

**GENERAL TERMS of PURCHASE of  
MALI Spezialfahrzeuge GmbH, Heinrichsburg 1, D- 88436 Eberhardzell**

**1. General provisions**

1.1. The purchasing of goods by MALI Spezialfahrzeuge GmbH (hereinafter referred to as "purchaser") is effected exclusively pursuant to these terms of purchasing. They are a component of all agreements entered into by the purchaser with its suppliers regarding all deliveries or services offered by them. They shall apply also to future business relationships even if they are not expressly agreed again.

1.2. Upon placing the order and/or upon accepting the order confirmation, however at the latest upon receipt of the goods or service, the terms of purchasing of the purchaser shall be deemed as agreed.

1.3. Contrary terms and conditions of the suppliers and/or terms and conditions deviating from the purchasing conditions of the purchaser shall not apply even if their application is not separately contradicted. Consent to the application of such terms and conditions shall not be constituted even if reference is made to a letter containing the terms and conditions of the supplier or a third party or referring to them. The acceptance of goods and/or services of the supplier and payment of such goods and services also shall not constitute such consent. Acknowledgement of external terms and conditions is only made in case of express written consent.

**2. Purchase orders and conclusion of the agreement**

2.1. Purchase orders of the purchaser as well as changes of or supplements to the purchase orders must be made in writing in order to be effective. Oral agreements of any kind – including subsequent changes of and supplements to our general terms and conditions – must be confirmed by us in writing in order to be effective.

2.2. The offers of the seller are binding and free of costs for the purchaser.

2.3. To the extent that the offers of the purchaser do not expressly contain a period of commitment, the acceptance period for the purchase orders of the purchaser amounts to two weeks after the date of the offer. What is authoritative for the timely acceptance is the receipt of the acceptance declaration by the purchaser.

**3. Modes of delivery**

3.1. The delivery shall be effected franco domicile unless a deviating agreement has been made. If no delivery franco domicile has been agreed, the seller has to provide the goods taking into account the time for loading and shipment to be agreed with the carrier.

3.2. Dispatch notes, waybills, invoices and the entire correspondence have to contain the order number of the purchaser.

3.3. Agreed dates and times of delivery are binding. What is authoritative for compliance with such dates and times is the receipt of goods by us. The seller shall inform the purchaser immediately when he recognizes that he will not be able to adhere to the agreed dates of delivery.

3.4. The acceptance of the delayed delivery or service without reservation does not include a waiver of the claims for compensation to which the purchaser is entitled due to the delayed delivery or service.

3.5. Partial deliveries and premature deliveries are basically inadmissible unless the purchaser consented to them expressly or they are reasonable for the purchaser. An acceptance of the delivery made nevertheless shall not change the originally agreed terms and dates of payment.

3.6. In case of default in delivery, the purchaser is entitled for each commenced week of default in delivery to claim a contractual penalty amounting to at least 0.5%, maximum 5 %, of the respective order value after previous written warning towards the seller. The contractual penalty is to be offset against the default damage to be replaced by the seller.

**4. Bearing the risk**

The shipment is effected at seller's risk. The risk of any deterioration including accidental loss remains with the seller until the delivery to the address for shipment and/or place of use requested by the purchaser.

**5. Modes of payment**

5.1. The prices shown in the purchase order are binding. The agreed prices are fixed prices plus statutory VAT and exclude additional claims of all kinds. Unless otherwise agreed in writing, the price shall include delivery and transport to the address for shipment stated in the agreement including packaging. If no prices are stated in the purchase order, they shall have to be agreed separately.

5.2. The supplier bears all ancillary costs (insurance, duties, obtaining documents etc.) for the delivery until the address for shipment and/or place of use requested by the purchaser.

5.3. Claims against the purchaser shall become due only upon complete receipt of goods by the purchaser and receipt of the properly prepared invoice documents.

The purchaser pays the purchase price within 14 days with 3 % cash discount or within 30 days net, calculated as of delivery and receipt of the invoice.

The seller may not assign, pledge or otherwise dispose of its claims against the purchaser.

**6. Warranty**

6.1. Basically, the purchaser is entitled to the right to choose supplementary performance. The supplier only may deny the type of supplementary performance chosen by the purchaser if this would be possible only with unreasonable costs.

6.2. The purchaser is entitled to set the seller a reasonable period of time for removal of the defect. If the defect is not removed within this period of time, the purchaser shall be entitled to withdraw from the agreement or to reduce the remuneration. Further claims for damages remain unaffected.

6.3. Claims for defects shall be deemed as asserted in due time if they are asserted towards the seller within 14 days after delivery of the goods. In case of hidden defects, this period for making the claim only starts to run upon discovery of the defect.

6.4. If the seller cannot perform the supplementary performance or if he does not perform immediately, the purchaser may carry out such supplementary performance himself or have it carried out by third parties in urgent cases after agreement with the seller, especially in order to avert imminent dangers or to avoid more grievous damage.

6.5. The refusal to continue the negotiations in case of disputable claims pursuant to § 203 s. 1 BGB [German Civil Code] has to be made in writing.

6.6. Claims for defects become statute-barred after three years, except in cases of fraudulent intent. The limitation of actions starts upon delivery of the contractual item.

6.7. The statutory warranty claims remain reserved.

**7. Liability**

7.1. To the extent that the seller is liable for product damage the cause of which is within the seller's sphere of responsibility, he shall indemnify the purchaser against claims for damages of third parties. If the purchaser is obliged to a recall against third persons because of a mistake of the product delivered by the supplier the supplier bears all the recall costs.

7.2. The seller is obliged to maintain a product liability insurance.

7.3. Claims for damages of the purchaser against the seller remain unaffected.

#### **8. Reservation of title**

A reservation of title of the seller only shall be effective if the seller is authorized to resale and processing within the proper business dealings and the reservation of title lapses upon payment of the purchase price.

Any prolonged or extended reservation of title shall be excluded.

#### **9. Industrial property rights and rights of use**

9.1. The seller warrants that all deliveries are free from protective rights of third parties and especially that no patents, licenses or other protective rights of third parties are infringed by delivery or use of the delivery items.

9.2. The seller indemnifies the purchaser and its customers against any claims of third parties under possible infringements of protective rights and bears all costs incurred by the purchaser in this connection.

9.3. The purchaser is entitled to obtain the licensing of the delivery item and services in question from the authorized person at costs of the seller.

9.4. The seller is obliged to keep secret all illustrations, drawings, calculations and other documents and information received. They may be disclosed to third parties only with consent of the purchaser. The obligation to maintain secrecy also applies after execution of this agreement. Documents let for use including duplicates possibly made are to be returned without request immediately after execution of the purchase order.

#### **10. Place of performance and place of jurisdiction**

10.1. Place of performance for both parties to the agreement is the place of business of the purchaser.

10.2. The exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship is at the place of business of the purchaser. However, the purchaser is also entitled to sue the seller at his place of general jurisdiction.

#### **11. Final provisions**

11.1. German law under exclusion of the Vienna UN Convention on the International Sale of Goods (CISG) applies to the legal relationship between the purchaser and the seller.

11.2. If any provision in these terms of purchasing or a provision within the framework of other agreements is or becomes invalid completely or in parts, this shall not affect the validity of other provisions or agreements. The invalid provision shall be replaced by the statutory regulations.

Version: July 2009