

Terms & Conditions of Purchase

Production Material Non Automotive

1. Scope of These Terms

- 1.1 The terms of purchase below (hereinafter the “Terms of Purchase”) shall apply to all legal transactions and all future business relationships involving the supply of goods to or the performance of services for (hereinafter the “Contractual Goods/Services”) Active Key GmbH, Brunnenäcker 6, DE-91257 Pegnitz (hereinafter “AK”) by AK contractual partners (hereinafter “Supplier”) even where they are not expressly agreed upon again, until new AK Terms of Purchase come into force.
- 1.2 The terms and conditions of Supplier shall only become part of a contract if they conform to those of AK or AK expressly recognises Supplier’s terms and conditions in writing. This shall apply even when AK accepts or pays for Contractual Goods/Services from Supplier in the knowledge that Supplier’s terms and conditions oppose or differ from these Terms of Purchase.
- 1.3 If these Terms of Purchase are in conflict with Supplier’s terms and conditions, contract procedures shall be subject solely to these Terms of Purchase. Supplier agrees to the waiver of its terms and conditions with its confirmation of AK order, at the latest with the first delivery of ordered goods or the beginning of its service performance.

2. Conclusion of Contract

- 2.1 Negotiations and transactions made verbally or by telephone require written confirmation by AK. Outline agreements, orders and forecast delivery schedules and also their acceptance or changes or supplements to them must be made in writing. Electronic form shall also fulfil the contractually agreed requirement for written form. Verbal agreements after the conclusion of a contract, in particular subsequent changes and supplements to these Terms of Purchase – including this clause requiring written form – and secondary agreements of all kinds shall also be valid only after written confirmation by AK.
- 2.2 Quotations from Supplier are binding and free of cost unless expressly agreed otherwise in writing.
- 2.3 A contract is not valid until it is confirmed in writing by AK or on receipt of a counter-signed and unchanged copy of AK written order. Until then, AK is entitled to cancel its order at any time without giving a reason, and without any liability towards Supplier.

3. Prices

- 3.1 In the case of orders where no price is specified, the conclusion of the contract shall depend on the express agreement on price by both parties and the written confirmation of the price by AK.
- 3.2 The prices quoted by Supplier are fixed prices unless Supplier makes a general reduction to the prices in question. Prices are based on the mutually agreed Incoterm clause according to INCOTERMS® 2010 as evident from all commercial documents (order, frame contract, offer, order confirmation, invoice). In the event of and contrary to all expectations any discrepancies in this regard may occur, the more advantageous Incoterm clause for the buyer shall apply. Price increases and other changes to costs or cost components are permissible only with the previous express written approval of AK. In particular, this also applies to any unexpected developments in raw material prices or increases in the costs of development, production or transport.

4. Delivery Dates and Quantities

- 4.1 Agreed delivery dates and quantities shall be binding and fixed. Their observance shall be a main obligation of Supplier. The date of the receipt of Contractual Goods/Services by AK shall determine whether delivery dates or delivery periods have been observed. Delivery periods begin on the date on which the order is placed. If no delivery deadlines are agreed upon, deliveries must be made as soon as calls are placed by AK.
- 4.2 Forecast delivery schedules are binding unless Supplier objects to them in writing within forty eight (48) hours of receipt on a working day on the grounds that the quantities or deadlines cannot be met. In this case, Supplier must inform AK in writing within three (3) working days of the earliest possible delivery date.
- 4.3 Both release for manufacture and release for raw material will be individually determined in purchase orders and frame contracts. Supplier must ensure that its capacities as well as supply of raw materials are always sufficient to meet its delivery obligations from calls for shipment, including any forecast quantities.
- 4.4 There shall be no obligation on the part of AK to accept delivery before the expiry of an agreed delivery date. This also applies to additional quantities. In the case of early deliveries or additional quantities, AK may, at its own discretion, return these at Supplier's cost or store them until the agreed delivery date at Supplier's cost and risk. AK accepts partial deliveries only after express agreement.

5. Delayed Deliveries, Flat-Rate Compensation for Delay

- 5.1 If Supplier realises that it cannot meet a delivery date or period, it must inform AK immediately giving the reasons and the next possible delivery date.
- 5.2 The statutory claims existing in the case of delay in delivery cannot be excluded. After fruitless expiry of an appropriate additional period set in the case of delay, AK may withdraw from the contract and demand compensation from Supplier for non-performance.
- 5.3 During Supplier's delay of delivery of Contractual Goods or first samples, AK shall also be entitled to demand flat-rate compensation of 0.2% for every working day or part thereof up to a maximum of 10% of the value of the order, unless Supplier proves that the actual damage was less. This does not affect AK further contractual or statutory claims; however, the flat-rate compensation for delay must be set off against them.
- 5.4 Unreserved acceptance of a delayed delivery shall not be regarded or interpreted as a waiver of AK contractual or statutory claims based on delay.

6. Changes

- 6.1 AK shall be entitled to change the Contractual Goods/Services at any time (in particular in drawings, specifications etc.) and entitled to also demand changes to the Contractual Goods/Services from Supplier, such as changes to design or the scope of performance, at any time. This also applies to changes in delivery dates.
- 6.2 If AK deems changes necessary, Supplier shall be informed immediately. Supplier must immediately examine the necessary impact on costs and deadlines and document these in a coherent and suitable manner. The parties shall agree in a suitable manner on the appropriate adjustment of the respective contract.

7. Spare Parts and Ability to Deliver

- 7.1 Unless expressly agreed otherwise in writing, Supplier is obliged to supply spare parts, if electronic parts at least upwardly compatible parts, at normal market conditions for the period of the normal technical use of the final product, for a typical period of five (5) years after the last series delivery. Normal market conditions are deemed to be the price applicable to the last series delivery plus additional verifiable costs, such as those for packaging and handling.
- 7.2 If Supplier ceases delivery of spare parts after the expiry of the period mentioned in No. 7.1, AK must be given adequate time to place a final order. Even after this time, scrapping of tools and devices requires AK express written approval.

8. Packaging, Dispatch, Transfer of Risk, Documentation

- 8.1 Contractual Goods shall be packed properly with the degree of care usual in commercial practice and in compliance with the relevant legal provisions for transport and storage to preclude any damage or loss. Unless agreed otherwise or specified by AK customer, the currently valid version of AK packaging and delivery specifications shall apply.
- 8.2 The risk of accidental loss and accidental deterioration remains with Supplier until approval by AK goods receiving department.
- 8.3 Supplier is obliged to provide all documents and information necessary to meet customs regulations or other applicable national regulations for the delivery of the Contractual Goods. This applies in particular to documentary evidence of origin, other information on the commercial and preferential-legal origin of goods and materials and any documents on refund of duty. Changes in origin are to be reported immediately and unsolicitedly. If necessary, Supplier must provide evidence of its information on the origin of goods by means of an information sheet confirmed by its customs office.
- 8.4 If Supplier culpably neglects the above obligations, it shall be liable for all costs incurred thereby.

9. Safety, Environment, Hazardous Goods

- 9.1 Supplier's deliveries and services must at least comply with the currently valid versions of all relevant statutory provisions and industrial standards regarding safety and the environment insofar as AK have no exceeding specific demands.
- 9.2 If Contractual Goods are a substance or preparation with dangerous properties within the meaning of the Hazardous Substances Ordinance, or these are created when Contractual Goods are handled, then AK must be informed immediately and comprehensively of the safety regulations to be observed. Supplier must provide AK with a list of all dangerous goods or substances used by Supplier in the implementation of the deliveries. Appropriate safety data sheets must be kept available.
- 9.3 Supplier shall indemnify AK upon first request against any and all claims and damage resulting from improper or illegal use of hazardous goods or substances for which Supplier is responsible.

10. Invoicing, Payment and Assignment

- 10.1 Invoices must contain the full name and address of Supplier and of AK, the tax number or VAT identification number of Supplier, the date of issue, the invoice number, the quantities and kind of Contractual Goods/Services, the date of shipment or performance of services, the price, if applicable the tax rate and the tax due, further AK SAP order number and the name of the employee in charge.
- 10.2 Payment for complete deliveries shall be made following correct invoicing according to the mutually agreed payment term as evident from all commercial documents (order, frame contract, offer, order confirmation, invoice). In the event of and contrary to all expectations any discrepancies in this regard may occur, the more advantageous payment term for the buyer shall apply.
- 10.3 All payments shall be subject to an audit of accounts and do not represent acknowledgement that the Contractual Goods/Services were fault-free, in due time or complete, unless AK expressly states otherwise in writing. AK shall be entitled to make use of its statutory rights of set-off or retention.
- 10.4 Delayed deliveries or delayed receipt of invoice and the delivery of faulty goods according to No. 11 shall entitle AK to withhold the respective payment. Where legally permissible, AK may also make payments using the credit memo procedure.
- 10.5 Supplier may not, without previous written approval from AK, assign rights or obligations from a delivery contract with AK or conclude a subcontract with a third party.

11. Warranty

- 11.1 Unless agreed to otherwise below, Supplier warrants according to statutory law that the Contractual Goods/Services are fault-free.

In particular, Supplier warrants AK that the Contractual Goods/Services conform with all recognised rules of technology, all relevant standards and regulations, the currently valid specifications of AK and with all samples or descriptions supplied by Supplier or AK or accepted by AK, and are fault-free and suitable for the specific purposes required by AK.

Supplier also warrants that adequate quality inspection and testing exists for all goods delivered. Supplier must ensure through suitable inspection and testing measures that the Contractual Goods delivered by him meet the agreed specifications.

- 11.2 In view of Supplier's comprehensive quality assurance measures, AK is comprehensively relieved of its statutory obligations to promptly inspect and give notice of faults to Supplier. AK incoming goods inspection is restricted to the quantity and identity of the Contractual Goods, outwardly apparent transport damage, and faults outwardly apparent when the Contractual Goods are further processed by AK, so that AK has to report such faults to Supplier as soon as they are noticed.
- 11.3 If the Contractual Goods/Services delivered or rendered do not correspond with properties specified in No. 11.1 or other contractual agreements or warranties, then the following shall apply, notwithstanding AK GmbH further rights based on a contract or statutory law:

Notification of a defect by AK shall be deemed to be a demand for immediate remedy. AK shall have the right to select the type of remedy to be provided by Supplier; if no selection is made, fault-free goods must be delivered.

Supplier acknowledges by its acceptance of the order that the meeting of the delivery deadlines specified is a main obligation of the contract, and therefore in the event of a notification of a defect will make all reasonable efforts to provide a remedy as soon as possible.

Supplier shall reimburse AK all costs, losses and damage caused by Contractual Goods/Services that are faulty or do not conform to the contract. Faulty goods shall be returned at Supplier's expense and risk.

If Supplier cannot provide a remedy or if Supplier does not meet the demand for remedy immediately, AK shall be entitled without further notice to withdraw from the contract or to reduce the purchase price. In this case and in other cases AK regards as urgent and of which Supplier has been notified, AK shall also be entitled to remedy the fault itself or to have it remedied by a third party or to obtain the products elsewhere at Supplier's cost.

In the case of faulty parts that are already in the production process or in the field, remedy by Supplier shall be considered impossible. The fault will instead be remedied by AK, its customer or a third party. All costs incurred by or charged to AK for this reason are to be reimbursed by Supplier.

Should a fault become apparent within six (6) months of the transfer of risk, it shall be assumed that the fault already existed at the transfer of risk, unless this assumption be incompatible with the nature of the item or the fault.

If the same Contractual Goods are delivered again and found to be faulty, AK shall be entitled, in the event of a repeat faulty delivery after a written warning, to withdraw also in respect of the Contractual Goods not yet delivered. In this case, Supplier must reimburse AK the cost of re-qualification, also the cost of the dismantling, transport, re-assembly and resumption of operation of the tools. Supplier also undertakes to transfer to AK immediately the supplementary production systems specifically necessary for the production of the Contractual Goods at residualbook value.

- 11.4 The warranty period for Contractual Goods shall be thirty-six (36) months after the first sale of the final product to the final customer. The maximum warranty period however shall be sixty (60) months from the date of passing of risk concerning the goods to be delivered.

For defects of title, the warranty period shall be ten (10) years.

The warranty period is observed if notification of a fault is given to Supplier in time. After such notification the running of the warranty period shall be suspended until the fault is fully remedied. For Contractual Goods/Services provided as remedy within the warranty period, the warranty period begins to run anew at the time at which Supplier has completely fulfilled all demands for remedy.

12. **Liability, Indemnification, Recourse, Insurance**

- 12.1 Unless agreed to otherwise in these Terms of Purchase or in individual contracts, Supplier shall be liable for compensation according to statutory law. Supplier shall be held liable for its representatives, sub-suppliers and subcontractors to the same extent as for its own behaviour.

- 12.2 Supplier shall indemnify and hold harmless AK upon first request from all claims including those arising from fault, subsequent or collateral damages and claims based on product liability lodged against AK by third parties and which are based on the Contractual Goods/Services or the Supplier's behaviour (warranty claims, product liability, infringement of industrial property rights or copyrights or other third party rights etc.).

In the case of claims based on warranty or tort, however, the forgoing shall apply only if Supplier is at fault, and, in the case of warranty claims, if the warranty period specified in No. 11.4 has not yet expired.

In particular, AK reserves the right of recourse against Supplier without further notice if due to a fault in the Contractual Goods AK has to take back a manufactured or sold product, must accept a price reduction or is otherwise confronted with claims deriving from such fault. This recourse shall cover all expenses and compensation which AK may have to incur in relation to its customers or third parties. Subject to the warranty period in No. 11.4 above, this recourse shall become statute-barred at the earliest two (2) months after AK has satisfied the customer's claim and at the latest five (5) years after delivery to AK.

- 12.3 Supplier is obliged to compensate AK for the damage caused if Supplier's information on the origin or conformity of the Contractual Goods/Services is incorrect (e.g. as a result of erroneous certification or a lack of evidence), is not recognised or is subsequently disqualified.
- 12.4 Supplier shall take out and maintain permanently at its own expense a manufacturer's and product liability insurance including the risk of product recall with sufficient insured amount. Supplier shall inform AK annually, at the latest by June 30 of each calendar year, of the continuation of the insurances and the current coverage amount, providing verification where appropriate.
- 12.5 Employees of Supplier carrying out work on AK premises in fulfilment of a contract must observe the applicable safety regulations of AK working regulations which will be provided to them on request. Supplier must ensure that its employees have the same obligation to confidentiality as Supplier itself.

Supplier shall take all necessary safety measures for the avoidance of damage to property or personal injury. AK accepts no liability for accidents to these persons on company premises, unless caused with intent or gross negligence by AK legal representatives or vicarious agents. Supplier shall be liable for damage caused by its activities on AK premises only if fault can be attributed to Supplier.

13. **Drawings, Samples, Tools**

- 13.1 Supplier must review the documents and drawings received from AK and shall confirm non-existence of objections in writing through a feasibility analysis. Should Supplier have any reservations, it must inform AK thereof immediately, in any case before the order is carried out.
- 13.2 Unless expressly agreed to otherwise in writing, AK product specifications alone (drawings, CAD data sets, technical delivery regulations, data sheets, samples, models, packaging and delivery regulations etc.) shall be authoritative and binding. Title and ownership of these remain with AK, even if provided to Supplier.

- 13.3 Series production may not begin until AK has informed Supplier of this in writing and has given its approval for series production. If AK demands the production of reference samples, then series production may not begin until AK has given its express written approval of the first samples under series production conditions. Unless otherwise expressly agreed, Supplier shall bear the costs of the provision of samples.
- 13.4 If Supplier is responsible for subsequent sampling because the inspection documents were incomplete or deviations occurred, then Supplier shall bear the full costs of subsequent sampling and re-qualification.
- 13.5 Unless agreed to otherwise, the agreed payment for the tools ordered by AK and produced by Supplier is due and payable only after full release of the tool. Tools, moulds, devices, samples and the relevant documentation and software (hereinafter "Tools") produced wholly or partially for AK as part of the order are and remain the property of AK. They are only on loan to Supplier.
- 13.6 Supplier is obliged to maintain, to service and to store the tools properly. The cost shall be borne by Supplier as long as the Tools remain on its premises.
- 13.7 After termination or expiration of the concrete contract, or if the business relationship is ended prematurely, or if the order is not carried out – even partially – for any reason whatsoever, all Tools and drawings, samples, models and documents and any copies thereof are to be handed over to AK immediately, unless agreed otherwise in writing, or unless statutory requirements to keep records means the Supplier must keep copies. Supplier may not use the documents for its own purposes or through third parties and may not disclose them to third parties.
- 13.8 For tools and supplementary production systems required specifically for the production/supply of the Contractual Goods to AK and which Supplier does not require for the production of other standard products, and which are not already in AK ownership and possession, Supplier shall grant AK an irrevocable option to acquire possession and ownership of these together with the relevant technical information at residual book value.

14. **Intellectual Property, Rights of Use**

- 14.1 Supplier warrants that the supply and use or exploitation of the Contractual Goods/Services do not infringe any third-party patents, utility models, copyrights or other rights to intellectual property ("protective rights"). This shall not apply to Contractual Goods developed by AK.
- 14.2 Insofar as Supplier's protective rights have been incorporated into the Contractual Goods and are required for their use, Supplier shall grant AK a non-exclusive, irrevocable and transferable license, with no restrictions of time and territory and free of cost, for the use, processing and reproduction of the Contractual Goods. This license shall extend to software belonging to the Contractual Goods including the relevant documentation. The software belonging to the Contractual Goods is freely transferable. Multiple use is expressly permitted and requires no separate payment. Supplier warrants that the firmware and software it supplies is free of viruses or similar defects.
- 14.3 If AK protective rights are affected by an order, Supplier warrants that it will use these protective rights exclusively in the course of and for the purpose of fulfilling the order in the production location approved by AK. At all events Supplier has only a non-exclusive right of use which is limited in time to the duration of its actual business relationship with AK.

15. **Set-Off, Retention**

Supplier may set off claims against AK only to the extent that this is done on the basis of an undisputed claim or a claim subject to a final and binding court decision. Supplier may refuse performance or exercise a right of retention only if Supplier's counter-claim is undisputed or a claim subject to a final and binding court decision.

16. **Approval, Title and Ownership**

16.1 Contractual Goods shall be deemed approved as in accordance with the contract and required quality if they fully comply with the specifications attached to the order and AK has confirmed this in writing through full approval of the first sample inspection documents.

16.2 Title and Ownership of Contractual Goods shall pass to AK immediately upon delivery. Any retention of title and ownership on the part of Supplier shall be effective only by express written agreement or confirmation by AK.

17. **Force Majeure**

Force majeure, labour conflicts, operational breakdowns beyond the control of the affected party, riots, administrative measures and other unforeseeable and inevitable events shall entitle AK – without prejudice to AK other rights – to withdraw wholly or partially from the contract insofar as their duration is not negligible and they cause a considerable reduction in AK requirements. AK may only claim compensation if not notified immediately of the occurrence of the force majeure event with specification of the probable delay in delivery.

18. **Termination for Cause**

18.1 In addition to and as a supplement to statutory rights of termination and other contractually agreed rights of termination, AK may terminate a contract completely or partially for cause at any time in the event of:

- a material breach of contract by Supplier which default is not cured within an appropriate period, at most thirty (30) days after Supplier has been notified of the breach in writing;
- an existing or imminent substantial deterioration of Supplier's financial situation, thus jeopardizing the fulfilment of contractual obligations to AK. A substantial deterioration in its financial situation shall, in particular, be assumed if Supplier does not pay its own suppliers, if its cheques are not honoured or its bills of exchange go to protest;
- a permissible petition for the opening of insolvency proceedings has been made, Supplier has ceased its business activities, the legal entity of Supplier has been dissolved for reasons other than the opening of insolvency proceedings or the dismissal due to insufficient assets;
- a substantial change to Supplier's ownership or equity interest, a change to the board of management or other far-reaching changes on the part of Supplier which AK may reasonably believe would jeopardize proper performance of the contract.

18.2 In the case of termination, Supplier shall remain obliged to continue to fulfil existing contractual agreements to their full extent until the termination becomes effective, and beyond insofar as contractual agreements are not covered by the termination.

19. **Place of Performance, Governing Law, Place of Venue and Final Provisions**

- 19.1 The place of performance shall be the place to which according to the order specification the Contractual Goods/Services are to be delivered; if not specified the head office of AK.
- 19.2 The contractual relations between AK and Supplier, including all past and future legal relationships, shall be governed exclusively by the laws of Germany to the exclusion of all conflict of law alternatives and the terms of the CISG (UN Convention on Contracts for the International Sale of Goods).
- 19.3 The exclusive place of venue for all legal disputes arising directly or indirectly from contractual relationships based on these Terms of Purchase shall be Nuremberg, Germany. AK shall be optionally entitled to bring action against Supplier also at the courts competent at Supplier's head or branch office, or at the court having jurisdiction at place of performance.
- 19.4 Should any provisions of these Terms of Purchase and of the further agreements made be or become invalid, this shall not affect the validity of the remaining provisions. In this case the parties undertake to agree a legally permissible provision which corresponds to or comes closest to the desired commercial effect. This also applies to the filling of omissions.