

OEM Original Equipment Manufacturer OES Original Equipment Supplier General Terms for the Sale and Delivery of OEM Products Abroad (Direct Sales)



The following Terms for Sale and Delivery ("Terms") shall only apply to the sale of OEM products which have not been in use in Germany or which are intended to be exported with OES German direct sales.

In these Terms, unless the context otherwise requires, any German words and phrases ("in brackets") defining any proximate prior English words and phrases shall have legal effect for purposes of interpreting these Terms, and their meaning shall prevail the meaning of the respective English words and phrases. Headings to clauses, parts and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in interpreting these Terms.

I. Conclusion of Contract/Transfer of Purchaser's Rights and Obligations

1. The Purchaser is legally bound by the order for a maximum period of four weeks. The contract shall be deemed as concluded as soon as OES confirms the order in writing or undertakes delivery within the mentioned period up to the non-binding delivery date ("Contract"). OES shall be however obliged to inform the Purchaser immediately if the order is not accepted.

2. The Purchaser shall neither assign any and all claims arising out of the Contract nor sell or transfer ownership of the product within a period of four months from the date of delivery. This shall not apply if Purchaser sells the product for non-commercial purposes. If the product is sold in violation of the foregoing provision for commercial purposes or to a commercial reseller ("gewerblicher Wiederverkäufer"), OES shall be entitled to claim from the Purchaser a contract penalty ("Vertragsstrafe") of 15% of the product net purchase price.

II. Prices

1. The purchase price of the product includes optional extras and accessories ("Purchase Price"). Any further discounts as well as the statutory rate of value-added tax ("gesetzliche Mehrwertsteuer", VAT) or any other export/EC deposit shall be shown separately on the invoice and are not included in the Purchase Price.

Any and all costs for transportation, insurance, licensing and transfer of the products as well as any other additional services agreed upon will also be charged separately to the Purchaser and are not included in the Purchase Price.

The export deposit will be refunded as soon as Purchaser submits written proof of exportation ("Ausfuhrnachweises"). The EC deposit will be refunded as soon as Purchaser provides a certified copy of registration ("Customs declaration from destination country or amtliche Zulassungsbescheinigung") of the product in another member state of the European Union.

2. The prices as displayed in the order form may be amended by OES subject to the following conditions: (i) between conclusion of the Contract and the agreed date of delivery elapses a time period of more than four months and (ii) OEM changes its list price for the product after the Contract had been concluded. This shall also apply on changes of the statutory VAT rate. OES shall notify Purchaser immediately of such amendment. If the agreed Purchase Price is increased in accordance with the above-mentioned provision by more than 5%, the Purchaser may rescind ("zurücktreten") the Contract by giving written notice within two weeks after receipt of the notification of this change. If the product is delivered within four months after conclusion of the Contract, the agreed price remains valid.

III. Payment

1. The invoice shall be issued in Euro (for US models in US\$, for Canadian models in CAN\$). The invoice will be issued to the Purchaser's foreign address.

2. The Purchase Price and all additional costs and services become due within eight days after Purchaser had been notified about the product's readiness for collection.

3. All payments have to be made in the currency shown in the invoice (III.1.). Payments shall be made in advance to delivery of the product, at the latest at the time of collection of the product in Nürnberg or prior to release of the product for transportation. Payments shall be made by wireless bank transfer or a banker's draft (no personal Cheques). Cheques will only be accepted under reservation and after calculation of all collection charges.

If OES accepts payment in another currency than displayed in the invoice and under derogation of III.1., any and all costs resulting hereof, especially exchange rate differences and expenses for currency exchange shall be borne by the Purchaser.

4. Purchaser may only set off ("aufrechnen") claims arising from the Contract against OEM's counter-claims if Purchaser's claims are undisputed ("unbestritten") or Purchaser can provide a legally binding executory title ("vollstreckbarer Titel"). The Purchaser may only enforce a right of retention ("Zurückbehaltungsrecht") if it is based on claims resulting from the Contract.

IV. Delivery and Delay in Delivery

1. Delivery dates and delivery periods which may be binding or non-binding shall be stated in writing. Delivery periods shall commence with the date of conclusion of the Contract.

2. If OEM/OES exceeds a non-binding delivery date or a non-binding delivery period by six weeks or more, the Purchaser may request from OEM delivery of the product. OEM/OES shall be deemed to be in default of delivery ("Verzug") upon receipt of this request. If the Purchaser is entitled to claim damage caused by delay in performance ("Verzögerungsschaden"), this claim shall be limited in case of slight negligence ("leichte Fahrlässigkeit") by OEM/OES to a maximum of 5% of the purchase price. Purchaser may only rescind the Contract ("zurücktreten") and/or claim compensation instead of performance ("Schadensersatz statt der Leistung") after having put OEM/OES on notice for another reasonable period of time for delivery in addition to and after expiration of the six-week period according to sentence 1. If the Purchaser is entitled to compensation instead of performance, this claim shall be limited in case of slight negligence to a maximum of 25% of the agreed Purchase Price. If OEM is, whilst in delay permanently unable to deliver the product by coincidence ("zufällige Unmöglichkeit") OEM/OES shall be liable in accordance with the above-mentioned agreed liability limitations. OEM/OES shall not be liable if the damage also had occurred even at delivery on time.

3. If a binding delivery date or a binding delivery period is exceeded, OEM/OES shall be deemed to be in delay of delivery by exceeding the particular delivery date or delivery period. Purchaser shall in this case be entitled to the rights of sentence 3 to 6 of IV. 2.

4. All time periods, dates and deadlines as stated in IV.1. - 3. shall be extended by such a period of time, within which OEM/OES is - without negligence ("ohne eigenes Verschulden") - temporarily unable to deliver the vehicle "vorübergehende Unmöglichkeit" for reason of Force Majeure or stoppage at OEM's or its suppliers' factories or plants. If such circumstances result in an interruption of more than four months, Purchaser shall have the right to rescind the Contract ("Recht zum Rücktritt"). The right of Purchaser to rescind the Contract for other reasons shall remain unaffected hereby.

5. Provided their reasonableness for the Purchaser and having taken into consideration OEM's/OES's interests, constructional changes or changes in the shape, differences in colour-tones as well as differences in the bulk of delivery carried out by OEM/OES during delivery time shall have no effect on the Contract. As far as OEM/OES makes use of characters and/or numbers for purposes of designating the particular order or product, no rights shall be derivable from this fact alone.

6. The transfer and/or transportation of the product to a destination other than the place of performance ("Erfüllungsort", IX.1.) will be carried out on demand of, at the sole risk and on cost of the Purchaser. This shall apply irrespective of the party or person who carries out the transportation. Upon request by the Purchaser OES shall be entitled to arrange and/or carry out the transfer and/or transportation of the product by itself or charge third parties. In this case no rights or claims against OEM/OES shall be derivable from the kilometers clocked up during transportation. OES shall also be entitled to arrange transfer/transport insurance within the limits customary in this field of industry on cost and expense of the Purchaser. This shall not represent any tacit acceptance or guarantee for damage cover by OEM/OES.

7. The Purchaser shall be entirely responsible to insure compliance with all relevant national import regulations ("nationale Einfuhrbestimmungen") applicable to the product and the licensing requirements ("Zulassungsbestimmungen") in the country of final destination. This shall not apply if the product has been explicitly ordered in a country specific version. In the latter case the Purchaser shall be solely responsible for deciding whether and under what conditions the product may - if necessary - be temporarily registered in Germany or another country.

V. Acceptance

1. The Purchaser is obliged to collect the product within 14 days after receipt of the notification of the product's readiness for collection. If Purchaser fails to collect the product within this period, OES may make use of its statutory rights.

3. If OES demands compensation in connection with non-acceptance ("Schadensersatz wegen Nichtabnahme") or a delay in acceptance ("Schadensersatz wegen verspäteter Abnahme") of the product from Purchaser, this compensation shall be 15% of the net purchase price. The compensation rate may be increased or decreased or shall entirely not apply if OES proves more or Purchaser proves less damage or Purchaser can prove that no damage whatsoever has incurred.
4. The Purchaser must provide legal written proof of identity when collecting the product. If a third party collects the product on behalf of the Purchaser, such party shall also provide proof of identity and a written power of attorney ("schriftliche Handlungsvollmacht") or, upon OES's request, a written and notarized power of attorney ("notariell beglaubigte Vollmacht") from the Purchaser.
5. The product shall only be for international export. Unless otherwise agreed, OES will insure the product in the name of and on expense of the Purchaser from the date of the notification of the product's readiness for collection. For purposes of licensing, registration, conclusion of insurance, transportation and handover of the product the Purchaser must provide OES with a notarized power of attorney ("notariell beglaubigte Vollmacht") which enables OES to act for and on behalf of the Purchaser. The Purchaser bears the entire risks for any and all damages, loss or destruction of the vehicle after it has been handed over by OES to either the Purchaser or the transporting person.

VI. Retention of Ownership and Title

1. OES shall retain ownership and title ("Eigentumsvorbehalt") to the product until the Purchaser has settled any and all claims arising from the Contract.
- At Purchaser's request, OES shall waive ("Verzicht") its retention of ownership and title if Purchaser has settled any and all claims arising from the Contract in an uncontested ("unanfechtbar") way and has provided adequate security ("angemessene Sicherung") for any and all other claims arising from the current business relationship with OES. OES shall have the right to retain the product registration documents during retention of ownership and title.
2. In case of Purchaser's delay with payment ("Zahlungsverzug") OES shall be entitled to rescind the Contract ("Rücktritt vom Vertrag"). If OES is entitled to claim compensation instead of performance ("Schadensersatz statt der Leistung") and takes the product into repossession OES shall reimburse to Purchaser the product's standard market value ("gewöhnlicher Verkehrswert") at the time of repossession. At Purchaser's request to be expressed without delay after OES has taken the product into repossession the Purchaser may demand to have an officially appointed and sworn expert, e.g. from Deutsche Product specified Treuhand ORG determining the product's standard market price. The Purchaser shall bear all costs arising from the repossession and realization of the vehicle. The realization costs shall be deemed to be - without any proof - 5% of the standard market value. The rate shall be increased or decreased if OES proves higher or the Purchaser can prove lower costs.
3. During retention of ownership and title ("Eigentumsvorbehalt") the Purchaser may neither sell the product or transfer ownership to third parties nor assign any right of use to third parties.

VII. Material Defects

1. In accordance with statutory provisions any and all claims of Purchaser in connection with material defects ("Sachmängel") shall become statute-barred ("verjähren") within two years after production date of the product.
- If a material defect occurs within one year after date of production it is assumed that the particular defect had already existed at the time of delivery unless this assumption is not consistent with the type of defect. Restricted to the Purchaser's right for subsequent improvement ("Mängelbeseitigungsanspruch"), such presumption also applies if a material defect occurs for the first time within the second year after production. There are no claims derivable from material defects if the defect or damage results from conventional wear and tear ("natürlicher Verschleiß") or due to the fact that
 - The Purchaser did not inform OEM/OES about the defect immediately after its discovery or
 - The product had not been treated properly or had been used over-excessively, e.g. crisis regions competitions or
 - The product had been incorrectly repaired, maintained or serviced by a non authorized (by manufacturer) workshop and the Purchaser had positive knowledge thereof or could have realized this or
 - Parts had been installed into or onto the product which have not been approved by the manufacturer or the product or parts thereof (e.g. software) were altered in a manner not approved by the manufacturer or
 - The Purchaser failed to observe the regulations relating to the handling, servicing and maintenance of the product (e.g. operating instructions in the owner's manual).In the event of fraudulent concealment ("arglistiges Verschweigen") of material defects or the acceptance of a quality guarantee ("Beschaffenheitsgarantie") further claims shall remain unaffected hereof.
2. If the product's body shows severe signs of corrosion ("Durchrostung") within 12 years or a defect of the lacquer layer within 3 years after its delivery, Purchaser is entitled - irrespective of his statutory or contractual warranty rights - to demand subsequent improvement from OEM. The rights of Purchaser are subject to regular technical services in intervals specified by OEM and subject to checks and, as the case may be, improvements of the product body and underbody during these technical services. Purchaser is in particular not entitled to request the removal ("Nachbesserung") of the above mentioned defects if they are due to rock slide, scratches, dents, accidental damages or environmental impacts.
3. The proceedings for the removal of material defects ("Mängelbeseitigung") are as follows:
 - a) Claims on removal of defects ("Mängelbeseitigungsansprüche") can be raised against OEM or any other entity of the OEM dealer network. In the latter case Purchaser must notify OEM hereof. If Purchaser notifies claims orally, OEM shall send a written confirmation of the receipt of such notification to the Purchaser.
 - b) If the product becomes inoperative due to a material defect, Purchaser must notify this incident to the nearest member of the OEM dealer network which is in service at the particular time.
 - c) All replaced parts become property of OEM.
 - d) Concerning all new parts embodied into the product in course of replacement Purchaser shall have the warranty rights based on the purchase agreement as set out within these Terms as long as Purchaser's warranty rights concerning the product are not yet statute-barred.
4. Any change of the product's ownership ("Eigentumswechsel am Fahrzeug") shall have no effect on the statutory rights for subsequent improvement of material defects ("Recht auf Mängelbeseitigung").

VIII. Liability

1. If OEM is liable due to statutory provisions and due to the provisions set out hereinafter for any damage caused by slight negligence ("leichte Fahrlässigkeit"), OEM's/OES's liability is limited as follows: OEM shall only be liable, if the damages were caused by a breach of fundamental obligations under the Contract ("Verletzung vertragswesentlicher Pflichten"). OEM's liability is limited in this case to the typical damage foreseeable ("vorhersehbaren typischen Schaden") at the time of conclusion of the Contract. This limitation shall have no effect in case of damage of life, limb and general health ("Verletzung von Leben, Körper und Gesundheit"). As far as the particular damage is covered by an insurance of Purchaser for such an instance (excepted insurances of fixed sums), OEM shall only be liable for associated detriments ("verbundene Nachteile"), e.g. increased insurance premiums or detrimental interest until the compensation by the insurance. This shall also apply in case of damages caused by a material defect of the product.
2. OEM's liability due to fraudulent concealment ("arglistiges Verschweigen") of a material defect, acceptance of a quality guarantee or the risk of procurement as well as all claims arising from the Product Liability Act ("Ansprüche nach dem Produkthaftungsgesetz") remain unaffected.
3. Any liability due to delay of delivery is exclusively settled in section IV.
4. Any personal liability of OEM's/OES's legal representatives, agents or employees for any damage caused by their slight negligence is hereby excluded.

IX. Place of Jurisdiction

1. Exclusive place of performance ("Erfüllungsort") shall be Nürnberg, Germany.
2. Exclusive place of jurisdiction ("ausschließlicher Gerichtsstand") for any and all current and future claims arising from OES's business relations with the Purchaser, including all claims based on a bill of exchange or cheque shall be OES's principal offices ("Hauptsitz").
3. The same place of jurisdiction shall apply if the Purchaser has no general place of jurisdiction ("allgemeiner Gerichtsstand") in Germany, moved his/her domicile or normal place of residence outside Germany after the conclusion of the Contract or if his/her domicile or normal place of residence was not known at the time of initiation of legal proceedings. In the case of claims by OEM/OES against the Purchaser, the place of jurisdiction shall be the latter's residence.
4. This Contract and all disputes arising from or in connection with it shall be subject to German law and shall be interpreted, enforced and performed in accordance with German law. Application of the United Nations Convention on the International Sale of Goods (CISG) is hereby expressly excluded.
5. Should the Contract, these Terms or any provisions thereof be void, unenforceable or incomplete, the effectiveness of the remaining Contract, Terms or single provisions thereof shall remain unaffected. The parties shall be obliged to substitute the ineffective or incomplete provision by such an effective provision which meets best the commercial intentions and interests of both parties hereto.