

# Eberspächer SÜTRAK

## Eberspächer Sütrak Terms and Conditions of Purchase / 2010

### **1. Applicability of our Terms and Conditions**

- 1.1 Our Terms and Conditions of Purchase shall apply exclusively; we will not recognize any supplier's terms and conditions deviating from ours unless we have expressly agreed to do so in writing. Our Terms and Conditions of Purchase shall apply even if, being aware of terms and conditions of the supplier that contradict or deviate from our Terms and Conditions of Purchase, we accept a supplier's delivery unconditionally.
- 1.2 All agreements entered into by us and the supplier relating to the performance of this Agreement must be recorded in writing in this Agreement.
- 1.3 Our Terms and Conditions of Purchase shall apply only to merchants as defined by section 24 of the German law regulating general terms and conditions of business (*AGB-Gesetz*).
- 1.4 Our Terms and Conditions of Purchase shall also apply to all future transactions with the supplier.

### **2. Method of Ordering**

- 2.1 Only those orders or draw-downs submitted in writing or by telex, teletex or fax shall be valid.
- 2.2 Verbal or telephone orders, or orders placed through other means of telecommunication require our confirmation in the form prescribed for valid orders in 2.1 above. The same shall apply to draw-downs.

### **3. Effectiveness of Orders – Withdrawal from the Agreement**

- 3.1 The supplier must accept our order within a period of two weeks. Without this being a precondition for validity, the supplier must confirm an order effectively placed in the form specified in 2.1 above.
- 3.2 In case of obvious inaccuracies in an order (e.g., obvious writing or calculation mistakes), we shall have the right to require from the supplier that the supply agreement be deemed concluded with the obviously intended content.
- 3.3 The supplier must agree to deliver goods in different constructions and designs where reasonable and provided that associated additional or reduced costs, as well as changes in delivery dates, have been agreed.

### **4. Prices – Payment Terms**

- 4.1 The price stated in the order shall be binding. In the absence of a written agreement stating otherwise, the price shall include shipping and packaging. The return of packaging materials must be agreed separately.
- 4.2 We can process invoices only if, as explicitly mentioned in our order, the order number, order date and, if applicable, our reference stated in the order are included in the invoice; the supplier shall be responsible for any consequences arising from non-compliance with this obligation.
- 4.3 Unless otherwise agreed in writing, we shall pay the purchase price with a discount of 2% within 30 days from delivery and receipt of invoice, or net within 60 days from receipt of invoice.
- 4.4 Our legal offsetting and retention rights shall remain unaffected.

## **5. Delivery**

- 5.1 The delivery date stated in the order shall be binding. If a delivery or an agreed partial delivery does not take place fully or in part by the agreed date, and if it does not take place within an additional grace period of two weeks set by us, we shall have the right to withdraw from the Agreement or to demand damages for non-performance. In the case of a fixed purchase pursuant to section 376 of the German Commercial Code (*Handelsgesetzbuch*, hereinafter "HGB"), we shall not be required to set an additional grace period.
- 5.2 Our acceptance of a late delivery shall not affect our right to claim compensation for damages.
- 5.3 Deliveries shall be made at the supplier's expense and risk to our plant in Renningen, Germany, or to the place of delivery stated by us. The risk passes to us concurrently with the transfer of ownership through acceptance by our employees or those of the recipient. The supplier must state our exact order number on all shipping documents and delivery notes; non-compliance will inevitably lead to delays in processing for which we shall not be held responsible.
- 5.4 In the case of a petition for, or initiation of, insolvency proceedings at the supplier, in the case of disputed cheques or bills of exchange, in the case suspension of payments, liquidity problems or if an out-of-court settlement is sought, we shall have the right to withdraw from the Agreement even if either we or the supplier have already fully or partially performed under the terms thereof, but the supplier's warranty periods have not yet expired. The supplier undertakes to supply spare parts at a commercially reasonable price for up to 15 years following the end of our series production.

## **6. Delivery Impediments**

- 6.1 Unforeseeable official measures for which we are not responsible, as well as events of *force majeure*, including strikes and lock-outs, regardless of whether they take place at our Company or at our customer, shall release us from performance of the contractual obligations undertaken while these circumstances prevail.
- 6.2 If such an event lasts longer than 2 months, or if our contractual performance becomes impossible in the long term because of such events, we shall have the right to withdraw from this Agreement.

## **7. Notice of Defects**

- 7.1 In the case of defects that become apparent when the delivered goods are properly examined, we may issue complaints within 2 days from receipt of the goods. In the case of defects that are not apparent, this period shall begin at the time the defect is noticed.
- 7.2 As a precaution, we shall not be bound by the goods inwards inspection provisions of sections 377 and 378 HGB.

## **8. Warranty**

- 8.1 The supplier shall guarantee the use of materials best suited for the intended purpose, correct and proper manufacture, appropriate construction and assembly, as well as compliance with the agreed performance, efficiency, power requirements, etc.
- 8.2 If the supplier is responsible for a defect that also includes the absence of an agreed feature, the supplier may choose between correcting the fault or replacing the item, in which case the supplier must bear all expenses arising from such correction or replacement. In case of imminent danger or particular time pressure, we shall have the right to correct faults ourselves, at the supplier's expense. We shall have a right of withdrawal or purchase price reduction only if the correction/replacement attempt has failed. This shall apply in particular if the supplier is not willing or able to provide the

correction/replacement that is due, or if the supplier delays such correction/replacement beyond the grace periods set by us in writing, or simply refuses to carry out the correction/replacement. We expressly reserve the right to assert claims for damages in the case of gross misconduct.

8.3 The warranty shall end 24 months following the initial registration of a vehicle or the installation of a spare part supplied, but no later than 24 months following delivery unless there is a separate agreement to the contrary.

8.4 In the case of goods where proper handling is not, or not yet, generally known, the supplier must, without being specifically asked to do so, provide assembly or operating instructions no later than at the time of delivery, under separate cover and stating our order number; if the supplier fails to do so, the supplier shall be liable for all damages that would not have occurred had these documents been available.

## **9. Product Liability – Indemnification – Liability Insurance Cover**

9.1 If the supplier is responsible a product defect, it is obligated indemnify us from third-party damage compensation claims upon first request insofar as the cause lies within its control and organisational sphere and the supplier is itself liable to third parties.

9.2 In this context, the supplier must also reimburse any expenses in accordance with section 683 and 670 of the German Civil Code (*Bürgerliches Gesetzbuch*) arising from or in connection with a recall action carried out by us. Insofar as it is possible and reasonable, we shall inform the supplier of the subject and extent of recall measures to be carried out and offer an opportunity to respond.

9.3 The supplier undertakes to maintain product liability cover of €2.5 million per personal injury/material damage event (flat rate); should we be entitled to further damage compensation claims, such claims shall remain unaffected.

## **10. Intellectual Property Rights**

10.1 The supplier is responsible for ensuring that, in connection with the goods delivered to us, no third-party rights will be violated in Germany, France, Switzerland, Austria, Sweden, Finland, Italy, the Netherlands or Belgium.

10.2 If we are held liable by a third party in this respect, the supplier is obligated to indemnify us from these claims upon first written request; without the supplier's consent we have no right to enter into any agreements with such third party, which applies especially to the negotiation of settlements.

10.3 The supplier's indemnification obligation relates to all expenses that will inevitably arise for us in connection with being held liable by a third party.

10.4 The supplier undertakes to inform us immediately of any risks of violation that become apparent and of alleged cases of violation, and to give us the opportunity to prevent such claims, acting by mutual agreement.

10.5 The supplier undertakes to inform us upon request of the use of published and unpublished own or licensed intellectual property rights and applications for such rights in relation to the goods delivered.

## **11. Samples, Drawings**

11.1 The supplier undertakes to provide us upon request with parts lists that include illustrations of spare parts for the goods to be delivered.

11.2 Parts that were developed by the supplier according to our specifications and in significant cooperation with us may not be forwarded to third parties or brought to their attention by the supplier without our written consent.

11.3 We reserve ownership and copyright of all images, drawings, calculations and other documents; they may not be made available to third parties without our express written consent. They are to be used solely for the manufacture of goods ordered by us; upon fulfilment of the order, the supplier must return them to us without being

requested to do so. Confidentiality towards third parties must be maintained with regard to such items.

## **12. Reservation of Title – Provision of Parts – Tools – Confidentiality**

- 12.1 If we provide the supplier with parts, we reserve ownership of these parts. Any processing or adaptation by the supplier is carried out for us. If our reserved goods are processed together with other objects that do not belong to us, we acquire proportional ownership of the new item based on the value of our item in relation to that of the other objects at the time they were processed.
- 12.2 If the item provided by us is inseparably commingled or combined with other objects that do not belong to us, we acquire proportional co-ownership of the new item based on the value of the reserved item in relation to that of the other objects at the time they were commingled or combined. If the commingling or combining is carried out in such a way that the supplier's item is to be regarded as the main item, it is deemed agreed that the supplier shall transfer to us proportional co-ownership. The supplier grants us indirect ownership of the item.
- 12.3 We reserve ownership of tools; the supplier must use the tools exclusively for the manufacture of the goods ordered by us. The supplier must insure the tools belonging to us at their replacement value for fire and water damage and for theft, at its own expense. The supplier must carry out any maintenance and inspection work necessary in a timely manner and at its own expense. The supplier must notify us immediately of any breakdowns; if this provision is violated, our right to claim damages remains unaffected.
- 12.4 The supplier must maintain strict confidentiality concerning all images, drawings, calculations and other documents and information received from us. Making such items available to third parties requires our express written consent. This confidentiality obligation shall apply even after the fulfilment of this Agreement; it shall expire once and insofar as the manufacturing expertise contained in the images, drawings, calculations and other documents provided has become common knowledge.

## **13. Final Provisions**

- 13.1 Unless our order specifies a different place of delivery, the place of performance is 71272 Renningen, Germany.
- 13.2 The legal venue, even if pertaining to cheques, bills of exchange or legal documents, shall be our choice of either 71272 Renningen, Germany, or the registered location of the supplier.
- 13.3 This Agreement is governed exclusively by the laws of the Federal Republic of Germany.