

## General Purchase Conditions

Status: 21 September 2016

### 1. General – scope

- 1.1 All offers, agreements and services of Stackpole Powertrain International GmbH (hereinafter referred to as “Stackpole”) are provided solely on the basis of these General Purchase Conditions (hereinafter referred to as “GPCs”). The GPCs shall therefore always prevail. Stackpole shall not recognise contrary conditions of its contractual partner (hereinafter referred to as “Supplier”), or terms diverging from GPCs conditions unless Stackpole explicitly approves their validity in writing. These GPCs shall also apply when Stackpole unreservedly accepts the delivery despite being informed of Supplier terms and delivery conditions contrary to or diverging from these GPCs.
- 1.2 These GPCs apply solely to entrepreneurs in the sense of Section 14 of the German Civil Code (§ 14 BGB).
- 1.3 These GPCs also apply to all future transactions with Supplier. Acceptance of an order, or at the latest by shipment of the goods, confirm Supplier’s acceptance of these purchase conditions.
- 1.4 Additional agreements or the modification, addition or cancellation of this agreement must be submitted in writing.

### 2. Offer and conclusion of contract

- 2.1 Supplier shall deliver quantity and quality of goods precisely in accordance with the order specification and shall expressly indicate any discrepancies. In the case of the latter, agreements shall only be concluded with the written consent of Stackpole. Silence shall be considered as a rejection.
- 2.2 Offers shall be submitted in writing, free of charge.
- 2.3 Any concerns that Supplier has against the design intended by Stackpole – for example because content and interpretation of the claims are not clear – shall immediately be expressed to Stackpole in writing prior to order delivery. In such cases a further written communication by Stackpole is required prior to order delivery.
- 2.4 The documents, drawings, weights, dimensions and samples, etc., which are have been specified in the order are binding features. Supplier shall not deviate from descriptions set out in the offer. Purchased items must have the properties or characteristics indicated in the samples or quality assurance agreements. In the event that Stackpole requires outturn samples, further production shall only resume after written approval of the sample has been obtained.
- 2.5 Orders shall only be placed in writing. Orders placed verbally, by telephone or telegraph shall not be valid unless they are confirmed in writing by Stackpole. The same applies to additions or changes.
- 2.6 Supplier is obliged to accept the order within a period of ten days. In the event that the order is not confirmed in writing within ten days, the order shall be deemed void and can no longer be accepted.
- 2.7 Supplier guarantees that the delivered goods comply with the relevant statutory accident prevention regulations, DIN standards, VDE regulations, applicable police regulations, other legislation, good engineering practice and with the quality agreements that have been concluded. Supplier guarantees that delivery items are free of defects in design, material and workmanship. In particular, Supplier shall ensure that delivery items have the properties specified by Stackpole and are fully functional.

### 3. Terms of delivery

- 3.1 The deadline for the delivery as specified in the order confirmation of Supplier is binding unless otherwise agreed to in writing. The delivery time shall begin with the receipt of the order by Supplier.
- 3.2 Items shall be shipped DAP (most recent Incoterms) to the place designated by Stackpole, including packaging, so that the delivery time is met if the ordered goods are received on the agreed date at the named place. If, in exceptional cases, the agreement in writing requires Stackpole to bear the cargo and other shipping costs, Supplier shall ensure that the shipment is expedited at the cheapest prices and conditions (utilisation of discounts, etc.) unless Stackpole issues contrary instructions. In cases of doubt, Supplier shall liaise with Stackpole on the mode of dispatch.
- 3.3 Each delivery shall be accompanied by a delivery note/packing slip with a precise description of the goods, including the order number and order date. Partial deliveries and premature deliveries require an explicit agreement.
- 3.4 As soon as Supplier assumes that delivery of the goods in question shall be subject to a delay, he shall indicate this in writing, in order to limit possible damage, stating the reasons for and the expected duration of the delay. In the event Supplier neglects his obligation to inform Stackpole, he shall also be held liable for such delays in delivery which are not his fault. Recognition of the new delivery date shall neither be given by the notification or lack of response to this notification.
- 3.5 In the case of delay in delivery Stackpole shall be entitled to demand 0.5% of the pro-rata contract price for the outstanding share of delivery as lump-sum damages per working day of the delay but in total not more than 5%. Further legal claims shall remain unaffected by this provision. In particular, Stackpole reserves the right to demand compensation for damages instead of order fulfilment after fruitless expiry of a reasonable time period, and to withdraw from the contract. Supplier is entitled to prove that no or much lesser damage has been incurred from the delay.
- 3.6 In the event that deliveries arrive prior to the agreed date, Stackpole reserves the right to return the goods at the risk of Supplier. Alternatively, Stackpole reserves the right to charge Supplier for the costs incurred (e.g. demurrage) and to adjust the value date of the invoices accordingly.

### 4. Packaging

- 4.1 Supplier shall always ensure proper packaging at his own expense and take into account any relevant legal provisions. Furthermore, Supplier shall ensure that all packaging can be re-used or recycled outside the public waste disposal system. Invoiced returnable packaging shall be credited to Stackpole after prepaid return of freight.
- 4.2 All packaging and disposal costs are covered by Supplier's prices. Supplier undertakes to ensure free pick-up and statutory recycling of used packaging. At Stackpole's request, Supplier shall join a dual collection and recycling system at his own expense.

## **5. Dispatch notes and invoices**

- 5.1 Dispatch notes and invoices shall be sent to Stackpole in duplicate format and clearly indicate the gross and net weights of delivery, the order number and date as well as Supplier's VAT identification number.
- 5.2 In the case of the commercial movement of goods within Germany, Supplier is obliged to separately indicate the applicable German sales tax on his invoices.

## **6. Prices and payment terms**

- 6.1 The price stated in the order is binding. It includes all fees and expenses related to the execution of the contract. Listed prices are net prices unless otherwise agreed and clearly indicated in the order confirmation.
- 6.2 If events occur after conclusion of the contract such that the Supplier's costs become more expensive in regard to the production or shipment of the goods, or as a result of increases in Supplier's purchase prices or wage increases, Supplier shall not be entitled to raise his prices unless expressly authorised to do so in writing.
- 6.3 The agreed remuneration shall become due after a proper invoice has been submitted, and at the earliest after proper receipt of goods (see 8.6). Statutory rights of retention and set-off rights are preserved for Stackpole in any case.
- 6.4 All payments are made under reservation. They are not deemed to be confirmation of proper delivery or performance. To a reasonable extent, Stackpole is entitled to withhold payments until the proper fulfillment of all claims arising from the business relationship.

## **7. Fulfilment of order**

- 7.1 Rights and obligations of Supplier are neither assignable nor transferable without Stackpole's consent. This does not apply, however, to assignments due to extended retention of title. The execution of contractual work by third parties requires Stackpole's consent. Supplier shall only be granted set-off rights and rights of retention to the extent that his counter-claims are undisputed or have been legally established.
- 7.2 In the case of work performed on Stackpole's premises, Supplier shall observe the latter's work regulations and is responsible for complying with all applicable safety regulations.
- 7.3 Supplier undertakes to monitor the quality of his deliveries and to lead an ongoing proof of his process capability through statistical process control. Supplier shall provide Stackpole with access to its documentation and quality assurance system by means of appropriate quality checks. At Stackpole's request, Supplier shall ensure that each delivery is accompanied by a factory test certificate in accordance with DIN 50049/2.3 or BS 5750 Pt2.

## **8. Liability for material defects**

- 8.1 Stackpole is entitled to demand rectifications and re-delivery. Stackpole also reserves the right to withdraw from the contract or to reduce the contract price as well as the right to claim damages after it has fixed an adequate period of grace for subsequent fulfilment and this has expired without results.
- 8.2 Stackpole is entitled to demand a reduction in price and compensation for damages instead of performance even in the case of insignificant material defects.
- 8.3 In the event of rectification, Supplier shall also bear the costs incurred as a result of the purchased goods being brought to a place other than the residence or commercial establishment of the recipient after delivery. Place of performance of subsequent rectification shall be specified by Stackpole. Supplier shall also bear installation and removal costs.
- 8.4 In cases of urgency, Stackpole can eliminate defects at Supplier's expense or avail itself of other services. In particular, operational safety hazards, risk of excessive damage or risks to Stackpole's ability to provide service delivery to its customers constitute such cases of emergency.
- 8.5 Any claims submitted by Stackpole in regard to liability for material defects shall lapse within three years of delivery of the contract goods.
- 8.6 Stackpole undertakes to check the delivered goods for any material defects within a reasonable period of time; any complaint shall be deemed timely if received by Supplier within ten working days after receipt of goods or after discovery of hidden defects.
- 8.7 Supplier shall also compensate the expenses for the control of Delivery Items upon receipt which exceed the usual extent in cases where at least parts of the delivery were recognised as defective. This also applies to a partial or complete inspection of the received deliveries in the further course of business by Stackpole or by Stackpole's customers.

## **9. Product liability**

- 9.1 In the event Supplier is responsible for a product defect, he shall be obliged to indemnify Stackpole on first demand against any claims for compensation by third parties insofar as the cause of the loss is located within his sphere of control and organisation and insofar as he is liable in the external relationship.

- 9.2 In the context of his liability for cases of damage, Supplier is also obliged to reimburse all expenses arising out of or in connection with any product recall carried out by Stackpole. Whenever possible and reasonable, Supplier shall be informed of the content and extent of such recall measures and given the opportunity to comment on them. Other statutory claims shall be disregarded.
- 9.3 Supplier agrees to take out product liability insurance with adequate coverage and to prove that he has done so on request.

#### **10. Provisions of materials**

Materials, parts, containers, special packaging, tools, measuring devices or similar (materials and supplies) provided by Stackpole remain the property of Stackpole. In the event of the processing, combining or mixing of materials, Stackpole shall co-own the new product on the basis of the value of the provision in proportion to the value of the overall product. Materials may not be copied unless prior written approval has been obtained from Stackpole. Upon their production, copies and duplicates become the property of Stackpole. A Supplier shall not be granted right of retention for any reason. Supplies and any copies made thereof shall not be made available to third parties (including subcontractors) or used for any other than the agreed purposes.

#### **11. Cancellation and force majeure**

- 11.1 The following shall apply in the interests of building up long-term business relationships between Stackpole and Supplier: In the event that Stackpole becomes aware of signs of deteriorating creditworthiness or insolvency of Supplier then contrary to previous practice Stackpole can make the adoption of further deliveries dependent on presentation of a contract performance and warranty guarantee from a major German bank or cooperative bank (Volksbank) or from an equivalent institution for the amount of the particular order value. This condition shall also apply in the event that such circumstances become known between contract conclusion and delivery or after one or more partial deliveries. In the event Supplier rejects presentation of the guarantee or does not present a guarantee despite notice having been given, Stackpole reserves the right to withdraw from the contract and claim damages. Furthermore, if insolvency proceedings have been refused against the assets of Supplier, right of withdrawal and compensation shall also be granted to Stackpole without any further requirements.
- 11.2 Force majeure and other disruptive, unforeseeable and exceptional events which cannot be prevented with the due diligence customary for normal business transactions shall release Stackpole from any obligation to accept deliveries of goods which have been ordered.

#### **12. Confidentiality / information (models, samples, drawings and documents)**

- 12.1 Supplier shall keep any information provided to him by Stackpole such as drawings, documents, know-how, samples, production tools, models and data carriers, etc., confidential. Supplier shall not disclose them to third parties (including subcontractors) without the written consent of Stackpole, nor use them for any other purposes other than those specified by Stackpole – in other words, solely and specifically in the context of contractual use as directed. The same shall apply mutatis mutandis to copies and reproductions. This obligation does not apply to information already legitimately known to Supplier without obligation to confidentiality on receipt or subsequently become known to him without obligation to confidentiality, which – without breach of contract by one of the parties – is well known or for which he has been granted written permission to use for another purpose. Supplier shall not base any of his advertising on his relationship to Stackpole without the prior written consent of Stackpole.
- 12.2 Stackpole reserves the right to ownership and all other rights (e.g. copyright) to any information it provides. Copies may be made only after prior written approval has been obtained from Stackpole. Upon their production, copies and duplicates become the property of Stackpole. Supplier and Stackpole hereby agree that Supplier shall keep copies safe for Stackpole. Supplier shall carefully keep any documents and objects and reproductions thereof provided to him at his own expense. Supplier shall keep them in perfect condition, obtain insurance for them and return them to Stackpole or destroy them, in each case upon Stackpole's request. In the event that they are no longer required in order to carry out the delivery, information shall be returned, unsolicited, to Stackpole. Supplier shall not be granted right of retention for any reason. The complete return or destruction of the same shall be confirmed in writing.
- 12.3 Models, patterns, drawings and documents, etc., created by Supplier shall remain the property of Stackpole after payment of the share of tool costs.

#### **13. Place of performance, place of jurisdiction and applicable law**

- 13.1 Place of performance for deliveries shall be specified by Stackpole. In the absence of such indication, place of performance is Aachen. The same applies to place of performance for rectification by Supplier.
- 13.2 Place of jurisdiction for all disputes arising out of the contractual relationship is Aachen, provided Supplier is a registered merchant, or a legal entity or a special trust under public law. Stackpole, however, is also entitled to sue Supplier at the Court where Supplier has its general place of jurisdiction or where Stackpole operates a branch office.
- 13.3 Solely German law shall apply. The UN Convention on the Sale of International Goods is excluded.
- 13.4 If any of the above contractual provisions are partially or totally invalid, this shall not invalidate the remaining provisions of this contract. The parties shall endeavour to replace the invalid provision by a valid provision which is as close as possible to the economic purpose of the contractual agreement.

Aachen, 21 September 2016