

Supply agreement Purchased parts



Between

(name of company)

street

postcode, town

– hereinafter referred to as **'the supplier'** –

and

(name of company)

street

postcode, town

a WKW.automotive company

– hereinafter referred to as **'the client'** –

– both together hereinafter referred to jointly as **'the parties'** –

together with the exclusively applicable General Purchasing Conditions of the client, attached to this agreement as an **appendix, the following is hereby agreed**

Preamble

In the making and performance of this supply agreement the client and the supplier shall orient themselves toward the special requirements relating to the quality and reliability of their products in the international automotive industry. They agree with binding effect that their competitive strength must be oriented toward these yardsticks and therefore that the rights and obligations under this agreement are at all times to be exercised in accordance with the abovementioned requirements.

Given the above as the basis of this agreement, the following shall apply:

1. Subject matter

1.1 The subject matter of this agreement is the supply of parts with the following

part designation:

– hereinafter referred to as the **'contractually agreed product(s)'**.

FB11-14 Supplier Agreement Purchased Parts_Liefervereinbarung Zukaufteile WKW.group_Englisch.	Changed:	Checked:	Cleared:
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- 1.2 The following shall apply with binding effect in the determination of the contractually agreed product and its quality:
- 1.2.1 the drawing (specification) no.
 - 1.2.2 the client's / contractor's specification sheet dated, if such have been agreed
 - 1.2.3 the IMDS-compatible material data sheet ...
This data sheet must list all the materials and component substances used by the supplier in making the contractually agreed product, and record all the data required for the subsequent recycling of the vehicle part.
 - 1.2.4 agreed test procedures
 - 1.2.5 the intended purpose of the contractually agreed product ('intended use')
- 1.3 The procedural instructions VA 11-03 (QM guideline 01 for purchased parts, contract and outside processing) and the supplier-logistics guideline of the WKW Group are also integral parts of this agreement.
- 1.4 Drawings are to be created and maintained solely and exclusively by the supplier unless anything else is agreed when the order is issued.
The following shall apply to the creation and maintenance of drawings for the project:
- drawings shall be created and maintained free of charge on behalf of the client; the client alone shall be or become the owner of said drawings
 - the client shall be entitled to sole right of use and exploitation of the industrial property rights contained therein, said right being transferable, and unrestricted in terms of time, place and content.
- 1.5 The companies listed below (being entities of the WKW-group) are entitled to order goods according to this Agreement and all General Terms, Appendices, etc. which are connected to this Agreement:
- [...]
 - [...]
 - [...]

The supplier is not entitled to set off claims he may have against one entity of the group against claims that are filed against him by other entities of the group. Furthermore the supplier is not allowed to withhold services or deliveries/goods against one entity if he has unsatisfied claims against another entity of the group.

2. Volume planning, on-call orders and deadlines, default, contractual penalty

- 2.1 The client shall inform the supplier of the delivery quantity prescribed by his customers and the delivery periods he himself must observe. The parties shall together specify the duly coordinated delivery quantities for given periods of time (volume plan). Unless anything else is agreed in writing, the volume plan shall only serve to assist the supplier in his capacity planning. There are no binding agreements with regard to delivery date or delivery quantity until the on-call order is issued as in § 2.2.
- 2.2 On-call orders shall be issued by the client's planners by e-mail, EDI or telefax. On-call orders shall be deemed to have been accepted by the supplier with binding effect if the latter does not



object to them in writing, by telefax, e-mail or EDI within three working days (Monday - Friday) of receipt at the latest.

- 2.3 The supplier shall be under obligation to adhere strictly to the binding delivery deadlines and delivery quantities stated in the on-call order. Part deliveries shall require the approval of the client.
- 2.4 The client has the right to alter the volume plan and on-call orders by the extent to which the corresponding volume of his own deliveries to his customers is also altered, without being obliged to make compensation for such alteration. The client shall inform the supplier of such alterations without delay.
- 2.5 The supplier shall bear all the costs – in particular extra freight costs, costs of handling and installing parts which have been delivered late, and other expenditure arising from interruptions to operations and follow-up claims from third parties – caused by failure to adhere to binding delivery deadlines or quantities. In the case of culpable default in delivery, the supplier shall pay a contractual penalty of 0.3% of the value of the on-call order affected by the default for each working day of default, subject however to a maximum of 5%. Notwithstanding, the client shall have the right to assert further claims for loss or damage. The contractual penalty will be offset against any loss or damage caused by the default.

3. Delivery, labelling

- 3.1 Define packaging and transport conditions: ...
- 3.2 The supplier shall deliver 'carriage paid' to the registered office of the client (DDP Incoterms 2010) unless anything else has been agreed.
- 3.3 The contractually agreed products to be delivered are to be labelled as follows: ...

4. Quality standards and environmental management

- 4.1 The quality features of the goods shall be specified by the client as in § 1.2 and shall be binding on the supplier. Any deviation therefrom shall require the prior consent of the client. The same shall apply to any changes to methods or processes such as may have an influence on the fulfilment of the quality standards.
- 4.2 Any relocation of the production facilities of the supplier shall require the written approval of the client, as shall the engagement of any subcontractors by the supplier.
- 4.3 The supplier is aware that the client must meet the growing quality demands of the automotive industry. The client therefore has the right to pass on such changing demands to the supplier, and they shall, having been passed on, form part of the supplier's obligation to perform. Any adjustment of costs or alteration to a manufacturing process shall require to be agreed upon beforehand. If necessary, the client shall, having reached agreement on the matter with the supplier, be authorised to carry out a time-and-motion study in respect of the contractually agreed products.
- 4.4 The supplier shall operate a certified quality and environmental management system that conforms to the currently applicable standards of the automotive industry (e.g. ISO/TS 16949). Without being requested to do so, he shall be under obligation to furnish evidence of ongoing and current certification by submitting the appropriate documents. The client shall have the right to carry out an audit at any time during the supplier's normal hours of work. The supplier shall also allow auditing to be done by the customer of the client.



4.5 Further requirements relating to the QM system are set out in the client's quality assurance agreement / QMR 01 which also applies.

5. Prices

€/unit ... in accordance with the quotation of Prices apply plus value added tax at the current statutory rate.

Savings: xx% each for 200_/200_/200_/200_. Any further discounts to be negotiated on an annual basis.

6. Price corrections

6.1 Any jointly obtained results of value analyses or cost or price changes pushed through by customers of the client shall lead to further price negotiations.

6.2 Generally, the agreed prices are fixed lifetime prices and shall include all goods and services of Supplier. [Alternatively: The prices agreed shall be reviewed with regard to changes in the economic framework conditions (material) at the beginning of each year. A prerequisite for negotiations regarding a price change shall be that there has been a change in material costs of at least 10% in the period for which the assessment is made. Basis of assessment ...; material share ...]

6.3 The client does not at the present time intend to become active himself in the area in which the supplier is active, or to engage any other suppliers to supply the contractually agreed product. The prices of the supplier must however remain competitive. The client shall inform the supplier of any more favourable prices offered by competitors for the performance to be rendered by the supplier. The client and the supplier shall negotiate as partners regarding the extent to which the supplier is prepared to bring his prices into line with those of the competition. If no agreement is then made within a period that can be regarded as reasonable under market conditions, the client shall have the right to terminate the supply agreement giving three months' notice.

6.4 It is expressly agreed that the supplier shall submit a cost breakdown for each new project, at the same time as his quotation, using and completely filling out the quotation analysis form FB 11-28 provided by the client together with the enquiry.

7. Payment

Unless any other agreement is made, payment shall be made within 30 days less 3% prompt-payment discount or 60 days net. Determinant for the beginning of such periods is the receipt of a correct and proper invoice or that of defect-free goods by the client (whichever of the two occurs later).

8. Supplier's assurances / warranty

8.1 The supplier shall ensure the capacities for the agreed deliveries on the proviso that the client's ability to supply his own customers is also ensured. This shall also entail the maintenance of capacity reserves of up to 20% over and above the planned requirements as communicated to him in respect of the client and / or the latter's customers.

8.2 The capacity of the supplier is as follows: ... [if necessary to be set out in appendix].



- 8.3 The supplier gives his assurance that the contractually agreed products supplied by him are free of defects. This includes the suitability for the intended use. The supplier shall inspect the goods prior to despatch completely and thoroughly for freedom from defects and duly document said inspection. The client shall not be under any obligation to inspect the contractually agreed products immediately. Instead, he shall notify the supplier in writing without delay of any defects in the goods delivered as soon as they are discovered during the ordinary course of business. To that extent, the supplier waives the right to reject notification of defects on the grounds of its being delayed. The client is merely under obligation to inspect the goods on receipt for obvious transport damage, identity and quantity. The client shall not be under any further obligation to inspect incoming goods.
- 8.4 In the case of defective deliveries, and in the case of other breaches of the contract or breaches of obligation, the client shall be entitled to his statutory rights unless any other agreement is made in this agreement or in the attached general purchasing conditions of the client.
- 8.5 If in a case of warranty the supplier fails to comply with the request of the client for supplementary performance in the period set by the client, or if it is not reasonable to expect the client to assert a claim for supplementary performance, in particular on account of urgency or on account of the threat of greater loss or damage, the client shall, without being obliged to set an extension period, have the right, at the supplier's expense, to procure replacements for defective parts, or to rectify defects himself or have them rectified by a third party or parties. If the client suffers loss or damage as a result of claims of recourse on the part of his customers occasioned by defective parts delivered by the supplier, in particular claims of recourse based on warranty agreements between the client and his customers, the supplier shall be under obligation to make full compensation for such loss or damage.
- 8.6 On request, the parts to be used by the supplier in replacing defective parts are to be made available by the client at the supplier's expense if this is possible and commercially reasonable.
- 8.7 Warranty claims on the part of the client shall fall under the statute of limitation on the expiry of 60 months after delivery to the client. If the supply and performance are destined to be treated and / or processed further and / or delivered elsewhere, said period shall not begin until the commencement of such treatment or processing and / or onward delivery, though it shall in all cases commence 6 months after the handing over of the goods or final acceptance at the latest. In the case of replacement delivery and rectification of defects the warranty period shall begin anew in respect of the parts concerned.
- 8.8 In any given case of defects of quality, the supplier shall determine the cause if requested to do so by the client and furnish the client with evidence thereof. The supplier shall inform the client immediately about the measures being taken to rectify the cause of the fault.
- 8.9 For the duration of this agreement, the supplier shall maintain extended product liability insurance, inclusive of cover for the costs of recall campaigns, with an insured sum of at least €5million in both areas of coverage per case of loss or damage under conditions that are usual in the automotive industry. The policy shall include extended liability of at least three years following delivery to the client. The client may request evidence that the insurance has duly been taken out.



9. Replacement parts

- 9.1 In the case of series supply, the supplier undertakes to continue to supply the client with replacement parts for a further 15 years after the discontinuation of said series. Furthermore, the supplier shall offer the client a final production batch. The scope and time of the on-call order shall be determined by the client.
- 9.2 During an ongoing series, replacement parts are to be supplied at the respective series price. The prices of replacement parts which apply after discontinuation of series production of the contractually agreed product are to be agreed separately in each case, but may not, for the first three years, be above the last valid series price.

10. Confidentiality

- 10.1 The client and the supplier shall safeguard all business, economic and technical information ('confidential information') issued to them by the other party in whatever form within the framework of a nascent or existing business relationship, including methods and processes in the manufacturing sector concerned, as trade and business secrets and maintain secrecy thereon. This applies in particular as an obligation incumbent on the supplier in any case in which a business relationship is initiated with a competitor of the client. Any breach of this obligation to maintain secrecy on the part of an employee shall be deemed to be a breach on the part of the party itself. In all cases, the obligation to maintain secrecy shall continue as a legal obligation in its own right after the termination of this agreement.
- 10.2 The obligation to maintain secrecy on confidential information shall not apply if that information is generally known, becomes known without there having been any breach of the obligations under this agreement, or has to be disclosed on account of binding statutory regulations.

11. Results of work, industrial property rights

- 11.1 Results of work are all and any results arrived at or achieved in the context of the business relationship, in particular expertise, inventions, industrial property rights, drawings, models, prototypes, recipes, formulae, images, computer programmes and documentations, reports and records protected by copyright – whether or not they were accomplished or performed by order of the parties ('foreground intellectual property').
- 11.2 As regards the results of work arrived at or achieved in the context of the business relationship, the party through whose employees or agents they were arrived at or achieved shall be entitled to them unless
- a) anything to the contrary has been agreed in writing, or
 - b) the client pays remuneration for the development as a whole or part of it, regardless of the type of said remuneration. It shall in all such cases be the client who is exclusively entitled to the rights arising in the context of the business relationship.



- 11.3 In the case of work results achieved jointly by employees or agents of both parties, the parties shall come to a mutually satisfactory agreement on the sharing, registration, maintenance, defence and utilisation of the work results achieved. If the parties fail to come to an agreement, the basic principles governing the community of part owners within the meaning of §§ 741 ff. of the German Civil Code (BGB) shall apply accordingly. Inasmuch as it is necessary to the fulfilment of the business relationship, each of the parties shall make available its project-related work results to the other party during the term of this agreement and grant it a right of use such as is necessary in terms of content, place and time to the contractually agreed manufacture and / or use of the contractually agreed product(s).
- 11.4 Jointly achieved work results may only be published with prior permission from the other party. Such permission may only be refused for a substantial reason.
- 11.5 The parties hereby agree to exchange information about their work results if and to the extent that this is necessary for development and application in the context of the business relationship.
- 11.6 If industrial property rights belonging to the supplier are used which were initially registered prior to the signing of this agreement, or which already existed at the time when this agreement was signed ('background intellectual property'), the supplier grants the client as a matter of basic principle a non-exclusive, transferable and worldwide licence in respect of the content relating thereto, to sell the products worldwide and to manufacture them or have them manufactured, the granting of said licence being settled by agreed payment for the products.

12. Term, notice of termination

- 12.1 This agreement shall come into force on being signed by both parties, and shall be concluded for an indefinite period of time. It may be terminated at any time giving notice in writing at least six months before the end of a given calendar month.
- 12.2 This shall not affect the right of the parties to terminate the agreement summarily for a substantial reason. A substantial reason for summary termination on the part of the client shall in particular be deemed to exist if the supplier fails to meet the agreed delivery deadlines or fails repeatedly to comply with the agreed quality standards.
- 12.3 The right to summary termination also exists if the client's customer ceases to purchase from the client.



13. Miscellaneous

- 13.1 German law shall apply, there being no recourse to the UN Convention on Contracts for the International Sale of Goods (CISG).
- 13.2 Exclusive legal domicile shall as a matter of basic principle be Wuppertal. The client shall however also be permitted to take legal action against the supplier at the latter's registered office.
- 13.3 Any alterations or additions to this agreement shall require to be made in writing. This shall also apply to any move made to supersede this clause itself.
- 13.4 In the case of any contradictions between or deviations in the provisions of a) this agreement, b) the client's general purchasing conditions and c) the other documents that also apply, the abovementioned sets of provisions shall take priority over one another in that order. Conditions negotiated between the parties individually and in writing always take priority over general provisions.
- 13.5 If any individual provision or provisions of this agreement should be or become invalid or void, this shall not affect the validity of the remaining provisions. The parties undertake to replace invalid or void provisions with new provisions which cater to the economic regulatory content of the invalid or void provisions in a way that is legally admissible. The same shall apply if this agreement is found to contain an omission.

(place), (date)

Client

Supplier

Name (please use capital letters)

Name (please use capital letters)

Appendices: ...