



Terms and Conditions of Sale and Delivery

I. Applicable terms and conditions

The legal relations between BPW Bergische Achsen Kommanditgesellschaft as the supplier (hereinafter referred to as "BPW") and the Customer are governed by these terms and conditions and any other additional agreements. Amendments and supplements to these terms and conditions must be made in writing, including waivers to the written form requirement. For the purpose of these terms and conditions, the written form requirement is equally met when carried out by electronic data transmission. Other general terms and conditions do not apply either, even if these conditions have not been expressly contradicted in any individual cases.

II. Orders

1. All delivery contracts (orders and acceptance) and call-off orders, along with any amendments and supplements to the same, must be made in writing. In the event that the written form requirement is not fulfilled, then the contract becomes valid at the latest when the order is executed by BPW (implied acceptance of order).
2. In the case that BPW fails to accept the order or the call-off order within three weeks after receipt then the customer has the right to cancel the order.
3. BPW reserves the right to make design changes to the product, as long as these changes do not affect its use and installation.

III. Payment

Unless agreed otherwise, the agreed price shall be paid by bank transfer within 14 days with 2% discount, or within 30 days net, after date of invoice. Generally prices are quoted EXW (as defined by Incoterms® 2010), including loading and packaging and excluding applicable VAT.

IV. Notice of Defects

The Customer is obliged to inspect the goods immediately after receipt, using the delivery documentation to check the type and quantity delivered, and to identify any obvious transport damages (including water entry). BPW must be notified in writing immediately of any shortages or damages. Other defects of the delivery must be reported immediately to BPW in writing as soon as they are identified in the normal course of business. In this case BPW waives its right of objection of late notification of defects.

V. Non-disclosure

1. The contractual parties are obliged to treat any commercial or technical information (in any form whatsoever), which is not public knowledge and has become known to them as a result of the business relationship as confidential.

2. In particular, drawings, sketches, models, samples, tools, test reports, measurement data, procedures, processes, programmes, software, parts lists, price and quantity agreements may not be disclosed to any unauthorised third parties or made available in any other way. The aforesaid remains the property of BPW and the Customer respectively. The copying of such information is permitted only within the framework of operational requirements and the copyright stipulations.
3. Sub-suppliers have to be bound accordingly.

VI. Dates of delivery

Agreed dates of delivery or deadlines are not binding, unless otherwise agreed in writing.

VII. Delay of delivery

1. Subject to the compliance with the legal prerequisites, BPW is obliged to compensate the Customer for damages caused by delay of delivery in the event of wilful intent or gross negligence. This does not apply to compensation for loss of profit and damages caused by disruption of operations, including possible contractual penalties to be paid by the Customer.
2. In the case of slight negligence, the damages payable are limited to additional freight costs and refitting costs.
3. In the event that the Customer has unsuccessfully given BPW a reasonable deadline to fulfil delivery obligations, then the compensation for damages is limited to the amount of additional expenditure incurred in making covering purchases.

VIII. Force majeure

Force majeure, strikes, unrest, governmental provisions (factory closures, factory restrictions, withdrawal or restriction of factory permits, etc.) and other unforeseeable, unavoidable and serious events release the contractual partners from their duty to perform their obligations for the period of the disruption and its effects. This also applies if these events occur at a time when the respective contractual party is in delay. The contractual parties are obliged to provide all required information within reason and without delay as far as possible to adapt their obligations to the changed circumstances in good faith.

IX. Quality and documentation

1. BPW must comply with all accepted standards of engineering, safety regulations and agreed technical data. Before making any changes to the product, e.g. in terms of the materials or manufacturing process, BPW shall inform the Customer in advance enabling the Customer to ascertain whether the planned change will have any adverse effects. This duty of notification is waived if, after



careful testing, BPW can assure the Customer that the possibility of adverse effects can be excluded. With regard to initial sample inspections, volume no. 2 of the German Association of the Automotive Industry (VDA) report, "Ensuring Quality of Supply", in the latest version is applicable. Notwithstanding the foregoing, BPW must continuously inspect the quality of the goods supplied. The contractual parties will keep each other informed of possibilities for quality improvements.

2. In the event that BPW and the Customer have not specified the type and scope of these inspections and the testing equipment and methods to be used, the Customer shall, upon BPW's request, be prepared within the range of his expertise, experience and capabilities to discuss the testing procedure with BPW in order to determine the respectively required state of the testing technology. Moreover, the Customer must inform BPW of all relevant safety legislation.

3. With respect to the documentation and archiving of quality requirements (including special features), VDA volume no. 1 "Documentation and Archiving" in the latest version is applicable.

4. Insofar as the authorities that are responsible for vehicle safety, emissions standards etc. demand access to the Customer's production processes and test reports in order to ensure that certain standards are met, BPW undertakes to give all reasonable assistance upon the Customer's request.

X. Liability for defects

1. In the event of the delivery of defective goods, the Customer may demand the following, if the respective legal requirements and the requirements listed below have been met, and provided no other agreements have been made:

a) Before start of production (processing or fitting) the Customer shall, in the first instance, give BPW the opportunity to sort out, repair or replace the defective goods. In the event that BPW is unable to do so or if rectification or replacement is unacceptable for the Customer, then the Customer may terminate the contract without notice. In urgent cases the Customer may, with the agreement of BPW, rectify the defect himself or have it rectified by a third party. Any costs arising hereof have to be borne by BPW as agreed before. In the event that the same goods are repeatedly supplied in a defective condition, then, after issuing a written notification, the Customer is entitled to withdraw the contract with respect to the goods not yet supplied.

b) If the defect is discovered only after production, despite compliance with the obligation under the terms of Section IV (Notice of Defects), the Customer can claim in accordance with § 439 Sections 1, 3 and 4 BGB (German Civil Code) and as de-

scribed in a) rectification or replacement and additional transport costs incurred for this rectification or replacement (excluding towing charges) and also dismantling and assembly costs (labour costs, material costs as far as these are agreed) or reduce the purchase price.

c) In the event of a culpable breach of obligation over and above the supply of defective goods (e.g. duty to notify, advise or examine), the Customer may demand compensation according to Section XI for consequential damages and also for consequential damages reimbursed by the Customer to his customer in accordance with the law. Consequential damages are damages which the Customer has suffered on other legally protected property as a result of the delivery of defective goods.

d) The Customer is entitled for further claims regarding expenses and damages arising from the delivery of defective goods only when this has been agreed beforehand. For any new agreements made, Section XVI, 1 must be observed.

2. The parts to be replaced shall be made available by the Customer to BPW immediately upon request and at BPW's expense or properly stored until inspection. In the event of costs being borne, BPW may request that the defective goods be destroyed.

3. Claims pertaining to liability for defects will expire 12 months after delivery. In the event of rectification of defects or replacement delivery the warranty period does not commence anew.

4. Claims are excluded insofar as the damages can be attributed to violation or non-observance of the latest operating, maintenance and installation instructions and other technical documentation that is available also on the internet at www.bpw.de. Unsuitable or improper use, incorrect or careless handling and normal wear-and-tear, or changes to the delivered goods made by the Customer or a third party have the same effect.

5. In the event of defective goods delivered, the Customer's claims under the law of the Product Liability Act or of torts remain unaffected by this Section X. Guarantees of quality and durability must be expressly defined as such in detail and in writing.

XI. Liability

In the absence of any other liability provision within these terms and conditions, BPW is liable for compensation for damages incurred by the Customer either directly or indirectly as a result of legal reasons caused by BPW in the following cases only:

1. The obligation to pay compensation shall in principle apply only if BPW is liable for the damages caused as a result of wilful intent or gross negligence. This does not apply in cases of injury to life, body or health.



2. If the Customer is subject to claims with regard to third parties on the basis of strict liability, in accordance with mandatory law that is inalienable, BPW will indemnify the Customer against any such claims to the extent to which he himself would be directly liable.

Compensation payments between the Customer and BPW shall be settled by applying the principles of contributory negligence. This shall apply also in case of claims made directly against BPW.

3. The obligation to pay compensation is excluded in cases where the Customer has effectively restricted his liability in relation to his customer. In this respect the Customer shall endeavour to stipulate similar restrictions of liability to the benefit of BPW, insofar as legally permissible.

4. Claims by the Customer are excluded insofar as the damages can be attributed to violation or non-observance of the latest operating, maintenance and installation instructions and other technical documentation that is available also on the internet at www.bpw.de. Unsuitable or improper use, incorrect or negligent handling, normal wear-and-tear or faulty repair of goods have the same effect.

5. BPW shall be liable for measures taken by the Customer to prevent damages (e.g. recall action) insofar as BPW is legally obliged.

6. Should the Customer intend to claim against BPW in accordance with the aforementioned provisions, he shall immediately and comprehensively inform and consult BPW. He must give BPW the opportunity to investigate the damages incurred. The contractual parties shall agree any steps to be taken, in particular settlement negotiations. If BPW instigates a recall, the Customer undertakes to support BPW by all means possible.

7. Compensation for loss of profit and damages caused by disruption of operations, including possible contractual penalties to be paid by the Customer, is excluded.

XII. Intellectual Property Rights

1. BPW shall be liable for claims concerning violation of intellectual property rights resulting from contractual use of the supplied goods, if at least one of the family of intellectual property rights is published legally binding by the European Patent Office or in one of the following states: the Federal Republic of Germany, France or Great Britain. The Customer undertakes to use the supplied goods so as to avoid an infringement of any third party rights.

2. In the event of a liability in accordance with clause 1 above, BPW shall indemnify the Customer against any claims of third parties arising from the use of such intellectual property rights provided that BPW had the opportunity in accordance with clause 4 below to counteract such claims. Any further claims by the Customer are

excluded.

3. BPW is not liable insofar as BPW has manufactured the supplied goods in accordance with drawings, models or similar other descriptions or information provided by the Customer. In this event the Customer indemnifies BPW against all claims from third parties.

4. The contractual parties agree to give each other the opportunity to counteract any claims resulting of any alleged contraventions.

5. The principles contained in Section XI, 1 – 3 and 7 regarding the limitation of liability shall apply accordingly.

XIII. Use of the Customer's means of production and confidential information provided by the Customer

Models, matrices, patterns, samples, tools and other means of production, as well as confidential information provided to BPW by the Customer or fully paid by him, may be used for deliveries to third parties only with the prior written consent of the Customer.

XIV. Retention of title

1. BPW retains ownership of all goods supplied until all claims resulting from the business relationship with the Customer have been settled in full; in this regard all individual deliveries shall be considered as components of one continuing delivery transaction. The retention of title shall act as security against any amounts outstanding.

2. If goods delivered are processed or transformed in the sense of § 950 Sect. 1 BGB (German Civil Code) or a new movable object is produced by means of processing or transformation of one or more materials, then BPW is deemed to be the manufacturer. In the event that moveable objects are joined together as defined by § 947 BGB (German Civil Code) or are mixed together or blended as defined by § 948 BGB (German Civil Code), and if one of these objects is to be considered the main object as defined by § 947 Sect. 2 BGB (German Civil Code), then the Customer assigns to BPW – insofar as the main object is not already the object(s) delivered by BPW - a co-ownership share in accordance with §§ 929 s. 1, 930 BGB (German Civil Code), in proportion to the value of the object(s) provided by BPW at the time of the joining, and grants BPW indirect possession in accordance with § 868 BGB (German Civil Code). Clause 1 above shall apply.

3. In the event that the Customer sells the delivered goods in accordance with the terms of the contract, he herewith assigns to BPW all his claims against his customer (inclusive of VAT) including any ancillary rights until all of BPW's claims have been settled in full, irrespective of whether the delivered goods have been sold with or without proc-



essing, transformation, joining, mixing or blending as defined in clause 2 above.

If there is a reasonable issue - especially in the event that the Customer does not meet his payment obligations - the Customer is obliged upon BPW's request to inform third parties of the assignment and to provide BPW with all the necessary information and documentation required for the assertion of his rights.

BPW shall release securities held insofar as their total value exceeds the claims being secured by more than 20%. BPW shall decide which securities are to be released.

XV. Transfer of risk, acceptance and default in acceptance

1. The transfer of risk is determined according to Incoterms® 2010 (or the current valid version thereof) agreed upon by BPW and the Customer.

2. The customer may not refuse acceptance on the grounds of a minor defect.

3. In the event that shipment is delayed or is not effected due to circumstances which are beyond BPW's responsibility, the risk is transferred to the Customer at the point in time at which he has been notified that the goods are ready for shipment or acceptance.

4. The obligation to sign an insurance coverage is determined according to Incoterms® 2010 (or the current valid version thereof) as agreed upon by BPW and the Customer.

5. Partial deliveries are permitted - provided this is reasonable for the Customer.

6. In the event that BPW withdraws from the contract due to reasons attributable to the Customer - especially due to default in acceptance - BPW can claim payment of damages in lieu of performance to a value of 25% of the agreed net invoice amount. The Customer is expressly permitted to provide evidence that no damages were incurred or that they were significantly lower than the flat rate of compensation.

BPW expressly reserves the right to make additional claims, taking into account the already paid flat rate of compensation as the minimum amount of the claim.

XVI. General Terms

1. In determining the level of damages to be paid by BPW in accordance with Sections VII, X, XI and XII, consideration shall be given in BPW's favour to BPW's economic circumstances, the nature, scope and duration of the business relationship, any possible contribution to the cause and/or fault of the Customer in accordance with § 254 BGB (German Civil Code) and any especially unfavourable assembly situation of the part supplied. In particular the compensation, costs and expenditure to be

borne by BPW should be in reasonable proportion to the value of the part delivered.

2. In the event that one of the contractual parties ceases payment or if insolvency proceedings or non-judicial settlement proceedings against said party's assets are applied for, the other party has the right to withdraw from the yet unfulfilled part of the contract.

3. Should any provision of these terms and conditions or of further agreements be or become ineffective, the validity of the rest of the contract shall not be affected. The parties are obliged to replace the ineffective provision with one which is as close as possible to the original one.

4. Unless otherwise agreed, the law of the Federal Republic of Germany shall apply.

The application of the United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980 is excluded. In principle the contractual language is English.

5. The place of performance for delivery is determined according to Incoterms® 2010 (or the current valid version thereof) agreed upon by BPW and the Customer. The place of performance for payment is Wiehl, Germany.

6. The court of jurisdiction is Cologne, Germany.

7. In accordance with the Data Protection Act it is hereby notified that BPW stores data relating to the Customer for use within the context of the cooperation.

As at 01.03.2012