

General Terms and Conditions of Purchase of BorgWarner Turbo Systems GmbH

I. General

The legal relations between us and Supplier shall be subject exclusively to the Terms and Conditions of Purchase set forth herein and to any other written agreements including the BorgWarner Supplier Manual. The present Terms and Conditions of Purchase shall also apply to any future business relations, even in case the parties do not expressly agree on them anew. Supplier hereby acknowledges the binding effect of the present Terms and Conditions of Purchase. Any terms and conditions of purchase of Supplier contrary to or diverging from our Terms and Conditions of Purchase shall not become an integral part of the agreement even if we have not explicitly objected to them in any particular case. The Terms and Conditions of Purchase shall also apply in the event we accept without reservation Supplier's delivery having knowledge of terms and conditions of Supplier contrary to or diverging from our Terms and Conditions of Purchase.

II. Orders

Solely the written order shall be relevant for the execution of the order. Supplier shall confirm any such written order without undue delay. The parties have not entered into any oral collateral covenants. Any subsequent changes shall be subject to our written confirmation to take legal effect. The written form can be replaced by fax, but not by the electronic form pursuant to § 126 a of the German Civil Code (BGB) or the text form pursuant to § 126 b BGB.

III. Confirmation

1. Should Supplier fail to accept our order in writing and without undue delay or, at the latest, within a period of 10 days following receipt thereof, we shall be entitled to cancel the order. Any delivery call-ups shall become binding at the latest if Supplier does not object thereto in writing within a period of two weeks following receipt of order or if he commences execution of the order¹.
2. We reserve title and copyrights with regard to all documents attached to the order. Such documents may not be made accessible to any third party without our express written approval. Such documents shall be used exclusively for production purposes based on our order and be promptly returned to us after execution of the order without need of request. Any knowledge obtained in the course of the order shall be kept confidential vis-à-vis third parties.
3. Supplier represents and warrants that the goods supplied by him will not infringe any domestic or foreign property rights, that the statutory provisions concerning environmental protection will be observed and that no proceedings regarding liability, regulatory or criminal offences against Supplier or Supplier's bodies are pending which

¹ US No. 1.

might influence the execution of the order. Supplier shall assume full responsibility in this regard and, to such extent, shall hold us harmless from any claims for damages.

4. In compliance with EC regulations concerning the common definition of the origin of goods, all order confirmations shall contain a reference to the origin of the goods.

IV. Prices and Payment Conditions

1. All prices quoted in the order shall be binding. The foregoing stipulation shall also be applicable if the terms and conditions on which Supplier procures third-party services or goods become less favorable for him.²
2. All prices quoted in the order shall be exclusive of the value added tax at the applicable rate at any given point of time. All public charges (taxes, fees, duties, etc.) which are incurred in connection with the conclusion or execution of this agreement outside the Federal Republic of Germany shall be borne by Supplier.
3. Invoices shall be sent in duplicate and separately from the delivery. Supplier shall quote the specifications of our order and the order number indicated therein.
4. Unless otherwise stipulated in writing, payment shall be made after receipt in full of the goods delivered in compliance with the agreement or, as the case may be, service rendered in compliance with the agreement as well as after receipt of invoice

with a 3% cash discount 10 days after receipt of invoice or
in the net amount 30 days after receipt of invoice.
5. Payments shall be made by check, bill of exchange or bank remittance. Payment shall be deemed effected in due time when the check or bill of exchange has been sent by mail on the due date or, as the case may be, the remittance has been ordered with the bank on the due date.
6. In the event of default of payment we shall be liable for default interest in the amount of 5% above the base interest rate as defined in Section 247 of the German Civil Code (BGB).
7. We shall be entitled to the statutory setoff and retention rights. We shall also be entitled to set off accounts receivable against affiliated companies of Supplier within the meaning Section 15 of the German Stock Corporation Act (AktG) against Supplier's claims for payment.³
8. We shall be entitled to refuse payment until Supplier has, appropriately and in a form specified by us, submitted to us sufficient evidence proving that the goods delivered by him are free from third-party rights.⁴

V. Delivery Period

² US No. 2.

³ US No. 3.

⁴ US No. 5.

1. The delivery date specified in the order shall be binding. Decisive for the observance of the delivery period shall be the receipt of the goods in compliance with the agreement at our premises. No special declaration of default shall be required.
2. Supplier shall be obligated to notify us in writing immediately in the event circumstances occur or become evident for Supplier which make it obvious that the agreed delivery period cannot be observed. In case Supplier fails to do so, Supplier shall also be liable for such delays in delivery for which he is not responsible.
3. In the event Supplier does not meet a delivery date, we shall be entitled to demand subsequent delivery and claim damages for delayed performance. At our request, Supplier shall be obligated to effect subsequent delivery as quickly as possible, unless the delay is due to *force majeure*. Any potential additional expenses shall be borne by Supplier.⁵ Separate agreements on contractual penalties shall become part of our orders. After unsuccessful expiry of a reasonable grace period for delivery, we shall be entitled to claim damages for non-performance or to rescind the agreement.
4. Partial deliveries shall not be accepted as performance. Any delivery exceeding the quantity ordered shall not entitle Supplier to claim payment for the excess quantity.⁶
5. In the event deliveries are made more than two weeks⁷ prior to the date specified by us or, as the case may be, agreed with us, we shall be entitled to return the goods or to invoice Supplier for the costs incurred thereby (e.g., demurrage, warehouse costs) and to set off our claim for cost compensation against Supplier's claims for payment.

VI. Quality, Inspection of Defects, Warranty

1. All goods delivered and all services rendered under the order shall (i) comply with the order and the related specifications, drawings, designs and descriptions, (ii) be of good quality and workmanship as well as free from any defects, (iii) be suitable for our particular purposes as specified in the agreement and (iv) comply with the latest acknowledged technological and scientific standards, any applicable legal provisions, regulations on the prevention of occupational accidents and any other conditions imposed and regulations issued by authorities. In the event Supplier was involved in designing the goods or approved a specific design, he shall also warrant and represent that the goods are free from any design-related defects.⁸
2. As regards the production of the goods to be delivered to us, only such materials and processes may be used respectively applied which comply with environmental protection and safety regulations as applicable at any given point of time.
3. Any modifications of the goods to be delivered shall be subject to our prior written approval. Supplier shall make special reference to any potential improvements and technical modifications.

⁵ US No. 4.

⁶ US No. 4.

⁷ US No. 4.

⁸ US No. 6.

4. Following receipt, we shall inspect the goods in terms of quality and completeness in a reasonable and technically feasible fashion. Any complaints related to obvious defects as well as the obvious absence of warranted features shall be submitted within a period of 7 days following receipt of goods.
5. Any legal remedy for defects or breach of warranty shall become time-barred 36 months after passing of risk.
6. We shall be entitled to at least the statutory remedies for defects or breach of warranty. In the event of delivery of defective goods we shall be entitled to claim, at our option, subsequent performance in the form of rectification of defect(s) or delivery of new goods free from any defect(s) prior to the start-up of production, processing or installation. In case such subsequent performance is unacceptable for us on the basis of the principles of good faith or where Supplier is unable to effect subsequent performance, we shall be entitled to rescind the agreement.
7. In the event Supplier, upon request, does not effect subsequent performance within a granted period or does so only insufficiently, we shall be entitled, at Supplier's expense, to remedy defects ourselves or cause them to be remedied by third parties or carry out replacement purchases of goods. In addition, we, at our option, may rescind the agreement or make price reductions; if warranted features are missing and in the event of defective or wrong delivery due to negligence, we may instead claim damages for non-performance.

VII. Liability Insurance Protection

Supplier hereby undertakes to maintain product liability insurance coverage with an insurance sum of at least € 5,200,000.00 per personal injury/damage to property. Any further claims for damages to which we may be entitled shall be unaffected hereby.

VIII. Shipment

1. All deliveries shall be shipped free of freight charges and expenses to our plant at Supplier's risk; all delivery papers with reference to the order numbers and order details shall be handed over there.
2. All deliveries shall be accompanied by a delivery note indicating the following details: description of article(s), order number(s) and destination of shipment. Supplier shall forward the relevant freight documents to us without undue delay. Unless otherwise specified in the order, packaging and transport costs shall be borne by Supplier.⁹
3. Goods shall be shipped without oil or any other liquids and comply with applicable environmental protection and occupational safety provisions. Supplier shall be liable for damages if his delivery does not comply with the aforementioned provisions, unless he may not be held responsible for such infringement. To the extent legal provisions on strict liability are applicable, the aspect of fault shall be immaterial.¹⁰

⁹ US No. 3 subs. 1.

¹⁰ US No. 3 subs. 2.

IX. Reservation of Ownership, Provision, Tools, Confidentiality

1. We hereby expressly reserve title to parts which are provided to Supplier. Any processing by Supplier shall be conducted on our behalf. In the event parts title to which has been reserved by us are assembled with other objects which do not belong to us, we shall acquire joint title to the new item in proportion of the value of our item (purchase price plus value-added tax as applicable at any given point of time) to the other assembled items at the point of time of processing.
2. In the event the item provided by us is inseparably commingled with other goods which do not belong to us, we shall acquire joint title to the new item in the proportion of the value of the item to which title has been reserved (purchase price plus value-added tax as applicable at any given point of time) to the other goods at the point of time of commingling. In the event commingling occurs in such a way that Supplier's item is to be viewed as the main item, the parties hereby agree that Supplier shall transfer joint title to us on a *pro rata* basis. Supplier shall keep the sole or joint property in safe custody on our behalf.
3. We reserve title to tools and any other supplied parts. Supplier shall be obligated to use the tools exclusively for the production of such goods ordered by us. Supplier shall be obligated to specifically identify the tools and parts belonging to us as our property and to insure them at their replacement value against fire, water and theft at his own expense. At the same time, Supplier, as of now, hereby assigns to us all claims for compensation from such insurance policy. We hereby accept such assignment. Supplier shall be obligated to conduct any necessary servicing and inspection work as well as all maintenance and repair work on our tools and parts at his expense in due time. Supplier shall notify us immediately of any irregularities. In the event Supplier culpably fails to do so, any claims for compensation on our part shall not be prejudiced hereby.
4. Supplier shall be obligated to keep all illustrations, drawings, calculations and any other documents and information received strictly confidential. Such documentation may only be disclosed to third parties with our express approval. This confidentiality obligation shall also apply after execution of this order. It shall cease, if and insofar as the production know-how contained in the illustrations, drawings, calculations and any other documents has become generally known.
5. All drawings, tools, devices, plans, designs, materials, models and any other production documents which are furnished for the execution of orders and which we make accessible, provide or supply to Supplier shall remain our property and be returned to us without undue delay after completion.

X. Liability

Unless a different liability provision is stipulated elsewhere in the present Terms and Conditions of Purchase, Supplier shall only be obligated to compensate us as follows for such damage which we incur directly or indirectly as a result of a defective delivery due to an infringement of administrative safety provisions or as a result of any other acts and conditions attributable to Supplier:

- a) Supplier shall be liable for damages if he fails to prove that he is not responsible for the infringement of a contractual duty constituting the cause for the damage pursuant to Section 276 BGB.

- b) If a third party asserts a claim against us on the basis of strict liability, Supplier shall be liable to us, if he too would be directly liable vis-à-vis such third party. The principles of Section 254 BGB shall apply *mutatis mutandis*. In so far, Supplier shall be obligated to indemnify us against any liability vis-à-vis any third party on first demand. The foregoing stipulation shall also apply to any case of product liability based on fault.
- c) Any claims on our part shall be excluded in the event the damage is the result of an infringement of operating, servicing and installation provisions, unsuitable or improper use, defective or neglectful handling on our part or our vicarious agents or persons employed in the performance of our obligations arising from this agreement. Liability shall also be ruled out with regard to normal wear and tear or defective repairs for which Supplier is not held responsible.
- d) With regard to our measures aiming at averting damage (e.g. recall campaigns), Supplier shall be liable insofar as he is legally obligated to assume such liability.
- e) Should we intend to assert claims against Supplier in accordance with the aforementioned provisions, we shall comprehensively inform Supplier thereof without undue delay and consult him. We shall give Supplier the opportunity to investigate the claim. We shall consult Supplier on measures to be taken, particularly in the event of settlement negotiations.

XI. Modification, Suspension, Annulment

1. At any point of time, we shall be entitled to modify, suspend or annul the order.
2. In the event of annulment, Supplier shall cease production of the ordered goods without undue delay and instruct his suppliers accordingly. Supplier shall receive the agreed purchase price for goods already finished. In case goods are specifically produced for us, Supplier shall receive compensation for the costs he incurred for raw materials and wages, except for any loss of prospective profits, to the extent the amount of such costs is deemed reasonable and may be attributed to the annulled portion of the order on the basis of generally accepted accounting principles. We shall not pay any compensation in case production commenced following a longer start-up period than it would have been necessary to comply with the delivery date specified in the agreement or in case such costs have been incurred after annulment of the order. Nor shall we pay any compensation if the produced goods are part of the customary stocks of Supplier or can be easily sold on the general market. Supplier's claim for compensation shall extinguish if it is not asserted within a period of 30 days following annulment of the order.
3. In the event of modification or suspension, the parties shall agree upon a procedure aiming at compensating Supplier for extra costs incurred by him. Extra costs may only be asserted if they are notified to us in writing within 10 days after our notification of modification at the latest.¹¹
4. In the event termination is based on any termination on part of our customer, we shall reimburse Supplier for such amounts (less our own costs) which we received as com-

¹¹ US No. 8 and 10.

pensation. Hours of in-house work shall be billed at customary hourly rates. No further claims for compensation, particularly for financial losses and lost profits, may be asserted.

XII. Force Majeure¹²

Neither party shall be held liable if, without any fault on its part and for reasons beyond its control, particularly in the event of *force majeure* and labor disputes, it is unable to fulfill its obligations set forth in this agreement. Upon occurrence of such circumstance, the affected party shall inform the other party thereof within 10 days and indicate the expected period of disruption of performance of its obligations. In the event such circumstance affects Supplier, he shall take any reasonable measure to effect performance of this order, particularly to switch to temporary production sites, including third-party production sites. As long as Supplier is unable to effect delivery in due time for said reasons, we shall be entitled to cover our demand from other sources and reduce the order accordingly; such entitlement shall not constitute any claims on the part of Supplier. At our request, Supplier shall represent and warrant within a period of 10 days that such delay in delivery will not exceed a term of 30 days. In the event the delay in delivery exceeds a term of 30 days or if Supplier fails to submit the requested representation and warranty setting forth that the delay in delivery will not exceed a term of 30 days, we shall be entitled to annul the order without assuming any liability whatsoever.

XIII. Intellectual and Industrial Property Rights¹³

1. Supplier represents and warrants that production, utilization or sale of the items delivered to us does not infringe any industrial or intellectual property rights, particularly patents, trademarks, registered designs, copyrights or mask work rights, or industrial secrets.
2. Supplier shall indemnify us, our employees and customers against each and every third-party claim arising from any alleged infringement of industrial and intellectual property rights or external industrial secrets resulting from the production, utilization or sale of the goods delivered to us and to assume any reasonable costs of legal defense. Prior to accepting our order, Supplier shall duly notify us should compliance with our given specifications result in such rights infringement. In the event he fails to do so, he shall be held liable pursuant to the present section.
3. Supplier hereby waives each and every claim raised against us on the basis of any infringement of industrial and intellectual property rights, also to the extent that such infringement is the result of Supplier's compliance with our specifications.

XIV. Inspection of Business Records

During normal business hours, we shall be entitled to inspect through our representatives all documents of Supplier as regards performance of the order as well account-

¹² US No. 12.

¹³ US No. 16.

ing records. In this respect, Supplier shall keep all relevant records for a period of at least two years following delivery.

XV. Spare Parts¹⁴

As regards goods requiring maintenance or upkeep, Supplier shall keep in stock spare parts and sell them to us at fair market prices for a period of seven years following final delivery.

XVI. Place of Performance and Jurisdiction

1. The place of performance for all services shall be the operating plant specified in the order.
2. The City of Heidelberg, Germany, shall be the exclusive place of jurisdiction for all disputes arising from this agreement, provided Supplier is a merchant, a legal entity or a special fund under public law. We shall also be entitled to commence an action at Supplier's legal place of jurisdiction.

XVII. Ethical Conduct

Seller's employees shall comply with the BorgWarner Supplier Code of Conduct articulated within the BorgWarner Supplier Manual. Compliance with these standards is a mandatory component of Buyer's purchase contracts worldwide and must also apply to supplier subcontractors. Both the BorgWarner Supplier Code of Conduct and the BorgWarner Supplier Manual are incorporated by reference as part of this Purchase Order and are binding on the Seller.

XVIII. Quality Control

Seller shall maintain adequate and consistent quality control inspection and testing to assure that goods will consistently conform to specified requirements, and shall, at Buyer's request, furnish substantiated results of quality control inspections and testing in accordance with the BorgWarner Supplier Manual. Supplier shall notify Buyer in writing before changing any way processes used in production or Buyer's specified requirements of goods ordered by Buyer under this purchase order. Buyer's specified requirements used in production must not be changed without Buyer's prior written consent and in accordance with the BorgWarner Supplier Manual.

XIX. General Provisions

1. In the event any provision of the present Terms and Conditions of Purchase and the further agreements made is or becomes invalid, such invalidity shall not affect the validity of the remaining provisions of the present Terms and Conditions of Purchase. The parties shall be obliged to replace any such invalid provision by a stipulation which most closely achieves the economic purpose of such invalid provision.
2. The laws of the Federal Republic of Germany shall exclusively govern the order and its processing; the applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be ruled out.

¹⁴ US No. 25.

3. In the event Supplier suspends payments or insolvency proceedings are requested against Supplier's assets, we shall be entitled to rescind the agreement in whole or in part.
4. Supplier shall comply with all applicable requirements of the European Union's ("EU") REACH legislation, including, without limitation, pre-registering and/or registering any substances supplied to Customer and for which REACH registration is required, and designating an "Only Representative" to act as an importer under REACH for any substances supplied, directly or indirectly, by you for import by a Customer entity into the EU. Supplier shall provide Customer with all documents and information Customer may reasonably require to verify Supplier's compliance with REACH. Supplier shall indemnify and hold Customer harmless from and against any liability, claims, demands or expenses arising from or relating to Supplier's noncompliance.