

## GENERAL TERMS AND CONDITIONS OF PURCHASE (Version 01/2019)

### Article 1

#### Applicable Terms and Conditions

1. All declarations and agreements between Edscha Holding GmbH as well as any company in which the afore-mentioned company holds a majority interest (§ 16 German Stock Corporation Act/*Aktiengesetz*/AktG) respectively which the afore-mentioned company directly or indirectly controls (§ 17 German Stock Corporation Act) (hereinafter "**Edscha**" or "**Edscha Company/ies**") and any of their suppliers, service providers and other contractors (hereinafter referred to as "**Supplier/s**") as well as all legal relationships resulting therefrom shall be exclusively subject to these General Terms and Conditions of Purchase, (Edscha and Supplier hereinafter separately and jointly "**Contractual Partners**").

For the purpose of these General Terms and Conditions of Purchase, any legal entity which from time to time controls, is controlled by, or is under common control with a relevant other legal entity, control meaning the power to direct the management and policies of a legal entity directly or indirectly, whether through the ownership of voting rights, by contract or otherwise (and provided that a legal entity shall be deemed to control another legal entity if such first legal entity owns fifty percent (50%) or more of the capital stock or other equity interest of such other legal entity), shall be regarded as an affiliated company (hereinafter "**Affiliated Company/ies**").

Any amendments to these General Terms and Conditions of Purchase shall require the approval in writing of the Head of the Purchasing Department of Edscha located in Germany.

Any different, conflicting or additional terms issued by any Supplier or any third party are expressly rejected hereby; such conditions shall not apply, even if they were not rejected explicitly in an individual case, unless Edscha expressly accepted them in writing in total or in part.

2. These General Terms and Conditions of Purchase as amended from time to time and as published on the Edscha Supplier Portal ([www.esp.edscha.com](http://www.esp.edscha.com)) at the time of ordering shall also apply to all future business relationships between Edscha and its Supplier even if not expressly agreed upon or incorporated by reference.
3. In as far as their content can be applied to the individual business relationship, the legal relationships between Edscha and the Supplier shall be ruled by the following agreements, conditions and other provisions in the hierarchy given below:
  - the provisions of the order;
  - the provisions of the nomination letter; - the provisions of the supply agreement;
  - the other conditions, regulations and guidelines set out in the order, the nomination agreement and/or the supply agreement;
  - the other general terms and conditions of Edscha as published on the Edscha Supplier Portal ([www.esp.edscha.com](http://www.esp.edscha.com));
  - the specific and general technical terms and conditions and guidelines of Edscha;
  - these General Terms and Conditions of Purchase.

Unless otherwise agreed upon, Edscha manufacturing standard ESN R-82110 and Edscha acceptance standard ESN-R82115 each as amended from time to time shall apply additionally to the manufacture of machinery, machinery systems and facilities, and their equipment.

In case the Supplier does not have access to the Edscha Supplier Portal, Edscha shall, upon receipt of a respective written notice of the Supplier, as soon as reasonably possible provide the Supplier with the relevant documents referred to in the Edscha Supplier Portal.

### Article 2

#### Requests for Quotations and Offers, Orders and Delivery Call-Off

1. Requests for quotations issued by Edscha shall not impose any obligation upon Edscha. Any offer submitted by any Supplier to Edscha shall be free of any charge to Edscha.
  2. Supply agreements (order and acceptance) and delivery call-offs as well as any changes or amendments thereto must be made in writing. Orders and delivery call-offs may also be made by remote data transmission.
  3. If the Supplier does not accept the order within one week of its receipt, Edscha shall be entitled to revoke such order and the Supplier shall have no claims whatsoever against Edscha with respect to such order.
  4. If the Supplier does not object in writing within three (3) days from receipt of a delivery call-off, such delivery call-off shall become binding upon the Supplier.
  5. Edscha shall also have the right to place any order in the name and for the account of any other Edscha Company. That other Edscha Company shall in such an event also have the right to issue delivery call-offs.
- Where Edscha so desires, the Supplier will provide notification of the dispatch of deliveries by Electronic data interchange (EDI) or via the Edscha Supplier Portal ESP.

### Article 3

#### Changes and Price Adjustments

1. Edscha may demand changes in the delivery items (including but not limited to the construction, design, time and place of the supply) to be implemented immediately, in as far as this can be reasonably expected of the Supplier. Any effects resulting thereof, in particular with regard to extra costs and reduced costs and supply dates, have to be adequately regulated by mutual consent – taking into account accountability and default. If no mutual agreement can be reached within five (5) working days, Edscha reserves the right to appoint an independent competent third person, who will decide on the effects of the change and the allocation of costs. The decision shall be binding on both Contractual Partners. The Supplier shall be obliged to suggest to Edscha changes that it deems necessary or expedient for the achievement of the contractual targets or in view of amended statutory or other mandatory provisions.
2. The Supplier shall have to immediately evaluate the consequences of such amendments or changes and to inform Edscha accordingly, in particular as regards the technical fea-

sibility as well as increases or reductions of costs incurred or time shiftings, if any. Any changes and adjustments of prices and dates, if any, must be documented in a form to be agreed between the Contractual Parties. The Supplier shall in no event be entitled to cause any extra costs prior to the written approval of the changes by Edscha. Otherwise, it shall bear these costs.

3. During the cooperation, the Supplier shall permanently analyse costs and values, in order to optimize costs and it shall agree to a reduction of the piece price per series where there is potential for saving costs. Edscha shall be entitled to review the Supplier's prices at any time. If, after any such review, Edscha is of the opinion that a price adjustment is required, Edscha shall immediately notify the Supplier accordingly stating the reasons therefor and mutually agree upon an adjustment of prices with the Supplier. The Supplier shall be obliged to cooperate.

#### **Article 4 Payment**

1. Payment shall be made in accordance with the regulation stipulated in the supply agreement respectively order. In the event of acceptance of early supplies, the due date for payment after invoicing shall be determined according to the agreed supply date.
2. Payment shall be made by transfer, cheque or credit memo procedure.
3. In the event of defective supply or service, Edscha shall be entitled to withhold payments pro rata until proper fulfilment.
4. The Edscha Company stated in the supply agreement respectively order shall be the sole debtor of the Supplier. However, Edscha may choose to fulfil its payment obligations to the Supplier through payments made by any other Edscha Company.
5. The Supplier shall not be entitled, without the prior written consent of Edscha, which may not be unreasonably withheld, to assign its claims against Edscha or to have them collected by third parties. In the event of an extended retention of title, such consent shall be deemed to have been granted. If the Supplier assigns its claim against Edscha contrary to the regulation above without the consent of Edscha to a third party, the assignment shall still be valid; however, Edscha can make a payment either to the Supplier or the third party at its discretion with debt-discharging effect.
6. The Supplier shall not be entitled to any remuneration, unless it has received a written order from Edscha's purchasing department. This shall also apply to changes or to measures taken by the Supplier.
7. It is Edscha's business policy to acquire from its Suppliers full title to special operating means (especially tools). Title to such operating means shall pass to Edscha at the latest upon full payment. If Edscha pays only proportionately for the operating means, Edscha shall hold a part of the complete title equivalent to the ratio between the proportionate payment and the current market value of the respective operating means at the date of conclusion of the related purchase agreement. Upon request, Edscha shall be entitled to acquire the full title by paying the lower of remaining market value respectively book value. Furthermore, the Conditions for the Provision of Special Operating Means as amended from time to time and as published on the Edscha Supplier Portal ([www.esp.edscha.com](http://www.esp.edscha.com)) shall apply.
8. An expanded or extended retention of title is not agreed unless expressly agreed in writing thereto by Edscha.

#### **Article 5**

##### **Shipment, Delivery Note, Labelling, Declaration of Origin and Traceability**

1. The manner of delivery shall be specified by Edscha in the order, the supply agreement or the respective delivery call-off particularly, but without limitation, by reference to the respective commercial clauses, e.g. INCOTERMS, as amended from time to time and as modified (if at all) in the delivery terms of Edscha included in the order, the supply agreement or the delivery call-off.
2. The standard delivery notes of the automotive industry as laid down in the German DIN 4994 standard or equal standards, the delivery notes as agreed between the Contractual Partners in writing shall be exclusively used for all shipments. The title to any empties not referred to in the delivery notes (number of container or load carrier) shall pass to Edscha free of any charge respectively said empties shall be disposed of at the expense of the Supplier. With respect to labelling, the Supplier must comply with the Edscha standard ESNR 41500, as amended from time to time.
3. The Supplier shall be obliged to comply with the country-specific requirements stipulated by the relevant Edscha purchasing department with regard to the origin of goods and, where appropriate, origin criteria.
4. The Supplier shall inform Edscha immediately about the origin of any newly adopted items to be supplied and any change in origin without any request being required.
5. For identification and allocation to delivery lots, the parts and the packaging must be marked for unambiguous traceability. If possible, the marking of the parts shall be agreed with Edscha's development department. Each packaging unit must in any event be marked sufficiently by the Supplier.

#### **Article 6**

##### **Invoicing**

1. For each shipment, an invoice in duplicate shall be issued and sent to the Edscha Company named in the order. Each invoice may relate to a single delivery note only.
2. Each invoice submitted hereunder shall be issued in due and proper form and shall contain all information required under applicable laws and the VAT related laws and regulations respectively VAT guidelines as amended from time to time, in order, *inter alia*, to allow the utilisation of input tax for credit by the Edscha Company to which the invoice is addressed.
3. Each invoice submitted hereunder must show the supplier number, the number and date of the order (or the conclusion of the supply agreement), the delivery call-off and the delivery note, the quantity of goods invoiced, the Edscha material number, the index number and any additional data required by Edscha such as, without limitation, allocation. All invoices hereunder shall furthermore comply with all applicable statutory requirements.

#### **Article 7**

##### **Dates and Deadlines**

1. Agreed dates and deadlines are binding, unless Edscha makes a reasonably acceptable change thereto (article 3 clause 1). The Supplier guarantees compliance with the dates and deadlines agreed. The decisive criterion for keeping the supply date or supply deadline shall be the receipt of the goods and services at the Edscha Company stated in the order or at the place determined in the supply agreement. If supply "ex works" is agreed, the Supplier shall provide the goods in time, taking into consideration the usual time for loading and dispatch.

2. The performance of any partial supplies/services by the Supplier is subject to the prior written consent of Edscha. The Supplier shall bear any extra costs (e.g. additional costs of transport, set-up/retooling or testing) incurred thereby.
3. If circumstances occur or become discernible for the Supplier that indicate that the delivery time agreed cannot be met, the Supplier shall be obliged to immediately inform Edscha accordingly in writing, stating the reasons for the delay, to propose suitable remedies and to carry them out immediately – in agreement with Edscha.

#### **Article 8**

##### **Delay in Delivery / Wrong Delivery and Over Delivery**

1. In case of delay, the Supplier shall be liable in accordance with the statutory provisions.
2. In each case in which the Supplier culpably fails to comply with any of the dates or deadlines, Edscha shall furthermore be entitled to liquidated damages of 0.5% of the net amount of the remuneration agreed for the delayed delivery for each calendar day, provided, however, that the total amount shall not exceed 5 % of the net amount of the agreed remuneration. The liquidated damages will count towards any claims for damages.
3. If the Supplier delivers wrong goods (Wrong Delivery) or more than the ordered goods (Over Delivery) Edscha is authorized to send the Wrong Delivery or Over Delivery back to the Supplier and to claim damages from the Supplier for any costs incurred through the Wrong Delivery or Over Delivery, especially for the cost of warehousing, logistics, transportation and packaging.

#### **Article 9**

##### **Force Majeure**

1. Force majeure, industrial action, civil commotion, official measures, fire, loss of operating facility and other non-foreseeable, inescapable and serious events shall release the Contractual Partners from performing their obligations for the period of the disruption and to the extent of its consequences only if previously all necessary and reasonable action has been taken to safeguard continued supply. As long as the obstacle according to sentence 1 exists and during a reasonable period thereafter, Edscha may procure the supplies respectively services from a source other than the Supplier (“Alternative Procurement”). In this event, the Supplier shall cooperate as required, e.g. provide data and necessary tools. Where, for scheduling reasons, Alternative Procurement is necessary for Edscha to avoid, *inter alia*, damage incurred or to be incurred by Edscha shall have the right to rescind or terminate the agreement with the Supplier. In such a case, the Contractual Partners shall not be liable for damages towards each other due to such termination.
2. As far as can be reasonably expected, the Contractual Partners shall be obliged to provide one another with whatever information is necessary without undue delay, to adjust their obligations to the changed circumstances in good faith and to minimise as much as possible the damage for the other Contractual Partner.

#### **Article 10**

##### **Acceptance and Transfer of Risk**

1. Where, by law or agreement, acceptance inspection is required, the Contractual Partners shall conduct formal acceptance. Acceptance will not be granted until the performance and/or the supply are provided free of defects and, in

particular, all identified defects have been remedied by the Supplier.

2. If an acceptance inspection demands start-up or physical use for testing purposes, formal acceptance shall be subject to the successful completion of such tests.
3. Neither start-up nor resale shall be deemed to be formal acceptance unless otherwise agreed in writing between the Contractual Partners.
4. Payment of the remuneration made by Edscha shall not be deemed to be acceptance of the performance.
5. The risk of loss of any supply and/or service shall pass to Edscha only after the supply and/or service has been handed over to Edscha and – where acceptance inspection is to be performed by law or agreement – is accepted by Edscha. In case of a Wrong Delivery or Over Delivery, the risk of loss of any of the wrong or over-delivered goods shall remain with the Supplier unless the Contractual Partners agree otherwise in writing.

#### **Article 11**

##### **Notification of Defects**

Edscha or, in case of supplies made on Edscha's instruction to a third party, the third party shall carry out incoming goods inspections only with regard to outwardly visible damage and to deviations from identity and amount visible from outside. Edscha shall immediately report such defects. Edscha reserves the right to carry out a more extensive inspection of the incoming goods. Moreover, Edscha shall complain on defects as soon as such defects are discovered in the ordinary course of business immediately upon discovery thereof.

To this extent, the Supplier waives the objection of belated notification of defect.

The Supplier will perform inspection of outgoing goods.

#### **Article 12**

##### **Liability for Defects**

1. In the event that non-compliance goods are supplied, Edscha shall be entitled to its statutory claims. Notwithstanding the above, unless otherwise agreed, Edscha shall have the right, in particular, to demand the following:
  - a) Prior to the start of production (processing or fitting), Edscha shall first give the Supplier the opportunity to sort out and, at the option of Edscha, to remedy non-compliances or to make a subsequent (replacement) delivery, unless Edscha was not aware of the non-compliance at the time of manufacture or this is unreasonable for Edscha. If the Supplier is not able to sort out, remedy the non-compliance or make a subsequent (replacement) delivery, or if the Supplier does not perform any of these measures immediately, Edscha may terminate the agreement to that extent without setting any further period of notice as well as return the goods at the Supplier's risk and expense. In cases in which, due to special urgency, it is not possible any more to inform the Supplier about the non-compliance and the impending damage and to grant the Supplier a deadline for own remedy, Edscha may remedy the non-compliance itself or may arrange for it to be remedied by a third party (replacement performance). The Supplier shall bear the costs incurred thereby. If the same good is repeatedly supplied with non-compliances, Edscha shall, after written warning, in the event of a further non-compliant supply be entitled to terminate the agreement also with regard to the part of the supply not yet fulfilled.

- b) If the non-compliance is not ascertained before production has commenced, although the obligation according to article 11 (Notification of Defects) has been fulfilled, then Edscha shall be entitled to,
- claim remedies, i.e. removal of the deficiency or delivery of compliant goods and
  - claim reimbursement of expenses such as, without limitation transportation cost, as well as for disassembly and assembly cost (labour cost; cost of material etc.), all related to such additional remedies, or
  - a reduction of the sales price.

In any case, the Supplier has the right to refuse the remedies chosen by Edscha, if the effort necessary to provide such remedies appears to be disproportionately high compared to Edscha's interest in obtaining such remedy, if the Supplier is obliged to provide the remedy personally and cannot be reasonably expected to comply with said obligation, having balanced Supplier's reasons for refusing to provide said remedy with Edscha's interest in obtaining said remedy or if the costs for such remedy are unreasonably high. In this respect it is necessary to take into account the value of the goods in a non-compliant state, the relevance of the non-compliance and whether Edscha has the possibility to claim the other type of remedy contemplated in this article 12 clause 1 lit. b) (Liability for Defects) without suffering serious prejudice. If the Supplier, in accordance with the foregoing, rightfully refuses to provide the remedy chosen by Edscha, the latter has the right to claim only the other type of remedy, it being understood that the Supplier has the right also to refuse to provide such other type of remedy in accordance with the foregoing.

- c) If the non-compliance is in the form of a short delivery. Edscha's claim for performance will persist parallel to Edscha's warranty rights. In respect of the undelivered goods Edscha has the right to choose between its claim for performance and its warranty rights.
2. Upon request and at the expense of the Supplier, Edscha shall make the parts to be replaced by the Supplier available to the Supplier – if this is reasonable possible for Edscha.
  3. Claims arising due to non-compliances including claims to damages due to non-compliances shall become time-barred
    - a) upon the expiry of 36 months from the date of the initial registration of the vehicle, the installation of the spare parts or, where acceptance inspection is to be conducted by law or agreement, from the date of formal final acceptance. Relevant is the latest occurrence;
    - b) however, at the latest, upon the expiry of 48 months of the supply to the Edscha Company stated in the order or to the place set forth in the supply agreement.

By way of deviation herefrom, claims due for legal non-compliance shall become time-barred in the case of a) upon the expiry of 48 months and upon the expiry of 60 months in the case of b).
  4. In case of defective and/or non-compliant supplies, Edscha's claims on the basis of product liability, tort and other applicable statutory claims shall remain unaffected by the provisions of this article 12.
  5. Guarantees regarding quality and durability must be designated expressly as such in writing.  
However, the Supplier shall in any event bear the risk associated with procurement of the items ordered by Edscha.

### **Article 13 Liability**

1. The Supplier shall furthermore have to compensate Edscha for the damage incurred directly or indirectly due to a defective and/or non-compliant supply or service, any infringement of official safety regulations, any breach of the stipulations of the agreement or this General Terms and Conditions of Purchase or any other reasons attributable to the Supplier, as follows:
  - a) There shall be an obligation to pay compensation if the cause of damage is directly or indirectly attributable to the Supplier.
  - b) If claims are asserted against Edscha on the grounds of liability without fault, the Supplier shall indemnify Edscha and hold it harmless to the extent that the Supplier would be directly liable. In determining how much of a given claim must be borne by Edscha and the Supplier respectively, the principles of contributory negligence shall be applied, taking into account the degree of fault of each Contractual Partner; both Contractual Partners are responsible for the acts and omissions of their respective agents and auxiliary persons. Failure by one Contractual Partner to avoid or mitigate the damage is also deemed to be contributory negligence. This shall also apply in the event of claims asserted directly against the Supplier.
  - c) In as far as the Supplier is obliged thereto under law, the Supplier shall be held liable for measures undertaken in order to avoid damage (e.g. recall actions) and for the costs associated therewith (e.g. costs of remedy or re-supply, vehicle identification, identification of registered owners and letters to end-customers, costs of logistics, costs of replacement vehicles and costs of installation and removal).
2. Edscha will notify and consult the Supplier if Edscha intends to assert claims against it in accordance with the aforementioned provisions. As far as possible, Edscha shall give the Supplier the opportunity to investigate the damage event.
3. Claims for damages due to the delivery of non-compliant goods shall become time-barred in accordance with article 12 clause 3. Other claims shall become time-barred in accordance with statutory provisions.
4. If Edscha, its legal representatives, employees or vicarious agents wilfully or grossly negligent breach any obligation, irrespective of the nature thereof and the legal reason therefor, in particular, under the contractual relationship, or in the event of wilful or gross negligent tort, Edscha shall be liable for the damage of the Supplier caused by such breach in accordance with statutory provisions.
5. If Edscha, its legal representatives, employees or vicarious agents breach an obligation due to simple negligence, irrespective of the nature thereof and the legal reason therefor, in particular, under the contractual relationship, or in the event of simple negligent tort, the Supplier shall not be able to assert any claims for damages against Edscha, unless Edscha breached a material contractual obligation. In such a case, the liability of Edscha shall be limited to the contractually typical, predictable damage. A material contractual obligation within this meaning is such obligation in which the proper performance of the agreement is only possible when such obligation is fulfilled, and the Supplier can regularly rely on and have confidence in the continual performance thereof.
6. The aforementioned exclusion of liability respectively limitation of liability shall not apply either in the case of culpable injury to life, body or health nor in the presence of liability under the Product Liability Act (*Produkthaftungsgesetz*).

7. The statutory regulations on the burden of proof shall remain unaffected by the above regulations.

#### **Article 14 Subsuppliers**

1. Unless the Supplier has obtained the prior written consent of Edscha, the Supplier shall not be entitled to assign the performance of services and/or any other contractual performance in whole or in part to third parties (subcontractors and subsuppliers, hereinafter collectively "**Subsupplier**").
2. If Edscha has granted its consent, the Supplier shall impose on the Subsupplier all obligations to which it itself is subjected with regard to Edscha when performing its services and/or other contractual obligations, and it shall ensure the fulfillment of the same by the Subsupplier. The overall responsibility towards Edscha for the performances assigned by the Supplier to the Subsupplier shall remain with the Supplier.
3. If the Supplier instructs a Subsupplier or a third party with the performance of services and/or other contractual performances without having obtained Edscha's prior written consent, Edscha shall be entitled to terminate the agreement and/or to claim damages.

#### **Article 15 Intellectual Property Rights**

1. The Supplier undertakes to make an investigation as to intellectual property rights existing in the member states of the European Union, the North American Free Trade Agreement (NAFTA), the People's Republic of China and Japan as well in those countries to which the items are to be supplied respectively where they are to be distributed (hereinafter "**Countries relevant in terms of Intellectual Property Rights**"); upon inquiry, Edscha shall name the Countries relevant in terms of Intellectual Property Rights to the Supplier. The Supplier guarantees that the items to be supplied do not infringe any intellectual property rights nor the applications for intellectual property rights of any third party. Intellectual property rights, their registration and/or the applications for intellectual property rights are hereinafter referred to as "**Intellectual Property Rights**".
2. The Contractual Partners undertake to inform one another without undue delay about risks of infringement of which they become aware, and any alleged cases of infringement and to give one another the opportunity to respond amicably to any such claims.
3. The Supplier shall be liable for all legal consequences including all damage incurred through the contractual use of the items supplied owing to the infringement of intellectual property rights or applications for intellectual property rights of third parties.
4. The Supplier shall hold Edscha and Edscha's business partner harmless from all claims arising from the use of such Intellectual Property Rights of third parties.
5. When submitting its offer, the Supplier shall inform Edscha in writing of the use of published and unpublished Intellectual Property Rights and Intellectual Property Rights applications both of its own and licensed with regard to the delivery item ("**Old Intellectual Property Rights**"). The Supplier shall inform Edscha furthermore whether and to which extent third parties are entitled to co-use of these Old Intellectual Property Rights and whether and to which extent it is restricted in using these Old Intellectual Property Rights. If Old Intellectual Property Rights are contained in the delivery items respectively required for the manufacture of the delivery items, the Supplier shall grant and Edscha shall in this respect receive a

non-exclusive, royalty-free, irrevocable, assignable and sub-licensable right of use that shall be unrestricted in terms of time, place and content. In the event the Supplier intends to not pursue, to relinquish or to sell one of its Intellectual Property Rights that is used for the utilization of and/or contained in the development results or the delivery items or required for the manufacture of the delivery items, the Supplier is obliged to inform Edscha accordingly in due time and to offer to Edscha assignment of such Intellectual Property Right without any costs or, in case of intended sale, to purchase the Intellectual Property Right at adequate conditions. If Edscha does not declare its acceptance of the assignment or purchase of the Intellectual Property Right within six weeks of receipt of the offer, the Supplier is entitled to relinquish or sell the Intellectual Property Right according to Supplier's intent. In case of assignment of the Intellectual Property Right to third parties, the Supplier shall ensure that Edscha's existing rights towards the Supplier remain unaffected and are maintained towards the third party to the full extent.

6. With regard to inventions and other transferable work results for which protection can be filed or in respect of which it cannot be excluded that protection could be filed and which have been made by the employees of the Supplier in the course of performing the order (hereinafter "**Inventions**"), the following shall apply:

- a) In the event that and insofar as the exclusive rights to the Inventions do not already become vested in Edscha by law, the Supplier shall immediately upon gaining knowledge thereof, or, if applicable, after notification by its employee, inform Edscha in writing about all Inventions and offer assignment of the rights to and arising from the Invention to Edscha. In case of a specific term of acceptance stipulated by law, the Supplier is obliged to indicate the term in the offer. Edscha shall inform the Supplier in writing in due time before expiration of the stipulated term or in absence of a stipulated term no later than three months after receiving this offer whether Edscha wishes to acquire the rights to and arising from the Invention. The supplier is not allowed to release the Invention or refrain from making use of it before expiration of this time period. The Supplier shall keep Inventions and all related details communicated to it confidential towards third parties for such time period required for a proper application for intellectual property rights.
- b) If Edscha wishes to acquire the Invention, the Supplier shall accept and make use of the Invention preserving all rights or take all other measures necessary for the assignment of the rights to the Invention and shall assign all rights to and arising from the Invention to Edscha or upon Edscha's request, to Edscha's customer. The Supplier agrees to make all necessary declarations and other measures required accordingly without undue delay. If and to the extent stipulated by law the Supplier is obliged to pay an employee invention remuneration or a comparable payment of remuneration or compensation to its employees for Inventions, the Supplier shall be solely responsible for such payment to its employees. Edscha or, upon Edscha's request, Edscha's customer shall prepare and conduct the application process for the Intellectual Property Rights. Upon Edscha's request, the Supplier shall prepare and conduct the application process for the intellectual property rights against reimbursement of the reasonable and evidenced costs incurred. In such event, the Supplier shall be obliged to assign the rights to and arising out of the application for intellectual property

rights to Edscha or, upon Edscha's request, to Edscha's customer.

- c) If Edscha states in writing that Edscha is not interested in acquiring the rights to and arising from the Invention, the Supplier shall be entitled to use of such rights and to file an application for registration of the intellectual property rights at its own cost. In the event the Supplier files such application, the Edscha Company stated in the order, its customers and their respective Affiliated Companies shall in any event be entitled to a non-exclusive, timely and locally unrestricted, royalty-free, assignable and sublicensable right of use for all kinds of use.
- d) If Inventions are made jointly by employees of Edscha and the Supplier, the aforementioned provisions in subsection 6 a) to c) shall apply mutatis mutandis with respect to the share of the employee of the Supplier in the Invention.

In case assignment of the rights to the Invention is legally impossible, the Supplier grants to Edscha at least a royalty-free, non-exclusive, timely and locally unrestricted, assignable and sub-licensable license to use and to exploit these Inventions to the same extent as the Supplier is legitimated by its employee. The Supplier ensures that it is entitled to, at least, a non-exclusive, timely and locally unrestricted, assignable and sub-licensable right of use for all manner of use with regard to its employees' Inventions.

7. The aforementioned provisions in clauses 1 to 6 shall apply accordingly for work results of Supplier's employees that are protected by copyright. The Supplier grants Edscha the – with regard to geography and time – unrestricted, exclusive, world-wide, royalty-free, perpetual, transferable and sub-licensable right to use and exploit such copyright-protected work results. This scope of the right to use and exploit includes all fields of use, for example, but not restricted to, the right to modify and process or transform the work results in any other way, to use the work result in original or a modified, processed or transformed form, to copy it, to publish it, to distribute it in any medium, to display it, to use it online, to transmit it, to film it and to make it publicly available, to use it in all communication networks and/or in fixed and mobile data networks and end devices, and to transfer the right to use and exploit it to third parties by way of licenses.
8. If the Supplier uses a Subsupplier, it shall ensure that the provisions of article 15 are applied correspondingly to the benefit of Edscha.
9. For each case of violation of this article 15 Edscha shall have the right to demand liquidated damages from the Supplier in the amount of up to 3% of the annual revenue for the previous 12 months calculated from the day upon which Edscha became aware of the violation, unless the violation is not attributable to the Supplier. Edscha shall determine the amount of liquidated damages in accordance with the severity of the violation. The Supplier shall be entitled to request a ruling by the competent court on the amount of the liquidated damages. The total amount of liquidated damages is limited to Euro 500,000 per calendar year.  
The option for Edscha to assert further damages shall remain unaffected. The liquidated damages will count towards any claims for damages.

#### **Article 16 Confidentiality**

1. The Contractual Partners undertake to treat as business secrets, and therefore confidential, all information which is not public knowledge, especially commercial and technical de-

tails, of which they become aware through the business relationship. Edscha shall be allowed to disclose information to its Affiliated Companies as well as to its subcontractors (especially suppliers) and customers and their Affiliated Companies.

2. Drawings, sketches, models, patterns, samples, matrices and similar items, tools and other manufacturing means as well as confidential information and construction data may not be provided or made otherwise accessible to unauthorised third parties. Any duplication on the part of the Supplier is only permitted in connection with operational requirements and copyright provisions.
3. Subsuppliers and own employees of the Supplier shall be made to commit themselves accordingly, if legally possible even beyond the duration of their employment or other contractual relationship.
4. The Supplier may only use its business relationship for advertising purposes after prior written consent has been given thereto by Edscha. This applies, in particular, without limitation, to reference lists.
5. The confidentiality obligation does not apply to Information for which evidence can be furnished that:
  - a) the receiving Contractual Partner had already been aware of when it was communicated or became known to it, or
  - b) which is or enters the public domain without any infringement of the obligations contained in this article 16, or
  - c) is developed by the receiving Contractual Partner on the basis of its own independent development work, or
  - d) has been approved for publication by the disclosing Contractual Partner in writing, or
  - e) has been lawfully received by the receiving Contractual Partner from a third party without being bound to a confidentiality agreement, or
  - f) must be disclosed to third parties by the receiving Contractual Partner on grounds of statutory obligations.
6. If the receiving Contractual Partner must disclose information to third parties in the course of court proceedings, arbitration proceedings or due to an administrative order, the receiving Contractual Partner shall in this respect be released from the confidentiality obligation. In such an event, the Contractual Partners shall inform each other accordingly - if possible, in advance.

#### **Article 17**

##### **Use of Manufacturing Means and Confidential Data**

Drawings, sketches, models, patterns, samples, matrices and similar items, tools and other manufacturing means related to the order as well as confidential information and construction data that are provided to the Supplier by Edscha or that are, in connection with an order, prepared, procured, purchased, paid in full or in part by Edscha or amortized through the price of the parts may be used by the Supplier within the frame of the specific project commissioned by Edscha only and only after prior written consent of Edscha for other Edscha projects and/or supplies to third parties.

#### **Article 18**

##### **Provision of Spare Parts**

The Supplier undertakes to ensure the supply of spare parts (aftersales) with regard to the aggregate volumes supplied by it for the series for at least 15 years after the end of production of the series (End of Production) in the amount requested by Edscha on at least the same conditions and with at least the same quality.

The Contractual Partners shall mutually agree on reimbursements, if any, for extra costs incurred in connection with the supply of spare parts, e.g. for packaging, transport, etc. The Supplier shall be obliged to provide the necessary tools, machines, appliances, etc. (hereinafter "**Operating Means**") required to comply with the duty to supply spare parts for at least fifteen (15) years after End of Production – irrespective of the ownership relationships – free of charge and in operating condition. The above provision does not affect any claims for surrender on the part of Edscha. The scrapping or sale of the Operating Means shall in any event be subject to the prior written consent of Edscha.

#### **Article 19 Prohibition of Assignment**

The assignment or any other transfer of rights and obligations by the Supplier is excluded; Edscha shall, however, reserve the right to expressly approve in writing an individual case of assignment or other transfer of rights and obligations by the Supplier. Edscha may not refuse to give consent without good reason. The provisions in article 4 clause 5 shall remain unaffected thereby.

#### **Article 20 Reservation of Set-Off and Rights of Retention**

Edscha shall be entitled to claim payments, including, but not limited to, liquidated damages, fixed damages, etc., if agreed, until final payment and to set them off against such final payment.

The Supplier shall only be entitled to rights of retention if its counterclaims have been established as final and absolute, are uncontested or are acknowledged by Edscha. Furthermore, the Supplier shall only be authorised to exercise its right of retention to the extent that its counterclaim is based on the same legal relationship.

#### **Article 21 Information**

The Supplier shall be obliged to notify Edscha immediately in writing of any of the following circumstances occurring or threatening to occur at the Supplier:

- a sale of all or a material part of the Supplier's shares respectively a change in the Supplier's ownership (share deal), any other material change in the Supplier's shareholder structure, including, but not limited to, change of corporate form of the company, or sale of all or a material part of the Supplier's assets (asset deal);
- a change of direct or indirect control of the Supplier (particularly but without limitation by virtue of a majority shareholding, voting right majority or by an organization contract) (change of control);
- shutdown, relocation or closure of Supplier's operation;
- an (even only temporary) inability of the Supplier to perform any of its contractual obligations towards Edscha in total or in part including, without limitation, a material deterioration in the Supplier's financial position.

#### **Article 22 Termination and Rescission**

1. Irrespective of the right to give ordinary notice of termination – regardless of the legal qualification of the contractual relationship – the Contractual Partners shall be entitled to immediately terminate the agreement for cause. Cause for immediate termination for one of the Contractual Partner shall exist, in particular, if the other Contractual Partner ceases to make payments or perform work.

In addition, Edscha shall have an extraordinary right of termination, in particular with regard to the cases mentioned in article 21, if the supply relationship is thereby adversely affected for a long term and/or there are serious reasons which give rise to concerns that the Supplier will not be able to properly fulfil its contractual obligations as well as in the case of a demonstrable lack of competitiveness of the Supplier.

2. Deviating from the statutory consequences of a termination, the following shall apply:
  - a) If Edscha terminates for an important cause on grounds not attributable to the Supplier, Edscha shall compensate the Supplier for costs for which the Supplier can furnish evidence that they have necessarily been incurred and directly relate to the order up to termination of the Agreement in relation to material procurement and treatment as well as to the completion of the supply and service, if such supplies and services are based on binding supply scheduling or material and/or production approval. In this context, any other use of the supplies and services, which may be made after approval of Edscha only, shall be taken into account and shall accordingly reduce the compensation. The expenses incurred respectively presumably still to be incurred shall be communicated by the Supplier immediately after the date of termination. The Supplier shall not be entitled to any further claims on grounds of the termination.
  - b) If Edscha terminates for an important cause on grounds not attributable to any one of the Contractual Partners, in particular upon termination of the main contract with the customer of Edscha, article 22 clause 2 lit. a) shall apply mutatis mutandis.
  - c) If Edscha terminates for an important cause on grounds attributable to the Supplier, only those services shall be remunerated which have been performed in accordance with the agreement until the receipt of the termination notice, which have been completed and for which the Supplier can provide evidence, provided that they can be properly used by Edscha. Any claims for damages of Edscha shall remain unaffected and can be set off against remuneration claims of the Supplier, in particular the Supplier shall reimburse Edscha for any extra expenses incurred as a result of the termination. The Supplier and Edscha shall in such a case reach an agreement on the measures to be taken in order to ensure the production of the series for the customer.
3. In case of termination of the agreement, the ownership and the intellectual property rights and/or rights of use with regard to the work results (drawings, prototypes, etc.) created up to the date of termination of the agreement and remunerated or to be remunerated by Edscha shall pass to Edscha – according to the provisions set forth in article 15.
4. If one of the Contractual Partners ceases to make payments or perform work, the other Contractual Partner shall be entitled to rescind the part of the agreement that has not yet been completed. In addition, Edscha shall be entitled to rescission if the Supplier does not fulfil its obligation of subsequent performance within a reasonable deadline stipulated in writing.

#### **Article 23 Governing Law, Legal Venue**

1. Unless otherwise stipulated in individual agreements, the laws of the country in which the Edscha Company entering into the agreement is located shall generally apply to all disputes relating to the deliveries and services of the Supplier.

2. The local legal venue shall be oriented towards the registered offices of the Edscha Company with whom the agreement was concluded, provided that the Supplier is a merchant, legal entity under public law or a separate fund under public law. However, Edscha shall be entitled to pursue legal action against the Supplier at its general legal venue. In such cases, solely the laws of the country in which the Edscha Company files the legal suit shall apply.
3. Furthermore, Edscha Companies shall – where legally permissible – have the right to pursue legal action against the Supplier and its affiliated companies in the Federal Republic of Germany; in such cases, the laws of the Federal Republic of Germany shall apply.
4. In the event that at least one of the Contractual Partners has its registered offices in the People’s Republic of China, by way of exception to the above clauses, the following shall apply:  
For all disputes arising from and in connection with the deliveries and services of the Supplier, the rules of arbitration of the China International Economic and Trade Arbitration Commission Beijing Headquarters (“CIETAC”), shall apply. The place of arbitration shall be Shanghai, People’s Republic of China. The proceedings shall be conducted in the English language. The arbitration tribunal shall comprise 3 (three) arbitrators, whereby each Contractual Partner shall appoint one arbitrator and these two arbitrators shall then jointly appoint a third arbitrator, who shall act as chairman of the arbitration tribunal. Should any Contractual Partner have not appointed an arbitrator within 30 (thirty) days of the receipt of the notice of arbitral proceedings from CIETAC, or the arbitrators have not appointed a chairman after 30 (thirty) days of their nomination, the corresponding arbitrator or chairman will be appointed by the chairman of CIETAC. The arbitral award shall be final and binding on the Contractual Partners. The reasonable costs and expenses (including fees for legal counsel) incurred in connection with the proceedings shall, unless stipulated otherwise by the arbitration court, be borne by the Contractual Partner losing the legal dispute.
5. The Contractual Parties agree that the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 shall be excluded.
6. If a claim for damages is filed in a foreign country against Edscha, a customer of Edscha, or an indemnified member of the distribution network on the basis of the allegation that a personal injury and/or damage to property was caused by a product defect (product liability claim), Edscha may also choose to assert a claim for release and complete or partial recourse, or commence legal proceedings, against the Supplier at the legal venue where the product liability claim has been filed. In respect of that claim, the substantive law of the respective legal venue shall apply.
7. The Supplier shall not be entitled to cease or delay the performance of deliveries and services while a legal dispute is pending. If the Supplier ceases or delays the fulfilment of the contractual deliveries and services while a legal dispute is pending, the Supplier will be obligated to reimburse for any damage and losses incurred by Edscha due to such cessation or delay.

#### **Article 24**

##### **General Provisions**

1. The Supplier acknowledges and agrees that, pursuant to pertinent data protection laws, Edscha will store data in con-

nection with the contractual relationship for the purpose of data processing.

2. The Supplier shall be obliged to take out insurance, in particular, insurance coverage with regard to liability and extended product liability in the appropriate amount and to maintain such insurance during the term of the business relationship with Edscha and shall, at the request of Edscha, provide evidence thereof.
3. If any of the provisions of these General Terms and Conditions of Purchase and of the agreements between the Contractual Partners and of any other applicable regulations is or becomes invalid and/or unenforceable, this shall not affect the validity and/or unenforceability of the remaining provisions. The Contractual Partners shall in any such event be deemed to have agreed in lieu of the invalid and/or unenforceable provision a valid one which approximates as closely as possible the economic intent of the invalid and/or unenforceable provision; the Contractual Partners shall undertake to replace the invalid and/or unenforceable provision with a corresponding valid and/or enforceable provision. This shall also apply in the event that a contractual gap becomes apparent in the course of implementation of the agreements/provisions agreed between the Contractual Partners.
4. Where the substantive content of individual provisions extends beyond the term of the Agreement, such provisions shall also continue to apply subsequent to the end of the Agreement, e.g. article 15 (Intellectual Property Rights), article 16 (Confidentiality).

#### **Article 25**

##### **Change Documentation**

In comparison with the previous version (Version 04/2011), changes to content were made to the following Articles:

- Article 1 clause 1, 2 and 3 changed (Applicable Terms and Conditions);
- Article 2 clause 4 and 5 changed (Requests for Quotations and Offers, Orders and Delivery Call-Off);
- Article 3 clause 1 changed (Changes and Price Adjustments)
- Article 4 clause 4 and 7 changed and newly added clause 8 (Payment);
- Article 5 clause 2, 3, 4 and 5 changed (Shipment, Delivery Note, Labelling, Declaration of Origin and Traceability);
- Article 6 clause 2 changed (Invoicing);
- Article 8 clause 2 changed (Delay in Delivery / Wrong Delivery and Over Delivery);
- Article 9 clause 1 and 2 changed (Force Majeure);
- Article 10 clause 1 and 5 (Acceptance and Transfer of Risk);
- Article 11 changed (Notification of Defects);
- Article 12 clause 1, 2, 3 and 4 changed and previous clause 4, sentence 3 and 4 shifted to clause 5 (Liability for Defects);
- Article 13 clause 1, changed and clause 3 – 7 newly added (Liability);
- Article 14 clause 3 changed (Subsuppliers)
- Article 15 deleted (Relocation of Production Facility);
- Article 16 deleted (Quality Management and Documentation)
- Article 17 deleted (End-of-Life Vehicles Directive, Environmental Protection, Safety and Protection of Health);
- Article 15 previously Article 18, Article 15 clause 1, 5, 6 lit. c), 6 last para. and 7 changed and clause 9 newly added (Intellectual Property Rights);



- Article 16 previously Article 19, Article 16 clause 1, 2, 3 and 6 changed (Confidentiality);
- Article 17 shifted, previously Article 20 (Use of Manufacturing Means and Confidential Data);
- Article 18 shifted, previously Article 21 (Provision of Spare Parts);
- Article 19, previously Article 22 changed (Prohibition of Assignment);
- Article 20 previously Article 23, Article 20 para. 1 changed and para. 2 newly added (Reservation of Set-Off and Rights of Retention)
- Article 21 shifted, previously Article 24
- Article 22 previously Article 25 and Article 26 combined, Article 22 clause, 1, 2 and 4 changed (Termination and Rescission)
- Article 27 cancelled (General Provisions)
- Article 23 newly added (Governing Law, Legal Venue)
- Article 24 newly added (General Provisions)
- Article 25 previously Article 28, Article 25 changed (Change Documentation)

A comparison version is stored in the Edscha Supplier Portal ([www.esp.edscha.com](http://www.esp.edscha.com)) showing the changes made to the contents compared to the previous version (Version 04/2011). A comparison version will be supplied upon written request to Edscha's Purchasing Department.