



## CML in Europe

### General Terms & Conditions

(CML Europe GmbH, CML Automotive GmbH, CML France S.à.r.l.)

**Status: January 2018**

#### § 1. General

- 1) CML Europe GmbH shall hereinafter be referred to as “CML”, the contractual partner as “Client”.
- 2) The following contractual provisions of CML shall apply to all contractual relationships of the parties.
- 3) These Terms & Conditions also apply for CML Automotive GmbH and CML France S.à.r.l.
- 4) These terms and conditions apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Client shall only become part of the contract if and to the extent that CML has consented to their validity in writing. The requirement of written consent also applies in the event of CML, in knowledge of the customer's terms and conditions, performing the delivery to the client unconditionally or CML replies or refers to a letter that containing or referring to the terms and conditions of the client or a third party.

#### § 2. Effectuation of the agreements

Offers of CML shall be non-binding unless expressly stated as being binding. Quotations are to be assessed as a request to the Client to place an order. The agreement shall be effectuated by the written order confirmation by CML or shipment of the goods or the provision of the contractually agreed service.

#### § 3. Sub-clients

- 1) In order to complete the agreement, CML shall be entitled to award subcontracts to an appropriate degree. CML shall be responsible for the careful selection of the sub-client/s unless the Client has expressly determined a third party.
- 2) The invoicing of the costs for using the sub-clients shall be borne by the Client through CML. The Client shall be informed of the relevant rates before the contract is awarded.

#### § 4. Intellectual property

CML shall exclusively own all intellectual property regarding the products and services provided in all actually known or future types of use. CML reserves all types of use and rights especially but not limited to manuals, documentation, explanations, quotations, diagrams, drawings and technical depictions, unless expressly otherwise agreed.

#### § 5. Place of performance

- 1) The place of performance shall be the business headquarters of CML, unless expressly otherwise agreed.
- 2) With the handing over of the goods to the company contracted with the shipping, the risk of accidental loss and deterioration shall pass to the Client, even if CML executes the shipping itself. On request of the Client, delivery shall be covered by transport insurance at its cost.

#### § 6. Delivery/performance

- 1) Delivery dates or delivery deadlines, which can be agreed as being non-binding or binding, must be specified in writing. In the case that there is a delay in delivery the statutory regulations shall apply with the proviso that the Client can only withdraw from the agreement

if there is a breach of obligations for which CML is responsible. Any default damages shall be ruled in accordance with § 13.

- 2) CML shall obtain the goods under the agreement from suppliers and in each case concludes congruent covering operations. CML's delivery duty is subject to punctual and correct self-delivery.
- 3) Delivery hindrances for which CML is not responsible (e.g. force majeure, war, natural disasters, transport or operational stoppages, import hindrances, energy and raw material shortages, government action, labor disputes as well as the breach of the co-operation duties of the Client), entitle CML to an appropriate single-sided extension of the delivery deadline for the duration of the disturbance.
- 4) CML reserves the right to assume complete deliveries within a window of +/- 5% of the ordered quantities.
- 5) CML reserves the right to withdraw from the agreement if CML in spite of the conclusion of congruent covering operations is not supplied on time or at all.
- 6) This shall apply correspondingly to partial deliveries.
- 7) CML can withdraw from partial deliveries unless the Client can prove that the remaining partial deliveries are of no interest to it. CML also has the choice of withdrawing from the entire agreement unless the Client can prove that the remaining partial deliveries are of interest for it.
- 8) Partial deliveries and partial performances and corresponding invoices are permissible if they are not unreasonable for the Client.
- 9) An extension of the performance deadline shall come into force as long as the parties negotiate a modification of the performance. The delivery deadline shall not begin before the provision of the documents, authorizations, approvals necessary for executing the agreement and receipt of an agreed payment through the Client.
- 10) CML does not accept penalties, especially not because of delay in delivery.
- 11) These provisions shall apply accordingly to other services by CML.

## **§ 7. Characteristics of the contractual object**

- 1) The Client is not entitled to any rights from the design changes of the manufacturer which occur during the delivery period, unless essential or agreed functional characteristics are dropped without any replacement. CML reserves the right up to delivery to carry out standard technical changes, in particular improvements, if as a result only minor changes to the quality arise and the Client is not unreasonably affected.
- 2) Statements regarding the quality or durability of a product or service do not represent a warranty or assurance in line with article 276 para. 1 German civil code and do not represent a quality or durability warranty in line with article 443 German civil code unless CML has taken over such a warranty expressly in writing.
- 3) If goods are produced or modified on the basis of the Client's specifications CML is not committed without a special agreement to review these specifications. The Client shall not be entitled to any claims due to faults which are based on these specifications or on goods supplied by third parties used by the Client.
- 4) For all Sample deliveries CML ask for a written release according to VDA. If such an official release is not existent until the order of series, such order and all subsequent orders of this article will recognize as release of the samples.

## **§ 8. Warranty**

- 1) The expiry deadline for claims based on defects shall be one year in the case of the purchase of new goods; for the purchase of used goods the provision of a warranty is excluded.
- 2) The deadline shall begin with the shipping of the goods.
- 3) This shall not apply if the statutory regulations in accordance with articles 438 para. 1 no 2, 479 para. 1 German civil code stipulate longer deadlines.
- 4) Art. 377 German Commercial Code (HGB) is applicable.
- 5) The goods or parts thereof which reveal faults within the aforementioned expiry deadline must either be improved or replaced by CML free of charge in line with the Client's choice if the cause was already evident at the time of the passage of risk.

- 6) CML must always be granted the opportunity to subsequent performance within a suitable deadline. If the subsequent performance fails the Client can withdraw from the agreement without affecting any of its claims for damages or reduce the remuneration.
- 7) Claims due to faults do not exist in the event of natural wear and tear or damages which result after the passage of risk due to faulty, negligent or incorrect use, excessive strain, unsuitable operating resources or due to special external influences which were not assumed according to the agreement. In the course of exercising the warranty rights, the Client must provide the information required to diagnose and eliminate faults, in particular making faulty goods available for inspection, disclosing the processing steps and providing a trained and competent employee, who co-operates in the subsequent performance. In the event of a subsequent performance on site free access to the faulty goods must be granted and if necessary other work on the production resources of the Client are to be stopped.
- 8) If changes, maintenance work or subsequent performance attempts are carried out by the Client or by persons other than the technicians contracted by CML, there shall be no claims based on faults for the above and for the resulting consequences.
- 9) The claims of the Client due to necessary expenses for the purpose of subsequent performance, in particular transport and travel costs, labor and material costs, are excluded if the expenses increase because the object delivered was subsequently moved to a different location to the place of delivery, unless the transfer corresponds with its intended use.
- 10) For claims for damages article § 13.
- 11) Further-reaching claims or claims of the Client against CML and their auxiliary persons other than those stated in the above mentioned paragraphs due to material defect are excluded.
- 12) If CML is unwarrantedly claimed against in the course of the warranty (e.g. due to a processing error, incorrect handling of the goods, absence of a fault), the Client must reimburse all costs incurred in connection with the inspection of the goods and the subsequent performance, unless it is not responsible for the recourse.
- 13) Handling the warranty CML shall be given access to the complained materials or by choice of CML the materials shall be sent to CML or any other place by the Client. CML is authorized to test the materials in running operations and during the further processing.

## **§ 9. Reservation of title**

- 1) The goods supplied shall remain the property of CML until the payment of all its accounts receivable, irrespective of whatever legal reason, and until all of the bills of exchange and cheques given to CML in payment have been cashed, even if the purchase price for especially marked accounts receivable has been paid. In the case of current account the retention of title shall be a security for any balance due to CML.
- 2) Any processing of the reserved goods shall take place on behalf of CML and free of charge as well as without placing any duty on CML so that CML shall be regarded as the manufacturer in accordance with article 950 German civil code, in other words at every point in time and degree of processing of the products retains the ownership in the products. When processed with other goods not belonging to CML by the Client, CML owns the new property in proportion of the invoice value of the reserved goods to the other processed goods at the time of processing. The same shall apply to the new item resulting from the processing as for the reserved goods. It shall be deemed as reserved goods in the interests of these provisions.
- 3) The Client's accounts receivable from a resale of the reserved goods shall already now be assigned to CML to secure all accounts receivable of CML from the business relationship irrespective of whether the reserved goods are resold without being processed or after being processed and whether it was resold to one or several purchasers.
- 4) The Client is only entitled and authorized to resell the reserved goods on the basis of a purchasing contract, contract for services, contract for work and materials or similar contract if the account receivables from the resale passes to CML. The Client is not entitled to dispose of the reserved goods in any other way. On request of CML the Client is committed to inform the third-party the assignment of payment to CML.
- 5) If the value of the existing securities for CML exceeds the value of its accounts receivable in total by more than 20%, CML is, on request of the Client or a third party disadvantaged by the excess security of the seller, committed to release securities of its choice.

- 6) The Client must inform CML without delay if third parties, through seizure, attachment, exercising the landlord's lien or similar measures, assert rights to the equitable lien of CML which affect or endanger the ownership and/or the indirect possession of CML, if a third party or the Client itself has made an application to open bankruptcy proceedings over its assets or if an out-of-court settlement is aspired.

## **§ 10. Remuneration**

Price fluctuations (e.g. personnel cost, raw materials) can occur, especially in long term contracts. CML and the Client shall re-negotiate the remuneration with regard to the following change request rules:

CML shall inform the Client regarding rising of costs (e.g. raw material, shipping, personnel costs) within a period of 14 days after the key date. The Client shall answer within a period of 14 days (accepting or refusal of changes) in written form. If the Client does not answer the changes are not accepted. CML is entitled to withdraw and to not to deliver the Client in future.

Agreed partial orders are not subject to this change request and will be executed.

The Client is not entitled to claim for any regress if CML withdraws from future contractual orders.

## **§ 11. Payment**

- 1) Unless otherwise agreed in writing invoices are due for payment immediately without any discounts.
- 2) CML shall be entitled to offset payments against the oldest invoice due, also in the case of opposing payment terms of the Client.
- 3) In the event of default, protest or stoppage of payment as well as if bankruptcy proceedings are opened any deferral shall end. All accounts receivable of CML shall be due in total immediately.
- 4) In the case that the Client is in default of acceptance, CML shall be entitled to withdraw from the agreement and to demand damages after setting a deadline of at least 14 days.
- 5) CML shall be entitled, notwithstanding the possibility of asserting higher actual damages, to demand 30% of the purchase price for sales contracts as flat sum damages, for service agreements 50% of the agreed remuneration, each calculated from the residual term of the agreement. The proof of the specific damage is not necessary in these cases. The Client reserves the right to prove that CML has not suffered any or only slight damages.
- 6) Unless otherwise agreed in writing CML refuses to pay any kind of penalties to the Client.

## **§ 12. Setting off**

The Client can only set off with accounts receivable against CML if its account receivable is established as res judicata, is uncontested or recognized by CML. The same shall apply to the exercise of rights of retention.

## **§ 13. Liability, exclusion of liability**

- 1) CML shall be liable for damages of the Client only if CML acts in cases of intent or gross negligence. CML is liable for damages of negligence regarding those contractual liabilities which are essential for the Client and whose breach could endanger the scope of the contract if the Client trusts in this. In this case the CML is not liable for damages which are not predictable or contractual coherent or typical foreseeable. CML is not liable for other negligently breaches of any other duties.
- 2) The fore standing exclusion of liability is not valid in cases of personal injuries (death, body injuries) and in cases of the German Product Liability Act.
- 3) The Client shall provide CML the production systems free of charge for the duration of the execution of the agreement (e.g. performance of the agreement, warranty, acceptance, etc.).

The Client accepts limitations of the usability. Any claims of the Client therefrom irrespective of whatever kind are excluded.

- 4) If liability is excluded or limited in accordance with the figures above, this shall also apply to the personal liability of the employees, representatives and aids of CML.
- 5) Any change of the burden of proof to the disadvantage of the Client is not connected with the provisions above.

#### **§ 14. Disposal obligations in accordance with the electrical and electronic equipment act**

- 1) The hardware supplied by CML is purely business-to-business equipment which is not intended for private use. The obligation for the correct disposal of the equipment shall herewith be transferred to the Client. The Client undertakes to correctly dispose of the equipment delivered at its own expense after the end of utilization in accordance with the legal provisions of the German electrical and electronic equipment act on the basis of the WEEE directive (EU directive 2002/96/EC dated 27 January 2003 about old electric and electronic equipment) or the respectively applicable provisions.
- 2) The Client shall exempt CML from the obligations of taking back and disposing of the equipment in acc. with article 10 para. 2 of the electrical and electronic equipment act and the claims of third parties connected herewith.
- 3) The Client must contractually commit commercial third parties to whom it passes on the equipment and goods delivered to properly dispose of said equipment and goods after their use at their own cost in accordance with the statutory regulations and in the event of the repeated transfer of the equipment to impose a corresponding further commitment.
- 4) The Client may not transfer the ownership of the goods delivered to a third party if the justified suspicion exists that the third party would breach these contractual conditions, in particular would not dispose of the equipment correctly.
- 5) If the Client passes on the equipment to third parties in the course of normal business transactions without being the manufacturer in line with the electrical and electronic equipment act, the Client commits to CML immediately after passing on to provide written proof that the third party has also been committed in line with further commitment of the third party in the course of the further commitment (fig. 3). The information to CML must contain the serial number of the equipment as well as the proof of the further commitment of the third party by means of submitting the commitment declaration.
- 6) If the Client fails to contractually commit third parties to whom it has passed on supplied equipment to dispose of the equipment and to further commit, the Client is committed to accept the goods delivered at its own cost and to dispose of them correctly in accordance with the statutory regulations.
- 7) CML's claim to assumption and exemption by the Client shall not expire before two years after the final termination of the utilization of the equipment. The two-year suspension of the expiration of prescription comes into effect only with the receipt of a written declaration from the Client to CML regarding the termination of utilization.
- 8) CML reserves the right to make a separate agreement differing hereof with the Client in writing about the return of the equipment.

#### **§ 15. Export**

If applicable, the goods supplied by CML shall be subject to the German and foreign export controls and embargo regulations. The export from Germany and the import into third countries is only permissible with the agreement of the relevant authorities (possibly several states and the EU). The Client undertakes to keep itself informed about the statutory regulations on a case-by-case basis and to obtain the necessary authorizations as well as to pass these on to CML.

#### **§ 16. Non-disclosure**

- 1) The parties agree to maintain confidentiality about all contractual contents, in particular the scope of the agreement, remuneration provisions as well as the skeleton and individual agreement. This commitment also exists after the agreement has been terminated.
- 2) The parties agree to a contractual penalty to the amount of € 25,000.00 excluding the continued offence principle without prejudice to the opportunity to assert higher actual damages, for each case of a breach of this non-disclosure commitment.

#### **§ 17. Place of jurisdiction**

The sole place of jurisdiction for any disputes from the contractual relationship of the parties and the related legal relationships is Waldbronn.

#### **§ 18. Choice of law**

Solely German law shall apply under exclusion of the UN convention on contracts for the international sale of goods and under exclusion of those Articles of the German EGBGB which refer to the laws of other countries.

#### **§ 19. Written forms**

Any amendments or supplements to the agreement, individual agreements and assurances must be made in writing. This shall also apply to the need for the written form.

#### **§ 20. Non-escape clause**

If provisions of these Terms and Conditions should be or become partly or wholly void, the remaining conditions will continue to apply. The parties are bound to replace the void provision or the void part of the provision by a legally valid arrangement, which comes as close as possible to *the commercial* meaning and purpose of the void provision or part of the provision.