damage incurred as a result, unless the supplier was not responsible for the rights arising to withdraw from or terminate the contract.
- 8.5 Statutory rights and claims shall not be limited by the regulations included in this Section 10.

## **9. Documents and Confidentiality**

- 9.1 . Any business or technical information provided by us (including any features obtainable from forwarded items, documents or software) shall be kept strictly confidential toward third parties as long and inasmuch said information is proven to not be known publicly, and said information shall be provided at Supplier's plant only to those persons who necessarily must be consulted on the use of said information for purposes of delivery to us. Said persons shall be obligated to maintaining confidentiality as well. Said information shall remain our exclusive property. Without our prior written consent, such information or any products manufactured or characterized by such information, production means, brands, and appearance shall not be copied or utilized in any value-enhancing way, or subsequently supplied to any third parties, except for deliveries to us. Upon our request, all information originating from us (including any copies or recordings made, if any) and any loaned items shall be returned to us immediately, or shall be destroyed

immediately. We shall reserve all rights to such information (including any copyrights and the right to file industrial property rights, such as patents, utility models, semi-conductor protection, etc.) Such legal reservation shall be applicable in favour of third parties in case such information has been provided by third parties.

- 9.2 Any products manufactured pursuant to documents designed by us, such as drawings, models, and alike, or which have been manufactured pursuant to confidential information designed by us, or manufactured with our tools or reverse engineering tools, shall not be used by Supplier himself, and shall not be forwarded or delivered to third parties by Supplier. The above shall equally apply to any printing orders

## **10. Export Control, REACH**

- 10.1 The supplier shall be obliged to inform us about any applicable export licence requirements for the merchandise under German, European or US export control law and customs regulation as well as the export control law and customs regulations of the country of origin of the merchandise in his offers, order confirmations, invoices and other business documents and shall name a contact person in his organisation to provide further information upon request.
- 10.2 The supplier shall be obliged to inform us about any applicable export licence requirements for the merchandise under German, European or US export control law and customs regulation as well as the export control law and customs regulations of the country of origin of the merchandise in his offers, order confirmations, invoices and other business documents and shall name a contact person in his organisation to provide further information upon request.

## **11. Place of Fulfilment, Jurisdiction**

- 11.1 Unless otherwise specified in the contract, the place of fulfilment shall be the venue where the merchandise is to be delivered by contract
- 11.2 The jurisdiction for any legal disputes arising either directly or indirectly out of contractual relationships based on these Purchasing Terms and Conditions shall be Tübingen. The Local Court of Reutlingen (Amtsgericht Reutlingen, 72764 Reutlingen) has jurisdiction and venue over cases brought before the Local Court. We however have the right to take legal action against the Supplier at a court with jurisdiction over the registered office or branch office of the Supplier or at the court with jurisdiction over the place of performance at our discretion.

## **12. General Regulations**

- 12.1 The German version of these General Terms and Conditions shall take precedence over the English version in any disputes.
- 12.2 In case of any disputes arising from this contract and contractual relations with us, German law shall apply exclusively while excluding the UN Convention on Contracts for the International Sales of Goods (CISG) and the conflict of law provisions:
- 12.3 If one of the provisions of these Terms and Conditions and of additional agreements reached should be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The parties hereto are obliged to agree upon a provision to replace the ineffective provision by one which comes closest in its economic intent to the ineffective one. The same shall apply in case of a loophole..