

General Purchasing Terms and Conditions

of Mahindra Forgings Europe AG, Gesekschmiede Schneider GmbH, Schöneweiss & Co. GmbH and Falkenroth Umformtechnik GmbH

June 2016

1. Scope

- 1.1 These General Purchasing Terms and Conditions shall apply to any and all business relations between Mahindra Forgings Europe AG, Gesekschmiede Schneider GmbH, Schöneweiss & Co. GmbH and Falkenroth Umformtechnik GmbH (hereinafter referred to as "MFE") and the supplier, even when not expressly mentioned in subsequent agreements. They shall apply accordingly to work performances and services. The taking of the delivered products shall be replaced in case of work performance by acceptance of work and in case of services by receipt of the service.
- 1.2 Any terms and conditions of the supplier conflicting with, in addition to or deviating from these General Terms and Conditions shall not form subject matter of the contract unless MFE expressly consented to their applicability in writing. These General Purchasing Terms and Conditions shall also apply in case MFE unconditionally takes delivery from the supplier, having knowledge of its conflicting or deviating terms and conditions.
- 1.3 Any agreements entered into between MFE and the supplier in addition to or deviating from these General Terms and Conditions shall be made in writing. This shall apply accordingly for the waiver of this written form requirement.
- 1.4 Rights that MFE is entitled to, beyond these General Purchasing Terms and Conditions pursuant to legal provisions or other agreements remain unaffected.

2. Conclusion and Amendment of Contract

- 2.1 An order becomes binding only if placed by MFE in writing or, in case of orders placed verbally, or in particular telephonically or by use of other distance communication means, if duly confirmed by the supplier in writing. An order placed by use of automatic appliances and lacking signature is considered a written order. Silence of MFE as to offers, requests or other declarations of the supplier are deemed consent only if expressly agreed in writing. To the extent the order contains obvious errors, misspellings or miscalculations, MFE shall not be bound to it.
- 2.2 Offers, drafts, samples and specimens of the supplier are free of charge for MFE. They shall, upon MFE's request, be taken back by the supplier immediately and at its own expense.
- 2.3 MFE shall retain title, copyright and other rights to all documents made available to the supplier in connection with an order or the fulfillment of a contract. Such documents must not be made accessible to third parties. Upon completion of the order, the documents shall be returned to MFE immediately and unsolicited.
- 2.4 Immediately, however at the latest two weeks after receipt of an order, the supplier shall issue a written confirmation expressly stating the price and delivery date. Deviations of the order confirmation from the order are deemed agreed only if confirmed by MFE in writing. This shall apply accordingly for subsequent contract amendments.
- 2.5 Should MFE have concluded a general supply agreement on future supplies with the supplier, an order placed by MFE shall be binding if the supplier does not oppose this within three working days after receipt of the order.
- 2.6 Order confirmations, advices of dispatch, waybills, bills of delivery, invoices and other written communication of the supplier shall contain the order data, in particular order number, order date and supplier number.
- 2.7 In case that, during the execution of a contract, deviations from the specification originally agreed turn out to be necessary or expedient, the supplier shall inform MFE immediately and shall submit modification proposals. MFE will notify the supplier if and how the latter must modify the original order. MFE shall be entitled to modify the order at any time, in particular with respect to the composition of the products. In such case, the supplier is granted a reasonable time period to modify the production as may be necessary. Should such modifications lead to differing costs incurred by the supplier due to the execution of the contract, the Parties shall negotiate an appropriate adjustment of the agreed prices. Should no agreement regarding an adjustment of the agreed prices be reached within eight weeks after a written negotiation request, MFE may terminate the contract without notice.
- 2.8 Should the supplier request an application for the opening of insolvency proceedings or equivalent with respect to its own assets or should the reasonable request of a third party to open insolvency proceedings or equivalent with respect to the assets of the supplier have been rejected due to lack of assets, MFE shall be entitled to withdraw the Contract wholly or in part.

3. Packing, Dispatch, Delivery, Acquisition of Ownership

- 3.1 The supplier shall observe MFE's specifications regarding the dispatch of the products, in particular the then current transport, packing, and delivery regulations.
Delivery shall take place in packing suitable for the type of products. In particular, the products shall be packed in a manner to avoid transport damages.
Packing materials shall be used only in the amount necessary for this purpose.
Environment-friendly and recyclable packing materials may be used only. The use of reusable packing shall be permissible with MFE's prior written consent only.
- 3.2 The dispatch of the products shall be notified immediately. To the extent it is agreed that MFE assumes the freight charges, this shall apply to the costs in the amount of the most reasonably priced type of dispatch, even if faster transportation is necessary in order to meet the agreed delivery periods and dates. All deliveries shall be accompanied by one single delivery note indicating the scope of delivery, the article and material numbers, the delivery amount, the date of manufacture and the order date, in particular the order number, order date and supplier number.
- 3.3 Deliveries can be made on working days during usual business hours only.
- 3.4 When delivering the products, the supplier shall comply with the Ordinance on Hazardous Substances (*GefStoffV*); it shall in particular pack and indicate the products accordingly and expressly state hazardous substances on the bill of delivery.
- 3.5 Ownership in the products shall be transferred to MFE directly and free from any encumbrances as soon as they are handed over. The supplier warrants to be entitled to resale the products and to transfer ownership in them.

4. Delivery Period

- 4.1 The delivery periods and dates stated in the order or otherwise agreed are binding.
The delivery periods start from the order date. The products must have arrived at the delivery address stated by MFE within the delivery period or on the agreed delivery date.
- 4.2 In case it becomes clear to the supplier that the delivery period cannot be met, it shall immediately inform MFE in writing, stating reasons and the anticipated duration of delay.
- 4.3 In case of a delay in delivery, MFE shall, regardless of supplier's fault and after expiration of a reasonable period set by MFE, be entitled to rescind the contract. In case the supplier is in delay, MFE shall be entitled to claim a contractual penalty in the amount of 0.5% of the net order value for each week of said delay or part thereof, however not exceeding 5% of the net order value; this shall not apply if the supplier is not responsible for the delay in delivery. MFE must assert the contractual penalty at the latest together with the final payment. Cases of force majeure shall be excluded. Further claims of MFE shall remain unaffected. MFE claim for delivery will cease to apply as soon as the supplier pays damages in lieu of delivery upon MFE's request. Taking of the delayed delivery shall not constitute waiver of damage claims or contractual penalty.
- 4.4 Delivery prior to the agreed delivery date shall be permissible with MFE's prior written consent only. MFE shall be entitled to return premature deliveries at the supplier's expense, unless the premature delivery is insignificant.

5. Prices and Payment

- 5.1 The price shown in the order shall be binding and shall apply free domicile. Unless otherwise agreed in writing, the price shall in particular include costs for packing, dispatch devices, and transport up to the delivery address stated by MFE as well as customs duties and other public levies, however not value added tax at its respective statutory amount.
- 5.2 MFE shall be entitled to determine the kind of packing, the means of transport, the route of transport, and the transport insurance. The supplier is obligated to effect a transport insurance.
- 5.3 MFE shall receive one single original of the supplier's invoice. It must not be attached to the delivery, but must be sent separately. Invoices without order number, order date, or supplier's number are deemed to not have been received for lack of handling possibility.
- 5.4 Payment shall be made after taking delivery of the products and receipt of the invoice within 14 days less a 3% discount or within 60 days net. For premature deliveries, the payment period shall commence upon expiry of the delivery period or upon the agreed delivery date at the earliest. Payment is made under reserve of invoice verification. MFE may at its own choice effect payment also by cheque or bank transfer.
- 5.5 In case of faulty delivery, MFE shall insofar be entitled to withhold payment until the proper execution without loss of rebates, cash discounts, or similar price deductions.
The payment period shall commence upon complete removal of the faults. For premature deliveries, the payment period shall commence upon the agreed delivery date at the earliest.
- 5.6 In case of delay in payment, the supplier may, taking into consideration the current interest rate level, claim default interest of 4 percentage points above the then current base rate unless MFE provides evidence of a lower loss. The supplier shall be entitled to rescind the contract after expiration of a reasonable grace period that it has set MFE upon occurrence of the delay in payment, unless MFE is not responsible for the delay. The supplier is obligated to declare bindingly upon MFE's request within a reasonable period whether the supplier, after expiration of the period and due to the delay in payment, rescinds or continues the contract.

6. Passing of Risk

- 6.1 The supplier shall bear the risk of incidental destruction or incidental deterioration of the products until their delivery to MFE.
- 6.2 In case the supplier is obligated to install or assemble the products at MFE's site, the risk shall pass to MFE upon installation or assembly of the products only.
This shall also apply in case MFE has assumed further obligations, e.g., transport costs.

7. Warranties, Claims based on Defects and Guarantees

- 7.1 The supplier warrants that the delivered products comply with applicable statutory provisions and the regulations and directives of public authorities, trade associations, and industrial unions. The supplier shall indemnify MFE from and against any and all claims of third parties asserted against MFE or its customers by reason of breach of such provisions. This shall not apply if the supplier is not responsible therefor. MFE shall be informed immediately in writing if the supplier has any reservations about the execution of an order as requested by MFE.
- 7.2 MFE shall notify the supplier of apparent defects within two weeks after taking delivery of the products and of hidden defects within two weeks following their discovery. If a delivery consists of a multitude of equal products, MFE shall examine only a reasonable amount of the delivered products for defects. If the products would become unsaleable by reason of the examination, the amount of the delivered products to be examined shall be reasonably reduced. If individual random samples of a delivery are defective, MFE may at its own choice request the supplier to single out the defective products or assert claims based on defects for the complete delivery. If, as a result of the defects in the products, an examination exceeding the usual extent of the inspection of incoming products is necessary, the supplier shall bear the costs of such examination. In case of delay or loss of the notification, the timely sending of the notification shall be sufficient.
- 7.3 Should MFE have concluded a general supply agreement with the supplier, the supplier is obligated to maintain a suitable quality management system and to produce and inspect the products to be delivered in accordance with such quality management system. In case the supplier procures from preliminary suppliers resources, inspection equipment, software, services, material, or other preliminary deliveries for the production or quality management of the products to be delivered, it will contractually include them in its quality management system or ensure the quality of the preliminary deliveries itself. The supplier will in particular conduct material testings on its own. The supplier will keep records of the performance of the quality management measures and retain such records as well as any samples of the products to be delivered in a well-arranged manner. It will, to the extent required, allow MFE inspection, explain the records, and hand over copies of the records as well as any samples. MFE will, immediately after taking delivery of the products to the extent this is possible within the ordinary course of business, inspect whether the products match the ordered quantity and type and whether they were apparently damaged during transport. In case a defect is discovered in the course of such inspection or at a later date, MFE shall notify the supplier thereof within two weeks after the inspection or the discovery. Any inspection of incoming products exceeding the above shall not take place.
- 7.4 To the extent the delivered products are, due to their defects and pursuant to applicable legal provisions, not marketable or must be properly disposed by MFE, MFE shall be entitled to dispose them at the supplier's expense.
- 7.5 In case of defective products, MFE shall be entitled to, notwithstanding statutory claims based on defects, request as subsequent performance at its own choice remedial of the defects or delivery of products free of defects by the supplier. The supplier shall bear the costs necessary for the subsequent performance. This shall also apply if the products were redelivered in accordance with their intended use to any place other than the delivery address indicated by MFE. In case the supplier fails to subsequently perform within a reasonable time period set by MFE, MFE may, at the supplier's expense and risk, take the necessary measures itself or have the same taken by third parties, unless the supplier is not responsible for the failure to perform within the period of grace. The period is dispensable if the supplier definitely and seriously refuses performance or if particular circumstances are at hand which, taking into account the mutual concerns, justify that the necessary entitlement to make a claim is taken immediately. Special circumstances in this sense shall apply in particular in urgent cases where subsequent performance by the supplier would most likely not remedy the pending disadvantage of MFE. In this case, MFE shall be entitled to take the necessary measures at the supplier's expense and risk also without the unsuccessful expiry of a reasonable period of grace, provided MFE notifies the supplier thereof.
- 7.6 The taking delivery of the products as well as the processing, payment, and repeat order of products whose defects have not yet been discovered and notified shall neither constitute approval of the delivery nor waiver of claims based on defects by MFE.
- 7.7 The limitations period for MFE's claims based on defects shall amount to 24 months, starting from the delivery of the products. This shall not apply in the event that longer limitations periods are provided for by law. Claims based on defects notified within the limitations period are time-barred at the earliest after six months after filing of the notice.
With respect to reworked, redelivered, replaced, exchanged or repaired parts, the Limitations period shall begin 24 months after completion of the work or, if provided for, acceptance of the work anew.
- 7.8 Suppliers of products with spare parts are obligated to supply MFE with the required spare parts, accessories, and tools for a time period of further ten years following the expiration of the limitations period at the prices applicable so far plus an inflationary adjustment.
- 7.9 Any exceeding guarantees of the supplier shall remain unaffected.

8. Product Liability

- 8.1 The supplier is obligated to indemnify MFE from and against any and all third party claims asserted in Germany and abroad based on product liability unless it is, according to principles of product liability laws, not responsible for the defect and the damage incurred. Any exceeding claims of MFE shall remain unaffected.
- 8.2 Within the context of this obligation to indemnify, the supplier shall reimburse MFE in particular such expenses incurred from or in connection with a warning, exchange, or recall carried out by MFE. MFE will, to the extent possible and reasonable, inform the supplier of the contents and scope of the measures to be taken and give it the opportunity to comment. The supplier shall use its best efforts to support MFE in the measures to be taken and shall take all reasonable measures instructed by MFE.
- 8.3 The supplier is obligated to effect and maintain a product liability insurance with coverage adequate for the products of at least € 3 m. per personal injury for each individual person and at least € 5 m. per damage to property. The supplier assigns to MFE, with effect as from today, all claims in connection with the product liability insurance with any and all ancillary rights. MFE accepts such assignment with effect as from today. If the insurance agreement does not allow for such assignment, the supplier herewith instructs the insurance company to make payments to MFE only.
- Any exceeding claims of MFE shall remain unaffected. The supplier shall upon request provide MFE with evidence of the conclusion and existence of the product liability insurance. The supplier shall refrain from each act and omission that might endanger the insurance coverage.

9. Property Rights of Third Parties

- 9.1 The supplier warrants that no patents, licenses, or other property rights or copyrights of third parties are infringed by the delivery and use of the products. This shall not apply for products developed by MFE.
- 9.2 To the extent a third party makes a claim based on the delivery and use of the products on MFE or its customers due to an infringement of such rights, the supplier is obligated to indemnify MFE from and against such claims. Such duty to indemnify shall cover all expenses incurred by MFE in connection with the claim. In particular, MFE shall be entitled to obtain, at the supplier's expense, approval from the third party to use the products. The duty to indemnify shall not apply if the supplier is not responsible for the infringement of the third party's property rights.

10. Force Majeure

- 10.1 In case MFE is hindered by force majeure from the fulfilment of its contractual duties, in particular from taking delivery of the products, MFE shall, for the duration of the hindrance and a reasonable restart time, be released from its duty to perform without being obligated to pay damages to the supplier. The same shall apply if the fulfilment of MFE's obligations is unreasonably impeded or temporarily impossible due to unforeseeable circumstances beyond MFE's control, in particular due to strike, measures of public authorities, lack of energy, or material interruptions of operation.
- MFE may refuse to take delivery of the products if such circumstances constrain the sale of the products due to a decrease in demand. This shall also apply if such circumstances occur at a date on which MFE is in default of taking delivery.
- 10.2 MFE shall be entitled to rescind the contract if such hindrance continues for more than four months and the performance of the contract is, due to such hindrance, no longer of interest to MFE. Upon request of the supplier, MFE will declare after expiration of the period whether it will exercise its right of rescission or take delivery of the goods within a reasonable period.

11. Liability of MFE

- 11.1 MFE shall be fully liable for damages resulting from a breach of a warranty or from harm to life, physical injury, or harm to health. The same shall apply in case of intent or gross negligence. For slight negligence, MFE shall be liable only to the extent material duties are breached, such duties resulting from the nature of the contract and being of essential importance for the attainment of the purpose of the contract. In case of breach of such duties and in case of default and impossibility of performance, MFE's liability shall be limited to damages that are typically expected to occur within the context of the contract. Statutory product liability shall remain unaffected.
- 11.2 Any preclusion or limitation of MFE's liability shall also apply for the personal liability of MFE's employees, staff members, representatives, and auxiliary persons.

12. Conformity with regulations

All products and/or services supplied must meet the applicable requirements regarding regulations, documentation and safety. The Supplier shall put in place processes to guarantee compliance with government restrictions and safety regarding substances with restricted or prohibited use, including products purchased by it or those relative to the production process. In order to comply with the terms of this contract, the Supplier shall fulfil any legal obligations and requirements applicable at any given moment, specifically including EC Regulation 1907/2006 of the European Parliament and of the Council concerning the registration, evaluation, authorisation and restriction of chemicals (REACH) and any modifications that may be made to said regulation in the future, as well as any other regulation applicable to this field.

13. Corporate social responsibility

THE CUSTOMER takes ownership of the ten universally accepted principles in the United Nations Global Compact strategic policy in the areas of human rights, labour and environment, and integrates them within the company's strategy and activities. These ten universally principles in the UNG Compact strategic policy are considered an integral part of its strategy and operations, so the compliance of them should be equally borne to the supplier. The non-compliance of any of them, would enable the immediate termination of the contractual relationship.

14. Confidentiality

- 14.1 The Parties are obligated, for an unlimited period, to keep confidential any and all information that become available to them and that are indicated confidential or are otherwise identifiable as business or trade secrets and, unless necessary for the supply relationship, to neither record nor hand on nor exploit them.
- 14.2 The Parties will, by appropriate binding agreements to be concluded with the employees and agents acting on their behalf, ensure that such employees and agents, for an unlimited period, neither exploit nor hand on nor record such business and trade secrets for own purposes.

15. Final Provisions

- 15.1 The supplier shall be entitled to transfer rights and duties to third parties or have a third party execute an order or essential parts thereof with the prior written consent of MFE only.
- 15.2 Payments shall be made to the supplier only. The supplier shall be entitled to offset counterclaims against payments due only where the claims have been legally established or are undisputed. The supplier may assert a right of retention only where its counterclaim is based on the same contractual relationship.
- 15.3 Subcontractors of the supplier are considered vicarious agents and shall be communicated to MFE in writing upon request.
- 15.4 The legal relationship of the supplier and MFE shall be governed by, and construed in, accordance with the laws of the Federal Republic of Germany to the exclusion of the United Nations Sales Convention (CISG).
- 15.5 Exclusive venue for any and all disputes arising out of the legal relationship between MFE and the supplier shall be Aalen. MFE shall also be entitled to bring action at the supplier's statutory seat and at any other permissible venue.
- 15.6 Place of fulfillment of all obligations of the supplier and of MFE shall be Aalen.
- 15.7 The language of the contracts shall be German.
- 15.8 The text decisive for these General Purchasing Terms and Conditions is the one written in German language. Therefore, in case of a different interpretation of the German and the English text, the German wording shall prevail.