

Terms & Conditions of Sale and Delivery

- 1. Acceptance and Purchase Orders.** ITW Automotive Products GmbH is herein referred to as "ITW" and the customer purchasing products ("Products") or services ("Services") is referred to as "Purchaser." These terms and conditions of sale ("Terms"), any ITW quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein ("ITW Documents" and together with these Terms, the "Agreement"), constitute the complete terms governing the sale of Products and Services. ITW HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR IN PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not ITW clicks on an "ok," "I accept," or similar acknowledgment. Commencement of any work by ITW or Purchaser's acceptance of delivery of the Products or Services will manifest Purchaser's assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of an ITW Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of ITW; (b) ITW Document terms; (c) these Terms. ITW reserves the right to reject any order by the Purchaser or any release within 5 days of receipt of the order.
- 2. Quotations.** Quotations are only valid in writing and for 3 months from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser's credit. ITW may refuse orders and has no obligation to supply Products or Services unless ITW issues an order acknowledgement or upon the shipment of Products or commencement of Services.
- 3. Prices and Payment Terms.** Prices are in EURO. Prices do not include any sales, use, value-added or other taxes, import or export duties, customs costs, license fees, shipping charges or like costs, fees or charges ("Fees") related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. Any agreement to the contrary requires specific written acceptance by ITW. If ITW is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify ITW therefore. Terms of payment are 30 days from the date of reception of ITW's invoice. Overdue invoices will incur interest at the rate of 9 percentage points above the basic rate of interest in terms of § 288 para. 2 of the German Civil Code ("BGB"). Purchaser may only set off or withhold payment in respect to counterclaims which are undisputed or have been finally determined in a legally binding manner. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify ITW for all associated costs incurred by ITW, including reasonable attorney fees and court costs as delay damages, not excluding any other rights or remedies ITW may have under the Agreement and the applicable law.
- 4. Credit Approval.** All shipments are subject to approval by ITW's credit department. ITW may invoice Purchaser and recover for each shipment as a separate transaction. If, in ITW's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then ITW may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser's purchase orders.
- 5. Cancellation or Modification.** ITW may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of ITW's Products or Services upon 90 days' written notice to Purchaser. Once ITW has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with ITW's written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.
- 6. Inspection / Non-Conforming Shipments.** Purchaser shall duly comply with the obligations of inspection and notification owed under § 377 German Commercial Code (HGB). Purchaser shall provide written notice of material defects, accompanied by a description of the defect, without undue delay. If Purchaser fails to provide ITW such written notice without undue delay, Purchaser will be deemed to have accepted the Products as conforming to the specifications applicable to the sale. Purchaser may not return any Product without ITW's prior written authorization. Any return authorized by ITW must be made in accordance with ITW's return policies. Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless ITW agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale.

7. Delivery, Risk, Retention of Title. ITW anticipates use of common carriers for shipment of Products. The carrier, and not ITW, will bill for freight rates and other shipping charges. Payments for such charges shall be paid by Purchaser directly to the carrier. All Products will be shipped ExWorks ITW's facility (Incoterms 2010). Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. ITW may ship items in a single or multiple shipments.

Risk in the Products shall pass to Purchaser in accordance with the applicable Incoterms 2010 shipping term. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after delivery. Without prejudice to the provisions of Section 6., Purchaser must notify ITW and the delivering carrier immediately from date of receipt of Products, of any damage or shortage, and afford ITW a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account, and claims for such loss must be made solely against the carrier; § 438 HGB applies.

ITW retains title to the Products until receiving full payment. If the validity of this reservation of title is subject to certain conditions or special formal requirements in the country of destination, Purchaser shall ensure that they are fulfilled. Purchaser may not pledge or assign as security the Products prior to the passage of title. In the event of attachments and seizures or other dispositions by third parties, Purchaser must inform the third party of ITW'S title and notify ITW without undue delay. Purchaser is entitled within the scope of his normal business transactions to resell the Products for which ITW reserves ownership under the following conditions: Purchaser must resell Products under reservation of ownership if the Products are not immediately paid in full by the third-party customer. There shall be no entitlement to a resale if Purchaser is in default of payment. Purchaser hereby assigns the claims arising under the resale or under any other legal grounds to ITW to secure ITW's claims. In the event that co-ownership is created, the assignment shall only encompass the percentage of claims corresponding to ITW's co-ownership. Purchaser shall remain entitled to collect the claims assigned to ITW after their assignment for as long as Purchaser complies with his payment obligations to ITW in accordance with the Agreement. ITW may demand at any time that Purchaser discloses the assigned claims and the debtors thereof, provides ITW with all information necessary for collecting such claims, delivers to ITW the documents pertaining thereto and informs the debtor of the assignment. Any processing of the reserved Products by Purchaser shall always be on ITW's behalf. If the reserved Products are blended, bonded or processed with items to which ITW does not own title, ITW shall acquire co-ownership in the ratio of the invoiced value of the reserved Products to the other processed items at the time of processing. If ITW's Products are blended, bonded or processed with other movables to a single item and if the other item is to be viewed as the main item, it shall be deemed that Purchaser shall transfer proportionate co-ownership to ITW, provided that Purchaser is the owner of the main item. Purchaser shall act as custodian of the property or joint property for ITW. In all other respects, the same provisions shall apply for the item created by processing, bonding or blending as in the case of reserved Products. In the event of actions on the part of Purchaser in breach of contract, including, but not limited to, default of payment, ITW shall be entitled to repossession following a notice of default, and Purchaser shall be obliged to surrender possession. Neither the enforcement of the reservation of title nor the pledge of the Products by ITW shall be deemed to be a rescission of the Agreement or parts thereof. An application for the initiation of insolvency proceedings concerning Purchaser's assets shall entitle ITW to rescind the Agreement or parts thereof, in particular the affected purchase order, and to demand immediate return of the Products. ITW reserves ownership to the Products until all of ITW's claims against Purchaser within the parties' current business relationship have been satisfied. ITW agrees to release the security to which ITW is entitled to the extent that its invoiced value not only temporarily exceeds ITW's as yet unsatisfied (residual) claims by more than 15%.

8. Warranty. Subject to Section 7 (retention of title), ITW warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under ITW. ITW further warrants that for a period of one year from the date of delivery to the common carrier (the "Warranty Period"), under normal use and given proper installation and maintenance as determined by ITW, the Products: (a) will conform to mutually agreed upon written specifications; and (b) will be free from substantial material defects. Claims on the part of Purchaser because of defects shall require that Purchaser has duly complied with the obligations of inspection and notification according to Section 6. In ITW's discretion ITW shall deliver a defect-free Product or remedy the defect, provided the subject of delivery is proven to have already been defective upon the passing of risk pursuant to Section 7. ITW reserves title to replaced parts provided within the scope of the replacement procedure.

No claims for defects shall be created and no liability pursuant to Section 9. shall exist pursuant to causes which are not attributable to any fault on the part of ITW, such as: Normal wear and tear, excessive use, improper interference or repair work on the part of Purchaser or third parties, incomplete or false information given by Purchaser, inappropriate or improper use, faulty operation, installation or start-up, faulty or careless handling, improper maintenance, use of unsuitable operating materials/substitute materials, hazardous ambience conditions unknown to ITW, chemical, electro-chemical or electrical influences, changes to the Products made without ITW's consent. Purchaser shall grant ITW the required time and opportunity for subsequent performance.

If ITW is not given this opportunity, ITW shall not be liable for any consequences resulting from such failure. Purchaser shall only have the right to remedy the defect himself or through a third party and demand reimbursement of costs incurred from ITW for reasonable necessary expenses in cases of emergency where plant safety is endangered or to avoid unreasonably greater damage, in which case ITW must be informed immediately.

In the event that Purchaser culpably contributes to the cause of the defects, including, but not limited to, Purchaser's failure to comply with the duty to avoid or reduce damage, ITW shall have, in case of subsequent performance, a claim to damages against Purchaser which corresponds to Purchaser's contribution to the cause of the defect.

Purchaser shall have at his option a right to rescind the contract subject to – and taking into account the exceptions under statute - a period of grace set for ITW to allow subsequent performance with respect to a defect is expired without success. If the defect is insignificant, Purchaser may only demand a reasonable reduction of the purchase price of the defective Product. Otherwise, the right to a reduction of the price shall be excluded.

9. [Service Warranty. ITW warrants that (a) it will perform Services in a competent and professional manner and in accordance with industry standards; and (b) the Services shall conform to any mutually agreed upon specifications or statements of work. Purchaser may only rescind the contract for a breach of the foregoing warranty, if and only to the extent the Services are proven to be demonstrably unusable for the Purchaser.]

10. Limitation of Liability. ITW can only be held liable, irrespective of the legal grounds for liability, in the case of:

- intent;
- culpable breach of major contractual obligations;
- gross negligence on the part of corporate bodies or executive officers;
- culpable bodily injury, death and damage to health;
- fraud;
- personal injury and property damage to personal items, provided that liability exists under the Product Liability Act for privately used items.

In the event of the breach of major contractual obligations ITW shall also be liable for gross negligence on the part of non-executive employees and for simple negligence on the part of corporate bodies and executive officers. In the event of simple negligence, ITW's liability is limited to reasonably foreseeable damage typical to the given type of contract.

In particular where the performance of work in accordance with Purchaser's specifications is concerned, any liability for the infringement of industrial property rights of third parties shall be excluded. ITW shall not be obliged to verify whether industrial property rights of third parties are affected.

11. Product Use. Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser's method of application. All physical properties, statements and recommendations are either based on the tests or experience that ITW believes to be reliable, but they are not guaranteed.

12. Recall. Purchaser shall not charge ITW for any recall costs without ITW's written consent or without final determination of ITW's liability for such recall costs in a legally binding manner.

13. Tooling/Molds/Dies. All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of ITW. Any material, tooling or equipment furnished to ITW by Purchaser will remain the property of Purchaser with title to and right of possession remaining in Purchaser.

14. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by ITW and all rights therein (collectively, "Intellectual Property") will remain the property of ITW and will be kept confidential by Purchaser in accordance with these Terms.

Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to ITW upon request from ITW. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use ITW's Products or receive the Services purchased from ITW.

15. Use of Trademarks and Trade Names. Purchaser shall not use, directly or indirectly, in whole or in part, ITW's name, or any other trademark or trade name that is now or may hereafter be owned by ITW (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by ITW in writing. Purchaser hereby acknowledges ITW's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by ITW. Purchaser shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Purchaser shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Purchaser shall provide reasonable cooperation to ITW with respect to any efforts of ITW to protect, defend or enforce its rights to the Trademarks. Should Purchaser cease being an authorized customer of ITW for any reason, Purchaser shall immediately discontinue any formerly permitted use of ITW's name or the Trademarks.

16. Confidential Information. All information furnished or made available by ITW to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without ITW's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by ITW; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to ITW with respect to such information.

17. Audit. Unless agreed to in writing by an officer of ITW, neither Purchaser nor any Purchaser representative, may examine or audit ITW's cost accounts, books or records of any kind or any matter, or any other data that ITW, in its sole discretion, considers confidential or proprietary.

18. Infringement and Indemnification. Except as set forth below, ITW agrees to defend and indemnify Purchaser against any non time-barred claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of ITW's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies ITW written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with ITW in the defense and settlement of such Claim; and (c) Purchaser allows ITW the right to defend and settle such Claim at ITW's expense. If a suit or claim results in any injunction or order that would prevent ITW from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of ITW, otherwise cause ITW to be unable to supply such parts or Products, ITW may do one or more of the following: (i) secure an appropriate license to permit ITW to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if ITW cannot accomplish the actions specified in subsections at terms ITW finds commercially reasonable (i) – (iii), then in ITW's sole discretion, ITW may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, ITW shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to cases in which ITW is not responsible for said infringement /misappropriation/violation, for example in case of: (1) the use of any part or Product, (2) the combination of any part or Product with any other part or product not supplied by ITW, or (3) any part or Product or process that is designed or specified by Purchaser.

19. [Service Terms / Replacement Parts. The following terms and conditions apply to any on-site Services provided by ITW:

A. Services or replacement parts will be provided at ITW's then current service rates or prices for replacement parts in effect at the time orders for the service or replacement parts are placed. Unless otherwise agreed to in writing by the parties, ITW's obligation to provide service / replacement parts shall cease three years from the end of production of the Products for the Purchaser.

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B. Purchaser shall prepare the site for the Services. If the site is not prepared for the Services upon ITW service personnel's arrival at the agreed upon time and date for Services, ITW may charge Purchaser for any delay and/or travel time at ITW's regular service rates.

C. Purchaser shall provide ITW with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses, that are applicable to Purchaser's local jurisdiction.

D. ITW may refuse, without any liability, to provide Services and to allow ITW service personnel to suspend Services or vacate any site where, in ITW's opinion, performance of Services would pose a risk to the safety of any person. In such event, Purchaser is responsible for payment of any delay and/or travel time at ITW's regular service rates.

E. Purchaser is solely liable for all damages or injuries caused or contributed to by Purchaser that may occur on the site, except to the extent damages or injuries are caused by the negligence or willful misconduct of ITW service personnel within the limitations of above Section 10.

F. Purchaser must provide at least 24 hours' notice of cancellation of any Service order. If Purchaser cancels with less than 24 hours' notice, Purchaser is responsible for any costs incurred by ITW caused by such cancellation.]

20. Compliance. Purchaser agrees to comply with all rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws and all applicable laws in territories where the Products are being used or processed by the Purchaser.

21. Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint ventures or as agents for one another or as authorizing either party to obligate the other in any manner.

22. Force Majeure. ITW will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of ITW's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable ITW to perform.

23. Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or Purchaser's purchase order may be made without ITW's prior written consent. ITW may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

24. Waiver. In the event of any default by Purchaser, ITW may decline to ship Products or provide Services. If ITW elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, ITW's actions will not constitute a waiver of Purchaser's default or any other existing or future default, or affect ITW's legal remedies.

25. Insolvency. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

26. Termination. ITW reserves the right to terminate the Agreement or any order or release under the Agreement upon 90 days' written notice.

27. Limitation of Actions/Choice of Law/Litigation Costs. Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of Germany upon exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and litigated in the courts of Würzburg. ITW may choose to file legal action against the Purchaser at the Purchaser's registered office.

28. Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

29. Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect. Instead of the unlawful provision, the statutory law shall apply.

30. Integration and Modification. The Agreement constitutes the entire agreement between ITW and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.