

# General Purchase Terms

**General Purchase Terms for annual orders of the Caterpillar Energy Solutions GmbH in the following named 'PURCHASER' (status 11/13)**

## **1. Variant Terms:**

Modifications, additions and SUPPLIER sales terms that differ from the terms below can only be accepted when PURCHASER confirms them in writing. Acceptance of deliveries or services, or payment for them, do not constitute agreement with the SUPPLIER'S sales terms.

## **2. Deliveries:**

**2.1** The SUPPLIER is to be notified of the quantities of PARTS TO BE SUPPLIED, arising from this order, that are to be delivered by means of a specific CALL-OFF. Each CALL-OFF is to be made about 6 months in advance and give details of quantities and dates. The last CALL-OFF to be provided to the SUPPLIER will always be the valid one. CALL-OFFS are to be communicated to the SUPPLIER using remote data transmission in compliance with VDA standard 4905 or by fax or, in exceptional cases, by post. As well as CALL-OFFS, individual orders of PARTS TO BE SUPPLIED may be made separately.

The quantities and dates given in the CALL-OFF are to be deemed to have been accepted if the SUPPLIER does not reject the CALL-OFF immediately, or at the latest two (2) working days after receiving the CALL-OFF.

Where the SUPPLIER foresees problems in providing finished or semi-finished products, or circumstances that are beyond their control which could impinge upon the dates or quality of the PARTS TO BE SUPPLIED, the SUPPLIER will notify the PURCHASER department where the order has come from.

**2.2** To the extent that no other arrangement is expressly agreed, the following go-ahead timescales are to be applied to the quantities and dates given in the CALL-OFFS.

During weeks 1 to 6 before delivery, the CALL-OFF constitutes a binding production go-ahead and order for the SUPPLIER; in exceptional cases, changes at short notice of up to +/- 15 % can be made by PURCHASER. During weeks 7 to 16 before delivery, the CALL-OFF details are to be used by the SUPPLIER to plan and procure semi-finished products (go-ahead for purchasing input materials), but do not constitute a go-ahead for production. Any details about quantities that are given in the CALL-OFFS and that fall outside the timescales described (from Week 17) are non-binding details for planning purposes.

PURCHASER reserves the right to adjust the dates and quantities given in the CALL-OFFS to actual requirements, and to also give the SUPPLIER additional orders for PARTS TO BE SUPPLIED.

**2.3** The delivery dates given in the CALL-OFFS are binding and in each case indicate the day of delivery to goods inward at the delivery location in question.

The SUPPLIER should bear in mind the time required for transport and send the PARTS TO BE SUPPLIED, or advise the haulier to pick up, at a sufficiently early point before the date agreed.

If the SUPPLIER delivers the PARTS TO BE SUPPLIED earlier than 5 days before the date given in the CALL-OFF, PURCHASER will charge the SUPPLIER with the pro-rata interest cost applicable for increased storage space (buffer storage) at PURCHASER.

If the SUPPLIER delivers more than the quantity stated in the current CALL-OFF or delivers without a current CALL-OFF and no follow-up CALL-OFFS are immediately available which PURCHASER can use to offset the delivery, PURCHASER will unpack the delivery in goods inward and send the quantity over-delivered back to the SUPPLIER with an inspection report.

The SUPPLIER will be charged as follows for the increased use of resources entailed by PURCHASER: handling costs 40 EUROS per delivery

goods inward inspection costs 80 EUROS per delivery .

Where non-agreed transport is required and is not to be provided by PURCHASER, this cost is to be charged to the SUPPLIER.

This will also be the case where whole, sub-divided delivery batches are delivered in multiple part-batches.

**2.4** The SUPPLIER will ensure that the goods are properly identifiable by using goods tags for each container in compliance with VDA standard 4902, and will arrange that the PARTS TO BE SUPPLIED have a satisfactory batch identification. Where technically possible, the SUPPLIER will notify PURCHASER of deliveries using remote data transmission, in compliance with VDA standard 4913. All dispatch documents should only be issued to cover one CALL-OFF unless the use of accumulative delivery notes has been agreed in compliance with VDA standard 4912. The annual order number and item number should always be provided. The same applies to invoices. The parts are always to be sent in compliance with the specific PURCHASER packaging instructions or the packaging instructions shown in the description of the PARTS TO BE SUPPLIED. The freight payer for empties is the party that pays for the full delivery. Unless there is evidence of greater damage, where the packaging instructions to be followed by the SUPPLIER are disregarded, a fixed sum of 40 EUROS per transport unit will be charged to the SUPPLIER.

**2.5** Unless otherwise agreed, settlement of deliveries will be done using an automatic reconciliation and posting procedure based on the prices stored at PURCHASER and the posted goods inward quantities, in compliance with VDA standard 4908. In this case, SUPPLIER invoices are not required.

## **3. Parts Identification / Tools:**

**3.1** The SUPPLIER shall only apply marks required by PURCHASER and/or other labels and/or identification and/or markings and shall not use their own labels.

The SUPPLIER acknowledges that they have no rights over the markings and identifiers required by PURCHASER.

**3.2** PURCHASER has the right to identify the PARTS TO BE SUPPLIED as original MWM or CAT parts and to market them in their own packaging.

**3.3** In order to ensure that the capability to deliver is ongoing, the SUPPLIER will only change, scrap or give up ownership of the tools developed to make the PARTS TO BE SUPPLIED, particularly moulds, models and other devices, with the written agreement of PURCHASER. In any case the SUPPLIER will give PURCHASER the opportunity to purchase the tools at a reasonable price.

**3.4** PURCHASER shall confer to the SUPPLIER, under the deferred condition that the SUPPLIER becomes insolvent, the proportion of the tools that they currently own at the residual book value then applicable of the proportion of the tools in question that they own.

The SUPPLIER's claim against PURCHASER arising from these figures shall become due 4 weeks after the SUPPLIER enters into insolvency.

## **4. Guarantee / Liability:**

**4.1** The SUPPLIER guarantees that the PARTS TO BE SUPPLIED are in perfect condition.

In particular, the SUPPLIER guarantees that the specified properties of the PARTS TO BE SUPPLIED have been achieved and that there is compliance with the applicable version of DEUTZ's quality guidelines. Otherwise, the SUPPLIER is legally liable for defects.

PURCHASER shall immediately notify the SUPPLIER in writing of any defects in the PARTS TO BE SUPPLIED, as soon as these are identified in the course of normal operations.

PURCHASER is entitled to ask either for rectification to be made free of charge or for a delivery of PARTS TO BE SUPPLIED with no defects likewise free of charge.

Where there is urgency, PURCHASER is also entitled to carry out the remedial work itself and charge it to the SUPPLIER or to have it done via a third-party or otherwise to procure a replacement.

Where there is a delay in supply or a delay in rectification, or the warranty is not observed or there is a defect in the PARTS TO BE SUPPLIED through fault of the SUPPLIER, the SUPPLIER will make good to PURCHASER the expense and loss that arises, in particular the additional costs arising from inspecting, disassembling, reassembling and working on the PARTS TO BE SUPPLIED and/or the engine, and also any possible related transport, labour and material costs. Where PURCHASER claims that a defect is the SUPPLIER's responsibility, it is for the SUPPLIER to prove that they have not acted culpably.

**4.2** Claims against defects, and thus also against the PARTS TO BE SUPPLIED, expire within 24 months after the engine going into commission or 36 months after delivery of the PARTS TO BE SUPPLIED to PURCHASER. Where PURCHASER concedes longer guarantee periods to their customers, the SUPPLIER is prepared to recognise these, too. PURCHASER shall notify the SUPPLIER of such cases and, to the extent that this is possible and permissible, give them the opportunity to see and inspect the documentation relating to the guarantee.

**4.3** Where PARTS TO BE SUPPLIED are defective, the SUPPLIER has to ensure that these do not, either directly or indirectly, become part of PURCHASER engines in the marketplace. Similarly, the SUPPLIER is to make such parts unusable in an appropriate manner prior to withdrawal for scrapping.

## **5. Quality:**

**5.1** The PARTS TO BE SUPPLIED must comply with the documentation upon which the contract is based, with PURCHASER company standards and technical specifications, with the legal provisions that are applicable in each case (e.g. the machinery safety law), with the pertinent regulations, rules and guidelines (e.g. accident prevention and VDE regulations), DIN standards and other recognised and current technical regulations. The SUPPLIER is to implement quality control measures of an appropriate type and scope and use a quality management system that reflects the current state of the technology.

**5.2** Due to the controlled production process and the QA measures that are planned to be implemented, including those relating to the outgoing goods inspection that the SUPPLIER is to document, PURCHASER is to limit itself when inspecting goods inward - in a departure from § 377 HGB - to transportation and packaging damage that is identifiable from the outside, and to verifying the identity of the PARTS TO BE SUPPLIED using the dispatch and delivery notes, and the damage or differences that are identified at this point are to be reported back to the SUPPLIER immediately, or at the latest within 10 working days. Otherwise, with regard to PARTS TO BE SUPPLIED defects that are only discovered when the PARTS TO BE SUPPLIED have been assembled, and functions have been tested or operations carried out, the SUPPLIER shall abstain from raising an objection that the defects have been reported at too late a stage.

## **6. Product Liability:**

Where a claim is made against PURCHASER on the grounds of product liability, the SUPPLIER is obliged to release PURCHASER from such claims, in so far as the damage has been caused by a defect in the PARTS TO BE SUPPLIED. However in cases of liability dependent on fault, this only applies when fault is attached to the SUPPLIER. To the extent that the cause of damage is the SUPPLIER's responsibility, the latter bears the burden of proof. In such cases, the SUPPLIER will assume all costs and expense, including the costs of any legal proceedings or callback. Otherwise, legal provisions are applicable.

**7. Confidentiality / Rights / Exclusivity:**

7.1 All types of documentation that PURCHASER provides to the SUPPLIER, such as specimens, drawings, models, data and such like, and all other information provided by PURCHASER, should not be revealed to third parties or given to third parties, unless they are recognisably intended for public use. Products that have been produced based on documents such as drawings, models and similar drawn up by PURCHASER, or based on confidential information belonging to PURCHASER or using PURCHASER tools or tools under licence, should not be used by the SUPPLIER themselves or offered or supplied to third parties. The SUPPLIER is only to have PARTS TO BE SUPPLIED manufactured by third parties with PURCHASER's written agreement.

**8. Third Parties' Trademark Rights:**

The SUPPLIER is responsible for domestic and international trademark rights not being infringed by the manufacture, supply and use of the PARTS TO BE SUPPLIED.

Where a claim is made against PURCHASER for infringing trademark rights, the SUPPLIER is obliged to release PURCHASER from such claims when first requested to do so in writing.

The SUPPLIER's obligation to release PURCHASER relates to all expenditure that necessarily accrues to PURCHASER out of or in connection with the claim made by a third party.

**9. Acts of God:**

In the case of acts of God, industrial action, interruptions to operations with no blame attached, disturbances, regulatory measures and other unavoidable events, PURCHASER is entitled to withdraw either partly or fully from the contract, to the extent that these result in a significant decrease in PURCHASER's requirements.

**10. Abandonment of Claims:**

Where the SUPPLIER has claims against PURCHASER, these shall not be subrogated without written permission from PURCHASER.

**11. Period of Validity:**

11.1 This order's period of validity is automatically extended by 12 months at a time, if one of the parties does not cancel the order at 6 months' notice prior to its expiry.

11.2 However, any possible obligation on the part of PURCHASER to source a particular proportion of their PARTS TO BE SUPPLIED requirements from the SUPPLIER loses its validity, regardless of the provision in 11.1, when the period of validity stated in the order expires.

**12. Place of Fulfillment / Jurisdiction:**

The place of fulfillment is the location to which, according to the contract, the PARTS TO BE SUPPLIED are to be delivered. The place of jurisdiction is Mannheim. The contract is subject to the law of the Federal Republic of Germany excluding the conflicts law. The use of the Hague Uniform Sales Law, the unified UN sales law or other conventions relating to sale of goods law is excluded.