

BOGE Rubber & Plastics (BRP)
General Terms of Delivery and Payment
with effect from September 1, 2014

1. General provisions

- 1.1 The provisions hereunder apply to all present and future, quotations, orders, contracts, deliveries and other supplier deliverables. Any ancillary agreements or amendments pertaining to the provisions hereunder shall only be binding insofar as they have been effected in writing.
- 1.2 Any purchaser's terms and conditions that differ from the provisions hereunder that are not expressly accepted in writing by the supplier shall not be binding on the supplier. Neither the failure to expressly object to an action nor the provision of deliverables shall constitute acceptance of the purchaser's general terms and conditions.

2. Quotations; scope of delivery

- 2.1 All supplier quotations are subject to confirmation.
- 2.2 The scope of delivery as well as all other conditions pertaining to any order shall be determined solely by the supplier's written order confirmation.
- 2.3 Any warranties pertaining to properties, modifications, amendments and ancillary agreements shall only be valid insofar as the supplier has expressly confirmed them in writing.
- 2.4 Information provided by the supplier in writing or in any other form (such as electronic data carriers or over the internet) and materials pertaining to price quotations such as diagrams, descriptions, drawings, dimensions and weight specifications, other technical data such as DIN, VDE or other company and industry standards and samples specified or referred to are only approximations unless they have expressly been designated as binding.
- 2.5 The supplier reserves the right of surplus or short weights and deliveries within standard commercial limits. The afore-stated rights shall not entitle the purchaser to lodge any claim.
- 2.6 The supplier reserves rights of ownership and copyright to cost estimates, drawings, plans, matrices, templates, patterns, tools and other production materials and documents (hereinafter referred to as "documentation"). Such materials shall only be made available to third parties with the supplier's prior written consent.
- 2.7 The purchaser shall assume full responsibility for the tasks incumbent on him,

including driving tests, and documentation to be provided by him such as drawings, models, gauges, samples and similar materials.

- 2.8** Production releases shall only be valid insofar as they are affected in connection with a master agreement. Production releases shall be issued for two month periods. Materials and capacity planning releases shall be issued for four months. Delivery call-offs shall be extended automatically by four weeks, insofar as they are not rendered moot by a more recent call-off.

3. Prices; terms of payment

- 3.1** Unless otherwise agreed, all prices shall be quoted in euros and shall be subject to the value added tax that is valid on the delivery date. Prices shall be valid for delivery ex works excluding packaging, freight, postage and insurance.

All prices shall be subject to confirmation and shall exclude customs duties. The invoice price shall be that which is valid on the delivery date.

- 3.2** In the event goods are shipped to a European Union member state outside of Germany, prior to shipment the purchaser shall submit to the supplier the name of his industry segment as well as the VAT identification number that will be used to process the shipment in question.
- 3.3** Unless otherwise agreed, payment shall be effected in cash without any deductions, ex supplier's payment office, immediately following receipt of invoice.
- 3.4** The supplier shall be entitled to offset all accounts receivable due from the purchaser against all accounts receivable which are due to the purchaser from the supplier.
- 3.5** In addition, the supplier shall be entitled to offset all accounts receivable due to him from companies associated with the purchaser.
- 3.6** Partial deliveries shall be invoiced immediately.
- 3.7** Only bills of exchange and checks shall be accepted as payment and shall only be deemed as payment upon encashment. The supplier expressly reserves the right to refuse to accept bills of exchange. The purchaser shall be liable for discount and bill charges and shall pay them forthwith.
- 3.8** Where the agreed payment period is exceeded, statutory interest on arrears shall be charged without this requiring a separate reminder and without prejudice to the assertion of any other right.
- 3.9** The purchaser shall only be entitled to withhold payments or offset them against counterclaims insofar as such counterclaim is uncontested or legally enforceable.

3.10 Any payment default or risk to the supplier's accounts receivable arising from deterioration of the purchaser's creditworthiness shall entitle the supplier to request immediate payment of all accounts receivable accruing to the supplier from the business relationship - irrespective of the term of any bills of exchange - or to request that security be provided. In this case, the supplier shall be entitled to require that all outstanding deliveries be affected against advance payment or if security is furnished.

4. Delivery periods

4.1 Delivery deadlines and dates shall only become binding upon express written agreement by the parties.

4.2 The supplier shall adhere to the delivery period insofar as all commercial and technical issues have been resolved between the contractual partners and insofar as the purchaser has met all obligations accruing to him such as furnishing required official certifications and authorizations and affecting payments on account. Where this is not the case, the delivery period shall be extended accordingly. The afore-stated shall not apply insofar as any delay in delivery is attributable to the supplier.

4.3 The delivery period shall be deemed to have been adhered to insofar as the goods have been shipped from the supplier's production facility by the end of the delivery period or where the supplier has notified the purchaser that the goods are ready to be shipped. Where acceptance of delivery is required, either the acceptance date (insofar as acceptance has not been declined for reasonable cause) or the date of the notification of readiness to accept delivery shall apply.

4.4 The delivery period shall be extended in accordance with the effects of labor disputes, particularly strikes and lockouts, or the occurrence of unforeseen hindrances to delivery which are beyond the supplier's control such as force majeure, action by governmental authorities, non-culpable delay in the manufacture of parts by subcontractors, plant breakdown, defective parts and delays in delivery of key raw materials, insofar as such hindrances can be shown to have significantly hindered production or delivery of the contractual deliverables. The supplier may not make claim of these events should they arise during an already existing delay. The supplier shall notify the purchaser in a timely manner of the time at which such events arise and when they end.

Neither the supplier nor the purchaser shall be required to perform their contractual obligations during such periods of delay. Where such occurrences render it impossible or unreasonable for the supplier to effect deliveries, the purchaser and supplier shall reach an amicable agreement as to the conditions that shall govern their relationship from that time forward.

4.5 The purchaser shall be entitled to terminate the agreement without notice prior to passage of risk should delivery of the complete agreement become impossible. The purchaser shall also be entitled to terminate the agreement should the fulfillment of any part of an order become impossible and the purchaser has reasonable cause to decline acceptance of a partial delivery of said order. Where this is not the case, the purchaser shall pay the contractually agreed price adjusted for partial delivery. The afore-stated also applies in cases of supplier non-performance. Paragraph 9.2 hereunder shall apply in all other cases.

Should the non-performance of the agreement be caused by a delay in acceptance by the purchaser or where the purchaser is solely or largely responsible for the occurrence of such circumstances, the purchaser is still committed to fulfill his contractual obligations.

4.6 Should the purchaser request a change in contractual deliverables after an order has been accepted, the supplier shall be entitled to delay delivery until he has ascertained the feasibility and effects of such changes, particularly in regard to cost and delivery deadlines. The performance of such changes shall only become binding upon express written confirmation from the supplier. The supplier shall be entitled to extend the delivery period by a reasonable period in order to effect the requested changes.

4.7 Should the supplier fail to perform the contract in good time, the purchaser shall grant a reasonable extension of the delivery period. Should the supplier fail to effect delivery within this period, the purchaser shall be entitled to request lump sum compensation for the delay. Such compensation shall amount to 0.5% for each full week of delay up to a maximum total amount of 5% of the value of the portion of the total delivery that is rendered operationally unusable by the delay.

Such compensation shall exclude loss of profit and damages occasioned by an interruption in business operations. In case of minor negligence, liability shall be limited to additional shipping costs. The amount of compensation shall be based on a good-faith assessment considering the supplier's economic situation, the nature, scope and duration of the business relationship, and, if applicable, the value of the parts to be supplied.

4.8 Where, at the purchaser's behest, shipment or delivery is delayed by more than one month following notification of readiness to effect shipment, the supplier shall be entitled to bill the purchaser for each full or partial month of storage costs.

4.9 Purchaser compensation claims regarding either delayed deliveries or deliverables exceeding the scope of that defined hereunder shall be excluded in all cases of delayed delivery, including following the lapse of any delivery deadline set by the supplier. Such exclusion of compensation shall not apply in the event of strict liability

for willful action, gross negligence, or injury to life, limb or health; nor shall it affect the burden of proof to the detriment of the purchaser's interests. The purchaser shall be entitled to terminate the agreement to the extent allowable by law, only when a delay in delivery is attributable to the supplier.

5. Shipping; passage of risk

- 5.1** Risk shall be deemed to have been transferred to the purchaser following shipment of the contractual deliverables ex works, including instances of partial shipment or where, in an exceptional case, the supplier has agreed to perform other Services such as delivery installation or assembly at no charge to the customer. Where acceptance of delivery is required, risk shall be deemed to have been transferred upon such acceptance. The delivery shall be accepted on the acceptance date or following notification from the supplier of readiness to accept delivery. The purchaser shall not be entitled to refuse delivery in the event of a minor defect.
- 5.2** The Incoterms in force on the day an order is confirmed shall be considered the effective Incoterms for that order.
- 5.3** Packaging and shipping shall be effected in accordance with the supplier's best judgment but without any additional liability accruing to the supplier.
- 5.4** At the purchaser's behest, the supplier shall insure the delivery against all insurable risk at the purchaser's expense.
- 5.5** Where shipment or acceptance of delivery is delayed owing to circumstances that are not attributable to the supplier, risk shall pass to the purchaser with effect from the day of notification of readiness to effect shipment. Where a reasonable deadline for acceptance of delivery has been set but has not been met, the supplier shall be entitled to dispose of the contractual deliverables by other means and to supply the purchaser within an extended period accordingly.
- 5.6** Non-returnable packaging shall be billed at cost and shall not be taken back.

Other types of packaging (containers, pallets, etc.) shall remain the property of the supplier and shall be returned forthwith, freight prepaid, if not otherwise agreed and insofar as the containers are not the purchaser's property.

- 5.7** The supplier shall be entitled to provide partial shipments in reasonable quantities.
- 5.8** The purchaser shall notify the supplier in writing of discrepancies in any shipment immediately following receipt thereof.

6. Retention of title

- 6.1** All goods furnished by the supplier shall remain his property until such time as

payment has been affected in full (until encashment) of all the supplier's accounts receivable from the purchaser arising from the business relationship (conditional goods). In this regard, all shipments are deemed to be a single series of interrelated delivery transactions. In the case of open accounts, the conditional goods shall be deemed to be security for the amount outstanding.

- 6.2** The purchaser shall neither pledge nor transfer as security goods that have been delivered. The purchaser shall inform the supplier forthwith in the event any that goods are seized, attached or otherwise disposed of by a third party. The purchaser shall be entitled to sell or otherwise use the goods in the course of ordinary business activity only.
- 6.3** The conditional goods shall remain the supplier's property. Such goods shall be processed, treated and/or reconfigured for the supplier in his capacity as manufacturer solely pursuant to article 950 of the German Civil Code (BGB) without any liability accruing to the supplier.
- 6.4** Where the purchaser combines the goods with other goods to form a single product, this shall be deemed to constitute an agreement on the part of the purchaser that he grants proportional co-ownership to the supplier pursuant to article 947, paragraph 1 of the German Civil Code (BGB) and that such goods shall remain in the possession of the supplier for purposes of safekeeping. Where such other goods are deemed to be the principle product, this shall be deemed to constitute an agreement on the part of the purchaser to grant the supplier proportional co-ownership to the extent that the purchaser owns such principle product. The supplier's rights to goods supplied by him which do not constitute the principal components of a product shall remain effected by the provisions hereunder.
- 6.5** Insofar as the purchaser sells the supplied goods in accordance with their intended use, the purchaser hereby assigns to the supplier all accounts receivable due from his customers or a third party arising from such sale, including all subsidiary rights, until such time as all of the supplier's accounts receivable have been paid in full. The purchaser shall also be entitled to collect such accounts receivable subsequent to their assignment until such authorization is withdrawn.
- 6.6** The supplier shall be entitled to rescind such authorization for reasonable cause such as delayed payment, suspension of payment or a significant decrease in the purchaser's assets and, to request, insofar as reasonable cause exists, that the purchaser notifies any third party purchaser of such rescission and provides the supplier with all information and documents he needs to assert his rights.
- 6.7** In the event of actions in breach of contract by the purchaser, or delayed payment, unauthorized disposal of the conditional goods, a significant decrease in the purchaser's assets, or protest pertaining to a check or bill of exchange; or where a

request is filed by the purchaser or any third party to initiate insolvency proceedings regarding the purchaser's assets, or if a request to initiate such proceedings is denied due to lack of assets, the supplier shall be entitled to prohibit treatment, processing and sale of the conditional goods. In this case, the supplier shall also be entitled to take possession of the conditional goods and, to this end, to enter the premises of the purchaser, request pertinent information and undertake any inspection of the purchaser's account books that may be required.

Where insolvency proceedings are initiated regarding the purchaser's assets, the supplier shall also be entitled to rescind the agreement and to request that the contractual goods be returned forthwith.

- 6.8 The agreement is deemed to have been rescinded insofar as return of the contractual goods has been requested, but not when the goods are only taken back.
- 6.9 The supplier shall release any security whose value exceeds by more than 20% that of the accounts receivable to be secured.

7. Defect Claims

The supplier shall be liable for quality defects and deficiencies in title in regard to goods supplied as follows, unless otherwise described in paragraph 9.

- 7.1 The supplier shall provide free of charge a repaired or replacement part that is devoid of defects (repair or replacement delivery, hereinafter referred to as "rectification") for all parts which prove to be defective owing to circumstances that existed prior to the passage of risk. However, a rectification, irrespective of the form it takes, shall not constitute acceptance of the purchaser's claim.
- 7.2 The supplier shall be notified forthwith in writing of the detection of any such defect.
- 7.3 Parts in regard to which a complaint is lodged shall be returned to the supplier at his behest and at the purchaser's expense.
- 7.4 In the event a notice of defect is issued, the purchaser shall be entitled to withhold payment in proportion to the scope of the quality defects that have come to light and insofar as such notice of defect is indisputably justified. Where a notice of defect is unjustified, the supplier shall be entitled to request compensation from the purchaser for any cost caused by such notice.
- 7.5 The purchaser shall, in consultation with the supplier, set aside the required time and provide an opportunity for performance of any rectification deemed necessary by the supplier. Where the purchaser fails to do this, the supplier shall be held harmless from liability for any consequences arising from the failure to perform such work. The purchaser shall be entitled to rectify defects himself or have such defects rectified by

a third party and to request reimbursement of any costs incurred there from only when such rectification is urgently needed in order to avoid substantial property damage and any reduction in operational safety.

7.6 The supplier shall assume the direct cost, including shipping, arising from the rectification of any replacement part insofar as the complaint in regard to such part proves to have been justified.

Where the purchaser requests reimbursement of his own expenditures or of expenditures reimbursed to his customer pursuant to legal regulations, the compensation to be paid by the supplier shall be determined as follows:

- a) Compensation shall be effected for transport, removal, labor and material costs arising from the rectification. Such compensation shall not exceed the expense that would have been incurred if the rectification had been performed by the supplier's staff. Where the purchaser hires a third party to perform the rectification, the cost arising there from shall be assumed by the supplier on condition that he has granted prior written authorization for such rectification.
- b) Liability shall be excluded insofar as the purchaser's liability toward his customers is effectively limited. In this regard, the purchaser shall undertake to limit his liability for loss or damage in a fashion that will benefit the supplier, insofar as allowable by law.

7.7 The purchaser shall be entitled to terminate the agreement in regard to any defective product supplied should a reasonable deadline for rectification of such defective product pass without such rectification having been performed. Where the defect is immaterial, the purchaser shall only be entitled to a reduction in the contract price. Any other right to a reduction in the contract price shall be excluded. Where the purchaser's financial situation precludes acceptance of part of the deliverables, he shall be entitled to terminate the contract in its entirety.

7.8 Any other claims shall be governed by the provisions of clause 9.2 hereunder.

7.9 Defect claims shall be excluded in the following cases:

- In case of immaterial discrepancies between product properties and those contractually stipulated
- In case of minor hindrances to usability
- In case of normal wear and tear
- In case of damage that occurs following the passage of risk as the result of erroneous or negligent actions, subjecting the product to undue strain, the use

of unsuitable operating materials, erroneous installation, or damage that results from unusual external factors that are not covered by the agreement

- In case of non-reproducible software errors
- In case of improper installation
- In case of errors occasioned by improper use
- In case of errors occasioned by improper handling on the customer' s premises, those of any of his partners, or at the customer's repair facilities
- In case of errors occasioned by installation conditions obtaining in a vehicle
- In case of errors occasioned by the use of car racing products, products used for other competitive activities, or products for special vehicles such as military or police vehicles
- In case of operating conditions whose parameters exceed those set forth in the performance specifications
- In case of errors occasioned by the use of repair kits
- In case of errors occasioned by parts from purchaser-designated suppliers

7.10 Guarantees on the part of the supplier, in particular guarantees regarding quality and durability such as those contained in delivery specifications, performance specifications, product specifications, performance descriptions, bills of quantities or other documentation are expressly excluded subject to the provisions of clause 1.1, even where such guarantees are expressly designated as such.

7.11 The purchaser shall have right of recourse against the supplier only on condition that the purchaser has not entered into any agreement with any of his own customers in which the scope of the right to lodge a defect claim exceeds that allowable by law. The extent of the purchaser's right to lodge claims shall also be governed by clause 7.6 hereunder.

7.12 All claims with regard to a product shall become statute-barred 12 months following delivery of such product. Additional purchaser claims shall be excluded, including defect claims lodged by the purchaser against the supplier and his associates, apart from those claims set forth in clause 7 hereunder.

8. Industrial property rights, copyrights and deficiencies in title

8.1 Where use of a contractual deliverable leads to the breach of third party industrial

property rights or copyrights in force in the Federal Republic of Germany at the time of transfer of ownership, the supplier shall, at his expense, obtain for the purchaser the right to continued use of such deliverable or shall modify it in a manner acceptable to the purchaser such that the breach of industrial property rights is eliminated.

Where the afore-stated cannot be carried out at reasonable expense or within a reasonable period, either party shall be entitled to terminate the agreement.

The supplier shall hold the purchaser harmless against undisputed or legally enforceable claims lodged by the owners of such property rights.

8.2 Where industrial property rights or copyrights are breached, the afore-stated obligations on the part of the supplier are definitive, subject to the provision in clause 9.2. Such obligations are enforceable only on condition that

- the purchaser immediately notifies the supplier of any asserted breach of industrial property rights or copyrights
- the purchaser provides the supplier with adequate support to defend himself against asserted claims and/or enables the supplier to perform modifications as provided in clause 8.1.
- the supplier retains the right to take all measures in his own defense including out of court settlements
- the deficiency in title is not attributable to an instruction issued by the purchaser
- the infringement of rights did not result from the purchaser having modified the deliverable without authorization or having used it in a manner that contradicts the agreement

8.3 All claims with regard to a product shall be subject to a 12 month statute of limitations following delivery of such product. This period shall begin with effect from dispatch of the shipment from the factory, any previously agreed acceptance of delivery, or the completion of such acceptance insofar as the supplier is to undertake installation of the deliverables. Where shipment, acceptance or installation are delayed for reasons not attributable to the supplier, such period of limitation shall expire no later than 18 months following notification of readiness to effect shipment.

8.4 Any other instance of deficiency in title shall be governed by the provisions of paragraph 7 hereunder.

8.5 Additional purchaser's claims regarding deficiency of title are excluded, including any such claims lodged by the purchaser against the supplier and/or his subcontractors

apart from those claims set form in clause 8 hereunder.

9. Liability

- 9.1** Where, through any culpable act on the part of the supplier, the purchaser is unable to use a deliverable as stipulated in the agreement due to (1) an omission or error in carrying out any proposal or advice that was provided prior to or following conclusion of the agreement or (2) a breach of any contractual obligation such as the obligation to provide operating and maintenance instructions for a deliverable, the provisions of clauses 7 and 9.2 hereunder shall apply and all other purchaser claims shall be excluded.
- 9.2** Where damage is not directly attributable to a deliverable, the supplier's liability, regardless of its cause in law, shall be limited to that occasioned by gross negligence or willful action.
- 9.3** Where a claim for damage not occasioned by negligence is lodged against the purchaser and such liability is not subject to exclusion with regard to third party claimants, the supplier shall hold the purchaser free and harmless of any claim to the extent that he himself would be held directly liable in such a case. Any payment of compensation between the purchaser and supplier, or any such payment resulting from direct liability on the part of the supplier, shall be effected pursuant to article 254 of the German Civil Code (BGB). The afore-stated shall also apply insofar as the supplier makes direct use of any deliverable.

Liability shall be excluded insofar as the purchaser's liability towards his customers is effectively limited. In this regard, the purchaser shall undertake to limit his liability for damage in a fashion that will benefit the supplier, insofar as allowable by law. Claims on the part of the purchaser shall be excluded insofar as damage is occasioned by any of the following: failure on the part of the purchaser to adhere to the conditions stipulated in operating, servicing, or installation instructions; inappropriate or improper use of the product; improper or careless handling or processing; normal wear and tear; or erroneously performed repairs.

- 9.4** Insofar as allowable by law, the supplier shall be liable for damage arising from actions undertaken by the purchaser to limit damage (e.g. in the case of a product recall).
- 9.5** The purchaser shall forthwith consult with the supplier and provide him with complete information in the event he intends to lodge a claim against the supplier pursuant to the provisions hereunder. The purchaser shall give the supplier ample opportunity to investigate the cause of the damage in question. The contracting parties shall agree upon any measures to be taken in this regard, particularly in regard to negotiating a settlement. The amount of liability shall be based on a good-

faith assessment, in terms of the supplier's interests, of the supplier's economic situation, the nature, scope and duration of the business relationship, and if applicable the value of the parts to be supplied.

- 9.6** All instances of contractual violations and the attendant legal consequences, as well as all purchaser claims regardless of their reason in law, shall be governed exclusively by the provisions hereunder. This shall also apply to all claims not expressly mentioned hereunder pertaining to damage, loss, reductions in purchase price, or termination or abrogation of the agreement. All purchaser damage claims that do not directly pertain to the deliverables themselves shall be excluded, including damage or loss arising from production stoppages, loss of effective use, lost orders, lost profit or other consequential damage. This exclusion of liability shall not apply to willful action or gross negligence on the part of the supplier, but shall apply to willful action or gross negligence on the part of auxiliary persons. This exclusion of liability shall not apply insofar as it is subject to imperative provisions of German law.
- 9.7** Where the purchaser is entitled to payment of compensatory damage pursuant to the present clause, such right shall expire upon expiration of the limitation period as provided in clause 7 hereunder.

10. Confidentiality

- 10.1** The contracting parties warrant that they shall treat all information obtained during the course of their business relationship as trade secrets insofar as such information is not public knowledge.
- 10.2** Under no circumstances shall drawings, models, patterns or similar materials (i.e. documentation) be provided or made accessible to unauthorized third parties. Reproduction of such materials shall only be permissible for purposes of fulfilling operational requirements and in accordance with copyright laws. Such documentation shall be made accessible to, or used for, third parties solely with the prior written authorization of BRP and shall be returned to BRP, at its request.

- 10.3** The supplier shall ensure that his subcontractors comply with the terms hereunder.

11. Place of performance and place of jurisdiction

- 11.1** The place of performance and place of jurisdiction for both parties to the agreement shall be the supplier's head office. Where shipment is effected from a production facility, subsidiary or location of a company associated with the supplier, the place of performance for shipments shall be such production facility, subsidiary or location of a company associated with the supplier.
- 11.2** The place of jurisdiction for all legal disputes arising from the agreement shall be the

supplier's head office. The supplier shall also be entitled to take legal action at the place where the supplier has his head office.

11.3 All legal relationships between the purchaser and the supplier shall be governed by the laws of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sales of Goods of November 11, 1980 shall be excluded.

12. Final provisions

12.1 All purchaser claims, regardless of their cause in law, are subject to a 12 month statute of limitations following delivery of the product in question without prejudice to the generality of article 479 I of the German Civil Code (BGB) insofar as it is applicable. The afore-stated notwithstanding, such statutory limitation periods shall apply to damage claims as provided in clause 9 hereunder as well as to any defect in a construction or product that was used for a construction in accordance with the normal mode of operation of such construction or deliverable, insofar as such construction or deliverable occasioned the defect in question.

12.2 Should any of the terms and conditions hereunder be or become invalid, the validity of the remaining provisions shall remain unaffected. However, this shall not apply should as fulfilling the provisions of the agreement represent a hardship for any of the parties. The contractual parties shall replace any invalid provision with a valid one that most closely serves the desired aims of the invalid provision.