

## General Conditions of Sale

### 1 General

- 1.1 These General Conditions shall apply to all, including future, business between Purchaser and Austria Druckguss GmbH & Co KG in A-8200 Gleisdorf (hereinafter referred to as "Austria Druckguss").
- 1.2 Changes and amendments to these Conditions shall be valid only if made in writing.
- 1.3 The written form shall include all methods of communication in the form of text (such as Telefax, E-Mail, EDI, etc.) This paragraph may be modified or waived only by a separate agreement between the Parties in the form of text.
- 1.4 No other conditions shall be valid even if not expressly rejected. Performance of the contract by Austria Druckguss does not constitute acceptance of such conditions.

### 2 Acceptance of Contract

Agreements for the supply of Goods (orders and acknowledgements of order) and call-offs, including any changes or modifications thereof, shall be made in writing.

### 3 Scope of Delivery, Dimensions, Weights, Technical Specifications

- 3.1 Unless otherwise agreed, binding call-offs shall be notified 3 months prior to the date of delivery.
- 3.2 Dimensional deviations within trade practice, deviations in weight of +/- 10% necessitated by foundry technology as well as - in case of serial deliveries - changes in volume up to +/- 10% are permissible.
- 3.3 Technical specifications given by Austria Druckguss are to be considered as approximate figures customary in the trade and not as expressly warranted characteristics, unless expressly designated as such.

### 4 Subcontracts

- 4.1 Austria Druckguss shall be entitled to subcontract the manufacture of the Goods to third parties.
- 4.2 Subcontracting of specifically designated safety parts ("D-parts") for automotive applications shall require the prior written consent of Purchaser, which shall not be unreasonably withheld.

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- 5 Price, Terms of Payment, Retention of Title**
- 5.1 The prices shall be quoted ex works (as defined in the Incoterms issued by the International Chamber of Commerce), excluding packaging, freight, insurance and VAT.
- 5.2 The Parties are committed to constant quality improvements and cost reductions.
- 5.3 In case of changes to the Goods required by Purchaser, after expiry of serial production and/or in case of purchases falling short of agreed or target volumes, the prices shall be adjusted accordingly.
- 5.4 In case of long-term contracts of more than 12 months' duration, changes in cost factors such as wage-, material-, energy-, freight or logistics costs, each Party shall be entitled to request a reasonable adjustment of the prices taking proper regard of these factors.
- 5.5 In case of premature termination of the contract by Purchaser, Austria Druckguss shall be entitled to a reasonable compensation of its unpaid services and unamortised investments in machines and tools.
- 5.6 In case of faulty supplies, the Purchaser shall be entitled to a proportionate withholding of payments until the contract is properly fulfilled. Should a mere part shipment have no economic interest to Purchaser, he shall be entitled to withhold the entire payment.
- The Purchaser shall be entitled to set off any amounts due against counterclaims which are either
- acknowledged by Austria Druckguss or finally awarded to Purchaser.
- 5.7** Austria Druckguss shall retain title to the Goods delivered until Purchaser has settled all claims which Austria Druckguss may have against him, respectively, in case such agreement should not be enforceable under applicable law, until Purchaser has fully paid the specific delivery to which title is withheld.
- 6 Ownership of Technical Documents**
- The ownership and copyright in all technical documents supplied to the other Party shall remain vested with the supplying Party.
- 7 Confidentiality, Publicity**
- 7.1 Neither Party shall disclose nor make use of any commercial or technical information received from the other Party in the course of business, to the extent said information is not in the public domain.
- 7.2 Drawings, patterns, templates, samples and similar objects may not be supplied to or otherwise be made accessible to unauthorised third parties. Copying of such objects is permitted only to the extent necessary for the performance of the contract and in accordance with the pertinent copyright law.
- 7.3 Subcontractors shall be bound accordingly.
- 7.4 Any reference to the business relationship between the Parties in advertising or publicity materials

shall require the other Party's prior written consent.

- 7.5 The aforementioned obligations shall expire 36 months following the expiry of the business relationship between the Parties. In addition, they shall not apply to the extent information or data are required to be disclosed by order of a public authority or of a court of competent jurisdiction or in connection with the defence in any suit brought against the disclosing Party.

## 8 Development Results

- 8.1 The know-how disclosed by Austria Druckguss in the course of the bidding process shall be fully protected pursuant to Article 7. The technical concept submitted by Austria Druckguss in the bidding phase shall neither be used by Purchaser for its own benefit nor disclosed to third parties.
- 8.2 In case the order for the long-term supply contract is not awarded to Austria Druckguss, Purchaser shall reimburse to Austria Druckguss the development costs it has incurred, including the costs for the design and manufacture of testing tools or prototypes.

## 9 Delivery Period, Dispatch and Passing of Risk

- 9.1 Agreed delivery times and dates are of the essence. Delivery periods or -dates are considered to have been met upon receipt of the Goods by Purchaser.
- 9.2 In case the delivery is not effected "carriage paid to" or according to a similar arrival clause according to the Incoterms issued by the International Chamber of Commerce as in force on the date

of delivery, Austria Druckguss shall, in time, make the Goods ready for loading and dispatch.

- 9.3 In any event, the risk shall pass to Purchaser latest when the Goods have left Austria Druckguss's works, even if Austria Druckguss is responsible for their transport.

## 10 Delayed Delivery

In case of delays in delivery, Austria Druckguss, to the extent permitted by law, shall not be liable to Purchaser for indirect damages, such as loss of profit or loss of production.

## 11 Force Majeure

Force majeure, labour disputes, turmoil, acts of government and other unforeseeable events beyond its control (such as interruption of the manufacturing process, rejects or remediation work, which, despite the affected Party's best efforts render timely performance of the contract impossible) shall exonerate the affected Party for the duration of the disturbance from the further performance of the contract. This shall also apply in case the force majeure or the other unforeseeable events occur when the affected Party is already in delay with the performance of its obligations. To the extent it can reasonably be required, the Parties shall be obliged to notify the other Party immediately in the event of force majeure or any other unforeseeable event and to adapt, in good faith, the mutual obligations to the changed conditions.

## 12 Prototypes and Tools

- 12.1 The costs for prototypes and tools (specific machining equipment, tools, moulds, patterns, templates, etc.) shall - unless otherwise agreed - be invoiced separately. The same applies to tools to be replaced due to wear and tear related to the order.
- 12.2 Should Purchaser during the manufacture of the prototype or the tools terminate or suspend the performance of the contract, he shall bear all pertinent costs incurred by Austria Druckguss up to the date of termination or suspension.
- Subject to the foregoing, the costs for maintaining and storing as well as the risk of damage to or destruction of the tools, including the tools supplied by Purchaser, shall be borne by Austria Druckguss.
- 12.3 Specific tooling for a particular order shall, even if paid by or being the property of the Purchaser and placed at Austria Druckguss's disposal, remain in Austria Druckguss's possession until the contract is properly fulfilled. Thereafter, Purchaser may request the return of the tools, to the extent he has fulfilled his contractual obligations.
- 12.4 Austria Druckguss shall store the tools free of charge for 3 years following the last delivery to Purchaser. Thereafter, Austria Druckguss shall invite Purchaser in writing to give Austria Druckguss, within 6 weeks, all necessary instructions regarding the further handling of the tools. Austria Druckguss's obligation to store the tools shall end, if the required instructions are not given within the aforementioned 6 weeks period or if no new order is being placed.
- Upon expiry of Austria Druckguss's obligation to store the tools, Austria Druckguss shall be entitled to dispose them at Purchaser's cost or to place them, at Purchaser's cost, at Purchaser's disposal.
- The above shall not apply to the extent Austria Druckguss is obliged to the further supply of spare parts.
- 12.5 Tools, used specifically for the order, may be used by Austria Druckguss for the manufacture and sale of goods to third parties only subject to Purchaser's prior written consent.
- ### 13 Cast-in Parts
- 13.1 Parts to be cast-in supplied by Purchaser must have the agreed dimensions and be ready to be cast-in. Costs for remedial work shall be for Purchaser's account.
- 13.2 The number of parts to be cast-in must exceed the number of Goods ordered by 10%. Rejects, which are not attributable to Austria Druckguss shall be replaced by Purchaser free of charge.
- ### 14 Quality and Documentation
- 14.1 The Goods supplied by Austria Druckguss shall be state of the art and comply with applicable safety rules and the agreed technical specifications. Changes to the Goods shall require the prior written consent of Purchaser.
- First samplings of automotive parts shall be made in accordance with the corresponding VDA-Regulations. Irrespective thereof, Austria Druckguss shall subject the Goods to a permanent quality control. The Parties shall keep each other informed of possibilities

to improve the quality of the Goods.

- 14.2 In case of automotive parts, which in technical documents or separate agreements are to be specifically designated, e.g. by adding the designation "D" (safety parts subject to special documentation) Austria Druckguss, in addition, shall separately record, when, how and by whom the Goods were tested with regard to the features to be documented and what results the required quality tests have yielded. The testing documents are to be stored for a period of 10 years and are to be submitted to Purchaser at its request.

Austria Druckguss shall, to the extent legally possible, bind its subcontractors and sub-suppliers accordingly.

- 14.3 To the extent authorities responsible for the safety of motor vehicles require access to the production process and the testing documents of Purchaser in connection with the review of Purchaser's compliance with legal requirements, Austria Druckguss, at the request of Purchaser, agrees to give these authorities the same access to its works and all reasonable assistance.

## 15 Notification of Defects

- 15.1 Defects in the Goods discovered by Purchaser in the ordinary course of its business shall immediately be notified to Austria Druckguss in writing. To this extent Austria Druckguss hereby waives its right of estoppel in case of late notification.
- 15.2 Reservation is being made for Purchaser's obligation to inspect incoming Goods with regard to

identity, quantity and apparent transport defects by taking random samples.

- 15.3 In case acceptance or first sample tests have been agreed, Purchaser shall be barred from notifying defects which could have been detected by Purchaser during the acceptance- or first sample tests.

## 16 Warranty

- 16.1 Austria Druckguss warrants the compliance of the Goods with the agreed technical specification, said warranty being exclusive and in lieu of any implied or statutory warranty.

In case Austria Druckguss is to manufacture the Goods according to drawings, specifications, samples, etc. of Purchaser, Purchaser shall bear the risk that the Goods are fit for the intended purpose. The relevant date for the compliance of the Goods with the agreed warranty shall be the date on which the risk in the Goods passes to Purchaser.

- 16.2 Austria Druckguss shall not be liable for defects caused by misuse, faulty assembly or commissioning by Purchaser or third parties, normal wear and tear, faulty treatment nor for defects caused by improper modifications by Purchaser or third parties.

- 16.3 In case defective Goods are being supplied, Purchaser shall, before the start of its manufacturing process (machining or assembly) first give Austria Druckguss the opportunity to sort out, repair or replace defective Goods, unless such prior actions are unduly burdensome on Purchaser. In case Austria Druckguss is not carrying

out the required remedial action or in case of delays of Austria Druckguss, Purchaser may terminate the pertinent portion of the contract and return the defective Goods to Austria Druckguss at Austria Druckguss's risk and cost.

In case of urgency, Purchaser may, after consultation with Austria Druckguss, carry out the remedial action himself or through third parties. The pertinent costs shall be for Austria Druckguss's account.

In case of repeated supplies of Goods showing the same defect, Purchaser, after prior written notice and in case of a renewed delivery of defective Goods, may cancel the entire contract.

- 16.4 In case a defect, despite the Purchaser having fulfilled his obligation to inspect the Goods and to notify any defects, is not detected before the start of Purchaser's manufacturing process, Purchaser, in addition to his rights according to Article 16.3 may claim compensation for the additional costs incurred only to the extent the assumption of such costs has been explicitly agreed between the Parties.
- 16.5 Purchaser shall, at Austria Druckguss's request, return to Austria Druckguss, at Austria Druckguss's cost, all parts to be replaced.
- 16.6 The right of recourse of Purchaser in consumer contracts according to § 478 of the German BGB or § 933 b of the Austrian ABGB, is excluded.

## 17 Limitation of Liability

- 17.1 The warranties set forth in these General Conditions of Sale are expressly in lieu of any express warranty of any kind and in lieu of any implied warranty, including any warranty of merchantability or fitness of the Goods for a particular purpose. Austria Druckguss shall not be liable for any loss or damage, directly or indirectly, arising from the use of the Goods sold to Purchaser, for any incidental, special or consequential damages, such as loss of profits, loss of production, loss of use or loss of contract, arising for any reason, including damages resulting from defective design, materials or workmanship or from faulty instructions, irrespective of whether such damages are claimed to arise from breach of contract, in tort, the theory of product liability or otherwise.
- 17.2 The foregoing limitation of liability does not apply in case of Austria Druckguss's statutory liability based on wrongful intent, gross negligence or products liability acts.
- 17.3 To the extent Austria Druckguss's liability is excluded or limited, such exclusion or limitation shall equally extend to the personal liability of its directors, officers, employees and agents.
- 17.4 If Purchaser, based on the theory of strict liability, is held liable for personal injury or damage to private property, Austria Druckguss will indemnify and hold harmless Purchaser to the extent it would be directly liable itself. The right of recourse between Purchaser and Austria Druckguss shall be governed by applicable law. This

shall also apply in case Austria Druckguss is directly held liable.

Office, in a EU-state or in the United States.

Austria Druckguss's duty of indemnification shall be excluded to the extent Purchaser has validly excluded his liability towards his clients. As far as permitted by law, Purchaser shall exert his best efforts to enter into limitation of liability agreements also for the benefit of Austria Druckguss.

20.2 Austria Druckguss shall indemnify and hold Purchaser and his clients harmless from and against all claims resulting from the infringement of such third party industrial property rights.

## 18 Statute of Limitations of Liability and Warranty Claims

Subject to longer time periods provided in mandatory statutory law, liability and warranty claims of Purchaser shall be time-barred after 2 years following the receipt of the Goods by Purchaser.

20.3 Exception is being made to the extent Austria Druckguss has manufactured the Goods according to drawings, patterns or similar descriptions or data of Purchaser without knowing or having a duty to know that the Goods are infringing third party rights.

To the extent Austria Druckguss, based on the preceding paragraph is not liable, Purchaser shall indemnify and keep Austria Druckguss harmless from and against all third party claims.

## 19 Recalls

Austria Druckguss's liability for costs incurred by Purchaser in the defence against liability claims or in connection with recall campaigns, shall be limited to the scope of coverage of Austria Druckguss's insurance policy and to **a maximum of € 10 Mio. per occurrence** or series or occurrences based on the same defect, unless the Parties, in a particular case, have agreed otherwise.

20.4 The Parties shall immediately inform each other of any infringement or alleged infringements coming to their attention. They shall further coordinate their defence against such claims.

20.5 The aforementioned liability and indemnification does not extend to loss of profits or damage resulting from loss of production.

## 20 Industrial Property Rights

20.1 Austria Druckguss shall be liable for the infringement of third party industrial property rights by the Goods if at least one of the industrial property rights forming part of the pertinent IP-family has been published in the country of Austria Druckguss's place of business, by the European Patent

## 21 Miscellaneous

21.1 Each Party shall be entitled to the premature termination of the unfulfilled portion of the contract if the other Party fails to pay its bills as they become due, or in case insolvency-, receivership- or similar proceedings have been instituted against the other Party.

21.2 If any part of these General Conditions of Sale or of an

agreement between the Parties is or becomes invalid, such determination shall not affect the validity of the remaining provisions of these conditions or of an agreement between the Parties and to this extent the provisions of these Conditions and of any agreement between the Parties are declared to be severable. The Parties shall exert their best efforts to replace the invalid provision by a legally enforceable provision coming closest to the original intention of the Parties.

## **22 Choice of Law, Venue, Place of Performance**

22.1 The contract between Austria Druckguss and Purchaser shall be subject to Swiss law without recourse to the principles of the law of conflicts.

22.2 Place of performance of the contract shall be the place of business of Austria Druckguss.

22.3 Exclusive place of jurisdiction shall be Austria Druckguss's place of business. Austria Druckguss, however, shall be entitled to bring actions in any other court of competent jurisdiction.

Valid as of September 1, 2002

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