

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## of Martinrea Germany

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### 1. CONCLUSION OF AGREEMENT

- (a) Each purchase order and purchase order revision (“this **Order**”) issued by Martinrea, or any affiliated company (“**Buyer**”) is an offer to the supplier for the purchase of goods and/or services, and includes and is governed by the express terms contained on the face of this Order, these general terms and conditions and its respective appendices, and the terms contained in any addendum or supplement to this order, any supplier manual provided by the Buyer to the supplier, and other documents incorporated by reference in this Order in these general terms and conditions (collectively “the **POTC**”). Any expression of acceptance of this Order by the supplier, including the supplier’s commencement of (i) work on the goods subject to this Order (the “**Products**”) or shipment of the Goods, whichever occurs first, or (ii) performance of all or any portion of the services subject to this Order (the “**Services**”), shall constitute an acceptance of Buyer’s offer. By each acceptance of an Order, the supplier accepts the then-current Terms. Any proposal for additional or different terms or any attempt by the supplier to vary any of the Terms, whether in the Supplier’s quotation form, acknowledgement form, invoice, correspondence or otherwise, shall be deemed material and is hereby objected to and rejected by Buyer, but any such proposal or attempted variance shall not operate as a rejection of this Order if supplier accepts Buyer’s offer by commencement of work, shipment of the Goods or performance of the Services, or by other means acceptable to Buyer, in which case this Order shall be deemed accepted by supplier without any additional or different terms or variations whatsoever. This Order does not constitute an acceptance of any prior offer or proposal by supplier, and any reference in this Order to any such prior offer or proposal is solely to incorporate the description or specifications of the Goods and the Services in such offer or proposal, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in this Order. If this Order is found to be an acceptance of any prior offer or proposal by supplier, such acceptance shall be limited to the Terms. Any additional or different terms in such prior offer or proposal shall be deemed material and are hereby objected to and rejected by Buyer. Buyer may withdraw and cancel all or any part of this Order at any time prior to Buyer’s actual knowledge of acceptance by the supplier.
- (b) These POTC shall also apply to all future transactions with the supplier, even if the application of these POTC is not expressly agreed again.

- (c) No other general terms and conditions of business or other different conditions of the supplier shall apply even if not expressly rejected by Buyer. If Buyer accepts the delivery/performance without express objection, this may under no circumstances be construed as an acceptance of the supplier's terms and conditions. This shall also apply in case a payment for the delivery/performance has been made by Buyer or a third party.
- (d) If the supplier in response to a request for quotation from Buyer prepares an offer, it shall precisely comply with Buyer's request for quotation and expressly accentuate any discrepancies that may exist. Unless Buyer expressly refers to the offer, it shall not become an integral part of the purchase order. Inquiries by Buyer to the supplier regarding the supplier's Products and delivery conditions, or requests by Buyer to submit an offer shall not bind Buyer in any way.
- (e) If the supplier fails to accept the purchase order within 10 (ten) working days (by acknowledgement to the ordering factory) after its receipt in writing, Buyer shall be entitled to its revocation. Within the meaning of these POTC a purchase order shall be any written request from Buyer to the supplier to provide a Product.
- (f) If on the basis of a regular business relationship with the supplier, purchases are made by release orders, the following shall apply: In the case of just-in-time deliveries, a release order takes effect at the latest if the supplier does not object in writing within (three) working days and in the case of all other deliveries within 10 (ten) working days after its receipt (to the ordering factory). The supplier shall reserve the necessary capacities to be able to deliver the required quantities including any prognosticated quantities (for a maximum period of 6 (six) months from the date of transmission or delivery of the release order). Unless otherwise agreed, release orders shall be linked to a production release for a period of 4 (four) weeks as from the date of transmission of the release order as well as a material release for another period of 4 (four) weeks. Beyond these periods, a call order shall only represent a non-binding forecast.
- (g) Only purchase orders placed in writing shall be legally valid. The supplier shall prior to accepting the purchase order point out any obvious errors (e.g., spelling and/or calculation mistakes) and incompletions of the purchase order including the purchase order documents for the purposes of correction and/or completion; the agreement shall otherwise not be regarded as concluded. Purchase orders placed verbally or by telephone must subsequently be confirmed in writing by Buyer to be legally valid. The same shall apply to additional verbal agreements and any amendments to the agreement. The written form shall be deemed to have been observed if orders are sent by fax, email or another remote data transmission system. If, by submitting a transmission report, Buyer can prove that Buyer has communicated by fax, email or remote data transmission, it shall be

assumed that the supplier has received the relevant declaration.

- (h) No remuneration shall be paid for visits, the preparation of offers, project work or similar activities unless expressly agreed or prescribed by mandatory law. The same shall apply to estimates submitted by the supplier unless expressly agreed otherwise.

## **2. PRICES, SHIPPING AND PACKAGING**

- (a) The prices agreed shall be fixed prices (net) and in each case shall be the total price for the production and delivery of the Products including any and all collateral performances, in particular packaging. Unless otherwise agreed, the price shall be "DDP" (Delivered Duty Paid) in accordance with Incoterms 2010, i.e., customs duties and taxes paid with free delivery to the site of use designated in the purchase order for the account and on behalf of the supplier. If a separate calculation of the packaging costs is agreed with the supplier, such costs may only include original costs unless expressly agreed otherwise. Pricing constitution shall not affect any agreement regarding the place of performance. Even if shipment was agreed, the risk shall pass only upon delivery of the Products are delivered at the place of destination.
- (b) If terms of delivery are agreed in accordance with Incoterms 2010, whereby Buyer pays for the transportation or customs clearance, the Products shall be transported or customs duty paid by a forwarding agent stipulated by Buyer.
- (c) If the supplier during the term of a product delivery agreement should deliver Products as covered by the agreement or of similar type in comparable quantities to a third party under more favorable conditions, in particular with regard to price, discounts, technology, quality, payment terms, delivery periods or other conditions, the supplier shall immediately inform Buyer of this fact and automatically grant Buyer these more favorable conditions. These new conditions shall apply with retrospective effect from the date on which the supplier has granted these favorable conditions to the third party.
- (d) The supplier shall not be entitled without Buyer's written consent to assign claims accruing to it from the supply relationship with Buyer or to have such claims collected by a third party.
- (e) In respect of its scope of supply, the supplier shall be responsible for the free procurement of all documents required in accordance with customs regulations or other applicable government regulations prior to the delivery to Buyer, in particular customs drawback documents and certificates of origin or declaration of preferential origin as well as any other details relevant in respect of the origin of the Products or materials contained therein. In so far as Buyer communicates the relevant information in this conjunction the

above shall also apply to documents required for the delivery of the Buyer Product to a Buyer customer. At least once a year and in case the underlying circumstances of these declarations have changed or upon request by Buyer, the supplier shall provide a declaration of preferential origin or, respectively, a certificate of origin free of charge.

- (f) Delivery notes, bills of lading, invoices and all correspondence shall include the Buyer purchase order number. Offers shall include the request for quotation number.
- (g) In case of deliveries from third countries a clear proof of customs clearance shall be presented. Buyer or a site of use designated by Buyer may reject the acceptance of the respective Products if such clearance is not presented.
- (h) Partial deliveries shall only be permissible if agreed in advance. Buyer reserves the right to reject any early deliveries. The transfer of title to the Products to Buyer shall be unconditional and irrespective of the payment of the full purchase price. If Buyer accepts an offer conditional upon the payment of the full purchase price on a case-by-case basis, the supplier's retention of title shall expire upon payment of the purchase price at the latest. Even prior to the payment of the purchase price, Buyer remains entitled to resell the Products in the ordinary course of business subject to an assignment in advance of the claim arising from such resale. Excluded are in any case all further forms of retention of title agreements, in particular the extended and expanded retention of title.
- (i) The acceptance of the supplied Products and/or their payment by Buyer shall not constitute a waiver of any assertion of claims based on defects, damages or any other claims against the supplier at a later time.
- (j) The Products shall be packed and loaded in a manner that avoids damage in transit and minimizes the use of packaging material. The supplier's obligation to take back returned packaging material shall be in accordance with the relevant legal provisions. To the extent permitted by law, the supplier will take back the packaging material free of charge. If this is not possible, the supplier shall pay the corresponding reasonable disposal costs incurred by Buyer.

### **3. DELIVERY DEADLINES, DEFAULT IN DELIVERY AND FORCE MAJEURE**

- (a) Unless expressly agreed otherwise the delivery deadlines stipulated in the purchase order or the release order shall be binding. If a fixed deadline is exceeded, the supplier shall be in default in delivery without any prior notification to this effect (fixed date transaction). In the case of obligations to be performed at the purchaser's place of business, compliance with delivery deadlines or periods shall be determined by the date on which the Products are delivered to the recipient or user nominated by Buyer. In all other cases, the

supplier shall make the Products available in good time taking into account the usual time required for loading and shipping. The supplier undertakes to immediately notify Buyer in writing if it transpires that a delivery deadline will not be met. The occurrence of default as of the expiration of the delivery date and the related consequences shall not be affected by this.

- (b) If the supplier is in delay, Buyer shall be entitled to claim contractual penalty amounting to 0.1% of the order value for each calendar day up to a maximum of 10% of the order value. This shall not affect the right to assert claims for compensation. Any contractual penalty shall be set-off against any claims for damages for delay or compensation. Buyer's right to prove a higher damage and the supplier's right to prove a lower damage shall not be affected. In case of acceptance without reservation of the delayed delivery, Buyer expressly reserves the right to claim contractual penalty or other damages up to the due date of the payment.
- (c) If the supplier realizes that it is not possible to comply with a delivery date or quantity agreed with Buyer, it must inform Buyer immediately, stating the reasons, the anticipated duration of the delay and the effects, together with suitable measures for averting them. The occurrence of default as of the expiration of the delivery date and the related consequences shall not be affected thereby.
- (d) If delivery takes place earlier than agreed, Buyer reserves the right to return the Products at the expense of the supplier. If, in case of an early delivery, the Products are not returned, they shall be stored by Buyer at the cost and risk of the supplier until the agreed delivery deadline. In case of an early delivery, Buyer reserves the right not to make the necessary payment prior to the agreed due date based on the originally agreed delivery deadline.
- (e) In the event of short-time working, interruption of operations or other cases of stoppage or shutdown, which prevents Buyer from accepting goods in the affected sector without its fault, the contracting parties will agree on an appropriate alternate date. Buyer will inform the supplier timely, if possible.
- (f) Buyer will only accept partial deliveries, if this has been expressly agreed. In the case of agreed partial deliveries the remaining quantity is to be indicated.
- (g) The supplier may only rely on Buyer's failure to supply necessary documents if he has requested the relevant documents from Buyer in writing and has not received the documents within a reasonable period of time.
- (h) Force majeure, natural disasters, riots, war, acts of government and any other events that

are unpredictable and unpreventable shall release the supplier from its performance obligations for the duration of the default in performance and, additionally, to the extent necessary, the duration of an adequate resumption period. The supplier undertakes to make all reasonable efforts to provide without undue delay the necessary information regarding the existence, type and anticipated duration of the default in performance and to adjust its obligations in good faith in accordance with the changed circumstances. Buyer shall be fully or partially released from its duty to take delivery or accept performance. If no agreement where time is of the essence has been agreed, Buyer shall be entitled to revoke the unperformed part of the agreement should the delay exceed a period of 2 (two) weeks.

- (i) In case of a continuous violation of its supply obligations, the supplier, having been granted an adequate period of time, shall be obliged to hand over to Buyer or a third party for production purposes all items and information required for such purposes (including licensing of commercial property rights required for production at terms customary in the industry) to the extent that they are not owned by third parties or required for the supply of third parties (emergency production). If at fault, the supplier shall pay the costs thus incurred. Any claims for damages against Buyer shall be excluded.
- (j) The supplier shall not employ one or more subcontractors to fulfill an order or part of an order without the prior written approval of Buyer.

#### **4. STORAGE AND PROVISION OF DOCUMENTS**

The supplier shall keep all product related documents, particularly invoices, transport and custom documents, data/records regarding quality, test results, analyses, process data and all details required for the period of series production as well as the spare parts supply, for at least 10 (ten) years and shall provide Buyer access to such documents upon request. If customers of Buyer demand a longer storage period, the supplier expresses its willingness to grant a longer storage period upon receipt of such notification.

#### **5. INVOICING AND PAYMENT**

- (a) Following delivery invoices shall be submitted separately in the proper manner together with all pertinent documents and data. In the absence of a proper invoice, in particular, if the purchase order number is missing, Buyer shall be entitled to withhold performance.
- (b) Unless agreed otherwise in writing, the invoice shall be paid by Buyer net within 60 (sixty) days after delivery and receipt of the invoice. The later date of delivery or receipt of the invoice is relevant for the beginning of the period.

- (c) In so far as certificates in respect of the testing of materials or proof of material properties have been agreed they shall constitute an integral part of the supply and shall be handed over to Buyer at the same time as the delivery. The time limit for payment as per clause 5(b) above shall not commence prior to the receipt of the relevant certificate.
- (d) Payment of an invoice shall not be construed as a waiver of any claim. In the case of a defective delivery, Buyer reserves the right to retain an appropriate part of the payment until proper performance has been achieved.
- (e) If prepayments are made to the supplier, the latter shall provide adequate security taking the form of a customary directly enforceable absolute bank guaranty of a commercial bank acceptable to Buyer.
- (f) Should Buyer be in default of payment, the supplier may demand default interest at a rate of five percentage points above the base interest rate pursuant to Section 247 German Civil Code (*Bürgerliches Gesetzbuch*).
- (g) Should Buyer be in default of payment the supplier may not revoke the agreement unless it has specified an additional period for performance without result.

## **6. SET-OFF AND RIGHT OF RETENTION**

The supplier shall only have the right to set-off against any claims of Buyer, if and to the extent that the supplier's claims are undisputed or its counterclaims are final and non-appealable. The same shall apply to the exercise of any right of retention. Buyer shall have the right to set-off against claims of the supplier any claims of Buyer affiliates within the meaning of Section 15 German Stock Corporation Act (*Aktiengesetz*). Buyer shall also have the right to set-off claims of Buyer against any claim of the supplier *vis-à-vis* any affiliate of Buyer within the meaning of Section 15 German Stock Corporation Act (*Aktiengesetz*).

## **7. AMENDMENTS TO THE AGREEMENT**

- (a) Even after the conclusion of the agreement, Buyer shall have the right to request changes with respect to the Products including but not limited to specifications, drawings, designs, constructions as well as changes regarding date/time and place of delivery, packaging, quality, quantity and means of transportation. Such change requests shall consider the supplier's reasonable interests. The supplier is under a duty to suggest changes to Buyer which the supplier considers necessary or appropriate in view of revised statutory or other mandatory provisions or for other reasons. If a change results in an increase or a reduction of the supplier's costs or an adaption of the delivery dates,

the supplier shall immediately inform Buyer and the parties shall agree on a reasonable adjustment of the supplier's remuneration for which Buyer places a change order. The content of a change order shall be deemed to be agreed if supplier does not object the change order in writing within fourteen (14) days after its receipt.

- (b) The Supplier shall not be entitled to carry out changes with respect to the Products (including, but not limited to specifications, additional and functionalities not agreed upon, drawings, designs, software, constructions, production process, date/time and place of delivery, packaging, quality, quantity and means of transportation) without Buyer's prior written consent.

## **8. WARRANTY**

- (a) Unless otherwise stated in the following provisions, statutory provisions shall apply to deliveries of defective Products.
- (b) Compliance with validation rules and any approval by Buyer and/or its customers shall not release the supplier from its obligation to supply faultless Products. Acceptance or approval of presented samples or specimens by Buyer shall not be construed as a waiver of any warranty claims.
- (c) Buyer's right to supplementary performance shall initially apply to the supply of a faultless Product by the supplier. In individual cases, the parties may also agree on a rectification of the defective Products. In both cases, the supplier shall bear all costs incurred by the supplier, Buyer and/or third parties, e.g., transportation costs, travelling expenses, labor and material costs or costs for an incoming Product inspection over and beyond the normal scope. The same shall apply to any costs that may be incurred for removal and fitting. If the case of a subsequent delivery, the supplier shall bear the cost of taking back the defective Product. The supplier is aware that the Products supplied are used for equipment and other Products within the worldwide automotive industry and that, therefore, the amount of expenses involved may significantly be determined by the location in which the vehicles are used.
- (d) If the opportunity to carry out supplementary performance fails, or if such work represents an unreasonable burden on Buyer, or if the supplier does not immediately commences with the supplementary performance, then Buyer shall be entitled to withdraw from the agreement/purchase order without setting any further deadline and to return the Products at supplier's risk and expenses. Buyer itself or a third party may rectify a defect at the expense of the supplier if it is not reasonable for Buyer to wait for the defect to be rectified by the supplier, in particular, if an immediate rectification of the defect is advisable in order to avoid serious damage or to maintain operational safety.



This shall only apply if the supplier may not refuse rectification of the defect in accordance with Section 439 paragraph 4 German Civil Code (*Bürgerliches Gesetzbuch*).

- (e) Any further claims of Buyer, in particular for damages or in connection with warranties of the supplier, shall not be affected.

In case of any claims by third parties in case of defects as to title, the supplier shall indemnify Buyer, unless the supplier is not responsible for such defect as to title. The supplier shall indemnify Buyer in case of any claim by a third party based on Product liability if and to the extent that any damage is caused by a defect in the Products delivered by the supplier. The right of indemnity shall apply insofar as the supplier itself would be directly liable. In case of strict liability, the duty of indemnity shall apply only if the supplier is at fault. In case of defects as to title, Buyer's rights shall also encompass statutory claims.

- (f) If the Product has been processed and delivered to Buyer's customer, the supplier shall receive parts for examination, provided that Buyer receives such parts from its customer. Buyer shall prove defects on the basis of Buyer customer processes, i.e., usually on the basis of an extrapolation of examinations of Products received with the same defect profile from predetermined reference markets. In so far as Buyer provides the supplier with Products for examination, this shall be at the expense of the supplier.
- (g) Claims arising from liability for defects shall become statute-barred on the expiry of a period of 24 (twenty four) months after the date of delivery to Buyer. In the case of delivery of exchange parts, the limitation period commences again.
- (h) In case of claims arising from defects concerning Products which are usually used in the automotive sector, the limitation period commences after expiration of 30 (thirty) months either following the first registration of the vehicle or the date of retrofitting or installation of spare parts in vehicles already registered, however, at the latest 36 (thirty six) months after delivery (term of expiration). In cases of retrofitting and the installation of spare parts the expiration term shall be extended to 48 (forty eight) months. Longer statutory limitation periods shall remain unaffected by this.
- (i) If Buyer is obliged to grant one of its customers a longer or more extensive warranty for defects, the supplier shall, if it delivers Products, then also undertake to accept this regulation in future following the receipt of a written notification thereof.

## **9. LIABILITY**

The supplier shall be liable in accordance with the statutory regulations unless stated otherwise in these POTC. If any claims for damage are asserted against Buyer by third

parties for which the supplier is liable according to law or in accordance with these POTC then the supplier shall indemnify Buyer in respect of any and all such claims.

## **10. PRODUCT LIABILITY AND RECALL**

- (a) If the supplier has caused a Product fault and/or (depending upon the basis upon which the claim is made) is responsible for the fault and claims are lodged against Buyer in respect of violations of official safety regulations or on the basis of domestic or foreign product liability provisions or laws in relation to a Product defect caused by the supplier's Product, then the supplier undertakes to pay Buyer compensation at first request or shall indemnify Buyer against any third party claims. The obligations of the supplier shall also include the payment of costs incurred by Buyer in calling on the services of a lawyer or otherwise incurred in connection with the defense of product liability claims. If Buyer is subject to special regulations regarding the burden of proof in relations with the injured party, these regulations shall also apply in relations between Buyer and the supplier if the circumstances requiring proof do not fall within Buyer's area of responsibility. In corresponding product liability cases, the supplier shall provide Buyer with all necessary information and every support within the bounds of reason to repel the claims.
- (b) The supplier shall be liable for measures taken by Buyer, Buyer's customers or other third parties to avoid danger and damage (e.g., recall actions, customer service actions or other field actions) to the extent that these measures were caused by defects of the Products supplied by the supplier or other violations of the supplier's duties.
- (c) The supplier shall adequately participate in good faith in any voluntary customer service actions or other field actions initiated by Buyer, Buyer's customers or other third parties.
- (d) The supplier undertakes to take out and maintain sufficient product liability insurance to cover the risks of product liability, including the risk of recall. At the request of Buyer, the supplier shall immediately provide documentary evidence of the conclusion of such a product liability insurance agreement. If the supplier is not in a position to furnish evidence of the insurance policies within 2 (two) weeks, Buyer shall be entitled to conclude such insurance at the supplier's expense.

## **11. QUALITY ASSURANCE AND INSPECTION OF INCOMING SHIPMENTS**

- (a) For its Products, the supplier shall implement and maintain an appropriate quality assurance system in compliance with the current and established state of the art. Upon request of Buyer, the supplier shall furnish proof of such quality assurance system to Buyer (e.g., by providing a copy of the latest certificate of an accredited body). Should Buyer deem this necessary, the supplier shall enter into an appropriate quality assurance

agreement with Buyer. Minimum requirement shall be a certified QM system in accordance with DIN ISO 9001, IATF 16949 or equivalent. Moreover, the parties shall inform each other about the possibility of further quality improvements.

- (b) In case of Products specifically identified in the technical documents or by means of a separate agreement, the supplier shall moreover record in special drawings, when, in what way and by whom the Products have been tested with regard to the characteristics specified in the documentation as well as the outcome of the required quality tests. The test documents shall be retained for at least 16 (sixteen) years and submitted to Buyer as required; by way of instruction reference is made to the latest version of VDA Volume 1 "Production of Evidence".
- (c) Any initial sample shall be produced in compliance with the latest version of VDA Vol. 2 "Quality Assurance of Deliveries" respectively PPAP (AIAG). In addition to the initial sample inspection report, the supplier shall enter all material data into the International Materials Data System (IMDS). The approved and accepted entry in the International Materials Data System (IMDS) is a component of and precondition of each successful initial sample approval. Irrespective hereof, the supplier shall continuously check the quality of the Products.
- (d) The supplier shall impose on its subcontractors the obligations set forth in the above provisions of this clause 11.
- (e) Buyer shall have the right to terminate the present agreement by informing the supplier in writing to this effect if the supplier fails to comply with the agreed quality standards for a period of 3 (three) months.
- (f) Any change of the production location or of the dispatch location of the Products requires the prior written consent of Buyer, which may not be unreasonably withheld. Any costs which are incurred by Buyer due to the non-compliance with this provision or otherwise due to a change of location initiated by the supplier, shall be borne by the supplier. The supplier will inform Buyer immediately of any relocations in its supply chain in the sense of sentence 1 above or of any changes to sub-suppliers in its supply chain which are or become known to the supplier.
- (g) Buyer's duty of examination shall be limited to an examination of the quantity and identity of the Products upon their delivery as well as an examination in respect of externally visible damage. Buyer shall immediately notify the supplier of any non-conformance found during such an examination.

In so far (hidden) defects are ascertained in the ordinary course of business, Buyer shall

notify the supplier in this respect. Such notification shall be deemed timely, if received by the supplier within 2 (two) weeks following ascertainment.

## **12. TOOLS AND ACCESSORIES**

- (a) In so far as Buyer provides the supplier with material, parts, substances, containers, special packaging, tools, measuring instruments or substances or similar items (accessories), these shall remain the property of Buyer. Any processing, intermixture or combination takes place for Buyer as manufacturer pursuant to Section 950 German Civil Code (*Bürgerliches Gesetzbuch*). If, in case of any processing, intermixture or combination with the property of third parties the ownership of these third parties survives, Buyer shall acquire co-ownership in the new item in proportionate value of the items (purchase price plus VAT) compared to the value of the overall value at the time of the processing, intermixture or combination. In case the processing, intermixture or combination is carried out in such way that the supplier's items are considered the main item, it shall be agreed that the supplier shall assign proportional co-ownership to Buyer; the supplier shall store and hold in safe custody the sole property or the co-ownership of Buyer in the name of Buyer. The supplier shall take inventory at least once annually at its expense; any discrepancies found as a result of the inventory shall be for its account.
- (b) Production and test equipment provided or paid for by Buyer (directly or on the basis of amortization) including accessories and documents shall remain or become the property of Buyer and shall be identified as such or, if applicable, as the property of the relevant Buyer customer. Such items shall be provided to the supplier on loan and shall be returned upon request of Buyer at any time, provided that the supplier does not require such items to fulfil its obligations under the agreement with Buyer. The supplier's obligation to surrender such items shall also apply in case an application has been made for the institution of insolvency proceedings against the supplier as well as in cases of long-term interruptions of the supply relationship.
- (c) The above mentioned items may only be used for the manufacture of Buyer Products and shall be installed and maintained in good condition at the expense of the supplier. The supplier may not relocate the items without the prior express written consent of Buyer. Further, such items shall not be sold, assigned as security, pledged, mortgaged, charged or otherwise encumbered or disposed of without the explicit prior written consent of Buyer.
- (d) In addition, the abovementioned items, if necessary, shall be replaced at the expense of the supplier, should the agreed output or the output anticipated in good faith not be achieved.

- (e) The supplier shall bear the risk as long as these items are in its safekeeping and it shall adequately insure the items at their replacement value. The supplier herewith already assigns any and all benefits from such an insurance policy to Buyer. Buyer accepts this assignment. The supplier shall not have any rights of retention on whatever basis in respect of the above mentioned items.
- (f) If the supplier works with cast or roll Products supplied by Buyer, it shall maintain an register containing the article number, article condition and processing status of the respective Products. The supplier shall support Buyer with inventories relating to such Products and facilitate accessibility and repatriation at any time.

### **13. INDUSTRIAL PROPERTY RIGHTS**

- (a) The supplier guarantees that through the purchase, ownership, offering, use, processing or further transfer of the Products neither Buyer, nor customers of Buyer, shall infringe any intellectual property rights of third parties, in particular any rights of a third party as to brand, company, name, patent, utility model, design, equipment, or copyrights (including the relevant industrial property right applications) in the supplier's country of origin, as well as the European Union or in any of the following countries: the Federal Republic of Germany, France, Great Britain, Italy, the Netherlands, Slovakia, Spain, Sweden, China, Japan, Brazil, Mexico, Canada, Hungary, South Africa or the USA. If the supplier negligently infringes this obligation, then the supplier shall indemnify Buyer and its customers at Buyer's first request against any third-party claims arising from such actual or alleged infringements of property rights and shall bear all costs and expenses incurred by Buyer in this respect, in particular costs of bringing an action and of defense and costs resulting from observance of a possible duty to refrain.
- (b) Taking into consideration the duty of care of a prudent businessperson, Buyer, with the consent of the supplier, shall be entitled to obtain the beneficiary's approval for the use of the relevant Products and performances.
- (c) If the scope of supply in accordance with these POTC includes development work to be paid for by Buyer, possibly by inclusion in the prices of parts, Buyer shall receive a non-exclusive, royalty-free, transferable and in terms of content unlimited right in the development results, e.g., in inventions and results protected by copyright, to use these development results in any way whatsoever.

### **14. SECRECY, USE AND SECURITY OF INFORMATION**

- (a) The supplier is obliged to treat confidentially any and all commercial and technical details not in the public domain, of which it becomes aware as a result of the business relationship

and not to disclose such details to third parties without the approval of Buyer and to use such details only for the purposes for which they have been made available. The supplier undertakes to impose the same obligations to maintain confidentiality on all relevant subcontractors.

- (b) The supplier shall secure Buyer's data and its own data which is necessary for the delivery of the Products in accordance with the latest state of the art against unauthorized access, modification, destruction and other misuse. In particular, the supplier shall strictly separate and handle separately Buyer's data (except for email communication) from the data of other customers, and implement appropriate protective mechanisms against access by other customers to Buyer's data. "Data" in this sense is information which is stored or transmitted either electronically, magnetically or otherwise not directly perceptible.
- (c) Buyer reserves any and all property rights and copyrights in samples, drawings, sketches and other corporeal and non-corporeal information of any kind provided by Buyer. These items shall only be used in relation to purchase orders issued by Buyer. Copies may be made only with the prior written consent of Buyer. Title to the copies passes to Buyer after such copies are created. The supplier hereby agrees with Buyer that the supplier stores the copies on behalf of Buyer as bailee.
- (d) The supplier agrees to properly store at its expenses all information, data, documents, storage media and other objects, including copies thereof, that were made available to the supplier, to keep them in perfect condition, to obtain insurance for them and to return to Buyer or destroy them, in each case upon request of Buyer. The supplier shall have no right, on whatever grounds, to retain such objects. The complete return or destruction of the relevant object has to be fulfilled by the supplier following termination of the supply agreement or if requested by Buyer. Upon request of Buyer, the supplier shall confirm to Buyer in writing the complete return or destruction of the relevant object.
- (e) The obligation to maintain secrecy shall continue to apply for a period of 5 (five) years following the end of the supply relationship. At the end of the supply relationship, the supplier undertakes to return to Buyer all confidential information received if it is embodied or stored on electronic storage media. At Buyer's request, the supplier shall confirm to Buyer in writing that it has fulfilled the obligation arising from the last two sentences. This provision shall not apply in case the supplier is obliged by virtue of statutory or governmental requirements to store confidential documents or other storage media.

- (f) Without prior written approval of Buyer, the supplier shall not use the business relationship for advertising purposes or exhibit Products manufactured for Buyer. The same applies for the use of a company logo.
- (g) To the extent that Buyer and the supplier have concluded an individual confidentiality agreement, such agreement shall prevail over the provisions on secrecy and use of information in this POTC.
- (h) If the supplier breaches its obligations under this clause 14, a contractual penalty in the amount of EUR 25,000 shall immediately become due and payable for each breach. The supplier shall retain the right to have the contractual penalty determined by a court decision. Damages shall be set-off against any paid contractual penalties.

#### **15. SUPPLIER MANUAL, LAWS, RULES AND REGULATIONS AND APPLICABLE DOCUMENTS**

- (a) The supplier shall at all times comply with Buyer's "Supplier Requirements Manual" which can be downloaded at [www.martinrea.com/srm.pdf](http://www.martinrea.com/srm.pdf) and will be made available to the supplier upon request.
- (b) The supplier undertakes to comply with the current and established state of the art and the applicable rules and regulations issued by official authorities, employers' liability insurance associations and professional associations for all supplies and performances and shall provide the supplies accordingly. The supplier undertakes to comply with the applicable statutory and governmental requirements of the exporting country, the importing country and any countries of destination stated by the final customer. The supplier shall be informed of such countries of destination. In case it is necessary to deviate from these rules and regulations in individual cases, the supplier shall obtain written approval to this effect from Buyer. The supplier's warranty shall not be restricted by such approval. Should the supplier have any reservations as to the execution required by Buyer, it will notify Buyer in writing without undue delay.
- (c) The supplier undertakes to comply with the current legal provisions applicable to the Products and their production, in particular with provisions regarding chemicals/substances and other environmental regulations in Germany, the EU and other relevant states, *inter alia*, EU chemical legislation REACH (1907/2006/EC), General Product Safety Directive RoHS (2001/95/EC) and, ELV (2000/95/EC). Being aware that the Products cannot be used for instance if the requirements of the EU chemical legislation REACH (1907/2006/EC) are not completely and properly complied with, the supplier undertakes to perform such required preregistration and registration within the specified

time. Buyer shall not be obliged in any way to carry out such preregistration or registration. Should substitution recommendations exist, an evaluation of alternatives shall be performed and documented. This shall apply not only to Products delivered, but also to individual substances included in the Products, manufacturing and operating supplies as well as coatings. The supplier shall at its own costs provide for the relevant Products the required information for systems designed to achieve compliance with the above regulations (such as the International Materials Data System (IMDS)); the Products shall then be deemed declared.

- (d) Whilst performing under the supply agreement, the supplier shall use the necessary resources (in particular materials, energy and water) efficiently and shall reduce the environmental impact (in particular with respect to waste, wastewater, air pollution and noise) to a minimum. This also applies to logistics and transportation expenses. The supplier shall also warrant the environmental sustainability of the Products supplied and the packaging materials used. The supplier shall promote the application of proactive, environmentally sustainable practices. The supplier shall comply with the requirements of the latest packaging ordinance currently in force and shall comply with its statutory waste disposal obligations.
- (e) Supplier's performance of its obligations under this Order shall be in compliance with all laws, ordinances, rules, codes, standards and regulations that are applicable to this Order, including the requirement for obtaining any export license or agreement, if applicable, the anti-trafficking statutes and regulations or prohibitions of imports made with child labor or forced labor (collectively, "Laws"). Supplier shall establish and maintain throughout the term of this Order its own policies and procedures to ensure compliance with Laws.
- (f) Buyer reserves the right to perform a comparison of supplier data in accordance with EU Regulations No. 881/2002 and No. 2580/2001 (EU-Anti-Terrorism-Regulations). The supplier shall agree to this and shall ensure compliance with these EU regulations in respect of its scope of supply. The supplier shall be obliged to inform Buyer if the provided Products (including software and technology) are covered by lists of items subject to German, EU or US export control legislation as well as national export control legislation of the originating country. In addition, the supplier undertakes to provide on demand and without undue delay each information on export control.
- (g) In case the need of access to Buyer business areas or Buyer's IT-systems arises in connection with the order, the supplier shall only deploy such employees who were granted access or access authorization by Buyer. Employees of the supplier who were subject to a general ban of access by Buyer or any of its affiliates shall not be deployed by the supplier. With regard to any performances performed on premises of Buyer, the



"Guidelines for External Companies and their Employees (FB-PU-012)" shall apply, which can be downloaded at [www.martinrea-honsel.com/downloads](http://www.martinrea-honsel.com/downloads) and will be made available to the supplier upon request. The supplier shall comply with directions of the factory security service.

- (h) The supplier undertakes to pay its employees at least the statutorily prescribed or contractually agreed minimum wage.
- (i) In order to secure the supply chain, the supplier represents and warrants to Buyer, on the date of this Order and through the contractual relationship between supplier and Buyer, that the supplier undertakes to ensure that Products which are delivered on behalf of Buyer or are received by Buyer are stored, handled, processed and loaded at safe production sites, warehouses and transshipment locations and are protected from unauthorized access during production, processing, handling, storage and loading. Furthermore the supplier undertakes that the personnel (i) in charge of the production, storage, processing or handling, loading, transportation and take-over of such Products, (ii) in the context of contractually agreed temporary employment, and in the context of agreements for work performances, service and other contract, is reliable and trained.
- (j) To the extent specific Buyer documents (work instructions, forms, checklists) are to be observed, such documents shall be provided to the supplier together with the written order.
- (k) To the extent legally permissible, the supplier shall be obliged *vis-à-vis* Buyer to fully participate in the investigation, examination and review of product counterfeiting or product data falsification allegations and any quality defects against the supplier or its sub-suppliers and shall provide Buyer any necessary documents, records and data upon request in this respect.
- (l) Buyer does not assume a duty to monitor Seller, including, without limitation, for compliance with Laws or standards regarding working conditions, pay, hours, discrimination, forced labor, child labor, or the like and Buyer does not assume a duty to monitor or inspect the safety of any workplace of Seller nor to monitor any labor practices of Seller.
- (m) Buyer does not have the authority and disclaims any obligation to control (i) the manner and method of work done by Seller, (ii) implementation of safety measures by Seller, or (iii) employment or engagement of employees and contractors or subcontractors by Seller.

## **16. DATA PROTECTION**

To the extent the Parties process information that may directly or indirectly identify a natural person (“Personal Data”) in the context of the provision of the Products and Services under these Terms and the Order, the Parties agree that the processing of such Personal Data shall be governed by the Privacy Addendum available at <https://www.martinrea.com/privacyaddendumenglish.pdf>

## **17. INSURANCE**

The supplier shall be obliged to effect and maintain adequate worldwide insurance cover in respect of its obligations resulting from the supply relationship with Buyer. For coverage of insurance related risks concerning product liability (including the risk of recall), please refer to clause 10(d) above.

## **18. SUPPLY OF SPARE PARTS**

- (a) The supplier undertakes to guarantee the supply of spare parts to Buyer during the serial production of the Buyer Products for which the Product is used as well as for a minimum period of further 15 (fifteen) years following the end of the serial production of the Buyer Products. In good time prior to the expiry of the minimum period, the supplier shall grant Buyer the option to place a final order for the all-time requirement.
- (b) For a period of 3 (three) years or a longer period contractually agreed with a customer, the supplier shall deliver or provide the Products for the last valid series price.
- (c) Buyer shall be entitled to source the Products used as spare parts directly from the supplier's sub-supplier or any third party.
- (d) If the production of spare parts is discontinued following the period mentioned in clause 18(a) above, the supplier shall be obliged upon request to surrender design specifications, documents and drawings to Buyer in return for an appropriate remuneration.

## **19. INSPECTIONS, QUALITY AUDITS AND ESCALATION PROCESS**

- (a) Following a reasonable period of notice, during normal business hours and at intervals, Buyer deems necessary, Buyer shall be entitled at any time to carry out (by itself or through third parties) reasonable inspections and quality audits of the premises in which the supplier manufactures the Products. Buyer shall have the right to terminate the agreement with the supplier by written notice, if the supplier fails to comply with the agreed quality standards for a period of 3 (three) months.

- (b) For each case of intentional or negligent non-compliance with a valid quality management system requirement in accordance with clause 11(a) above, the supplier shall pay a contractual penalty in an amount of EUR 5,000.
- (c) In case Buyer or its customers initiate programs or measures in relation to Products of the supplier due to recurring quality defects of the Products, the supplier shall fully cooperate and shall bear the costs involved.

**20. DISCLOSURE DUTIES, TERMINATION DUE TO LACK OF COMPETITIVENESS AND DECLINE OF THE FINANCIAL STATUS OF THE SUPPLIER**

- (a) The supplier shall inform Buyer without undue delay and completely with regard to a change of name or legal form and changes to its holding, shareholder and owner structure which are of significance for the supply relationship between Buyer and the supplier by informing the competent purchasing department of Buyer. Changes significant for the supply relationship shall be a transfer of all or substantially all assets of the supplier, a merger or demerger of the supplier with or to another legal entity, the entering into a domination and/or profit and loss transfer agreement by the supplier as dominated entity, and an acquisition of at least 30% of the voting rights in the company of the supplier by one or more parties acting in concert in one or more transactions.
- (b) The supplier shall be obliged to inform Buyer as soon as the supplier learns about its impending or current cash flow difficulties or a (potential) insolvency filing. To the extent legally permissible, the supplier shall at any time upon written request by Buyer, provide Buyer with appropriate information (in particular quarterly, semi-annual and annual financial statements together with corresponding audit reports including appendices and information on key business indicators) required for evaluating the current economic and financial situation of the supplier regarding its continuing ability to supply. Buyer shall be obliged to keep this information strictly confidential, unless the respective information is publicly available or becomes available without Buyer's fault.
- (c) Buyer shall at any time be entitled to review the competitiveness of the supplier with regards to prices, quality and reliability. If the supplier is no longer competitive, Buyer shall grant the supplier a reasonable period of time to restore its competitiveness. Should the supplier fail to restore its competitiveness in such period of time, Buyer shall be entitled to terminate the agreement for cause.
- (d) Should the financial situation of the supplier substantially deteriorate after the agreement has been entered into or should insolvency proceedings or similar proceedings over the estate of the supplier be initiated, Buyer may terminate the agreement or withdraw from

it to the extent that it has not been yet fulfilled.

- (e) In case of cancellation or other termination of an agreement, the supplier shall surrender to Buyer property, documents as well as all other items made available by Buyer.

## **21. TRANSFER OF ORDER TO THIRD PARTIES**

- (a) Without the prior written approval of Buyer, the supplier shall not be entitled to transfer the order or substantial parts thereof to third parties. If Buyer has granted its consent, the supplier shall have to impose on the third party all obligations to which itself is subjected towards Buyer when performing its services and/or other contractual obligations, and it shall have to ensure that the third party fulfills them. The overall responsibility towards Buyer for the performances assigned by the supplier to the third party shall remain with the supplier.
- (b) If the supplier instructs a third party with the performance of services and/or other contractual performances without having obtained Buyer's prior written consent, Buyer shall be entitled to terminate for cause or to rescind the agreement and/or to claim damages.

## **22. SEVERABILITY**

If any provision of these POTC should be or become invalid or unenforceable in whole or in part for whatever reason, including a violation of any laws applicable to it, the validity of the other provisions of these POTC is not and shall not be affected. The same shall apply in cases where the agreement contains a gap in its provisions. In order to fill a gap such valid provisions shall be assumed as agreed as the parties would have agreed on the basis of the economic purpose of the agreement and the purpose of the POTC, if they had had knowledge of the said gap, provided that such replacement does not result in any material change of these POTC.

## **23. PLACE OF PERFORMANCE**

The place of performance for the supplier's delivery obligations shall be the delivery address or the place of use specified by Buyer, unless expressly agreed otherwise.

## **24. GOVERNING LAW AND JURISDICTION**

- (a) The relationship between the supplier and Buyer shall exclusively be governed by the laws of the Federal Republic of Germany, excluding the German conflict of law rules and the provisions of the UN Convention of Contracts for the International Sale of Goods (CISG).

- (b) The place of jurisdiction for all disputes arising from the business relationship between the parties to the agreement shall be Arnsberg. Notwithstanding the foregoing, Buyer shall also be entitled at its discretion to file a suit against the supplier at any other court having jurisdiction.

## **25. PRECEDENCE**

This English language version of the POTC serves exclusively for the purposes of information and translation. In the event of any discrepancies between the terms of the German and the English language version, the German language version shall prevail in each and every case.