

## **General Conditions of Sale and Delivery of Walther Flender GmbH / National Customers Flennor Automotive Unit**

(The following terms and conditions apply only to businesses)

Last revised: December 2016

### **1. General**

1.1 Deliveries, services and Quotations of Walther Flender GmbH are based exclusively on these General Conditions of Sale and Delivery. These terms and conditions are an integral part of all contracts concluded and apply also to all future business relations, also if not expressly agreed.

1.2 Upon granting of the contract, however no later than upon acceptance of the delivery or service, these General Conditions of Sale and Delivery are acknowledged by the customer.

1.3 Contrary terms and conditions or diverging counter confirmations of the customer are non-binding for us, also if we have not expressly objected to them. In order to be legally effective, they require our express written acknowledgment.

1.4 There are no amendments and supplements, and no verbal subsidiary agreements to this contract. For reasons of proof, amendments and supplements to this contract must be in writing.

### **2. Offer and conclusion of contract**

2.1 The cost estimates and offers are subject to change without notice and are not binding. All documents relating to the contract, such as illustrations, drawings and weight information, are to be deemed as only approximate, insofar as they are not expressly designated as binding. We retain the ownership and copyright on all catalogues, drawings, cost estimates and other documents. They may not be made available to third parties.

2.2 The customer is liable for the correctness of specified dimensions and for the correctness of design drawings and similar documents provided by himself, in addition to other information that could affect the suitability of the ordered elements for the intended use. The customer is also liable for ensuring that no patent or other property rights of third parties are violated by the use of the drawings and documents. In this respect the customer shall release us from any liability claims of third parties at the initial request. We are not obligated to examine whether property rights of third parties are violated by execution of the documents provided to us. We shall be obligated to make plans marked by the customer as confidential available to third parties only with the customer's approval.

2.3 The contract is not brought about until written confirmation of the order and corresponding to the content thereof or as a result of acceptance of the delivery by the customer. If there is no written confirmation, our delivery order or our invoice shall also serve as the order confirmation.

2.4 We reserve the right, also after sending the order confirmation, to make alterations to the drawings and descriptions included with our offers and order confirmations, as a result of manufacturing considerations or improvements, experience and progress in technology, insofar as this is reasonable for the customer in consideration of our interests in the modification. The same applies to weight and size differences that are usual in the trade.

2.5 Production-related excessive or reduced quantities in series production of up to 5% in relation to the ordered quantity are allowed, insofar as this deviation in quantity is reasonable for the customer in consideration of our interests.

### **3. Delivery**

3.1 The delivery periods stated in the order confirmations are non-binding and approximate. They are only binding if expressly designated by us as binding.

3.2 The delivery period begins with the date of the written order confirmation; if further inquiries are necessary, it begins after all points have been clarified. If advance payments have been agreed to, the delivery period begins with receipt of the first payment.

3.3 The delivery period is complied with if by the time of its expiration the delivery object has left our works or we have notified the customer that it is ready for dispatch.

3.4 In justified special cases, in particular for operational reasons, we are entitled, after prior notification, to execute partial deliveries and partial services and to invoice them separately.

3.5 Delays in deliveries and services due to force majeure or other circumstances beyond our control and which demonstrably have a significant influence on the manufacture or delivery of the delivery object – including in particular strikes, lock-outs, official directives, shortage of material, non-availability or non-deliverability of goods, etc. – also for our suppliers, are not our responsibility even in the event of bindingly stipulated delivery periods and deadlines or within a delay in performance. We shall inform the customer promptly of the beginning and ending of such hindrances. In the event of hindrances of a temporary duration, we are entitled to postpone the deliveries or services by the duration of the hindrance plus a reasonable lead time. In the event of impossibility of performance, we have the right to cancel the contract in whole or in part concerning the part not yet fulfilled. In this case, the customer shall also be informed promptly of the non-availability of the service and any counter-performance already provided shall be refunded without delay. The customer can request us to state whether we will cancel the contract or deliver within an appropriate period.

3.6 Our deliveries are subject to proper and timely delivery by our suppliers in all cases. This proviso applies insofar as we in turn have concluded a corresponding covering transaction in due time and/or are not ourselves responsible for the delayed delivery by our suppliers.

3.7 Insofar as we are responsible for the failure to comply with bindingly assured periods or deadlines or we are in default with the delivery/service, the customer is entitled, after expiration of a suitable period, to cancel the contract; further liability for damages is provided for in Section 9 of these Terms and Conditions.

3.8 If the customer is in default of acceptance, we are entitled after setting a suitable deadline to no avail, to request compensation in lieu of the delivery for the amount of 20% of the stipulated contract amount, notwithstanding the possibility of proving higher damages. The customer on his part retains the right to prove that no damage was incurred or the damage was significantly lower.

### **4. Dispatch and transfer of risk**

4.1 Place of performance for the delivery is – for deliveries from our warehouse – Düsseldorf, and otherwise the head office of our respective supplying plant.

4.2 All deliveries are carried out at the risk of the customer, also in the event of partial deliveries or if we have undertaken to perform other services, e.g. shipping charges or transport.

4.3 In the absence of special instructions, the packaging and the transportation route and transportation means will be chosen by us at our discretion. Acceptance of the goods from us without objection through the railway, post office, carrier or other transport company shall be deemed confirmation that the packaging is free of defects at the time of dispatch and excludes any liability through us due to improper packaging or shipment for damages or losses occurring en route, insofar as we are not peremptorily liable as a result of intentional behaviour or gross negligence.

4.4 The risk of accidental loss or accidental deterioration of the goods is transferred to the customer upon transfer of the goods to the railway or other carrier, however no later than upon leaving our warehouse or, in the event of direct delivery, upon leaving our supplying plant, in all cases – e.g. also for FOB and CIF transactions. If the customer picks up the delivery himself, the transfer of risk takes effect at the time the goods are made available and dispatch of the notification of readiness for delivery.

4.5 The shipment will be insured against transport damage and other risks only at the express request and at the expense of the customer.

4.6 Goods accepted before dispatch shall be deemed as delivered according to the stipulated conditions.

4.7 If the dispatch or acceptance is delayed at the request or by fault of the customer, then the risk of accidental loss or accidental deterioration is transferred to the customer at the time we notify him verbally or in writing of the readiness for delivery or readiness for acceptance. In this case, we are entitled to charge the customer for the additional expenses incurred beginning one month after notification of the readiness for delivery.

4.8 If the customer is in default of acceptance we can exercise our right pursuant to Section 3.8 or dispose freely of the delivery object and instead deliver an equivalent delivery object within a reasonable period according to the terms of the contract.

## **5. Prices**

5.1 Our prices are net prices from the supplying plant and do not include the applicable statutory value-added tax. Costs of packaging, transport and freight will be charged separately.

5.2 Subsequently agreed modifications to the contract entitle us to charge the customer for the additional costs thereby incurred. Cost savings after deduction of the additional costs caused by the change will be refunded to the customer.

5.3 The prices stipulated upon conclusion of the contract are based on the valid cost factors at that time, in particular material prices, wages, energy, taxes, etc. If the stipulated delivery date is more than 4 weeks after the conclusion of the contract, we are entitled to adjust the price accordingly, if the above-mentioned cost factors change.

## **6. Conditions of payment**

6.1 In the absence of an express agreement, the net amount is due without discount 30 days after receipt of the invoice, so that the stipulated amount is available to us on the due date at the latest. Special agreements require our written counter-confirmation.

6.2 Checks are accepted only as conditional payment. If, by way of exception, we declare our approval of payment by bill of exchange, we will accept discountable and properly taxed bills of exchange only after concluding a corresponding written agreement. The customer shall bear the costs of discounting and collection.

These costs shall be due immediately. We shall assume no liability for the timely submission, notification and return of a bill of exchange.

6.3 In the event of a default that occurs due to non-payment within the period stated in Section 6.1, we are entitled to request interest based on the interest calculated by our bank for business loans, however at least interest for the amount of 9 percentage points above the applicable basic interest rate. Our right to assert further claims for damage due to default remains in full force.

6.4 All of our receivables shall become due immediately, if the conditions of payment are not fulfilled without a warranted reason or if after conclusion of the contract we become aware of a significant worsening of the financial circumstances of the customer. We are entitled to execute any then outstanding deliveries and services only in return for advance payment or collateral security or to reduce or completely cancel promised trade credits in this case. If advance payment or collateral security is not provided after expiration of a reasonable grace period, we are entitled to cancel the contract in whole or in part. In that case we retain the right to assert claims for damages for the unnecessary expense incurred, for the lost profit and for further damages.

6.5 The customer is entitled to set-off counter-claims only if these counter-claims are based on other contractual relationships and only if they are recognized by declaratory judgment or if they are undisputed.

## **7. Reservation of title**

7.1 We reserve the ownership of all goods delivered by us, until the customer has paid all receivables from the business relationship including future receivables incurred, also from contracts concluded at the same time or a later time and from any current account balance, and until full release from contingent liabilities that we have assumed in the interest of the customer.

7.2 The customer shall treat and protect the reserved goods with care and conduct the necessary and usual inspection, maintenance and preservation tasks at his expense. The customer may neither pledge nor transfer ownership of the reserved goods for the duration of the reservation of title. Access by third parties to the reserved goods, e.g. by way of seizure or confiscation, and damage or destruction shall be reported to us in writing without delay.

7.3 If the customer fails to fulfil a due service as agreed, in particular if the customer is in default of payment of receivables, we are entitled, after setting an appropriate payment deadline to no avail, to cancel the contract and to request the return of the reserved goods. We are then additionally entitled to request compensation from the customer for the damage incurred.

7.4 a) The customer is authorized and entitled within the scope of an ordinary business transaction, which does not include the so-called check/note procedure, to resell the reserved goods. If the customer is in default with payments from the business relationship with us, we can prohibit reselling of the reserved goods. If the customer grants his customer an extension for the purchase price, then he is authorized to resell if he likewise reserves the ownership of the sold goods in relation to his customer.

b) The customer hereby assigns to us the demanded purchase price or other entitlements to remuneration including all ancillary rights from the resale or other sales transaction from his customer. They shall serve as security to the same extent as the reserved goods. The customer is entitled and authorized to resell or otherwise utilize the reserved goods only if it is assured that the resulting receivables are transferred to us, in particular that no assignment prohibition in the relationship of the customer to his customer exists.

c) If the reserved goods are sold by the customer together with other goods not provided by us, then the assignment of the receivables from the sale applies only to the amount of the invoice value of the respective reserved goods sold. In the sale of goods of which we have part ownership according to Section 7.5, the assignment of the receivables applies to the amount of the value of that share of joint ownership. If the assigned receivable is included in a current account, then the customer hereby assigns to us a part of the balance corresponding to the amount of this receivable – including the corresponding part of the ending balance – from the current account. If interim balances are drawn and it is agreed that they will be carried forward, then the receivable from the interim balance to which we are entitled according to the above stipulation shall be treated as assigned to us for the next balance.

d) The customer is authorized until revoked to collect the receivables assigned to us. We cannot exercise this right of revocation as long as the customer properly satisfies his obligations of payment from the business relationship with us and as long as we do not become aware of circumstances that significantly diminish the customer's creditworthiness. If the prerequisites for exercising the right of revocation are given, then we can request that the customer assigns to us any claims for return against his customer or informs us of the assigned receivables and their debtors, provides all information necessary for collecting those receivables, surrenders to us the corresponding documents and notifies the debtors of the assignment. In addition, we are ourselves authorized to notify the debtors of the assignment.

7.5. The customer is entitled to process the reserved goods in the ordinary course of business, as long as he is not in default of payment. The processing or transformation of the reserved goods shall be performed for us as the manufacturer pursuant to Section 950 of the German Civil Code, without binding us. The processed or transformed goods are deemed reserved goods in accordance with Section 7.1. In the event of processing by the customer of reserved goods with other objects not belonging to us, we acquire joint ownership of the new object in proportion of the value of the reserved goods to the total of the values of the other objects used; the time of processing is decisive. If the reserved goods are mixed, compounded or blended with other objects and our ownership of the reserved goods thus expires, then the customer hereby assigns to us the property rights to the mixed or compounded object or the unified object to which he is entitled in proportion of the value of the reserved goods to the total of the values of the other mixed, compounded or blended objects; the time at which the incident occurs is decisive. The customer shall also preserve for us, at no charge, the objects owned jointly by us in accordance with the above provisions. The stipulations of the entire Section 7 apply accordingly to the joint ownership shares according to Section 7.5.

7.6 At our request, the customer shall provide us at any time with information on the whereabouts of the reserved goods and on the receivables resulting from the resale or other disposal.

7.7 Our rights from the reservation of title according to Section 7 shall apply until full release from contingent liabilities (e.g. suretyships or acceptances), which we have assumed in the interest of or at the request of the customer.

7.8 Should the reservation of title according to the above provisions be invalid according to the laws of the country in which the reserved goods are located, then the nearest equivalent security according to the laws of that country shall apply. If any action is required on the part of the customer in this connection, the customer shall be obligated at our request to undertake these actions.

7a. Tool costs

7a.1 The tools, devices and special measuring equipment manufactured for the production of parts, regardless of whether they were paid for in whole or in part by the customer, remain our property without restriction.

7a.2 We shall bear the costs for the usual maintenance and the usual repairs of the tools.

7a.3 If the delivery is not executed for reasons within the responsibility of the customer, we are entitled to charge him for the full tool costs incurred up until that time. This also applies in the event that the delivery is executed to such a small extent that amortization of the tool share acquired by us is not possible.

## **8. Warranty**

8.1 The customer shall examine the received goods for defects immediately upon arrival. Discernible defects, incorrect or incomplete deliveries, variations in quantity or dimensions and transport and packaging damages must be noted by the customer immediately upon arrival of the goods on the bill of lading or delivery order and we must be notified in writing of the defect without delay, however no later than seven days after delivery of the goods. If the customer does not report defects within this period, then the goods shall be deemed free of defects and approved in accordance with the contract.

8.2 Defects that cannot be detected within this period even upon careful examination must be reported to us in writing as soon as they are discovered. The same applies to defects that occur during the warranty period. If a defect is not reported to us within the stipulated period, then warranties shall be void for this defect.

8.3 We shall grant no warranty in particular in the event of unsuitable or unauthorized use of the goods, incorrect assembly or commissioning by the customer or third parties, normal wear, incorrect or negligent handling, incorrect maintenance, unsuitable operating material, faulty construction work, unsuitable foundations or in the event of chemical, electro-chemical or electrical influences, insofar as we are not responsible for them.

8.4 In the event of a defect, we can choose to eliminate the defect or deliver an object free of defects. All substituted products and parts become our property, insofar as they were not already our property.

8.5 If the elimination of a defect by means of rectification or replacement is unsuccessful within a reasonable period, then the customer can request reduction of the purchase price with respect to the defective product or, if a construction service is not the subject of the warranty for defects, cancel the contract. Compensation for damages shall be determined exclusively based on Section 9.

8.6 The limitation period shall be determined exclusively based on Section 10.

## **9. Liability of supplier, exclusion of liability**

9.1 If the delivery item can't be used by the customer as may be required by the contract due to culpably neglecting or incorrect consulting before or after conclusion of the contract or due to culpably breaches of other contractual secondary obligations – in particular instructions for operation and maintenance of the delivery item – then provisions according to chapter 8 and 9.2. apply to the exclusion of further claims.

9.2 Where there has been no damage to the delivery item itself the supplier will only accept liability - for whatever legal reasons - in the event of

- a. malicious intent,
- b. gross negligence of the proprietor/ executive bodies or management staff,
- c. negligent injury to life, body or health,
- d. fraudulent concealment of defects
- e. promise of guarantee

- f. defects of the delivery item itself for which legal liability exists for personal or material damages to objects in private use.

In the case of intent, gross negligence, culpable breach of significant contractual duties, the supplier is also liable for gross negligence of employees and for slight negligence, in the latter case limited to reasonable, foreseeable typical contract damage. Further claims are excluded.

#### **10. Statute of limitations**

All claims by the customer – for whatever legal reasons - are subject to a limitation period of 12 months starting with the date of delivery. Claims for damages by the customer according to chapter 9.2 a – d and f are subject to the statutory limitation periods. The statutory limitation periods also apply for defects in a building or for objects that were used for a building in accordance with their normal manner of use and caused the building to be defective.

#### **11. Final clauses**

11.1 Place of jurisdiction for deliveries and payments (including actions on checks or bills of exchange) and all disputes arising between the parties is Düsseldorf. However, we reserve the right to take legal action at the location of the customer's head office. The relations between the parties are governed solely by the applicable laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

11.2 The customer can assign his rights and obligations from this contract to third parties only with our written approval. The assignment of a pecuniary claim remains unaffected by this clause. This approval is not required, however, if the assignment is made within the framework of an effectively extended reservation of title, which the customer agrees upon with a third party within the scope of the provisions of Section 7 above.

11.3 If individual provisions of the above terms and conditions or parts thereof become invalid, this will not affect the validity of the remaining provisions.

Walther Flender GmbH

Düsseldorf, Germany

13<sup>th</sup> December 2016