



Terms and Conditions of Purchase of Weber Automotive GmbH

I. Determining Conditions

The legal relationship between supplier and Weber Automotive GmbH shall be determined by the following conditions and any additional terms agreed by the parties, if any. Changes and amendments to these conditions have to be made in writing. Any other general business terms and conditions shall not be applicable, even if they were not rejected explicitly in any individual case.

II. Orders

1. Supply contracts (order and acceptance of such an order) and call orders in case of volume contracts as well as any changes or amendments thereof have to be made in writing. Fax and emails shall be considered to be written form.
2. In case the supplier does not accept the order within three weeks after receipt, Weber Automotive GmbH shall have the right to revoke such order. Call orders shall become binding if the supplier does not reject such call order within two weeks after receipt.
3. To the extent it is reasonably acceptable to the supplier, Weber Automotive GmbH may demand changes to be made to the goods relating to both design and process. In this case the consequences, especially with respect to additional cost or reduction of costs, as well as with respect to delivery dates, are to be resolved in an appropriate and mutually agreeable manner.
4. Increases in prices have to be accepted by Weber Automotive GmbH to take effect. In case of obvious mistakes (scribal or arithmetical errors) there are no liabilities arising for Weber Automotive GmbH. If the market situation should allow a price reduction, the sales price has to be immediately reduced.
5. Agreed prices are valid for a period of at least 3 years after first order.

III. Payment

1. Payment is to be made within 14 days with a discount of 3 % or within 60 days strictly net after delivery and receipt of invoice. Modifications thereof are only valid after amicable agreement in writing. In case of premature shipments, payment will be made according to the agreed delivery date.
2. Payment shall be made by bank transfer or check.
3. In case of defective delivery, Weber Automotive GmbH is entitled to withhold an appropriate amount until the defective goods have been replaced.

4. Without previous written consent of Weber Automotive GmbH, which shall not unreasonably be refused, supplier is not entitled to assign his receivables to third parties or to have such receivables collected by third parties. In the event of an extended reservation of title, consent to resale is assumed to have been given.

Even if the supplier assigns his receivable against Weber Automotive GmbH contrary to the first sentence of this clause III.4. to a third party without consent of Weber Automotive GmbH, the assignment remains valid. Regardless the assignment, Weber Automotive GmbH may choose whether payment is made to the supplier or to the third party.

5. Payment term for tools shall begin with successful initial sample evaluation and existing release by Weber Automotive GmbH, unless the parties agreed on a different provision.

IV. Notice of Deficiencies

Weber Automotive GmbH shall notify the supplier in writing about any deficiencies of a shipment as soon as such deficiencies have been discovered in the course of an ordinary business practice, and, in case Weber Automotive GmbH complies with the aforementioned condition, the supplier waives his right to reject delayed notification of deficiency.

Partial shipments are not allowed, unless the parties agreed on a different provision.

V. Confidentiality

1. The parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are public.
2. Drawings, models, patterns, samples and similar objects shall not be made available or otherwise be made accessible to unauthorized third parties. Reproduction of such objects is permitted only according to business requirements and in compliance with the laws of copyright.
3. Subsuppliers shall commit themselves accordingly.
4. Each party may use the business relationship for advertising purposes only after having obtained previous written consent from the other party.

VI. Delivery

Agreed delivery dates are binding. Compliance with such dates shall be determined by the day of arrival of the goods to be supplied at Weber Automotive GmbH. If the parties didn't agree on „free delivery“ the supplier shall make the goods available in time taking into consideration the time usually necessary for loading and shipment.

VII. Delay

1. The supplier shall be obliged to compensate Weber Automotive GmbH for all damages caused by delay. There shall be no right for recovery for loss of profit and damages resulting from business interruption.
2. The supplier is obliged to pay liquidated damages to Weber Automotive GmbH amounting to 1 % of the delayed part of the delivery per each commenced week of delay up to an aggregated amount of 10 % of the delayed part of the delivery. Weber Automotive GmbH expressly reserves the right to claim further damages.
3. If the Supplier has reason to believe that delivery will delay, he shall immediately inform Weber Automotive GmbH and take all reasonable measures to avoid delay or to keep the delay as short as possible. Those measures will lead to no costs to Weber Automotive GmbH.

VIII. Force majeure

In case of acts of god, strike, civil commotion, government directives and other non-foreseeable, inescapable and serious events the parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable in case the party concerned is already in delay. The parties are committed to give each other the necessary information (which may reasonably be expected without delay) and to adjust their obligations bona fide to the changed circumstances.

IX. Quality and Documentation

1. Concerning his deliveries the supplier shall comply with the acknowledged standards of engineering, the safety regulations and the agreed technical specifications, drawings and other documentation. Changes to the supplied goods are subject to the previous written consent of Weber Automotive GmbH.

Concerning the first sample approval, reference is made to the VDA-publication "Sicherung der Qualität von Lieferungen, Lieferantenauswahl/, Qualitätssicherungsvereinbarung, Produktionsprozess – und Produktfreigabe, Qualitätsleistung in der Serie, Deklaration von Inhaltsstoffen" respectively the QS-9000-manual "Produktionsteil-Freigabeverfahren (PPAP)", as currently applicable. Furthermore, the documents „Lieferantenrichtlinien“ and „Qualitätsvorausplanung“ are applicable and will be made accessible to the supplier and the current issue will be published on the internet at www.a-weber.de. Independent from the afore-stated, the supplier shall permanently control the equality of the goods delivered. The parties shall inform each other of the possibilities of improving the quality of the goods to be delivered.

2. In the event the kind and extent of testing, as well as the instruments and testing methods, are not agreed between the supplier and Weber Automotive GmbH, Weber Automotive GmbH shall, if the supplier so desires, agree to discuss the testing with the supplier pursuant to his Know-how, experiences and possibilities in order to find out the requisite state of techniques in the case being considered.

3. Concerning the parts especially marked in the technical documentation or designated by separate agreement, the supplier is, moreover, required to keep special records as to when, in what manner and by whom the supplied goods have been tested with regard to the characteristics required to be recorded and which results were achieved by the quality tests so required. The test records have to be kept for at least ten years, unless a longer period is mandatory by law, and have to be presented to Weber Automotive GmbH in case of need. The supplier is required to obligate any sub-suppliers to the same extent if legally possible. As a manual, reference is made to the VDA-publication "Sicherung der Qualität von Lieferungen, Lieferantenauswahl/, Qualitätssicherungsvereinbarung, Produktionsprozess – und Produktfreigabe, Qualitätsleistung in der Serie, Deklaration von Inhaltsstoffen" respectively the QS-9000-manual "Produktionsteil-Freigabeverfahren (PPAP)", as currently applicable.

4. In the event any authorities responsible for vehicle safety, emission standards and the like demand inspection of the manufacturing process and disclosure of the test records, to scrutinize certain requirements, the supplier shall, on request of Weber Automotive GmbH, concede to such authorities the rights which they have with regard to Weber Automotive GmbH and provide them with the support which may reasonably be expected.



X. Warranty

1. If defective goods are delivered Weber Automotive GmbH is entitled, according to the relevant legal provisions and the following clauses of this Article X. unless otherwise agreed upon, to claim the following:

a) Before start of production (machining or assembly) the supplier shall first be given the opportunity by Weber Automotive GmbH to sort out as well as repair or replace them unless this cannot reasonably be expected by Weber Automotive GmbH. In case the supplier is unable to accomplish the afore-stated or in case he does not conform with it immediately, Weber Automotive GmbH is entitled to rescind the contract to this extent and return the goods at the supplier's risk. In urgent cases he may accomplish the rework himself or have it done by a third party. Any costs resulting therefrom shall be borne by the supplier. In the case the same goods are repeatedly supplied in a defective condition, Weber Automotive GmbH is entitled to rescind the contract also with respect to the goods not yet supplied if, upon written notification, the supplier has again delivered defective goods.

b) In the event the defect is discovered only after start of the production and Weber Automotive GmbH has observed article IV (Notice of deficiencies), then Weber Automotive GmbH is entitled

- according to § 439 para. 1, 3 und 4 BGB to claim additional fulfilment and indemnification for cost of transport (without towing cost) as well as cost of dismantling and installation (cost of labour; cost of material), which are required for the additional fulfilment, or

- to reduce the sales price.

c) If in addition to the delivery of the defective goods the supplier has violated further contractual obligations (e.g. obligations of information, consultation or examination) Weber Automotive GmbH can claim indemnification for the consequential damages according to Article XI. These consequential damages are determined by the damages which Weber Automotive GmbH suffered from the delivery of defective goods regarding others than the parts delivered.

Further claims regarding expenses and damages because of the delivery of defective goods on the basis of § 437 BGB or directly on the basis of the rules named therein may only be claimed by Weber Automotive GmbH, if this has been agreed by contract.

2. At his request the parts to be replaced shall be made immediately available to the supplier at his own cost.

3. The warranty expires at the end of 24 months after the first licensing of the final product or the installation of the replacement part, at the latest, however, 30 months after delivery to Weber Automotive GmbH. The legal rules of expiry of warranty apply to parts for commercial vehicles unless the parties have agreed otherwise.

4. A warranty claim does not arise if the defect is attributable to the non-observance of operation, service or installation instructions, inappropriate or unsuitable use, incorrect or careless treatment, normal tear and wear as well as to changes to the good supplied made by Weber Automotive GmbH or a third party.

5. If defective goods are delivered claims of Weber Automotive GmbH on the basis of Product Liability Act, and the civil law of delict and actions without mandate shall remain valid under Article X.

XI. Liability

1. Insofar as these conditions do not provide other liability clauses, the supplier shall be liable for damage directly or indirectly caused to Weber Automotive GmbH as a result of defective supply, violation of official safety obligations or for any other legal reason, attributable to the supplier only, according to the following.

2. In case Weber Automotive GmbH is liable under law, without any fault on his part, which cannot be excluded with regard to third party claimants, then the supplier shall hold Weber Automotive GmbH free and harmless of any claim to the extent he would himself be liable directly. Compensation between Weber Automotive GmbH and the supplier shall be settled by applying (the principles of) § 254 BGB correspondingly. This shall also apply in case the supplier is liable directly.

3. Any liability shall be excluded to the extent Weber Automotive GmbH has on his part effectively excluded any liability in relation to his customer. In doing so Weber Automotive GmbH shall attempt to stipulate limitations of liability on behalf of the supplier to the extent legally possible.

4. As far as he is legally bound the supplier shall be liable for compensation with regards to actions which Weber Automotive GmbH undertakes to avoid any damage (for instance recall actions).

5. If Weber Automotive GmbH intends to assert a claim against the supplier according to the afore-stated provisions, he shall immediately consult the supplier and shall comprehensively inform him. He shall give the supplier the opportunity to investigate the damage occurred. The parties shall consult each

other on the steps to be taken, especially in case of negotiations for a settlement.

XII. Intellectual Property Rights

1. The supplier shall be liable for any claim, which, by the use of goods according to the terms of the contract, result from the infringement of intellectual property rights, either granted or applied for, at least one of such intellectual property rights being published either in the supplier's mother country, by the European Patent Office or either in the Federal Republic of Germany, France, Great Britain, Austria or the United States of America.

2. The supplier shall hold Weber Automotive GmbH and its customers free and harmless of all liabilities resulting from using such intellectual protective rights.

3. The afore-stated shall not apply in case the supplier has manufactured the goods to be delivered according to drawings, models or similar descriptions or statements provided by Weber Automotive GmbH and if, at the same time, the supplier does not know or, in connection with the products developed by him, was unable to know that intellectual property rights were infringed.

4. The parties commit themselves to inform each other immediately on all risks of violation or alleged violations and to give each other the opportunity to jointly oppose such claims.

5. At the request of Weber Automotive GmbH the supplier shall inform Weber Automotive GmbH about the use of any published or unpublished intellectual property rights relating to the goods to be delivered regardless whether they are owned by the supplier or licensed to him including also any rights pending.

6. The rules pursuant to Article VII para. 1 concerning limitation of liability shall be applicable accordingly.

XIII. Use of workshop facilities and confidential information made available by Weber Automotive GmbH

Models, original drawings, patterns, samples, tools and other workshop facilities as well as confidential information provided to the supplier by Weber Automotive GmbH or paid by him in full, may be used for supplies to third parties only after having obtained the previous written consent of Weber Automotive GmbH, and remain property of Weber Automotive GmbH. The supplier shall treat them carefully and repair and maintain them, if necessary. Weber Automotive GmbH is entitled to reclaim the aforementioned facilities at any time without complying with a term.

XIII. General Provisions

1. In case the supplier ceases payment or insolvency or non-judicial settlement proceedings are applied for, Weber Automotive GmbH is entitled to rescind the contract with respect to the part not yet fulfilled.

2. Should one of the provisions of these conditions or of any additional stipulations agreed upon be or become invalid then the validity of the remaining part of these conditions shall not be affected thereby. The parties are obliged to replace the invalid provision by another equivalent term, in so far as this is possible, with respect to the commercial effect.

3. If the parties have not agreed otherwise, the laws of the Federal Republic of Germany shall be applicable. The application of the uniform laws of sale contained in the Hague Convention on International Sale of Goods is hereby excluded.

4. Place of performance shall be the registered office of Weber Automotive GmbH, Markdorf. Place of jurisdiction shall be Ravensburg, as far as legally allowed.

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