

## **General Terms and Conditions of Purchase of DEUTZ AG (Revision of 1 November 2014)**

In respect of the supply parts (hereinafter "SUPPLY PARTS") to be delivered to DEUTZ by the supplier (hereinafter the "SUPPLIER") these 'General Terms and Conditions of Purchase of DEUTZ AG' (hereinafter "DEUTZ") apply, unless these General Terms and Conditions of Purchase are contracted out expressly by way of written agreement between the parties. Terms and conditions used by the Supplier do not apply although DEUTZ may not have objected to them expressly in the specific case.

### **1. Fundamental provisions:**

- 1.1 Modifications and amendments as well as terms and conditions of sale of the Supplier deviating from the terms and conditions below shall be deemed accepted only if confirmed in writing by DEUTZ.
- 1.2 The acceptance of deliveries and services or their payment by DEUTZ does not constitute any consent to the Supplier's terms and conditions of sale. By way of the delivery of Supply Parts to DEUTZ by the Supplier, the Supplier accepts these General Terms and Conditions of Purchase of DEUTZ without requiring any written statement of the Supplier.

### **2. Terms and conditions of delivery:**

- 2.1 With regard to the disposition of the Supply Parts the Supplier receives forecast delivery schedules (hereinafter "Forecast Delivery Schedule(s)") from DEUTZ for each Supply Part. Forecast Delivery Schedules may be notified in written form or in electronic form. Each Forecast Delivery Schedule contains a time horizon of at least twelve (12) months with quantity and delivery date data. The delivery dates represent the prospective day of receipt of the Supply Part at the DEUTZ plant. The delivery date for the Supply Parts binding on the Supplier (depending on the Incoterms clause agreed upon with the Supplier) is calculated by way of a method according to which the Supplier deducts a number of days specified by DEUTZ as the average shipment time from the delivery date specified in the Forecast Delivery Schedule.
- 2.2 The quantities of the Supply Parts specified in the Forecast Delivery Schedule for weeks 1 and 2 (plus the shipment time specified by DEUTZ pursuant to section 2.1 above) are agreed upon as invariable fix orders to be complied with by both contracting parties (obligation of the Supplier to delivery exactly in due time and obligation of DEUTZ to pay the price) which cannot be altered by either contracting party. The quantities specified for week 2 in the relevant Forecast Delivery Schedule, however, are only applicable subject to the condition that such quantities correspond with the quantities specified for week 3 in the previous Forecast Delivery Schedule.
- 2.3 The quantities of the Supply Parts specified in the Forecast Delivery Schedule for the weeks 3 through and including 8 (each time plus the shipment time specified by DEUTZ pursuant to section 2.1 above) may be changed by DEUTZ within a range of plus/minus twenty percent (+/- 20%) relating to the relevant amounts of the total Supply Parts quantities specified in the Forecast Delivery Schedule for the weeks 3 to and including 8. Taking into account this range of variation, the quantities of the Supply Parts specified in the Forecast Delivery Schedule for the weeks 3 through and including 8 are binding on both contracting parties to the extent in which the quantity of Supply Parts specified for week 3 are translated into a fix order in the following Forecast Delivery Schedule relating to week 2 as set forth in section 2.2 above.

2.4 The quantities of the Supply Parts specified in the Forecast Delivery Schedule as of and including week 9 constitute unbinding planning figures.

The Supplier has the right to object to the quantities of the Supply Parts specified for week 9 (plus the shipment time specified by DEUTZ pursuant to section 2.1 above) within two (2) working days (excepting Saturdays) after the receipt of the Forecast Delivery Schedule if the Supplier is justifiably not going to be able to effect the delivery of the quantities specified by DEUTZ on the delivery date (future weeks 1 and 2, see sections 2.1 and 2.2 above). In this case it applies that the quantities of Supply Parts specified for week 9 in the Forecast Delivery Schedule of the preceding week supersede the quantities for week 9 specified by DEUTZ in the objected-to Forecast Delivery Schedule.

If the Supplier does not object to a Forecast Delivery Schedule, the Supply Part quantities specified in the following Forecast Delivery Schedule for week 8 (plus the shipment time specified by DEUTZ pursuant to section 2.1 above) corresponding with the quantities specified by DEUTZ in the preceding Forecast Delivery Schedule for week 9 shall be binding on both contracting parties as defined in section 2.3 above.

2.5 If the Supplier should deliver Supply Parts earlier than 5 days prior to the date specified in the Forecast Delivery Schedule, DEUTZ will charge the prorated interest amount to the Supplier which DEUTZ incurs due to the increased warehousing requirements (buffer warehouse). Should the Supplier deliver quantities in excess of the applicable Forecast Delivery Schedule and/or make deliveries without any valid Forecast Delivery Schedule and if there are no direct follow-up Forecast Delivery Schedules for DEUTZ to set-off such delivery, then DEUTZ will repack the deliveries in the incoming goods area and return the quantity delivered in excess together with an inspection report to the Supplier. Any additional expense DEUTZ incurs in this respect will be charged to the Supplier as follows: handling costs EUR 50.00 per delivery; incoming goods inspection costs EUR 80.00 per delivery. The Supplier's right to prove that DEUTZ incurred less expenses shall not be affected.

2.6 The costs for accelerated shipments which DEUTZ is not responsible for shall be at the expense of the Supplier. This also applies if delivery batches scheduled as complete deliveries are delivered in several partial batches.

2.7 The Supplier makes sure that the goods are sufficiently identifiable by using product tags pursuant to the VDA (German Automotive Industry Association) Standard 4902 for each container and arranges for sufficient batch identification of the Supply Parts. The Supplier notifies DEUTZ wherever technically feasible of the deliveries by way of remote data transmission pursuant to the VDA Standard 4913. All shipment documents must only be issued for the volume of one Forecast Delivery Schedule, unless the use of collective bills of delivery pursuant to the VDA Standard 4912 has been agreed upon. In this connection the annual order number and the item number shall always be indicated. This applies to invoices mutatis mutandis. The parts shall be sent exclusively pursuant to the special DEUTZ packaging instructions or the packaging instructions specified in the description of the Supply Parts, respectively. The payer of the empty packaging freight is the one paying the full packaging freight. Subject to the proof of higher damage, any violations of the packaging instructions which the Supplier is responsible for are invoiced to the Supplier at EUR 50.00 per shipment unit. The Supplier's right to prove that DEUTZ incurred less expenses shall not be affected.

2.8 Unless agreed otherwise, the accounting of the delivery will be made by way of an automatic reconciliation and accounting process pursuant to the VDA Standard 4908 on the basis of the prices stored and incoming goods quantities recorded by DEUTZ. In this case invoices of the Supplier are not required.

2.9 Documents to be completed by the Supplier to prove the origin status of the Supply Parts delivered by the Supplier:

2.9.1 Supply Parts with preferential origin status (delivered from EU countries)

For all the Supply Parts delivered to locations of DEUTZ in Germany, the Supplier will upon request of DEUTZ issue a long-term supplier's declaration on goods with preferential origin status pursuant to the Regulation (EC) No. 1207/2001. In the long-term supplier's declaration, the Supplier will indicate its DEUTZ business partner number, the DEUTZ part number of the Supply Parts, as well as the HS product codes of the Supply parts as applicable from time to time. The Supplier will immediately notify DEUTZ of any change of the origin of the Supply Parts by sending a new long-term supplier's declaration. There only those Supply Parts should be listed the origin of which changed. On request, the Supplier shall prove its product origin data for the Supply Parts by way of an information sheet confirmed by a customs office.

2.9.2 Supply Parts without preferential origin status (delivered from EU countries)

If the Supplier should deliver Supply Parts to DEUTZ which have no preferential origin status pursuant to the Regulation (ED) No. 1207/2001, the Supplier will issue an officially certified certificate of origin to DEUTZ and send it to DEUTZ immediately after the dispatch of the Supply Parts indicating the DEUTZ business partner number of the Supplier as well as the invoice number of the relevant delivery. German suppliers may opt for a "(long-term) declaration according to IHK (chamber of industry and commerce) standards for the non-preferential origin status pursuant to Regulation (EC) No. 2913/92 (Customs Code) and 2454/93 (Customs Code Implementing Ordinance)" and to have it certified by the appropriate local chamber of industry and commerce.

2.9.3 Supply Parts delivered from non-EU countries

If the Supplier delivers Supply Parts from non-EU countries to DEUTZ, the Supplier will issue to DEUTZ either a movement certificate "EUR.1" or "A.TR." cleared by a customs office or a "declaration of origin on the invoice" (in case of the value of the goods exceeding EUR 6,000 – only valid with customs office approval number) or an officially certified certificate of origin "Form A" or an officially certified "certificate of origin" as customary in the country of dispatch and deliver it to DEUTZ enclosed to the goods shipment.

#### 2.9.4 Due dates and shipment address

The documents specified in sections 2.9.1, 2.9.2 or 2.9.3 above which are not enclosed to the goods shipment shall be sent to the following address within 14 days of the request or the dispatch of the Supply Parts:

DEUTZ AG  
Zollabteilung  
Ottostr. 1  
51149 Köln  
E-mail: [customsoffice.de@deutz.com](mailto:customsoffice.de@deutz.com)

Any delayed delivery of the documents after the sending of a reminder by DEUTZ will be invoiced to the Supplier with a lump-sum handling fee of EUR 100.00 per occurrence. The duty of the Supplier to issue the documents and send them to DEUTZ shall not be affected.

#### 2.9.5 Costs

The costs incurred for the issue and sending of the documents specified in sections 2.9.1., 2.9.2. or 2.9.3. above shall be borne by the Supplier. If the documents "declaration of origin on the invoice / EUR.1 / A.TR. / Form A" specified in section 2.9.3 above should not be delivered, DEUTZ will invoice to the Supplier the levied import duty based on documentary evidence.

### **3. Part labelling / tools / spare parts:**

3.1 The Supplier will equip the Supply Parts with the trademarks and/or other tags and/or labels and/or design requested by DEUTZ. The Supplier acknowledges that it is not entitled to any rights to the trademarks and design requested by DEUTZ.

3.2 DEUTZ has the right to identify the Supply Parts as original DEUTZ parts and to market them in a packing of their own.

3.3 To guarantee the permanent readiness of supply, the Supplier will not alter, scrap or let others possess the tools made for the manufacture of the Supply Parts, especially moulding tools, models and other appliances, unless with the prior written consent of DEUTZ.

3.4 For the demand of spare parts for the Supply Parts (hereinafter "Spare Parts") DEUTZ receives the same prices as for the Supply Parts for serial engines production. This also applies to components of the Supply Parts and/or Spare Parts.

The Supplier makes sure that the Spare Parts are available. The Supplier guarantees the continued delivery of the demand of Spare Parts for the supply period of the respective engine production series which is for a minimum of fifteen (15) years as of the end of the production of the respective engine production series by DEUTZ. The Supplier will notify DEUTZ of any planned end of production in a timely manner prior to the expiration of the above-mentioned availability period for Spare Parts in order to allow DEUTZ ordering a sufficient stock. DEUTZ has the right to purchase the Spare Parts directly from subsuppliers of the Supplier. The provisions in this section 3.4 shall remain in effect also after the termination of a serial delivery relationship between the Supplier and DEUTZ.

#### **4. Guarantee / liability / duty to obtain insurance:**

4.1 The Supplier guarantees the Supply Parts being free of defects, including meeting the qualities agreed with DEUTZ. DEUTZ will notify defects of the Supply Parts to the Supplier within two (2) working weeks after DEUTZ becoming aware of such defects subject to the circumstances of the due course of business. DEUTZ has the right to opt for requesting either subsequent improvement free of cost or new delivery of defect-free Supply Parts free of cost. The Supplier reimburses the costs of examination, disassembly, reassembly and/or rework of the Supply Part and/or the engine as well as the associated costs for shipment, materials, labour and personnel incurred in connection with the subsequent improvement or the new assembly.

4.2 In urgent cases or in case of default of the Supplier, DEUTZ has the right to carry out the removal of defects by itself or have it carried out by third parties or obtain replacement otherwise at the expense of the Supplier. In the event of default of the Supplier in connection with subsequent improvement or in case of a defect of one or several Supply Parts caused by the Supplier or its agents with vicarious liability, the Supplier will also reimburse DEUTZ for all the additionally caused expenses and damages. The Supplier shall particularly reimburse DEUTZ for its additional expenses as well as in connection with costs and damages for which DEUTZ has to reimburse customers of DEUTZ or third parties.

4.3 If DEUTZ provides evidence that there is a defect, particularly that the Supplier is responsible for the cause of a malfunction of or a damage to a Supply Part, then the burden of producing evidence or proof is incumbent on the Supplier to show that the Supplier did not act culpably.

4.4 In case of defect of the Supply Parts established by DEUTZ in the DEUTZ facilities, the Supplier pays to DEUTZ an amount of EUR 140.00 per notice of defects as compensation for internal expenses, any other claims notwithstanding. The right of the Supplier to prove that DEUTZ suffered a lower damage shall not be affected.

4.5 The warranty period is (a) thirty-six (36) months as of the assembly of the Supply Part in the DEUTZ engine or (b) forty-two (42) months as of the delivery of the Supply Part to DEUTZ, whatever ((a) or (b)) occurs earlier.

4.6 In derogation from section 377 HGB (German Commercial Code) DEUTZ confines its incoming goods inspection to recognisable exterior shipment and packing damages and, additionally, to the establishment of the identity of the Supply Parts based on the shipment and delivery documents, the damages recognisable in doing so being notified to the Supplier immediately, however not later than within fourteen (14) working days. Apart from that, for defects of the Supply Parts detected only at the time of assembly, function tests or operation of the Supply Parts the Supplier waives the defence of delayed notice of defects.

4.7 The Supplier commits itself to take out all-risk insurance for risks the Supplier incurs in connection with its liability. The Supplier proves such insurance cover on the request of DEUTZ.

## **5. Quality:**

The Supply Parts shall comply with the DEUTZ documentation, the DEUTZ plant standards and the technical specifications agreed upon with DEUTZ as basis for the order, as well as the statutory provisions (e.g. German Equipment Safety Act) as applicable from time to time, the relevant ordinances, regulations and guidelines (e.g. accident preventing regulations, REACH and the VDE regulations), the DIN (German Institute for Standardisation) standards, and the most recent recognised codes of practice. The Supplier shall conduct quality controls appropriate in type and extent and apply a quality management system in line with the most recent codes of practice.

## **6. Product liability:**

In the event that DEUTZ should be faced with third-party claims based on product liability, the Supplier shall indemnify DEUTZ from and against such claims, provided that and to the extent in which the damage was caused by a defect of one or several Supply Parts. In such cases the Supplier pays all the costs and expenses, including the costs of prosecution or product recall, if applicable. In any other respect the statutory provisions shall apply.

## **7. Non-disclosure / restrictions of use:**

The Supplier shall keep secret and not disclose to any third party information the Supplier receives from DEUTZ such as samples, drawings, models and other data and to use such information only for the purposes of the offer to DEUTZ and – if the order is awarded – only for complying with the obligations of the Supplier to DEUTZ. The Supplier shall not offer or deliver to any third parties Supply Parts manufactured on the basis of drawings, samples or models originating from DEUTZ. The Supplier shall not have Supply Parts manufactured by third parties unless with the written consent of DEUTZ.

## **8. Third-party property rights:**

The Supplier is liable for the fact that manufacturing, delivery and use of the Supply Parts do not violate any domestic and foreign property rights. If DEUTZ is faced with third party-claims for the violation of property rights, the Supplier shall indemnify DEUTZ from and against such claims on first request. The indemnification duty of the Supplier relates to all expenses DEUTZ incurs unavoidably as a result of or in connection with such third-party claims.

## **9. Force majeure and acts of God:**

Force majeure and acts of God, industrial action, operational disruptions without fault, riots, governmental actions and other unavoidable events entitle DEUTZ to rescind the agreement, as a whole or in part, provided that such events entail a considerable reduction of the demand of DEUTZ.

## **10. Due dates:**

10.1 If the Supplier recognises that the delivery dates agreed upon with DEUTZ cannot be met, the Supplier shall inform DEUTZ thereof immediately in writing or in electronic form. Early delivery or provision of service and partial delivery or provision of service require the consent of DEUTZ.

10.2 In any other respect the statutory provisions apply in the event of missed deadlines.

**11. Data protection:**

The Supplier agrees that DEUTZ stores the data of the Supplier required for the handling of the business relationship and of the agreements they entered into on electronic data processing systems and uses them for own purposes within the DEUTZ Group (including domestic and foreign subsidiaries and joint ventures).

**12. Term:**

The agreement based on these terms and conditions of business (such as e.g. a master agreement) is made for an undetermined period of time and may be terminated in writing with twelve (12) months' notice effective by the end of a calendar year.

**13. Venue of court:**

Venue of court shall be Cologne, Germany. The agreement is governed by law of the Federal Republic of Germany excluding conflict of laws provisions. The application of the The Hague uniform sales laws, the uniform UN sales law or other conventions on the sale of goods law is excluded.

**14. Severance:**

An agreement entered into on the basis of the applicability of these terms and conditions preserves its binding effect for the remaining parts if specific terms and conditions prove invalid. This does not apply if adhering to the agreement would imply undue hardship for either contracting party.