

General Conditions of Purchase

1. Scope of Application of Spheros' General Conditions of Purchase

1) All orders by Spheros GmbH, Gilching, or any associated companies as per the German Company Law [Aktiengesetz] §§ 15 ff (hereinafter uniformly referred to as "Spheros") shall be exclusively subject to these General Conditions of Purchase; the same shall apply to all future business relations even if the application of these Conditions is not expressly stipulated therein. If and when delivery is effected without demur, the Supplier shall be deemed to have agreed to the application of these General Conditions of Purchase. The Supplier's general terms and conditions shall apply only insofar as they coincide with these General Conditions of Purchase; Spheros now hereby expressly excludes any further application of said terms and conditions.

2) Derogation from these General Conditions of Purchase shall only be effective if confirmed in writing by Spheros.

2. Orders

1) Offers, orders and acknowledgement of orders, as well as call orders and modifications and additions thereto, shall be made in writing, by fax or by electronic mail.

2) Orders which the Supplier does not accept within two weeks of receipt shall not be binding. Call orders shall be also binding if the Supplier does not notify Spheros of objection thereto within 48 hours of receipt.

3) Spheros shall be entitled to request of the Supplier any reasonable modifications to the design and/or execution of the goods ordered. The two parties shall negotiate a corresponding supplementary agreement in writing. Not until this supplementary agreement has been concluded shall the Supplier be entitled and obliged to carry out the modifications requested.

4) If the Supplier fails, wholly or in part, to fulfil the obligations he has undertaken by acknowledging receipt of the order, Spheros shall be entitled to rescind the contract. The same shall apply if a petition is filed to institute insolvency or composition proceedings, in or out of court, against the Supplier's assets.

3. Delivery dates and deadlines

1) Unless otherwise agreed, the delivery dates and deadlines stated in the order shall be binding. Whether the delivery dates and deadlines have been met shall be based on the date of receipt of the goods by Spheros. Unless delivery "ex works" is agreed in any case, the Supplier must therefore provide the goods in good time to allow for the usual time involved in loading and dispatch. Where call orders are concerned, the size and date of each individual call order shall be determined by Spheros or the works to be supplied.

2) In case of failure to meet the agreed deadlines for delivery, Spheros need not put the Supplier in default to demand compensation for the loss thereby incurred. In such cases, moreover, Spheros shall be entitled to rescind the contract and claim damages for non-performance.

3) If after conclusion of the contract the Supplier is or expects to be unable to deliver by the agreed deadline due to any disruption of operations, shortage of raw materials or semi-finished products, or force majeure, it must notify Spheros thereof in writing immediately or at all events in time to enable Spheros to find another source of supply by the agreed delivery deadline. If said notification is not made at all, or not in time, the Supplier shall be liable for any delays and the consequences thereof.

4. Packing, shipment, proof of origin

1) Unless otherwise agreed, the goods to be delivered are to be packed appropriately and to commercial standards, or specially packed if so requested by Spheros. The Supplier shall be liable for any damage to defective packing.

2) The Supplier shall be obliged to furnish Spheros, in good time before delivery, with the necessary declarations regarding the origin of the goods for customs purposes. The Supplier shall be liable for any losses incurred by Spheros because the declaration is late or incomplete. If necessary it shall furnish an information sheet confirmed by its customs office to corroborate its statements regarding the origin of the goods.

5. Quality

1) The goods delivered by the Supplier must adhere to generally accepted engineering standards and the agreed technical specifications. The goods may not be modified without Spheros' prior written permission.

2) The Supplier undertakes to observe the standards, laws and other safety provisions applicable to the goods to be supplied, e.g. trade supervisory office requirements, the German Electrical Engineers Association's [Verein Deutscher Elektrotechniker] regulations concerning electrical parts, safety regulations laid down by employers' liability insurance associations, the EU End-of-Life Vehicle Directive and the German Dangerous Goods Ordinance [Gefahrgutverordnung]. It shall indemnify Spheros against any claims arising under private or public law due to violation of these provisions. The Supplier shall furnish all necessary test certificates and documentation unsolicited. Furthermore it must provide the requisite information to the appropriate systems (e.g. the International Material Data System, "IMDS") that serve to comply with the aforesaid provisions.

3) The goods delivered by the Supplier must conform to Spheros' quality assurance regulations for supplies, the so-called "QC 1" (accessible on the Internet at: www.spheros.de).

Above and beyond that, the Supplier must keep quality control records for all products showing when, how and by whom the production of the goods delivered has been guaranteed free of defects. This documentation must be kept for 15 years and submitted to Spheros on request. The Supplier shall impose the same obligation on its suppliers. The Supplier is hereby referred for guidance to the manual published by the German Employers Association [Verband Deutscher Arbeitgeber] entitled "Leitfaden zur Dokumentation und Archivierung von Qualitätsaufzeichnungen" ["Guideline on the Documentation and Archiving of Quality Requirements and Quality Records"].

4) For first orders and changes in the execution of orders the Supplier must submit the requested number of samples – labelled as such – for Spheros' authorization prior to serial production. Only after Spheros has released the samples in writing shall the order be deemed to have been definitively placed. Spheros will reject any samples that are defective or otherwise deviate from Spheros' requirements or other applicable provisions. Irrespective of the foregoing, the Supplier must check the quality of the goods to be delivered on an ongoing basis. The two parties shall inform each other of any potential quality improvements.

5) If any authorities responsible for vehicle safety, exhaust regulations etc. ask to inspect Spheros' production processes and its test reports to verify conformity with certain requirements, the Supplier agrees, if so requested by Spheros, to grant them the same rights on its premises and give them all reasonable assistance.

6) The Supplier respects current environmental regulations and legal requirements. In addition the Supplier will use environment-friendly processes when manufacturing any products for Spheros.

6. Invoicing and payment

1) Invoices shall be sent on the same day as the goods. Spheros may reject as void any invoices that do not bear the order number in full. Any agreed periods of payment shall then begin to run upon receipt of the emended invoice.

2) In case of defective delivery, Spheros shall be entitled to withhold payment of the value of the goods in question until proper replacement.

3) After having received the goods in accordance with the terms of the contract and a proper and verifiable invoice, Spheros shall effect payment within 90 days net cash. The due dates for payments of any early deliveries that are accepted shall be based on the originally agreed delivery date.

4) Payments shall be effected by transfer or by check.

5) The Supplier may not assign to third parties – and allow them to collect – its claims against Spheros for payment of the purchase price without Spheros' prior written consent, which the latter shall not withhold without good reason. This shall not apply

to any assignment within the framework of a renewed retention of title, to which Spheros hereby gives blanket consent.

7. Notification of defect

1) Spheros shall notify the Supplier immediately and in writing of any defects in the goods that it has detected in the course of its routine operations at the beginning of the processing or use of the goods, and shall assert its claims based on defects under German Civil Code [Bürgerliches Gesetzbuch (BGB)] § 437. To this extent the Supplier waives any objection of late notice of defects. In cases that brook no delay Spheros may remedy the defects itself, or have third parties do so, at the Supplier's expense, though this must be agreed upon with the Supplier before the work commences.

2) Any payments made toward the purchase price or acceptance of goods by a party authorized by Spheros prior to the detection of defects shall not constitute an acknowledgement that the goods are free of defects or release the Supplier from its warranty.

8. Warranty claims

1) If defective goods are delivered the Supplier shall be accorded an opportunity to sort out or rework them before production begins unless this cannot reasonably be expected of Spheros. If the Supplier cannot do this or does not do this without delay, Spheros may withdraw from the contract in so far as these goods are concerned, demand compensation for non-performance and send the goods back at the Supplier's risk. In case of urgency Spheros may rework the goods itself, after consulting with the Supplier, or have a third party do so. Any costs thereby incurred shall be borne by the Supplier.

If the same goods are repeatedly redelivered and found defective, Spheros shall be entitled, after having given a written warning on receipt of another defective delivery, to also withdraw from the contract with respect to the part of the scope of supply which has yet not been performed.

2) If the defect is not detected, despite observance of the terms of clause 7 (Notification of defects), until after production has commenced, Spheros may demand compensation for added expense over and above the provisions of subclause 8.1 only if so agreed in the contract.

3) Spheros shall provide the Supplier with the parts to be replaced immediately upon its request and at the Supplier's expense.

4) The foregoing warranty shall expire 24 months after the first registration of the vehicle or retrofitting of the replacement parts, though not more than 36 months after delivery to Spheros. Spheros' rights of recourse against the Supplier for warranty

claims under German Civil Code [BGB] §§ 478, 479 shall not be thereby affected. They may be asserted by Spheros even if the final customer is not a consumer, but a company.

5) Warranty claims shall not arise if the defect is attributable to failure to follow operating, maintenance or installation instructions, inappropriate or unsuitable use, improper or careless treatment, natural wear and tear, or interference with the goods by Spheros or third parties.

6) Unless otherwise provided hereinabove, the warranty claims shall be governed by the pertinent provisions of law. Guarantees of quality must be expressly and individually designated as such in writing.

9. Liability

1) Unless a different liability arrangement is provided elsewhere in these Conditions, the Supplier shall be liable as set out in the following for any loss incurred by Spheros directly or indirectly as a result of a defective delivery, violation of official safety regulations or for any other legal reasons attributable to the Supplier.

2) As a rule the Supplier shall be liable for damages only if it is at fault for the loss it has caused.

3) Where third parties are asserting claims against Spheros arising from product liability that is based on the performance of the supplier and which could also be asserted by third parties against the supplier, the supplier shall release Spheros from the internal relationship insofar as he would also be directly liability to third parties. The principles of Section 254 BGB (German Civil Code) shall apply to compensation. This shall also apply in the event of a direct claim on the part of the supplier.

4) Damages may not be claimed in so far as Spheros for its part has effectively limited its liability to its buyers. Spheros shall endeavour to stipulate limitations of liability, within the scope permissible by law, for the Supplier's benefit.

5) Damages may not be claimed if the loss is attributable to Spheros for failure to follow operating, maintenance or installation instructions, inappropriate or unsuitable use, improper or careless treatment, natural wear and tear, or faulty repairs.

6) The Supplier shall be liable for measures to avert losses (e.g. recall actions) and to the extent of its legal obligation.

7) If Spheros intends to claim damages from the Supplier under the foregoing provisions, it shall consult with the Supplier and inform the Supplier thereof immediately and in full. The latter shall be given an opportunity to investigate the claim. The two parties shall confer to determine the measures to be taken, particularly if any settlements are to be negotiated.

10. Industrial property rights

- 1) Provided that the goods supplied are used in accordance with the terms of the contract, the Supplier shall be liable for any claims resulting from the infringement of property rights applied for (industrial property rights).
- 2) The Supplier shall indemnify Spheros and its customers against any claims arising out of the use of such property rights.
- 3) This shall not apply if the Supplier has manufactured the goods according to drawings, models or other equivalent descriptions or information provided by Spheros and does not know, or might not know in connection with the products developed by Spheros, that property rights were thereby infringed.
- 4) When so inquired by Spheros, the Supplier shall report any use of its own or licensed disclosed or undisclosed property rights or applications for such rights with regard to the goods delivered.
- 5) Without prejudice to the foregoing subclauses 10.1 and 10.2, the two parties agree to notify each other immediately of any risks or alleged cases of infringement that transpire and to give each other an opportunity to counter such claims by mutual agreement.

11. Labelling of the goods

- 1) The Supplier shall label the goods in the manner specified by Spheros or as agreed with the latter.
- 2) The Supplier shall only supply Spheros, or a third party authorized by the latter, with goods bearing a trademark that is protected for Spheros or a corresponding design or packed in their original Spheros packaging. If goods so labelled are rejected as defective, they shall be rendered unserviceable by the Supplier at its own expense.
- 3) In case of breach of any of the foregoing obligations, Spheros shall be entitled to rescind the contract or demand that the Supplier turn over any sums gained from the breach or compensation for the loss incurred by Spheros.

12. Manufacturing Materials and confidential data

- 1) Any models, matrices, stencils, patterns, samples, tools or other manufacturing materials, as well as confidential data that are provided by Spheros to the Supplier or paid for in full by Spheros may not be used to supply third parties without Spheros' prior written authorization.

2) For the rest, the production of these manufacturing materials as well as their safekeeping, use, maintenance, servicing and payment for the same shall be subject to Spheros' corresponding special conditions.

13. Supply of spare parts

1) Unless otherwise provided, Supplier shall be required for up to 15 years after the last delivery of serial production to maintain a spare parts supply service for Spheros encompassing the entire functional range. It must also keep safe for this duration the manufacturing aids necessary to supply the spare parts. This safekeeping obligation shall expire at the end of this period subject to Spheros' written consent. This consent may be denied only for good cause, particularly if Spheros' customer refuses to grant the requisite release.

2) The parties shall make a new pricing agreement for the extended supply period stipulated in clause 1.

3) Supplier undertakes one 1 year before expiry of the spare parts supply period defined in clause 1 to submit to Spheros, upon request, suitable written suggestions for the economical production and supply of spare parts for the aftermath of said period. Spheros shall furnish Supplier on request with its tentative requirements forecasts for that purpose.

14. Secrecy

1) The two parties undertake to treat as business secrets any commercial or technical details that come to their knowledge through their mutual business relations and are not common knowledge.

2) Third parties shall not be allowed to use or otherwise given access to drawings, models, stencils, patterns and similar materials. Such materials may only be reproduced for operational requirements and in accordance with copyright regulations.

3) Subcontractors shall be enjoined accordingly.

4) The Supplier may not use its business connection with Spheros for advertising purposes without the latter's prior written consent.

15. Retention of title

1) The Supplier shall retain title to all goods it has delivered until full payment; all the deliveries shall be deemed for these purposes a coherent supply transaction. For current accounts the title retained shall be deemed security for payment of the balance due.

2) If the goods are combined by Spheros with other items to form a unified object and the other item is to be regarded as the principal item, Spheros undertakes to transfer to the Supplier a prorated share of the title if the principal item belongs to Spheros. If the goods are resold in accordance with the terms of the contract, Spheros now hereby assigns to the Supplier its accounts receivable from customers as a result of the sale, with all ancillary rights, until full settlement of all its claims. If warranted for a good reason, Spheros shall be obliged at the Supplier's request to disclose the assignment to the third-party buyers and furnish the Supplier with the information and documents necessary to assert its rights.

3) The Supplier shall release the security it holds to the extent that its value exceeds the claim to be secured by more than 20% in the aggregate.

16. Place of performance, venue, applicable law

1) If a party stops payments or if a petition is filed to institute insolvency or out-of-court composition proceedings against its assets, the other party shall be entitled to withdraw from the as yet unfulfilled portion of the contract.

2) If any provision of these Conditions or other agreements made should be or become void, the validity of the rest of the contract shall not be thereby affected. The contracting parties shall be obliged to replace the void provision with an arrangement that comes as close to it as possible in terms of its commercial effect.

3) If the Supplier is a fully qualified merchant, Spheros' registered office shall be the place of performance and jurisdiction.

4) The laws of the Federal Republic of Germany shall apply exclusively; the UN Convention on the International Sale of Goods (CISG) shall not apply.

Spheros GmbH
Friedrichshafener Str. 9-11
82205 Gilching