



## General Terms and Conditions of Purchasing and Ordering

Applies for all contractual relationships between companies, public law entities and public law entities with special funds (hereinafter referred to as "Supplier" ) and affiliate companies of the Knorr-Bremse Group (hereinafter referred to as "Purchaser").

### 1. Applicable Terms

- 1.1 The legal relationship between the Supplier and the Purchaser shall be governed exclusively by the following Terms and Conditions of Purchasing and Ordering (hereinafter "Terms").
- 1.2 Any terms to the contrary are hereby expressly excluded.
- 1.3 The unconditional acceptance of the goods or services (hereinafter consistently referred to as "goods/services") or payment by the Purchaser shall in no case constitute acceptance of the Terms and Conditions of the Supplier.
- 1.4 The Terms shall also apply for all future transactions of this kind with the Supplier.

### 2. Ordering

- 2.1 All contracts for delivery (purchase orders and confirmations) and release orders shall require the written form. Purchase and release orders may also be sent in text form (fax, e-mail, EDI, Web EDI).
- 2.2 ANY VERBAL AGREEMENTS AFTER CONCLUSION OF THE CONTRACT OR ANY COLLATERAL AGREEMENTS REQUIRE THE WRITTEN CONFIRMATION OF THE PURCHASER.
- 2.3 Any cost estimates shall be binding and free of charge.
- 2.4 THE PURCHASER MAY DEMAND REASONABLE CHANGES OF THE GOODS/SERVICES IN TERMS OF CONSTRUCTION AND DESIGN. The consequences of such changes, in particular with regard to additional or lower costs and delivery dates, shall be mutually and reasonably regulated between the parties.
- 2.5 Should the Supplier fail to accept an individual order within two weeks of the order date, the Purchaser shall be entitled to cancel the order.
- 2.6 Should these Terms be integrated into a framework agreement, an individual contract that is based on this framework agreement also comes into existence if the Supplier does not object immediately and justifiably; the date stated in the release order shall be met.
- 2.7 THE PURCHASER'S "QUALITY MANAGEMENT PROGRAM FOR PROCUREMENT" SHALL BE AN INTEGRAL PART OF THE DELIVERY CONTRACT.

### 3. Prices, Payment

- 3.1 Without special agreement, all prices are "delivered duty paid" (DDP according to Incoterms 2000) including packaging. Should the Supplier undertake installation or assembly, he shall, failing a written agreement to the contrary, bear all necessary additional costs.
- 3.2 Unless otherwise agreed, the Purchaser shall pay within 60 days of the claim for payment and after receipt of a due invoice as well as receipt of the goods/services. ANY PAYMENT IS SUBJECT TO INVOICE VERIFICATION.
- 3.3 Should early delivery of the goods and services (hereinafter referred to as "consignment") be accepted, any claim for payment shall become due not earlier than on the agreed date of payment, in case of doubt not earlier than the agreed delivery date. The right to assert compensation claims for additional costs, in particular with regard to storage costs is reserved.

### 4. Delivery and Delivery Dates, Late Delivery, Penalty

- 4.1 Any agreed delivery dates and terms shall be binding. Decisive for on-time delivery shall be the date the goods are received at the delivery address (place of performance) agreed with or designated by the Purchaser. Failing an agreement to the contrary, delivery shall be made "delivered duty paid" (DDP according to Incoterms 2000). In all other respects the Supplier shall coordinate delivery with the carrier of the Purchaser.
- 4.2 Partial deliveries and early deliveries are not permitted unless expressly agreed to in writing by the Purchaser.
- 4.3 Acceptance of late deliveries without reservation shall not be deemed to be a waiver of any claims to which the Purchaser is entitled due to late delivery.
- 4.4 Should the agreed delivery dates not be met, the statutory provisions shall apply. Should the Supplier anticipate difficulties that may prevent him from delivering on time or in the agreed quality, he shall notify the Purchaser thereof immediately, stating the reasons. IN ADDITION, IN CASE OF FAULT OF THE SUPPLIER THE PURCHASER SHALL BE ENTITLED TO DEMAND PAYMENT OF A LIQUIDATED DAMAGES AMOUNTING TO 0.5% OF THE VALUE OF THE LATE GOODS/SERVICES PER STARTED WEEK OF DELAY UP TO A MAXIMUM OF 5% OF THE ENTIRE VALUE OF THE ORDER. THE LIQUIDATED DAMAGES SHALL BE SET OFF AGAINST ANY CLAIMS FOR DAMAGES DUE TO LATE DELIVERY. THE LIQUIDATED DAMAGES MAY BE ASSERTED UNTIL THE AGREED PRICE HAS BEEN PAID IN FULL.
- 4.5 The Supplier shall bear the performance risk until acceptance of the Purchaser or his agent at the location, to which the goods shall be delivered in accordance with the contract.
- 4.6 THE SUPPLIER SHALL WARRANT A THOROUGH INSPECTION OF OUTGOING GOODS TO ENSURE DEFECT-FREE DELIVERY. An inspection of incoming goods only takes place with respect to outwardly visible defects and/or deviations in kind or quantity of the goods. The Purchaser will give notice of such defects immediately. Notice of any other defects will be given as soon as those are determined in the ordinary course of business. INSOFAR THE SUPPLIER WAIVES OBJECTION OF LATE NOTIFICATION.
- 4.7 The Purchaser shall have the unrestricted, irrevocable and within the Knorr-Bremse Group freely transferable right to use any software included in the scope of delivery, including any attendant documentation, in accordance with the intended use of the goods/services under the contract. He may also make a safety copy thereof without any express agreement.
- 4.8 If required and on demand of the Purchaser, the parties will agree to the establishment of a consignment warehouse.

### 5. Secrecy

- 5.1 Any information made accessible by the Purchaser shall not be disclosed to third parties insofar as it is not demonstrably known to the public. The information remains the exclusive property of the Purchaser and shall only be made available to those employees within the Supplier's company that are necessary in the performance of the contract and who have been put under an obligation to secrecy themselves. With the exception of deliveries to the Purchaser, such information may not be duplicated or used for commercial purposes without the prior written approval of the Purchaser. On request of the Purchaser, all information originating with the Purchaser, no matter what kind or in what form, shall be immediately and completely returned to him or destroyed in connection with a written declaration to that effect.
- 5.2 The Purchaser reserves all rights in such information (including copyright and the right to intellectual property applications). Insofar as the Purchaser has acquired such information from third parties, this reservation also applies for the benefit of such third parties.
- 5.3 The Supplier may neither use himself nor offer or deliver any products to third parties that have been manufactured on the basis of the Purchaser's documents, drawings, models and the like or on the basis of confidential specifications of the Purchaser or by means of his tools or copies thereof. This shall correspondingly also apply for printing orders.
- 5.4 The contracting parties may only use their business connection for advertising purposes with the prior written consent of the other party.

### 6. Inventions, Industrial Property Rights

- 6.1 The Supplier hereby grants the Purchaser a free, transferable right of use without restriction as to territory or time in any know-how and inventions of the Supplier that are capable of being protected and on which the goods/services are based or in which these are embodied or which have come into being through development processes during the contractual relationship. The Supplier shall organisationally ensure that he can meet his obligation to grant the right of use.
- 6.2 THE SUPPLIER IS AWARE THAT THE PRODUCTS OF THE PURCHASER ARE BEING USED WORLD-WIDE. HE UNDERTAKES TO IMMEDIATELY NOTIFY THE PURCHASER OF ANY USE OF PUBLISHED AND UNPUBLISHED, OWN AND LICENSED INDUSTRIAL PROPERTY RIGHTS AND PATENT APPLICATIONS REGARDING THE GOODS/SERVICES.

### 7. Packaging, Delivery Note, Invoice, Country of Origin of Goods

- 7.1 The goods shall be packaged according to the provisions of the packaging handbook of the Purchaser.
- 7.2 The Purchaser shall be provided with a delivery note and a separate invoice regarding each consignment. These must contain the Supplier number, date and number of the order and/or release order and purchase agreement, quantity and material number, number and date of the delivery note, gross and net weights listed separately, additional data of the Purchaser (e.g. point of discharge) as well as the agreed price per unit. A packing slip with a list of contents and order number must be enclosed with each consignment.
- 7.3 Should the invoice refer to several different orders, the information under 7.2 shall be listed separately for each order. The invoice may only refer to the delivery note.
- 7.4 A Supplier, whose place of business is inside the EU, shall provide the Purchaser with evidence of the country of origin of the goods by means of a long-term Supplier's declaration, a Supplier outside the EU by means of proof of preference or certificate of origin. The Purchaser shall be notified immediately of any change in the country of origin without prior request. The Supplier shall indemnify the Purchaser from all costs arising as a result of false, incomplete or incorrect statements or documents regarding the country of origin of the goods.

### 8. Force Majeure

Any force majeure, strikes or lockouts, disruption of operations through no fault of his own, riot, official governmental actions and other unavoidable events entitle the Purchaser – irrespective of his other rights – to withdraw from the contract in full or part, provided these events result in a significant reduction of his needs and last for a significant period of time.

### 9. Liability for Defects

- 9.1 Unless agreed otherwise below, the statutory provisions regarding defects of quality and title shall apply.
- 9.2 The Purchaser may choose the manner of subsequent performance.
- 9.3 Should the Supplier fail to start immediately with the repair of the defect within a period to be determined by the Purchaser, the Purchaser shall be entitled at the Supplier's expense to carry out the repair himself or have it carried out by a third party. Should the Purchaser, due to special urgency and in particular in defense against impending risks and/or substantial damage, be unable to notify the Supplier of the defect and the impending damage and to set a time limit, he shall be entitled to remedy measures without setting a time limit.
- 9.4 The warranty shall expire 24 months after ultimately being put into service by the end customer, at the latest, however, 36 months after delivery to the Purchaser.
- 9.5 FOR PARTS REPAIRED OR REPLACED WITHIN THE WARRANTY PERIOD, THE WARRANTY PERIOD SHALL START ANEW UPON COMPLETED SUBSEQUENT PERFORMANCE. HOWEVER, THIS SHALL ONLY APPLY IF THE VOLUME, DURATION AND COSTS OF THE REPAIRS OR SUBSEQUENT DELIVERIES ARE NOT MERELY INSIGNIFICANT.
- 9.6 The Supplier shall bear the costs incurred by the Purchaser due to defective delivery of the goods/services, in particular costs for handling, transport traveling, labour, material, installation and modification, costs for an incoming goods inspection that exceeds the ordinary scope as well as costs the Purchaser has to bear for his customers due to statutory obligations.
- 9.7 In case of culpable defect of title, in particular in case of infringement of third party industrial property rights, the Supplier shall indemnify the Purchaser and his customers from all claims by third parties and shall compensate all costs the Purchaser incurs due to a necessary and appropriate legal defense in connection with the infringement of third party rights. In respect of defects of title a period of limitation of 7 years applies.
- 9.8 Should the Purchaser take back any products manufactured and/or sold by him due to defects of the goods/services delivered by the Supplier, or should the remuneration of the Purchaser have been lowered or shall claims be made on him in other ways, the Purchaser reserves the right to recourse against the Supplier.

### 10. Other Liabilities

- 10.1 Should the Purchaser be subjected to product liability claims, the Supplier shall indemnify him insofar and to the extent that the damage was caused by a defect of his goods/services. However, in case of tortious liability this shall only apply if the Supplier is at fault. The Supplier shall bear the burden of proof, provided the cause of the damage lies within the scope of his responsibility. In these cases THE SUPPLIER SHALL BEAR ALL COSTS AND EXPENSES, INCLUDING THE COSTS FOR BRINGING AN ACTION.
- 10.2 THE SUPPLIER UNDERTAKES TO TAKE OUT AND PROVE THAT HE IS COVERED BY PUBLIC LIABILITY INSURANCE FOR DAMAGES UNDER EXTENDED PRODUCT LIABILITY AS WELL AS FOR THE COSTS OF ANY RECALL ACTION, such insurance to be taken out with a certified insurer within the EU. The sum insured shall be no less than EUR 5 million each for personal injury, property damage and extended product liability and recall costs.
- 10.3 The Supplier shall be liable for measures taken by the Purchaser in defense against damages (e.g. recall action) insofar as he is obligated to do so under the law and/or contract.

### 11. Third Party Industrial Property Rights

- 11.1 The Supplier warrants that no third-party industrial property rights are in conflict to the contractual use of the goods/services.
- 11.2 Insofar as the Supplier is at fault for the infringement of industrial property rights, he shall indemnify the Purchaser from all third-party claims made against him in and out of court, including any costs incurred by the Purchaser for a necessary and appropriate legal defense resulting from an infringement of industrial property rights.
- 11.3 Furthermore, the contracting parties shall notify each other immediately of any infringement risks and alleged cases of infringement and shall afford each other the opportunity to jointly counteract any corresponding claims.

### 12. Assignment and Set-Off

- 12.1 The Supplier may not assign his claims against the Purchaser nor have these collected by third parties without prior written approval, which may not be refused unreasonably.
- 12.2 The Purchaser may withhold or set off payments based on his counterclaims.

### 13. Retention of Title

- 13.1 Any extended or wider retention of title on the part of the Supplier shall require an express separate agreement to be effective.
- 13.2 Any materials provided by the Purchaser shall remain his property and may only be used for the intended purpose. Any processing of materials and assembly of parts is carried out on behalf of the Purchaser. The Purchaser shall have co-title in the products manufactured using his materials and parts in proportion of the value of the materials provided by him to the value of the overall products, which the Supplier shall keep for him.

### 14. Quality and Documentation

- 14.1 The Supplier shall meet state-of-the-art of science and technology standards, safety provisions and agreed technical specifications for his consignments. For this purpose he shall establish an appropriate quality management and provide evidence thereof.
- 14.2 The Supplier shall record in his quality documentation for all products, when, how and by whom a quality inspection ensuring defect-free production was carried out. These records shall be kept for 15 years as of the last time the Purchaser placed the final product on the market and shall be provided to the Purchaser if required. The Supplier shall be entitled to shorten the retention period if he can exclude any risk to life and health in the use of the products. Sub-supplier shall be obliged by the Supplier to the same extent within the limits of law.
- 14.3 Furthermore reference is made to clause 2.7 with regard to quality and documentation.

### 15. Safety and Environmental Protection

- 15.1 All packages shall be easily separable and recyclable, avoid compound unit packs and be made of naturally renewable materials. The corresponding information regarding product and material shall be made available.
- 15.2 Any persons carrying out work in performance of the contract on the premises of the Purchaser shall observe the applicable safety and environmental protection regulations. Any liability for accidents that happen to these persons on the Purchaser's premises shall be excluded unless these have been caused by intentional wrongdoing or gross negligence on the part of the legal representatives or vicarious agents of the Purchaser.
- 15.3 In all other respects reference is made to clause 2.7 with regard to safety and environmental protection.

### 16. Replacement Parts and Availability

Failing an agreement to the contrary, the Supplier shall be obligated to deliver replacement parts at appropriate conditions for the period of ordinary technical use, no less, however, than for 15 years after delivery of the last goods/services.

### 17. Final Provisions

- 17.1 Place of jurisdiction for all disputes arising directly or indirectly from contractual relationships that are based on these Terms shall be Munich insofar as legally permissible, otherwise the place of business of the Purchaser. FURTHERMORE, IT SHALL BE AT THE PURCHASER'S DISCRETION TO BRING ACTION BEFORE A COURT AT HIS PLACE OF BUSINESS, THAT OF HIS BRANCH OFFICE OR AT THE PLACE OF PERFORMANCE.
- 17.2 The contractual relationship shall be governed exclusively by the applicable law at the place of business of the Purchaser to the exclusion of the principles of conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 17.3 Should one of the contractual partners discontinue payment or should his assets be subjected to insolvency proceedings or composition proceedings be instituted in or out of court, the other party shall be entitled to withdraw from that part of the contract that has not been fulfilled.
- 17.4 Should any provision of these Terms and of the other concluded agreements be or become invalid, this shall not affect the validity of all other provisions of these Terms. The contracting parties undertake to replace such invalid provision with a valid provision that as closely as possible reflects the economic purpose of the invalid provision.